Vermont Bar Association

Seminar Materials

Equal Access to Justice: Paralegals & Limited Legal Licensure

September 19, 2014
Killington Grand Resort
Killington, VT

Faculty:
Sandra Baird, Esq.
Bridget Asay, Esq.
Laura Noyes
Chief Justice Paul Reiber
Dan Richardson, Esq.
Melissa Young Wilcox
The Future Of The Legal Profession.

Frederic S. Ury
Ury & Moskow, LLC
Fairfield, Connecticut

Thomas Lyons
Strauss, Factor, Laing & Lyons
Providence, Rhode Island
“Technology is changing the way we do business...

We have two choices.

We can try to impede these forces in order to preserve a familiar and comfortable world that seems to be slipping away.

Or we can decide that today’s rules should adapt.”

Stephen Gillers, A Profession, If You Can Keep It (2012)
Change: It’s all about delivery

• Legal services are not going to disappear. They will be delivered differently.

• Mail: Pony Express, email to tweets.

• Music, news, books, consumer products, and services.

• Borders books and Blockbuster.

• Television, cable, and Netflix.
Globalization.

- Over one million lawyers in India are willing to work for much less than American attorneys.
- Rates $25-50 per hour.
- Outsourcing overseas and to attorneys in the US.
- Ethical issues concerning supervision.
- We are a net exporter of legal services by billions.
Pangea3 and Other outsourcing.

- Bought by Thomson Reuters.
- In 2011 opened a 400 seat office in Texas.
- Outsourcing is returning to the US because of a glut of newly minted attorneys who would rather work for $50,000 or more than not work at all.
- Integreon: Fargo North Dakota.
- UnitedLex: Based in Kansas.
Pangea3 legal outsourcing.
UnitedLex.

A global leader in technology-powered legal and business solutions

Traditional consultancies, outsourcing companies and captive units are living on borrowed time.

Awards:
UnitedLex Makes Inc. Magazine’s 2012 Inc. 500 List of the Nation’s Fastest-Growing Private Companies

Legal Outsourcing Solution Highlights

Quantify - Defining Corporate Data. Redefining eDiscovery.
With Quantify, UnitedLex has fundamentally redesigned the eDiscovery process, allowing unprecedented insight into the composition of a dataset immediately after collection, and dramatically reducing the time and expense associated with eDiscovery. In a Quantify project, UnitedLex is able to search, analyze and even review documents prior to processing the data – ensuring that our clients’ resources are dedicated to identifying evidence, instead of paying to eliminate junk data. The Quantify platform provides meaningful, powerful data intelligence from day one after collection. With this information,

What’s New:
PRESS RELEASE
December 19, 2012
Former Global General Counsel of Deloitte Touche Tohmatsu to Serve as Managing Director and General Counsel to UnitedLex
UnitedLex announced the appointment of Joseph J. Lambert as Managing Director and General Counsel.
Stanley Lam paralegal.

Stanley Lam Compensation Paralegal Professional Corporation

WHO WE ARE

SLCP PC is a registered paralegal firm licensed to provide WSIB and WCB services for employers across Canada. Licensed under Law Society of Upper Canada.

SERVICES TO EMPLOYERS

Financial Services

- Appeal and Mediation representation at all levels across Canada includes preparation, interviews and hearings.
- Review and assess employer's current and/or alternative rate categories.
- Assist employers undergoing audit.
- Analyze worker status i.e., sub-contractor and independent operator employment status.
- Experience rating analysis.
- Assess the financial costs from a re-classification and/or un-applied accident cost credits.

Claim Services

Claim cost recovery through:

- third party transfers
- cost relief
Nothing has changed the practice as much as technology.

Small firms can compete with large firms for large transactions or complex litigation.

Every law firm no matter what size has the same access to legal resources.

Our clients have the same access to legal resources.

Allows firms to join together: Co-sourcing.
Virtual law firms and cloud computing.

- E-law firms, combined with outsourcing and co-sourcing, can build a nationwide network of law firms.
- UPL and regulatory considerations.
- Cloud computing and confidentiality.
- Grads who cannot find work are opening virtual law firms without mentoring.
- Opportunity for Litigation Section?
Why pay for something you can get on the internet for free?

- The internet is the primary source for information. Example: www.webmd.com.
- Our children have grown up using the internet to research, study, answer questions, shop, socialize, and play.
- Easy access to legal answers on the internet will change how people use attorneys.
- Music industry, newspapers, and books.
EXAMPLES
LegalZoom’s Achilles’ Heel: Free Legal Forms

For those of you following the LegalZoom IPO, which was scheduled for Friday, August 2, 2012, it was postponed for the usual stated reason that market conditions were not suitable. This really means that the offering could not get off at the $10-$12 price per share that the selling shareholders wanted. Instead the maximum price institutional buyers were willing to pay was reportedly $7-$8 a share, which would have reduced the valuation of the company by one-third. The reasons that were given for this lower valuation were comparisons with other transactional-based companies like www.ancestry.com which is selling at a price to earnings ratio of 21.75, compared to a projected price to earnings ratio for LegalZoom of over 40x.

Perhaps the research analysts on the buy side perceived a more fundamental flaw in LegalZoom’s business model.

The LegalZoom product offering at its core is still the provision of legal forms offered up to recently, without the option of the legal advice from an attorney. The pricing for these legal forms are comparable to the pricing of paralegal prepared legal forms offered for example by the many legal technicians in the State of California who work with consumers off line in face-to-face meetings, like lawyers.

Thus for example LegalZoom charges $299 for no fault divorce forms, and $139 for name change forms. Many virtual law firms now offer comparable legal form services but bundled with legal advice. See for example www.monsfamilylaw.com where a no-fault divorce is offered with the full accountability and the backing of an attorney for a fee of $275. For another example see FlashDivorce a virtual law firm service that offers no-fault divorce in four states for $199.

Law firms are going virtual and are finally figuring out ways to compete against LegalZoom on its own playing field. To be sure, these small law firms don’t have the capital and marketing budgets of a LegalZoom, but as thousands of these law firms eventually migrate to delivering online legal services they will not only offer a better value to consumers, but they will constrain LegalZoom’s growth and dominance.
Documents for free: Docracy.

About Us

What is Docracy?
Docracy is a home for contracts and other legal documents, socially curated by the communities that use them. Our mission is to make those documents freely available for everyone, while in the process making them easier to customize and use. No more shady templates behind a paywall where you click download and just hope for the best. Instead we offer reputable, transparent sources and social proof to help you find something as close as possible to the perfect document.

Why are you doing this?
We think it's a great idea to have an easy platform where you can access contracts and legal documents for free.

Documents

Where do the documents come from?
Anyone can upload or write a new document, including you. You can also edit and improve existing documents, either for the community or just for yourself. Documents are private by default, only you can see and edit them. If you make them public, only you, as the owner, will be able to edit them. However, if they are public, other people will be able to make a copy for themselves that they can then edit (we call it "branching").

How do I know if I am using the right document?

Signing

Is signing with Docracy legal?
Yes, agreements signed using Docracy are valid and legally enforceable as we are ESIGN Act compliant. We use email addresses to identify the parties, and we encrypt all content. Whether you decide to type your signature or draw it, your contract is executed the moment both signatures are appended, with a timestamp automatically added to the online document and the PDF copy. Your signed documents are also securely stored, so you can access them anytime.

Is storing documents on Docracy secure?
Search is changing access to justice.

- True access to justice for all will occur when the ability of computers to search improves to the point where anyone can find answers to everyday legal problems quickly and easily.
- Artificial intelligence along with search.
- Fair Outcomes, Inc.
- Connecticut legal aid network.
- Google scholar.
- Disruptive technology.
Neota Logic.
Fair Outcomes, Inc.

Game-Theoretic Solutions for Disputes and Negotiations
System Design - System Administration - Consultative and Online Services

Fair Outcomes, Inc.

Fair Outcomes, Inc. provides parties involved in disputes or difficult negotiations with access to newly developed proprietary systems that allow fair and equitable outcomes to be achieved with remarkable efficiency. Each of these systems is grounded in mathematical theories of fair division and of games.

Our founders and staff include game theorists, computer scientists, and practicing attorneys with extensive experience in designing, administering, utilizing, and providing consulting and online services with respect to such systems.

Further information about our company and our services may be obtained by using the contact information appearing on this page. Additional information about four of our systems, each of which can be accessed and used online (and examined and
EZLaw.

Create legal documents online with the help of an attorney
Simple. Easy. Law.

Create Online Legal Documents - Wills & Power Of Attorney - EZLaw.com - Windows Internet Explorer provided by American Bar Asso

Our Products

- Last Will and Testament
  - Don't let the courts decide what happens after you're gone – do it yourself right now!
  - Get Started

- Living Will
  - Make critical medical choices now, so your family won’t ever have to
  - Get Started

- Power of Attorney
  - Appoint someone you trust to make crucial life decisions when you can’t
  - Get Started

As Easy as 1-2-3

Complete the
Submit to attorney
Download your

The Attorney Consultation

Our attorney consultation gives you confidence in...
LawPivot.

LawPivot: Crowdsourced Legal Advice for Businesses

Type your detailed legal question here

- Ask Question Publicly
- Ask Question Confidentially

Get your answer

How it works:
- Businesses get legal advice by asking questions and receiving crowdsourced answers from lawyers
- Lawyers market themselves by providing legal advice, building their online reputations, and offering tax-price services

Two Options for Legal Advice
- LawPivot is the largest marketplace for businesses to receive crowdsourced legal advice from lawyers. Business can either:
  - Ask questions publicly, and receive legal advice that will benefit the entire LawPivot community

Recent Q&A Activity
- Ron Shepherd, Partner from Nampa. ID responded to the question:
  "My daughter takes dance and is on a dance team,"
- Ron Shepherd, Partner from Nampa. ID responded to the question:
  "The condo above mine flooded. Who is liable for the"
FreeAdvice.
Unbundled legal services.
A LITTLE PERSPECTIVE
Nature of the Clients.

- 1960s: 45% corporate, 55% individuals
- 1975: 53% corporate, 40% individuals
- 1995: 64% corporate, 29% individuals

Originally, this change meant higher income for lawyers because corporations paid more.

But, corporations are increasingly inclined to drive down the cost of legal services and lawyers have priced themselves out of the market for middle income clients.

Source, Prof. Thomas Morgan, GWU School of Law
Competition and fees.

- Clients expect that law firms will make every effort to reduce legal expenses.
- Is the billable hour going to replaced by fixed fees; blended rates; result oriented billing?
- Corporations and individual clients are not paying first year or any associates...mentoring and training.
- This effects our ability to train.
- Practice ready associates.
Many individuals cannot afford to hire lawyers.

- In CT 85% of divorces have one self-represented party.
- 90% of criminal defendants in CT are either represented by the Public Defender’s office or self-represented.
- Develop a new model to deliver legal services.
Where do lawyers work?

- 74% Private practice
- 8% Corporations
- 8% Private Industry
- 3% Judiciary
- 1% Legal Aid/Public defender
- 1% Education
- 1% Private association
- 5% Retired/Inactive

Information provided by Hinshaw & Clubertson LLP
Private practitioners.

- 48% Solo
- 15% 2-5 Lawyers
- 7% 6-10 Lawyers
- 6% 11-20 Lawyers
- 6% 21-50 Lawyers
- 4% 51-100 Lawyers
- 14% 101 plus Lawyers
Demographics.

- 55 percent of lawyers are baby-boomers.
- The oldest boomers are approaching retirement age. Can they afford to retire?
- Fewer lawyers are entering the profession.
- The decline in the number of attorneys may be offset by out-sourcing and technology.
- How will fewer attorneys impact bar associations and other professional organizations?
- Regulating an aging bar.
Total law firm employment peaked in 2004.
NUMBERS IN OUR REGION
Maine Bar demographics for 2006 and 2011.
Vermont Bar demographics for 2007 and 2011.
Connecticut Bar demographics for 2006 and 2011.
Can we direct change or only react to it?

- Change needs to be a partnership between the Judiciary, lawyers, bar associations and law schools.
- We cannot point the finger at each other but need to work together to change how we train attorneys and how we practice law.
- Our inability to organize change will allow others to do it for us and we will react to it.
We need to change how we are practicing law.

- The top of the economic ladder can access legal services.
- The poor are left with legal services which have not kept pace with the need.
- The middle of the economic strata can not afford legal services or are choosing to represent themselves or use web site providers.
Thoughts for leaders.

- “If you’re not on the train, you might be on the tracks.”
- We need to get our heads out of the sand.
- We need to think what the profession, bar association will be like in 5-10 years.
- Focus on “value added” work; avoid “commodity” work.
- How can you make technology work for you and your clients?
- Need to generate work by creating work.
More food for thought.

- Market legal products on the internet to make money while you sleep...Richard Granat.
- Update your website and make it interactive.
- Write a blog.
- Drive potential clients to your website.
- Provide unbundled legal services.
- Niche practices.
- Form collaborative networks and virtual law firms for one case or a particular area of practice.
- Examine your practice areas and discontinue those that have no future.
- Case management business.
How to reach Fred Ury.

- Frederic S. Ury
- Ury & Moskow, LLC
- 883 Black Rock Turnpike
- Fairfield, Connecticut 06825
- Telephone: 1-203-610-6393
- Fax: 1-203-610-6399
- Email: fred@urymoskow.com
- Website: www.urymoskow.com
How to reach Tom Lyons.

- **Thomas W. Lyons**
- Straus Factor Laing & Lyons
- 1 Davol Square
- Suite 305
- Providence, RI. 02903
- Phone: 1-401-456-0700
- Fax: 1-401-421-4730
- Email: tlyons@strausfactor.com
“The advantages of scale, flexibility, expertise and management that made large firms the tyrannosaurs of the 20th Century are being redistributed across an ecosystem of new players.

These upstarts use offshoring, practice management, technology, and big data to do many of the things that law has done cheaper, faster and better.”

Oliver Goodenough, “New Law is Replacing Big Law: How will the Profession Respond?,” Above the Law, March 13, 2014
We must be careful to protect the very essence of what it means to be a lawyer
What is the practice of law?
Washington State’s Approach

Practice of Law Board (POLB) convened in 2001

- Investigate unlicensed law practice (ULP) complaints

- Issue advisory opinions on the authority of non lawyers to perform legal services

- Make recommendations to the Washington Supreme Court regarding authorizing non lawyers to engage in certain defined activities.
Chronology of Washington’s Approach

• 2001: Washington Supreme Court adopted a rule defining the practice of law, and appointed the POLB in an effort to assure that ethical, competent legal services are provided to the public and to protect the public from the unauthorized practice of law without unreasonably restraining trade.

• 2003: A civil legal needs study identified the greatest legal needs for low and moderate income populations.
Chronology Continued

• 2008: The POLB proposed a rule change to permit limited licensing in the area of family law, which the Supreme Court published in 2009 without comment.

• 2012: The Court approved Limited Licensed Legal Technicians (LLLT) and appointed a Board to oversee and define the outer limits of the practice area and educational requirements.
State of Washington Rules


• Definition of Practice of Law GR24- http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesP DF&ruleId=gagr24&pdf=1

• Limited Licensed Legal Technicians (LLLT) APR28- http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesP DF&ruleId=gaapr28&pdf=1
ABA Task Force Proposal: Questions

• The future of legal education is:______________________.
• The future of the profession is:______________________.
• The following are the core skills of a lawyer:__________________.
• Is the future of legal education the same as the future of the profession? Yes/No, because ____________________________.
• These are the goals and objectives of the regulation of the practice of law:__________________.
• There is_____ is not_____ room in the profession for legal stratification. If so it is in this/these area(s):______________________________.
ABA Task Force Proposal: Composition and Challenges

• Composition: The task force should include representation from the court, bar, law firms, government lawyers, legal academy, business, consumers of legal services

• Challenges: The task force should consider possibilities such as: licensing changes, practice of law rules, UBE
AGENDA ITEM

III A. JUNE 17 13 Limited License Working Group

DATE: June 17, 2013
TO: Members, Limited License Working Group
FROM: Staff
SUBJECT: Working Group Recommendation: Support of Limited License Program and Possible Governance Structures

EXECUTIVE SUMMARY

In March 2013, the Board Committee on Regulation, Admissions & Discipline Oversight created the Limited License Working Group (“Working Group”) to explore the issue of licensing legal technicians and whether to create a limited license to practice law program in California. Legal Technicians are not fully licensed attorneys. They would be licensed to provide limited, discrete legal services to consumers in defined legal subject matter areas only. (Attachment 1)

BACKGROUND

Licensing legal technicians has been a subject of discussion at the State Bar for 20 years. In light of action taken creating a limited license to practice law for legal technicians in Washington State, and the actions of the Law Society of Upper Canada licensing and regulating paralegals, this was identified by the Board at its January 2013 planning meeting for exploration.

The Working Group held 3 hearings in San Francisco and Los Angeles where they took testimony from the Washington State Bar Association, the Law Society of Upper Canada, and representatives from legal academia, the judiciary, the Department of Consumer Affairs, and the US Attorney’s office. Discussion topics included:

- History and governance structure (independent board and practice area subcommittees) of the Limited License Legal Technicians (LLLT) program in Washington State
- Canadian model for licensing paralegals
- Physician assistant model
- Analysis of 3 previous State Bar reports on Legal Technicians (1988, 1990, 1993), including a regulatory framework, licensing requirements and specified areas of practice that were proposed in 1990
• Role of a limited license program in addressing public protection/access to justice (UPL and Immigration), including alternative solutions to a limited license program in addressing the justice gap such as court self-help centers, pro bono and modest means legal assistance
• Legal pre-emption issues related to federal law
• Economics of Legal Services and the UK model

ISSUE

Should the State Bar of California propose a further study, development, and implementation of a limited license to practice law program in California?

CONCLUSION

Yes.

DISCUSSION

Access to Justice

The cost of legal services continues to rise, resulting in increasing numbers of consumers seeking self-help options and legal assistance from unlicensed practitioners. Legal assistance provided by trained individuals under a regulatory framework should be readily available and affordable to address the justice gap.

The State Bar has previously published reports on legal technicians:

“…the dramatic growth in the numbers and types of services offered by non-lawyers to persons with law-related problems reflects society's response to needs not met by California lawyers.” [Report of the State Bar of California Public Protection Committee (April 1988)]

“There is an overwhelming unmet need of California residents for better access to the legal process, and…'legal technicians' may provide greater access so long as their activities do not pose an unreasonable risk of harm to the public.” [Report of the State Bar of California Commission on Legal Technicians (July 1990)].

The justice gap has grown progressively wider since 1988 and the Working Group took testimony on the effect this has had in Family Law courts: Family Law Judges in the Los Angeles Superior Courts estimated recently that 75% to 85% of family law cases are pro per and 90% of Domestic Violence cases are in pro per.

The legal profession has not found a way under traditional methods to alleviate the access to justice challenges.
Harm to the Public

The significant potential of harm to the public by both unscrupulous and well-intentioned but untrained providers of legal services cannot be ignored. Potential harm can include outright fraud; inadequate and imprecise advice; missed issues, defenses and remedies, exemptions.

Regulation offering licensure, disciplinary standards and consequences, codes of conduct, education, training, and financial responsibility can provide greater access to legal services while at the same time limiting potential harm to the public. [Report of the State Bar of California Commission on Legal Technicians (July 1990)].

Scope of Non-Lawyer Services

The scope of non-lawyer services would be defined to reserve to fully-licensed lawyers those activities that lawyers have been trained to provide, such as representing clients in court, representation in areas not benefitting from limited licensure, negotiations, and effecting legal rights otherwise.

Non-lawyers would be engaged to provide discrete, technical, limited scope of law activities in non-complicated legal matters in 1) creditor/debtor law; 2) family law; 3) landlord/tenant law; 4) immigration law. [Report of the State Bar of California Commission on Legal Technicians (July 1990)]; as well as in elder law [Washington State model].

FISCAL / PERSONNEL IMPACT:

To be determined.

RULE AMENDMENTS:

To be determined.

BOARD BOOK IMPACT:

None.
RECOMMENDATION

It is recommended that the Limited License Working Group report and recommend to the Board Committee on Regulation, Admission and Discipline Oversight that the State Bar further study and develop a proposal for a limited license to practice law program, including possible governance models, for adoption and implementation in California.

PROPOSED LIMITED LICENSE WORKING GROUP RESOLUTION:

Should the Limited License Working Group agree with the above recommendation, the following resolution would be appropriate:

WHEREAS, the availability of low cost legal services has continued to decline and the numbers of unrepresented persons appearing in California’s courts and justice system has continued to grow, particularly in the areas of family law, elder law, creditor and debtor law, landlord and tenant law, and immigration law, resulting in a broadening of the “justice gap,” and

WHEREAS, this justice gap has resulted in untrained and unlicensed providers of legal services; and

WHEREAS, regulation, with disciplinary standards, codes of conduct, education, training, and financial responsibility can provide greater access to legal services while at the same time limiting potential harm to the public;

WHEREAS, limited license programs adopted in other jurisdictions provide a model for addressing these issues; and

WHEREAS, there appears to be no viable alternatives from the past and existing efforts in California that have adequately addressed the justice gap;

RESOLVED, that the Limited License Working Group hereby supports the concept of a limited license program in California; and

FURTHER RESOLVED, that the Limited License Working Group recommends to the Board Committee on Regulation, Admissions and Discipline Oversight that the State Bar, in consultation with the relevant stakeholders, further study and develop a proposed limited license to practice law program and possible governance models for adoption and implementation in California.

Attachments:
1. Regulation, Admissions & Discipline Oversight Committee (RAD) agenda item, March 2013
Report to the
Attorney General
of Ontario
Pursuant to Section 63.1
of the Law Society Act
# Table of Contents

Executive Summary ................................................................. 2  
Foreword by the Paralegal Standing Committee ............................... 5  
Introduction ................................................................. 6  
  Requirement for this review .................................................. 6  
  Report after five years ......................................................... 6  
  Focal points for this review ................................................. 7  
  Methodology for this review ............................................... 7  
History of Paralegal Regulation ................................................ 8  
  The Attorney General’s Request ............................................ 8  
  The 2004 Report to Convocation .......................................... 8  
  The Access to Justice Act .................................................. 9  
Analysis of Paralegal Regulation ............................................. 10  
  Initial Implementation ..................................................... 10  
  Effect on Paralegals .......................................................... 11  
    Grandparenting Process ................................................... 11  
    Competency and Education .............................................. 12  
    Practice Support and Professional Development .................... 14  
    Paralegal Insurance ...................................................... 15  
    Paralegal Business Structures ......................................... 16  
    Conduct and Discipline ................................................ 17  
Budgetary and Administrative Issues ....................................... 19  
  Paralegal Regulation Start-up Budget ................................... 19  
  Law Society Budget Process ............................................... 19  
  Paralegal Operating Budgets .............................................. 19  
  Compensation Fund ........................................................ 19  
  Law Foundation of Ontario Grants ..................................... 20  
  Equity Department .......................................................... 20  
  Communicating with Paralegals, Lawyers, and the Public ............. 21  
  Paralegal Governance ...................................................... 22  
  Statutory Environment .................................................... 23  
  By-law 4 Exemptions ........................................................ 24  
Public Satisfaction with Paralegal Regulation ............................. 25  
Conclusions ........................................................................... 26  
Appendices ............................................................................. 28  
  Submissions Received .......................................................... 28  
  Five Year Review of Paralegal Regulation: Research Findings by  
    Strategic Communications Inc ........................................... 29
Executive Summary

Background

At the request of the Ontario government, and following assessment and study dating back to at least 1990, the Law Society of Upper Canada assumed responsibility for the regulation of paralegals in 2007. This represented an important change to the role of the Law Society, and an expansion of its mandate to cover the regulation of all legal services provided in Ontario.

The Law Society Act amendments through which this was implemented also created the requirement for reviews of paralegal regulation, after two years and again after five years.

When the then-Attorney General, The Honourable Christopher Bentley, tabled the two-year review in the legislature in March 2009, he commented, “The Law Society has made tremendous progress so far and I am confident it will continue to oversee the regulation of paralegals in the same professional and dedicated manner in which it put the regulatory system in place.”

This report is the outcome of the five-year review and demonstrates effective progress in the regulation of licensed paralegals in the intervening years.

The Review Process

In reviewing the effect regulation has had on paralegals, particular emphasis was placed on whether the Law Society has established fair and transparent licensing processes, reasonable standards of competence and conduct, and fair and transparent investigative and disciplinary processes.

In reviewing the effect of regulation on members of the public, particular focus was placed on whether Law Society regulation has established reasonable standards of competence for licensed paralegals in Ontario, accessible information about the legal services available in Ontario, and accessible and transparent complaint and disciplinary processes for the public.

The Law Society retained a consultant to conduct extensive background research on the subject of the review, including focus groups with paralegals and members of the public who have used paralegal services, key stakeholder interviews and surveys of licensed paralegals and users of paralegal services. These research findings have informed the report’s analysis.

The Law Society also solicited submissions from paralegals, lawyers, legal organizations and members of the public. Twenty-six were received, 12 from organizations and 14 from individuals. All of these submissions have been considered in the preparation of this report.

Paralegal Regulation Today

As of December 31, 2011, the Law Society had licensed 4,096 individuals to provide legal services within the paralegal scope of practice. Primary areas of practice include small claims court, traffic and other provincial offences, landlord-tenant and various other matters handled by tribunals and administrative bodies, and minor matters under the Criminal Code. A majority of paralegals (62 per cent) practice outside Metropolitan Toronto.

A significant proportion of licensed paralegals are carrying on practices established prior to regulation, with 2,230 having taken advantage of the grandparenting and transitional provisions. There was a high success rate on the part of these applicants, and therefore minimal mid-career disruption among long-term paralegals.

With that process complete, current applicants for licensing must graduate from one of 24 accredited college programs offered by 22 institutions around the province (including one French-language institution). Accredited programs must meet defined criteria and pass regular audits. In 2011, 604 licences were issued to graduates of these programs.

Licensing examinations are available three times annually, and licensing candidates must also be of good character, a consistent standard for both lawyers and paralegals. The Law Society Act provides that no one who meets the other licensing requirements can be refused a licence on the basis of good character without a hearing. In the grandparented and transitional licensing categories, 45 cases involving good character were referred to a hearing, and in 22 cases a licence was denied.
Once licensed, paralegals are subject to regulatory requirements that closely parallel those applicable to lawyers. Key elements include adherence to rules of professional conduct and requirements regarding trust accounts, insurance and continuing professional development, payment into a compensation fund, and the application of investigative and disciplinary processes. These requirements are central to a system of regulation that safeguards the public interest. Research conducted as part of the review process indicates that licensed paralegals are working to a higher standard of competence and enjoying enhanced professional standing. Further, paralegal clients are highly satisfied with the regulated services they have received.

As members of a regulated profession, paralegals also have the benefit of a wide range of resources provided by the Law Society. These include continuing professional development programs, a practice management helpline and mentoring services. The Law Society also implemented a practice audit program for paralegals, an integral part of the quality assurance activities in the public interest. The audits provide practical advice to help paralegals achieve effective and efficient practices.

Annual Law Society fees charged to paralegals compare favourably to those applicable to various other regulated professions, and fee revenues were sufficient to avoid incurring an anticipated deficit in the start-up phase of regulation. In addition to the requirement to pay an annual fee, licensed paralegals are required to file a Paralegal Annual Report. The reports provide demographic data, areas of legal services provided, maintenance of trust accounts and other financial information, and self-study activities.

Paralegals were integrated into the Law Society’s governance structure through an election process for five paralegal members of the Paralegal Standing Committee, established under the Law Society Act. The Committee is composed of the elected paralegals, and elected and lay benchers. The first election of paralegal members of the Committee was held in March 2010. In the relatively short period of its existence, the Committee has completed an extensive agenda, developing all the necessary details of the regulatory model for recommendation to the Law Society’s board, Convocation. The committee has worked very collegially together without tension between the paralegal and non-paralegal members.

Overall Results of the Review and Conclusions

The review has shown that implementation of the Law Society’s regulation of paralegals has been successful. The Paralegal Standing Committee agrees, but also notes that the review identified opportunities that merit further consideration.

In summary, the report has demonstrated the following:

- Consumer protection has been balanced with maintaining access to justice and the public interest has thereby been protected. Paralegals operate within a regulatory framework that closely parallels that for lawyers and are establishing a prestigious and well-regarded profession. A large majority of them (71 per cent) believe regulation has been beneficial. The Law Society was the right choice of regulator, having put in place a framework at a reasonable cost and without undue burden on licensed paralegals. Extensive services are in place and issues have been addressed as necessary to ensure paralegals are treated as respected legal services providers. It is implausible that a new regulator could have achieved comparable progress.

- The large group of paralegals who were providing legal services before regulation have been integrated into the regulated profession through a fair and transparent grandparenting process, with the one caveat that the good-character hearing process was perceived as slow.

- Initial cohorts have graduated from the accredited paralegal college programs. Submissions to the review included calls for more rigorous program standards and for a pre-requisite of two years of college education.

- In spite of extensive communications work by the Law Society, public awareness has not kept pace with changes in the legal services market, particularly with respect to awareness of the distinction between services provided by lawyers and services provided by paralegals.

- The categories of those who provide legal services but are exempt from licensing continue to provide challenges. The Law Society believes the number of exemptions should be further reduced over time. Tracking mechanisms regarding appearances before tribunals by exempt persons are also needed.
- Some anomalies remain in older provincial statutes that were not among the many amended when regulation was implemented, and the Law Society continues to work with government in this regard.
- The governance structure in the Law Society Act has worked well. Paralegal and non-paralegal members of the Paralegal Standing Committee work together cordially and no Committee report has ever been rejected by Convocation. The initial allocation of two paralegal benchers, however, will become increasingly disproportionate as the number of licensed paralegals increases.
- Most paralegals (68 per cent) are satisfied with overall progress to date with respect to Law Society regulation. Key benefits to them include enhanced credibility and prestige, and access to a wide range of services.
- Among the concerns the review disclosed, some relate to the activities of peers within the paralegal profession, for example, in the use of certain business names and marketing practices. Some paralegals see the regulatory enforcement as too lenient.
- While a significant proportion of paralegals (62 per cent) said they were satisfied with the scope of practice, some believe it should be expanded. The Law Society is actively considering whether changes to the scope of practice are appropriate, based in part on the recent Legal Needs Analysis, which is currently under committee review. Consultations on this issue are envisioned.
Foreword by the Paralegal Standing Committee

The Paralegal Standing Committee has reviewed and contributed to this Five Year Report on Paralegal Regulation in Ontario, and has reviewed the attached consultant’s report prepared by Strategic Communications Inc.

The Committee regards the implementation of paralegal regulation in Ontario as a success, providing consumer protection while maintaining access to justice, although there are remaining challenges and opportunities to be addressed, as noted in the report.

As shown by the focus groups conducted by the consultant, paralegals feel that the Law Society has provided fair and transparent licensing and regulatory processes, and that regulation has enhanced paralegals’ professional standing.

The Paralegal Standing Committee is satisfied that this report fairly presents the development of this initiative over the last five years. Given that the Law Society Act section 63.1 requires that “a portion of the report is authored by the Paralegal Standing Committee,” the Committee is pleased to submit this foreword in compliance with this legislative requirement.

The Committee looks forward to continuing to work with all stakeholders to further this important work.

Respectfully submitted,

Cathy Corsetti, Chair
On behalf of the Paralegal Standing Committee
Introduction

**Requirement for this review**

At the request of the Ontario government, the Law Society of Upper Canada assumed responsibility for the regulation of paralegals in 2007, implemented through amendments to the *Law Society Act*. This represented an important change to the role of the Law Society, which, while previously limited to the regulation of lawyers, expanded to make the Law Society the regulator of all legal services in Ontario.

*Law Society Act* amendments also created the requirement for two reviews of the implementation of paralegal regulation, one to be conducted after two years and one after five years.

The two-year review was completed in 2009, and presented to the then–Attorney General, The Honourable Christopher Bentley, for tabling in the legislature in March 2009. In his remarks, the Attorney General commented “The Law Society has made tremendous progress so far and I am confident it will continue to oversee the regulation of paralegals in the same professional and dedicated manner in which it put the regulatory system in place.” The two-year review is available on the Law Society website.

The provision of the *Law Society Act* governing the five-year review is as follows:

<table>
<thead>
<tr>
<th>Report after five years</th>
</tr>
</thead>
<tbody>
<tr>
<td>DEFINITION</td>
</tr>
<tr>
<td>63.1 (1) In this section,</td>
</tr>
<tr>
<td>“review period” means the period beginning on the day on which all of the amendments to this Act made by Schedule C to the <em>Access to Justice Act, 2006</em> have come into force and ending on the fifth anniversary of that day.</td>
</tr>
<tr>
<td>Review and report by Society</td>
</tr>
<tr>
<td>(2) The Society shall,</td>
</tr>
<tr>
<td>(a) review the manner in which persons who provide legal services in Ontario have been regulated under this Act during the review period and the effect that such regulation has had on those persons and on members of the public;</td>
</tr>
<tr>
<td>(b) prepare a report of the review, ensuring that a portion of the report is authored by the Paralegal Standing Committee; and</td>
</tr>
<tr>
<td>(c) give the report to the Attorney General for Ontario within three months after the end of the review period.</td>
</tr>
</tbody>
</table>

The “review period” in subsection 63.1 (1) ran from May 1, 2007 to April 30, 2012.
Focal points for this review

In reviewing the effect regulation has had on paralegals, particular emphasis was placed on whether the Law Society has established:

- fair and transparent licensing processes for paralegal applicants;
- reasonable standards of competence and conduct for licensed paralegals; and
- fair and transparent investigative and disciplinary processes for situations where it is alleged that licensed paralegals have failed to observe Law Society standards.

In reviewing the effect of regulation on members of the public, particular focus was placed on whether Law Society regulation has established:

- reasonable standards of competence for licensed paralegals in Ontario such that the public has access to competent paralegal services;
- accessible information about the legal services available in Ontario;
- accessible and transparent complaint processes for the use of members of the public who have concerns about the conduct or competence of licensed paralegals; and
- accessible and transparent disciplinary processes to address breaches of Law Society standards.

Methodology for this review

Following a request for proposals, the Law Society retained a consultant to conduct extensive background research on these issues. The methodology included focus groups with paralegals and members of the public who have used paralegal services, key stakeholder interviews and surveys of licensed paralegals and users of paralegal services. These research findings have informed the report’s analysis.

The Law Society also solicited submissions from paralegals, lawyers, legal organizations and members of the public. Twenty-six were received, 12 from organizations and 14 from individuals. All of these submissions have been considered in the preparation of this report.

The list of those who made submissions and the research findings are appended to this report.
History of Paralegal Regulation

The Attorney General’s Request

On January 22, 2004, then-Attorney General, Michael Bryant, attended Convocation and requested that the Law Society assume responsibility for regulating paralegals in Ontario. By that time, work on the issue dated back at least 15 years, and included major reports by Professor Ronald Ianni (1990) and Justice Peter de C. Cory (2000).

In August 1999 the Ontario Court of Appeal had commented as follows in the case of *R. v. Romanowicz*:

A person who decides to sell t-shirts on the sidewalk needs a license and is subject to government regulation. That same person can, however, without any form of government regulation, represent a person in a complicated criminal case where that person may be sentenced to up to 18 months imprisonment. Unregulated representation by agents who are not required to have any particular training or ability in complex and difficult criminal proceedings where a person’s liberty and livelihood are at stake invites miscarriages of justice. Nor are *de facto* attempts to regulate the appearance of agents on a case-by-case basis likely to prevent miscarriages of justice.

From 2001 to 2002 the Law Society had worked with the Professional Paralegal Association of Ontario to resolve some of the key issues, which led to the development of a document called *A Consultation Document on a Proposed Regulatory Framework*, which became an important building block in the project as it developed.

In response to the 2004 request from the Attorney General, Convocation authorized the Treasurer to establish a task force to develop a detailed proposal in collaboration with the Ministry of the Attorney General. The then Treasurer, Frank Marrocco, established the Task Force on Paralegal Regulation on February 10, 2004, chaired by Bencher William Simpson. On April 22, 2004, the Task Force submitted a revised consultation document to Convocation, which served as the basis for consultations with stakeholders to inform a more detailed proposal.

The Task Force consulted with stakeholders from April to August 2004, holding meetings in many centres across the province, from Thunder Bay to Windsor. It heard from more than 50 organizations and groups and submitted its Report to Convocation on September 23, 2004.

The 2004 Report to Convocation

In the view of the Task Force, previous attempts to regulate paralegals had failed principally because of the inability to achieve a consensus on two difficult issues, namely, the regulatory model and the scope of paralegal activities.

The Task Force believed that, with more than 200 years of experience as a regulatory body governing lawyers in the public interest, the Law Society could more efficiently and economically regulate paralegals than could a new regulatory body. The Task Force further found that there was now considerable support for this approach in the legal profession. This resolved the first of the two most difficult issues.

The Task Force also determined regulation of paralegals could best be achieved on the basis of the current law respecting paralegal activities, thus avoiding the need for numerous substantive-law changes. The Task Force received many submissions arguing that the permitted scope of practice for paralegals should either be broadened or narrowed. The Task force was concerned that an effort to resolve these disparate views would risk indefinitely postponing the regulation of paralegals. The appropriate starting point for paralegal regulation was instead deemed to be the regulation of persons providing services in currently permitted areas of law, as defined in legislation and case law.

The Task Force agreed that the approach to paralegal regulation should be based on the following principles:

- it should reflect the current definition of the “unauthorized practice of law” as set out in case law;
- it must be in the public interest, providing consumer protection and enhancing access to justice;
- it must ensure paralegal competence;
- it should be as uncomplicated as possible while achieving the desired result;
- it should mirror the regulation of lawyers wherever possible, to avoid confusion and duplication.
As the objective was to enable the Law Society’s regulation of the delivery of legal services comprehensively, a broad definition of the practice of law was required. Exemptions could then be created for those whom it was not necessary or appropriate for the Law Society to regulate. In this way, the regulation of paralegals would be focused on individuals retained by the public to provide services for a fee.

The over-arching scheme of regulation would appear in the Law Society Act, with the details in the more flexible format of regulations and by-laws.

Key features of the model would include the following:

- Persons wishing to acquire a licence would take an approved college course, be of good character, and pass a Law Society licensing examination.
- Licensed paralegals would — in the same manner as lawyers — be required to follow a code of conduct, carry insurance, and pay into a compensation fund.
- Licensed paralegals should be subject to discipline, with the most serious sanction being loss of their licence after a hearing.

Convocation approved the Task Force Report and submitted it to the Attorney General as the recommended basis for the necessary legislation. This recommendation, incorporating the principles and features outlined above, was accepted.

The Access to Justice Act

Attorney General Bryant introduced the Access to Justice Act on October 27, 2005. Schedule C contained amendments to the Law Society Act that closely followed the recommendations of the Task Force Report, including the recommendation that the details should be addressed by way of regulations and by-laws.

The Act received Royal Assent on October 19, 2006, with an effective date for the Law Society Act amendments of May 1, 2007. At that point, the challenge to the Law Society of preparing the required by-laws and supporting operational programs began.
Analysis of Paralegal Regulation

**Initial Implementation**

The amended *Law Society Act* meant that the Law Society ceased to regulate only lawyers and became the regulator of the delivery of legal services comprehensively. This was achieved through a broad definition of the “provision of legal services”. Within this broad definition, the scope of practice for paralegals was set out through by-law.

Subsection 1(8) of the amended Act excludes four areas from Law Society jurisdiction:

- other regulated professions, within the normal course of their work;
- in-house employees preparing documents for their employer;
- persons acting on their own behalf; and
- trade union representatives dealing with members’ trade union matters.

In addition to these four areas, subsection 1(8) gives the Law Society authority to exempt any other persons or classes of persons through by-laws. This gives the Law Society wide discretion to determine the areas of legal services that the Law Society will regulate.

While most of the *Law Society Act* amendments were effective on May 1, 2007, two provisions were effective immediately upon Royal Assent — the creation of the Paralegal Standing Committee (PSC) and the addition of two paralegal benchers to Convocation. The members of the PSC were appointed in November and met for the first time on December 5, 2006.

Section 16 of the *Law Society Act* required that five paralegal members of the committee be appointed by the Attorney General to sit until the first election could be held. That election took place in March 2010.

The committee immediately began the challenging work of developing the details of the regulatory model for Convocation’s approval. From November 2006 to May 2007, when all of the other amendments to the Act came into effect, the PSC developed extensive recommendations addressing:

- the grandparenting process;
- development of the rules of conduct;
- exemptions to licensing;
- insurance requirements;
- fees; and
- the compensation fund.

Developing an appropriate grandparenting process was a significant challenge, but was necessary for the benefit of the large number of paralegals already in practice. A key rationale for the regulation of paralegals was that there was a mix both of competent, conscientious paralegals and of some less competent, and even incompetent and unethical ones. This was not only harmful to vulnerable clients and contrary to the public interest, but also damaging to the reputation of competent paralegals. At the same time, one of the concerns of the Ontario government was that conscientious practitioners should not face unreasonable barriers to continuing their careers under the new regulatory framework.

Regulation was designed to create a standard of competence and to address the problem of incompetent and unethical paralegals. The grandparenting provisions gave applicants a six-month window to apply for a licence, from May 1 to October 31, 2007. There were no educational requirements, provided applicants had three years of full-time experience. These applicants were subject to all the other licensing requirements, including being of good character, carrying insurance and passing the licensing examination.

Where an application raised an issue of good character, the file was referred for investigation and a possible hearing.

More than 2,200 applicants applied under these grandparenting provisions. Of these, 1,930 took the first-ever licensing examination on January 17, 2008. In total, 2,230 paralegal licences were eventually issued under the grandparenting process.

With this process concluded, licensing now proceeds on an annual timetable, in much the same manner as the licensing process for lawyers.

By-law 4 under the *Law Society Act* was passed on March 29, 2007 and became effective on May 1, 2007. It set out details of the regulatory model, including the permitted scope of paralegal practice. As recommended by the Task Force, the permitted scope embodied the existing permitted areas.
As noted above, the amended Law Society Act, in subsection 1(8), provided exemptions to the licensing requirements. By-law 4 established further exemptions, in keeping with the intent to focus initially on the private provision of legal services for a fee. For example, in-house paralegals who only represent their employer, such as municipal prosecutors, are not required to have a licence.

Other exemptions were subsequently added by Convocation, on the recommendation of the PSC, where there was a public policy rationale. These included, for example, the staff of legal aid clinics and of not-for-profit organizations providing free legal services, as long as they carry professional liability insurance.

The regulatory exemptions were regarded as part of a phase-in of paralegal regulation — the By-law specified that they were to be reviewed after two years. The exemptions review began in spring 2009 and concluded in 2011 with two of the exemptions being removed from the By-law and others amended. While some exemptions are likely to be permanent, such as the exemption for immediate family members, the appropriateness of others continues to be assessed.

One of the guiding principles was that the regulation of paralegals be as similar as possible to that of lawyers. The regulatory provisions governing lawyers are for the most part found in the Law Society’s by-laws. A large proportion of the by-laws now apply equally to lawyers and paralegals, and when amendments are proposed, they are generally applicable to both. Provisions are essentially the same for both lawyers and paralegals with respect to:

- practice structures;
- professional liability insurance requirements;¹
- standards of competence;
- financial regulation;² and
- mandatory continuing professional development.

In March 2007, Convocation approved the Paralegal Rules of Conduct ("Rules") developed by the PSC. The Rules have been amended on a number of occasions since then to clarify duties and obligations, and to ensure consistency internally and with the lawyers’ Rules of Professional Conduct.

Provisions are essentially the same for both lawyers and paralegals with respect to:

- accepting instructions;
- carrying out instructions;
- professional relationships;
- advertising, competition and restraint of trade;
- professional conduct;
- conflicts of interest; and
- confidentiality of client information.

**Effect on Paralegals**

**Grandparenting Process**

While many aspects of paralegal regulation affect all licensed paralegals, some issues are specific to those who used the grandparenting process, as distinct from graduates of the accredited college programs.

When this process became available in May 2007, the Law Society had no means of knowing the potential number of applicants, but estimates had ranged from 750 to 1,200. When the window closed on October 31st, over 2,200 had applied. This represented a significant operational challenge.

The grandparenting provisions were meant to protect mid-career paralegals from undue disruption in their work lives, an important objective for both the Law Society and the government. They were designed to strike a balance between consumer protection and access to justice. The Law Society’s Professional Development & Competence Department developed proposals for the consideration of the PSC and subsequently Convocation, that required applicants to:

- have three years of full-time experience in the permitted areas of practice;
- be of good character;
- carry $1 million of professional liability insurance; and
- pass the licensing examination.

The vast majority of applicants were able to fulfil these requirements, regarding which there were very few complaints. Most paralegals who had practised for five or more years had no difficulty with the licensing examination. They were therefore able to continue providing legal services, assuring their clients that they were now licensed and insured, backed by a compensation fund and subject to regulation by the Law Society in the event of any problem.

---

¹ With the exception that insurance for paralegals may to be purchased on the open market;
² The only exception to the existing rules for lawyers was that grandparent applicants were given a transitional period within which to bring their financial management into conformity with the trust account rules.
As noted, many paralegals had satisfactory insurance coverage from private insurers and there was no compelling reason to disrupt these relationships. Paralegals remain able to purchase the specified level of coverage from their choice of provider. This contrasts with the situation for lawyers, who are required to purchase insurance from the Law Society’s wholly-owned insurance company, LAWPRO.

Applicants were eligible for grandparenting if they had worked as paralegals in the permitted scope of practice, either independently or as an employee, for three of the last five years. For applicants requiring accommodation under one of the grounds in the Ontario Human Rights Code, the requirement was three of the last seven years. Candidates who did not meet the years of experience requirement, but who had relevant education or training, could apply as transitional candidates. The Law Society ultimately processed 2,203 applications, 1,725 as grandparenting candidates and 478 as transitional candidates.

All such candidates were required to take and pass the Paralegal Licensing Examination. They were able to write the examination in English or French in five locations across the province: Toronto, London, Ottawa, Sudbury and Thunder Bay. Secure venues and competent invigilators were arranged and sittings took place on January 17, 2008, February 27 and April 2, 2008.

Applicants who successfully completed the licensing examination were notified by the Law Society and invited to complete the licensing process by submitting their annual fee and a registration package, subject to a good character review. Comments received from the first group of paralegals who went through the process were extremely positive with respect to service provision, learning materials and sessions and the overall experiences. The Law Society began issuing licences in May 2008 and by the end of October more than 2,000 had been issued to grandparented and transitional applicants.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant, 83 per cent were satisfied or very satisfied with the grandparenting process.

Licensing Examinations for paralegals now take place three times a year in February, August and October in Toronto. Applicants are permitted to write the examination up to three times, after which they may be required to obtain further education before re-applying.

**Competency and Education**

**COMPETENCY PROFILE AND EXAMINATION DEVELOPMENT**

The starting point for paralegal licensing was the development of a profile setting out the required competencies for an entry-level paralegal. Competencies form the basic building blocks for a defensible examination and licensure system and can be defined as the knowledge, skills, abilities, attitudes and judgments required to competently provide legal services to the public.

The Professional Development and Competence Department began with a review of the scope of practice and the creation of rules of professional conduct for paralegals. Consultations were held with tribunals and agencies, colleges and paralegals themselves. In addition, the department reviewed and analyzed legal services programs offered by private and community colleges. The competency profile was designed to reflect the Rules as well as core issues involving professional responsibility, practice management and ethics. Competencies in the various substantive areas of law within the paralegal scope of practice were to be addressed through the college accreditation process (see below).

Each competency in the final profile was rated on a scale of importance to create an examination blueprint. The blueprint specifies types and numbers of questions, and a scoring methodology. The department then organized a series of examination item writing sessions, during which subject matter experts created questions that aligned with the competencies and parameters of the examination blueprint. Questions were then validated by qualified external assessors. The end result was an examination consisting of 100 multiple-choice questions with a passing mark set using the ‘Angoff’ method.

Reference materials were developed to support the competencies being assessed in the examinations, and addressing ethics and practice management concepts related to the Rules and competency profile. Once the reference materials were complete, questions were tagged to the appropriate section to ensure the materials comprehensively addressed the paralegal examination bank. Examination items and reference materials were externally translated into French. In addition, a study guide and learning sessions to help paralegals prepare were developed.
Information from the focus groups and online survey of paralegals conducted as part of this review indicated a high degree of satisfaction with the licensing examination: 83 per cent of respondents were satisfied or very satisfied with the examination.

ACCREDITATION OF PARALEGAL COLLEGE PROGRAMS

Once the window for grandparenting and transitional applicants closed in October 2008, the Law Society began the process of accrediting paralegal programs of study. The objective was to ensure that all candidates seeking paralegal licensing have graduated from approved education programs that meet required standards.

A competency profile for paralegal program accreditation was developed by the Professional Development and Competence Department after extensive consultation with various colleges and the Ministry of Training, Colleges and Universities (MTCU). The profile specifies 18 required courses in a variety of substantive, procedural, skills related and practice management areas within the paralegal scope of practice. Specifically, accredited college programs must offer a minimum of 830 hours of instruction, comprised of:

- 590 instructional hours in compulsory legal courses within the permitted scope of practice;
- 120 hours of field placement/practicum work experience; and
- 120 instructional hours in additional (non-legal) courses that support a well-rounded college education.

In addition, accreditation requirements set out standards related to program infrastructure, including the number and qualifications of faculty, thoroughness of the institution’s assessment practices and examinations, and the suitability of the program’s field placement process.

The department prepared accreditation packages that were distributed to academic institutions in the fall of 2007. Colleges were given until May 1, 2010 to submit an application and obtain accreditation. Priority was given to assessing accreditation applications from institutions that already had paralegal programs in place. A total of 20 college programs had submitted an application and received accreditation by June 30, 2010.

The Law Society continues to liaise regularly with the MTCU on accreditation and auditing of paralegal education programs. The ministry is copied on accreditation approvals or denials, along with the reasons for such decisions. This relationship has been extremely beneficial in ensuring the effectiveness of the new system.

There are currently 24 accredited programs in Ontario, offered by 22 community colleges and private career academies (some in more than one location). This includes a French-language program at La Cité collégiale in Ottawa. Only candidates who have graduated from accredited college programs are permitted to apply for a paralegal licence. In 2011, 604 college graduates became licensed; this number is expected to rise in 2012. In addition, there have so far been 85 licences granted to the 497 applicants via the Integration Process described below.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant, 70 per cent reported that the college program was adequate preparation for the licensing examination.

AUDITING OF ACCREDITED PARALEGAL COLLEGE PROGRAMS

As a measure of quality assurance, accreditation policies allow the Law Society to attend at accredited programs to review systems, conduct interviews or otherwise assess information provided in the institution’s application. To ensure that each accredited program of study maintains appropriate standards of competence training and assessment, an audit is conducted within the first three years after accreditation, and at least every five years thereafter. The Law Society began these audits in November 2009.

Each audit is comprised of the following:

- review of selected materials (e.g. course descriptions, completed assessments, faculty lists and field placement reports) to ensure they meet or exceed minimum standards; and
- two-day site visits to each campus, during which the auditors observe classes and interview administrators, faculty, students, and the field placement coordinator.

After the site visits, an audit report is drafted, providing recommendations and commentary, and is sent to the institution for review and clarification prior to issuance of a final audit report.

As of April 30, 2012, the paralegal accreditation team has conducted 19 audits at 30 campuses. The audit team has experienced an excellent level of compliance with respect to recommendations and commentary made within the process, and feedback has been very positive overall.
INTEGRATION LICENSING PROCESS

On October 1, 2010, the Law Society approved an Integration Licensing Process for members of certain previously exempted paralegal groups. The Professional Development and Competence Department developed an online training and assessment program that covers substantive areas of law within the permitted scope of practice, in addition to ethics and practice management issues.

This self-paced Paralegal Conduct and Advocacy Course is organized into 15 modules and takes approximately 50 hours to complete. The curriculum is delivered in various formats, including readings, exercises, videotaped mini-lectures, vignettes, demonstrations, and interviews with licensed paralegals. Candidates are required to pass a 20-minute, multiple-choice assessment at the end of each module.

Eligible candidates were required to apply by September 30, 2011, and must satisfy all licensing requirements, including successful completion of the licensing examination and a good character assessment. The Law Society received a total of 497 applications for this Process by the end of September 2011. Comments from candidates who have completed the course to date have been very positive.

Practice Support and Professional Development

PRACTICE AUDITS

In November 2008, the Law Society implemented a practice audit program for paralegals, an integral part of the quality assurance activities in the public interest. Building on the model used for lawyer practice audits, paralegal practice audits have focused on evaluating practice-management systems in the areas of: client service and communication, file management, financial management, technology, professional management, time management and personal management. They provide practical advice to help paralegals achieve effective and efficient practices.

Initially, staff conducted 75 paralegal practice audits per year. In 2009, the total was increased to 125 per year, including at least 75 original visits and up to 50 re-visits, to ensure that an appropriate number of new paralegal practices were being audited annually.

The program has been well received by paralegals, with surveys showing that 97 per cent of those who underwent a practice audit found it to be constructive and value added.

PRACTICE RESOURCES

The Law Society conducted an extensive review of all existing Law Society practice management offerings, and where applicable, products, resources and services were updated to include reference to paralegal practices. These resources include the Knowledge Tree, a comprehensive, online listing of the most common practice-management questions that legal professionals have asked and the answers to those questions — and the following practice guides:

- Guide to Opening Your Paralegal Practice
- Paralegal Bookkeeping Guide
- Paralegal Guide to Retention and Destruction of Closed Client Files
- Paralegal Guide to Closing Your Practice
- Client Identification and Verification Resources for Paralegals.

CONTINUING PROFESSIONAL DEVELOPMENT PROGRAMS

Effective January 2011, paralegals have been subject to the continuing professional development (CPD) requirement. All paralegals who provide legal services are required to complete 12 hours of eligible educational activities in every calendar year, including a minimum of three hours of accredited professionalism-related content.

The CPD team works closely with volunteer paralegals to develop programs that meet the needs of paralegals in different practice areas and at different experience levels. Programs have addressed issues in landlord and tenant, small claims court, and provincial offences practice areas, as well as a cross-practice program for new paralegals and a program dealing with trust accounting and financials.

In 2011, the Law Society presented 18 CPD programs for paralegals, including seven free programs addressing practice management topics meeting the professionalism hours requirement. Free programs included Professionalism for Workers’ Compensation Practitioners, Opening Your Paralegal Practice, Effective Practice Management for Paralegals and Effective Writing for Paralegals.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant 65 per cent reported they were satisfied or very satisfied with the CPD requirements.
PRACTICE MANAGEMENT HELPLINE AND MENTORING

The Practice Management Helpline provides paralegals with assistance regarding the application of the Rules, and Law Society-related legislation and by-laws. The service is confidential and the helpline strives to return all calls within 24 hours.

Representatives screen calls, assist callers to identifying the issues, make referrals to existing resources and escalate the call to counsel, if necessary. Counsel will discuss the ethical issues, applicable legislation and potential options and the advantages and disadvantages of each. In 2011, the helpline responded to 861 calls from paralegals, representing growth over 606 in 2010, 797 in 2009 and 410 in 2008; in the first four months of 2012, there were 368 calls. Most calls from paralegals relate to the Provincial Offences Act, Small Claims Court and Statutory Accident Benefits matters.

Through the Practice Mentoring Initiative, staff working on the Practice Management Helpline can link callers who have specific substantive legal issues to mentors. The caller must have a unique legal issue and must demonstrate that he or she has already completed some legal research.

In 2011, the Practice Mentoring Initiative was expanded to include paralegals. Seven paralegal mentors working in the areas of property tax assessment, small claims court, landlord and tenant matters and Highway Traffic Act offences have been added to the roster.

LEGAL NEEDS REPORT

The Law Society regularly reviews the appropriate standards of competence for its licensed legal service providers. These issues formed part of the recent Legal Needs Analysis report prepared by the Professional Development and Competence Department, to determine the knowledge, skills and abilities required to provide specific services competently. Subsection 4.2 (5) of the Law Society Act refers to the Law Society’s obligation to set standards of learning and specifies that restrictions on service provision should be proportionate to the significance of the regulatory objectives. The primary goal is to ensure that competent, ethical and accessible legal services are available to the people of Ontario.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant, 62 per cent reported satisfaction with the current scope of practice.

CLIENT SERVICE CENTRE

With the exception of professional liability insurance, discussed below, the Law Society’s Client Service Centre adapted its existing structures and processes for use by paralegals. Depending on their employment situation, paralegals are assigned practice or employment status codes and corresponding fee categories that generally parallel those used for lawyers. Status codes are used by the Law Society for various purposes, such as determining insurance and trust account reporting requirements.

PARALEGAL ANNUAL REPORT

In addition to the requirement to pay an annual fee, licensed paralegals are required to file a Paralegal Annual Report. As paralegals were first licensed in 2008, the first reports were filed in 2009.

These reports provide important information to the Law Society on licensees’ activities, including demographic data, areas of legal services provided, maintenance of trust accounts and other financial information, and self-study activities. The report, covering the previous year’s activities, is due by March 31 each year. Failure to file more than 120 days after the due date may result in suspension of the licence to provide legal services.

Paralegal Insurance

The processes related to professional liability insurance for paralegals differ from those for lawyers, and therefore have required more changes in the operation of the Client Service Centre than other aspects of paralegal regulation. While lawyers in Ontario must purchase their professional liability insurance from a single entity (LawPRO), paralegals have a choice of service providers.

Subsection 12 (1) of Part II of By-law 6 outlines the minimum requirements for professional liability insurance, as follows:

- policy limits of $1 million per claim and $2 million in the aggregate;
- a reasonable deductible in relation to the financial resources of the licensee;
- coverage for liability for errors, omissions and negligent acts arising out of the provision of legal services by a paralegal;
- individual paralegals must be named as an “Insured” on the policy, or by way of endorsement;
• an extended reporting period of 90 days from the date of cancellation of the policy;
• addition of the Law Society as an “Additional Insured”;
• a provision that the policy may not be cancelled or amended without at least 60 days written notice to the Law Society.

Paralegals must provide written proof of their compliance with this requirement to carry mandatory insurance before they begin providing legal services, and annually thereafter.

In addition to the above requirements, the Law Society must have reviewed and approved the policy. The Law Society worked closely with a number of insurance providers to develop policy wording that meets the by-law requirements and, to date, has approved eleven errors and omissions policies offered by:

• ACE/INA
• A.M. Fredericks Underwriting Management Ltd./Echelon
• Berkley Canada
• Encon Group Inc.
• GCAN
• Lloyd’s of London – Complete Equity Markets
• Lloyd’s of London – Creechurch/Pembroke
• Lloyd’s of London – Elliot Special Risk/Markel
• Lloyd’s of London – Elliot Special Risk/XN
• Travelers Guarantee Company of Canada
• Trisura

While paralegals have an obligation to provide the Law Society with up-to-date insurance information, as the Law Society has relationships with the insurance providers and their respective brokers, in most cases the insurance information is sent directly from the broker to the Law Society.

Follow-up processes further ensure that paralegals adhere to the insurance requirements, including:

• Reminder Notices - 60 days prior to a policy expiring, a reminder notice is automatically printed and mailed to the paralegal requiring proof of valid insurance on or before their policy expiration date.
• Cancellation Notices - Policies that have been cancelled are captured in the Law Society’s system and an automated notice is generated informing the paralegal that they must either provide a new policy on or before the cancellation date, or change their status to one that does not require insurance.
• Paralegals who fail to maintain required insurance are subject to suspension of their licence.

The Client Service Centre also captures information about paralegals who are providing legal services, but are exempt from the insurance requirement, such as those who work for Legal Aid Ontario clinics or who work under the direct supervision of a lawyer.

**Paralegal Business Structures**

The Client Service Centre is responsible for the administration of forms and processes related to permissible paralegal business structures. These include professional corporations, multi-discipline partnerships (MDPs), and affiliations. Professional Corporations have an annual renewal process. There are filing requirements for MDPs and affiliations, and suspension may result from non-filing.

An information sheet explaining permissible business structures for paralegals was distributed during the grandparenting process, since it was clear that many existing business structures would no longer be permissible after paralegal licensing took effect.

Paralegals affected by these changes were given a grace period to bring their business structures into compliance, since many large businesses had to restructure and spin off their paralegal activities.

Law Society counsel also worked with staff to conduct a review of paralegal business names and assisted in the development of paralegal firm name guidelines. Since paralegals tend to use trade names, the approval process for professional corporation names posed some early challenges.

The significant number of professional corporation applications at the outset probably indicated that paralegals were most comfortable with these traditional structures. This meant that revisions were required to some of the Law Society’s internal processes, since shares of professional corporations can be owned entirely by lawyers, entirely by paralegals, or a combination of both (with different requirements for the Articles of Incorporation).

**ADMINISTRATIVE SUSPENSIONS**

Paralegals who fail to comply with the Law Society’s administrative requirements—including payment of annual fees, submission of annual filings, maintenance of professional liability insurance, and completion of CPD requirements—may be subject to licence suspension. In this administrative process, the Client Service Centre
monitors compliance, takes due diligence steps relating to non-compliance (typically consisting of reminder letters, emails and phone calls), prepares the summary order of suspension for signature by the designated Bencher, and mails out the notice of summary order of suspension of licence. Client Service Centre staff are also responsible for changing the status codes of paralegals whose licences are suspended.

**LAW SOCIETY REFERRAL SERVICE (LSRS)**

The Law Society’s Lawyer Referral Service, created in 1970, is a popular access to justice service that puts prospective clients in touch with lawyers who have indicated they are willing to accept referrals in a given area of law. Paralegals have now been added to this service, and the scope of the service has been expanded as well. The rebranded service launched in May 2012 as the Law Society Referral Service.

During the preparation of this expansion, Client Service Centre counsel assessed how to address the limited scope of paralegal practice and how to ensure fairness in referrals. It is important to ensure that the new service does not refer callers to paralegals on issues outside their scope.

**Conduct and Discipline**

**SCOPE OF PRACTICE ISSUES**

While the process for initial review of paralegal complaints mirrors the process for lawyers, it was necessary to adapt many existing precedents for paralegal complaints.

Early on, certain trends associated with paralegal complaints became apparent. For example, there was a marked increase in complaints about unauthorized practice. Since paralegal regulation brought with it a new category of “unauthorized provision of legal services”, paralegals who had made the effort to become licensed would often bring concerns about unlicensed providers of legal services to the Law Society’s attention.

Client Service Centre employees received specialized training on the scope of practice for paralegals and the exemptions in By-law 4, and were made aware of potential business structure concerns that were unique to paralegals.

The Client Service Centre is also responsible for reinstatement of the suspended licences of paralegals, licence surrender applications, and licensing following surrender.

**AREA OF EMPLOYMENT AS AT DECEMBER 31, 2011**

<table>
<thead>
<tr>
<th>Category</th>
<th>Number of Paralegals</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,055 Sole Practitioners</td>
<td></td>
</tr>
<tr>
<td>110 Partners</td>
<td></td>
</tr>
<tr>
<td>558 Employees</td>
<td></td>
</tr>
<tr>
<td>111 Associates</td>
<td></td>
</tr>
<tr>
<td>22 Education</td>
<td></td>
</tr>
<tr>
<td>200 Government</td>
<td></td>
</tr>
<tr>
<td>1,491 Other</td>
<td></td>
</tr>
</tbody>
</table>

*Note: does not include paralegals who were not working or were outside Ontario*

**GEOGRAPHICAL DISTRIBUTION AS AT DECEMBER 31, 2011**

<table>
<thead>
<tr>
<th>Location</th>
<th>Number of Paralegals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metropolitan Toronto</td>
<td>1,554 (38 per cent)</td>
</tr>
<tr>
<td>Ontario, outside Metropolitan Toronto</td>
<td>2,522 (62 per cent)</td>
</tr>
<tr>
<td>Elsewhere in Canada</td>
<td>12 (0.2 per cent)</td>
</tr>
<tr>
<td>Outside Canada</td>
<td>8 (0.1 per cent)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,096</strong></td>
</tr>
</tbody>
</table>

**PARALEGAL RULES OF CONDUCT**

An external consultant was retained to assist with the development of the Rules, which were approved by Convocation on March 29, 2007 and have been updated as required — they were drafted to be consistent with the *Rules of Professional Conduct* for lawyers and to be clear and accessible for paralegals and the public. They address duties to clients, to tribunals, to other licensees and to the Law Society, and focus on ethical and professional obligations in areas such as competence, confidentiality, integrity, conflicts of interest, and civility.

The standards for paralegals are the same as the standards for lawyers to the extent that this is possible, given the different scopes of practice. For newly regulated paralegals, it was critical that the Law Society’s expectations were very clear. To achieve this goal, the Rules are formatted differently from the *Rules of Professional Conduct*, and do not contain any interpretive commentary.

The *Paralegal Professional Conduct Guidelines* were approved by the PSC as a companion to the Rules. The guidelines are intended to be used as an educational tool for paralegals in interpreting and applying their professional obligations and responsibilities under the *Law Society Act*, its by-laws, and under the Rules.

Among paralegals who responded to the online survey conducted by the Law Society’s outside consultant, 84 per cent reported they were satisfied or very satisfied with the Rules.
GOOD CHARACTER HEARINGS

Subsection 27(2) of the Law Society Act requires applicants for licensing as lawyers or paralegals to be of good character, with a consistent standard for both lawyers and paralegals. Subsection 27(4) provides that no one who meets the other licensing requirements can be refused a licence on the basis of good character without a hearing. The Law Society assesses good character by requiring all applicants to disclose issues that may bring their character into question — an example of such an issue would be a criminal record. The raising of such an issue may not preclude a licence being granted since the issue to be determined is whether the applicant is of good character at the time of the hearing.

Some 400 grandparent and transitional cases raised good character issues. After investigation, 76 of those files were referred to the Proceedings Authorization Committee for decision on further action. Of these, 14 were closed and 17 were abandoned by the applicants. Forty-five were referred to a hearing, and in 22 cases a licence was denied. While this process may have seemed lengthy, the Law Society is bound to provide a hearing before denying a licence, and hearings are subject to the requirements of administrative law. Many applicants whose licences were denied by the hearing panel commenced appeals, and this significantly extended the length of the process.

By the end of 2011, the paralegal good character investigations and hearings related to the grandparenting and transitional applicants were almost entirely completed, with two decisions on reserve and one hearing remaining in progress.

INTAKE, COMPLAINTS AND INVESTIGATIONS

The Law Society responds to complaints involving conduct, competence and capacity of lawyers and paralegals. Complaints range from service issues to incivility to allegations involving the misuse of trust funds. The Law Society is able to resolve many complaints by working with complainants and licensees. When appropriate, the Law Society will conduct investigations which can lead to formal discipline prosecutions.

The Law Society began to receive complaints against licensed paralegals in 2008. The rate of new complaints increased by 32 per cent in 2010 but slowed dramatically in 2011. The volume is considered by the Law Society to be a predictable result of the regulation of a new profession.

Complaints about licensed paralegals have been integrated into the Law Society’s existing processes, and are generally similar to the types of complaints about lawyers — the most common relate to services, such as delay, lack of communication and failure to serve.

Some of the complaints have resulted in professional discipline of licensed paralegals, with the first such instance in 2009. As at December 31, 2011, 37 notices of application had been issued, 15 of which concerned the paralegal’s failure to respond to communications from the Law Society.

UNAUTHORIZED PROVISION OF LEGAL SERVICES

The Law Society Act prohibits individuals who are not licensed from practising law or providing legal services. With the start of paralegal regulation, the volume of complaints received about unauthorized provision of legal services increased significantly to a high of 445 complaints in 2009. The Law Society continues to receive an increased number of complaints about unauthorized practice, however the number of complaints received each year since 2009 has declined, with 255 complaints received in 2011.

TRUSTEE SERVICES

As is the case with lawyers, the Law Society becomes involved in obtaining trusteeships when a paralegal practice is abandoned or where the paralegal is no longer able to operate the practice, and there is no alternative provision for ongoing management of the practice. There was a significant trusteeship issue at the commencement of paralegal licensing when a large practice became insolvent, requiring Law Society intervention to protect the interests of several thousand clients. A number of paralegal practices have been abandoned since licensing. The frequency with which this has occurred is probably due to adjustments to a new regulatory regime. Altogether there have been a total of 20 trusteeships of paralegal practices.

TRIBUNAL LIAISON

The Law Society’s Professional Regulation Department maintains ongoing contact with the administrative justice community, where many paralegals routinely appear, to continue development of best practices for handling complaints originating from tribunals. This permits the review and improvements of current requirements, and provides support to the administrative justice agencies.

Tribunal contacts and submissions to this review emphasize the beneficial effect that paralegal regulation has had in the proceedings before Ontario tribunals, including a general
improvement in professional standards. In addition, there is better protection for vulnerable clients in matters such as automobile accident benefits and workers compensation. Prior to regulation, these were two areas where inappropriate and unscrupulous individuals frequently took advantage of vulnerable clients. Such individuals have sometimes tried to take advantage of the continued existence of regulatory exemptions, and the Law Society continues to work with tribunals to minimize these problems.

**Budgetary and Administrative Issues**

**Paralegal Regulation Start-up Budget**

In preparing for the implementation of paralegal regulation, the Law Society developed a budget for start-up costs in 2007. This included such items as by-law drafting and review, development of the rules of conduct, definition of the scope of practice, grandparenting process, examination development for the initial round of grandparent examinations, information systems development, establishment and support for the PSC and a communication campaign addressed to both the public and to the Law Society membership.

Expenditures were required in advance of the collection of any significant amounts from paralegal candidates. Furthermore, the expected start-up costs were projected to exceed initial revenues from paralegal candidates. Start-up costs were therefore covered from a new separate Paralegal Fund with any deficit generated to be recovered through an annual surcharge to paralegals. As it turned out, applicant numbers exceeded projections resulting in a surplus in the Paralegal Fund, a source of funds used to support paralegal activities in subsequent years.

**Law Society Budget Process**

The Law Society typically prepares its annual budget and sets fees for licensing and annual membership on a break-even basis using a full cost allocation method. Separate budgets are prepared for lawyers and paralegals. Where possible, direct costs are attributed to either lawyers or paralegals. When it is not possible to separate out the costs of paralegal activities, an allocation formula is used.

The Society’s annual membership fee has three common components for lawyers and paralegals charged to each member—the general membership fee, the Compensation Fund fee and the Capital Fund fee.

Members fall into one of three fee-paying categories, broadly defined as practising members (100 per cent fee), employed not practising (50 per cent fee) and not working, including parental leave (25 per cent fee).

The first paralegal licences were granted in early 2008, following the first examinations for grandparenting applicants. Subsequent to issuance of a licence, paralegal members are subject to annual fees in the same manner as lawyers. The paralegal start-up budget was wound up in 2008 and transitioned to an annual operational budget supported by fee revenue.

**Paralegal Operating Budgets**

Use of unique fees for lawyers and paralegals requires distinct fee calculation models. Paralegal annual operating budgets primarily comprise the direct cost of regulatory activities and the operation, maintenance and delivery of the paralegal licensing examination. Other components include a contingency to allow for unanticipated costs that may arise during the year and an amount to ensure the adequate provision of administrative overheads.

Since all operational departments provide some level of support to paralegals, a method of allocating a reasonable portion of expenses for departments without direct paralegal resources is required. This is done in two steps:

- Administrative expenses are allocated to each department based on relevant factors such as head count and floor space.
- Operational expenses are then allocated primarily based on direct paralegal spending as a percentage of total Law Society spending.

**Compensation Fund**

The Compensation Fund compensates members of the public who have suffered a financial loss through the dishonesty of a licensee. The Professional Regulation Division introduced new guidelines for access to the fund to complement those already in place for lawyers. The Law Society also established a limit of $10,000 for grant approval for paralegal dishonesty. As licensing developed, claims started to be made against the fund, many of which related to retainers. Up to the end of 2011, the Compensation Fund has paid $33,000 in grants relating to 40 claims against paralegals.
A separate pool within the Fund has been established for paralegals, funded by the paralegal Compensation Fund levy. Prior to launching this coverage, the Law Society retained an actuary to estimate annual claims for paralegals. This was used to set the initial paralegal Compensation Fund levy.

As a claims history for paralegals has developed over the five years of regulation, the levy calculation has become more similar to that for lawyers. This involves a provision for routine claims, based on the historic claims experience, to approximately cover expected annual costs with no large scale defalcation. The costs of the fund, including salaries and benefits, common expenses and allocated expenses need to be financed. Included in program expenses are the costs of practice audits which are regarded as a risk-control measure. A fund balance also needed to be established as protection against worse-than-expected claims.

Each year, the Law Society has retained an actuary to assist in the calculation of estimates used to set the levy. Actual claims against the paralegal pool of the Compensation Fund have not deviated significantly from actuarial estimates and at December 31, 2011 the balance of the Fund was $217,000.

**Law Foundation of Ontario Grants**

All components of the paralegal licensing process have a direct connection to the Law Foundation of Ontario (LFO)’s mandate to support legal education in the public interest. The process assesses core competencies that are of vital interest at the entry-level into the profession.

The LFO grants have supported the access-to-education component of the paralegal licensing process, which includes translation and support services, and lowers the costs for candidates.

The Law Society appreciates the LFO’s support, which has been as follows:

- 2008: $300,600
- 2009: $176,000
- 2010: $85,000
- 2011: $72,500

### ANNUAL FEES

The annual fees for paralegals over the last five years have been as follows:

<table>
<thead>
<tr>
<th></th>
<th>Total, of which:</th>
<th>General Fund</th>
<th>Compensation Fund</th>
<th>Capital Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>$845</td>
<td>$625</td>
<td>$145</td>
<td>$75</td>
</tr>
<tr>
<td>2009</td>
<td>$900</td>
<td>$710</td>
<td>$145</td>
<td>$45</td>
</tr>
<tr>
<td>2010</td>
<td>$933</td>
<td>$685</td>
<td>$183</td>
<td>$65</td>
</tr>
<tr>
<td>2011</td>
<td>$957</td>
<td>$711</td>
<td>$171</td>
<td>$75</td>
</tr>
<tr>
<td>2012</td>
<td>$982</td>
<td>$693</td>
<td>$214</td>
<td>$75</td>
</tr>
</tbody>
</table>

These fees are about 50 per cent of the fees paid by lawyers.

For purposes of comparison, the annual fees of some other regulatory bodies are shown in the following table:

<table>
<thead>
<tr>
<th>Regulatory Body</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royal College of Dental Surgeons of Ontario</td>
<td>$1,760</td>
</tr>
<tr>
<td>College of Midwives of Ontario</td>
<td>$1,585</td>
</tr>
<tr>
<td>Immigration Consultants of Canada Regulatory Council</td>
<td>$1,550</td>
</tr>
<tr>
<td>College of Physicians &amp; Surgeons of Ontario</td>
<td>$1,485</td>
</tr>
<tr>
<td>College of Dental Technologists of Ontario</td>
<td>$1,452</td>
</tr>
<tr>
<td>Association of Ontario Land Surveyors</td>
<td>$1,130</td>
</tr>
</tbody>
</table>

### Equity Department

Paralegals have been integrated into programs operated by the Law Society’s Equity and Aboriginal Affairs Department.

- This includes the Discrimination and Harassment Counsel program, which investigates complaints of any incidents of discrimination and harassment, whether by or in defence of a Law Society member;
- The Equity Advisory Group’s Terms of Reference were revised to include a paralegal individual member and a paralegal organizational member;
- The Equity Committee now includes a paralegal member;
- Model policies and guides developed in the equity department are also applicable to paralegals;
- Research has been initiated regarding paralegal demographics. The Paralegal Annual Report includes a self-identification question regarding membership in a list of equity-seeking groups, and the snapshots of the profession are available on the website. The Change of Status survey, which tracks when licensees leave practice, has been expanded to survey paralegals.
Communicating with Paralegals, Lawyers, and the Public

INITIAL OUTREACH

From the beginning of the review period, the Law Society has provided active communications support to paralegals, the public, and other stakeholders. The Law Society continues to use electronic and written materials, teleconferences, the Internet, and email to keep paralegals informed of all aspects of regulation, and to help the public understand the value of having a new group of licensed legal service providers available.

In 2007, no registry or database with contact information for paralegals existed. For the first formal communication, the Law Society invited paralegals to participate in a telephone conference call. More than 800 participants joined the call. The licensing process for grandparenting applicants was explained, as well as the rules for continuing to practise before examinations were held and licences issued. The teleconference included an hour-and-a-half of questions and answers.

After the teleconference, the Law Society received over 200 queries by email. Representatives from Professional Regulation, Professional Development and Competence, Legal Affairs, Policy, and the Client Service Centre departments met for two days to review and develop answers to the questions, which were posted on the Law Society website. Over the following two months, the Client Service Centre received an additional 600 email enquiries, most of which were answered within two days. The Client Services Centre continues to receive queries on a daily basis and strives to maintain the same response time.

ONGOING COMMUNICATION

Electronic registration for the teleconference and subsequent email queries allowed the Law Society to build the initial contact and distribution list. The Law Society created an electronic newsletter, Paralegal Update, with regular summaries of new developments in the growth of the regulatory system. Twenty-three editions have been issued to date. A new section dedicated to paralegals was created on the Law Society’s website. Professional notices, amendments to rules and by-laws, insurance requirements, and other material continue to be provided to paralegals through these pages. They attract several thousand visits every month.

The contact list for paralegals is now maintained by the Membership Services Department and is updated daily when contact information changes. It now numbers more than 4,000.

Every month that Convocation sits, an electronic newsletter is sent to all paralegals summarizing decisions made and issues discussed. In addition, rule changes, notices to the profession, upcoming events, CPD offerings, and other announcements are made to paralegals using the email distribution list.

A second teleconference for paralegals, held in 2008, covered issues related to business structures and the use of trust accounts.

The development and implementation of paralegal regulation is also of keen interest to lawyers, the courts, and the public. Law Society publications, including the Gazette and the Ontario Reports, media releases, the website, emails, and printed brochures are all part of the communications support provided. Media interviews continue to be given on all aspects of paralegal regulation. Paralegal benchers and Law Society staff appear regularly as guest speakers at conferences and meetings with various members of and organizations within the legal community.

To help members of the public find a paralegal, the Law Society maintains a public directory of licensed paralegals on the Law Society website. The directory provides contact information and is searchable by name or postal code. It mirrors the public directory for lawyers.

OTHER OUTREACH ACTIVITIES

In addition to extensive discussions with the Ministry of the Attorney General and other government ministries, the Law Society collaborated with other stakeholders in the legal community as the regulatory system for paralegals was put in place. This included establishing consultative roundtables with interested organizations and consulting with these key contacts:

- Senior judges from all levels of the courts.
- Justices of the Peace and Deputy Small Claims Court Judges, before whom paralegals often appear.
- Paralegal organizations including the Paralegal Society of Ontario, the Institute of Agents at Court (now the Licensed Paralegal Association of Ontario), the Paralegal Society of Canada, and several smaller paralegal groups and individual paralegals.
• College Advisory Group — this group, established by the Law Society, advised on the requirements for the accredited college courses and field placements.
• The Legal Organizations Group, including the Ontario Bar Association, The Advocates’ Society, and the County & District Law Presidents’ Association.
• Legal Aid Ontario and the community legal clinics.
• The Criminal Lawyers’ Association and the Family Lawyers Association.
• Senior representatives of administrative tribunals, including:
  • The Financial Services Commission of Ontario (‘FSCO’) — this tribunal was sufficiently concerned about the absence of paralegal regulation in Ontario that it developed a program to limit who could appear in statutory accident benefit cases — a limited form of paralegal regulation, the ‘Register of Statutory Accident Benefit Representatives’, a pioneering initiative.
  • The Workplace Safety and Insurance Board (WSIB) — this board is one of the largest in Ontario in terms of paralegal activity and the Law Society continues to work closely with the WSIB on a range of issues.
  • The Workplace Safety and Insurance Appeals Tribunal, to which cases from WSIB may be appealed, also provided helpful advice.
  • The Assessment Review Board.

Paralegal Governance

The governance structure was addressed in the 2004 Task Force Report as follows:

The Consultation Paper set out a model for paralegal governance, involving a Standing Committee of Convocation that would develop policies on paralegal regulation and submit them to Convocation for approval in the same way as other Law Society committees. Unlike other committees, however, it is proposed that Convocation could not at the first instance substitute its own decision for that of the committee, but could send the matter back to the Standing Committee for further consideration. Only on the second consideration could Convocation substitute its own decision.

The composition of the Standing Committee would be:

a. five paralegals, to be elected from all licensed paralegals (until the first election, the five licensed paralegals would be appointed by the Attorney General);
b. five elected benchers appointed by Convocation on the recommendation of the Treasurer, and
c. three lay benchers, appointed by Convocation on the recommendation of the Treasurer, for a total of thirteen members.

All members of the Standing Committee would be under an obligation to act in the public interest.

The Chair of the Committee would always be a paralegal. The Task Force proposes that all thirteen members of the committee choose the chair. The vice-chair would be an elected lawyer bencher or a lay bencher.

The Task Force further proposes that two of the paralegal members of the committee sit as full members of Convocation; these two persons would be chosen by eight members of the committee, the five paralegals and the three benchers. The committee chair would also be a member of Convocation, but would not have a vote (unless he or she is one of the two persons chosen as described).

This model was implemented through amendments to the *Law Society Act* that came into force on October 19, 2006. To permit the PSC to commence work on the details of the regulatory model immediately, section 25.2 of the Act provided that the first five paralegal members were appointed by the Attorney General.

The initial governance structure was conceived at a time when it was estimated that there would be 1,000 to 1,200 grandparenting applicants. In the submissions to this review, a number of paralegals have raised the issue of the proportionality of paralegal representation at Convocation, and only 27 per cent of paralegals in the online survey expressed satisfaction with the current structure. There are currently approximately 44,000 licensed lawyers who elect 40 voting members of Convocation. The over 4,000 paralegals elect two voting members, although the chair of the PSC also attends and speaks at Convocation. As the number of licensed paralegals increases, this issue will probably be revisited. Any change would require an amendment to the *Law Society Act*.

The first election of paralegal members of the PSC was held in March 2010. There were 39 candidates and 2,817 eligible paralegal voters. The election was conducted entirely online, using an external service provider selected through a competitive bidding process.
A total of 831 paralegals voted, a turn-out of 29.5 per cent. The successful candidates were Cathy Corsetti, W. Paul Dray, Michelle Haigh, Kenneth C. Mitchell and Robert Burd.

Once the paralegal members had been elected, the PSC elected the Committee Chair, Cathy Corsetti, who was re-elected in 2011 and 2012. Currently, the two elected paralegal benchers are Paul Dray and Michelle Haigh.

In the relatively short period of its existence, the PSC has completed an extensive agenda, developing all the necessary details of the regulatory model for recommendation to Convocation. The committee has worked very collegially together without tension between the paralegal and non-paralegal members.

**Statutory Environment**

Creating the paralegal regulatory model required the amendment of dozens of Ontario statutes. The Office of Legislative Counsel provided excellent assistance in this regard. However, some anomalies remain in older statutes, where complex issues arise when considering the most appropriate amendments. These issues have been raised by several paralegals and are discussed in a submission to this review from a paralegal association.

The Law Society continues to work on these issues with government representatives and stakeholders. Among the statutes that have been or are being considered for amendment are the following:

**JUSTICES OF THE PEACE ACT**

The Law Society recommends appointments to the Justices of the Peace Appointments Advisory Committee, but under the current wording of the Act, appointees must be lawyers. The Law Society has proposed that paralegals should be able to sit on this committee, as they often appear before Justices of the Peace. The Ministry of the Attorney General has the matter under consideration.

**COMMISSIONERS FOR TAKING AFFIDAVITS ACT**

The Act automatically makes lawyers, by virtue of their office, commissioners for taking affidavits. The Law Society has suggested that this would also be appropriate in the case of paralegals, as they are frequently required to prepare affidavits as evidence in proceedings. It would improve service to the public for paralegals to be able to take an affidavit. The Ministry of the Attorney General has the matter under consideration.

**NOTARIES ACT**

Under the Act, lawyers are automatically entitled to be notaries, upon application. It has been suggested that this would also be appropriate in the case of paralegals. The Law Society and the Ministry of the Attorney General are reviewing this issue.

**SOLICITORS ACT**

This Act is a historical piece of legislation that has been amended many times. It includes provisions on several important topics, including contingency fees and the assessment of costs. However, several aspects of the Act have caused difficulty since the introduction of paralegal regulation. The most significant problem is section 1 of the Act, which limits the charging of fees for representation in legal proceedings to lawyers. The provision is not enforced, but causes embarrassment and confusion. The Law Society has recommended that this provision be reworded, and it may be appropriate to consider re-allocating the remaining provisions of this Act to other statutes.

**BARRISTERS ACT**

A related issue arises in the context of this historical statute. Section 3 provides that Queen’s Counsel have precedence in court, and that precedence for other counsel is to be set by year of call to the bar. This provision dates from before other legal service providers were contemplated, and while it is again not generally observed, it has occasionally caused problems when matters to be argued by a paralegal have been moved to the bottom of the court list. The Law Society recommends that the Act be amended to ensure that paralegals are treated with respect and clients are not prejudiced by their choice of representative.

**JURIES ACT**

The Act currently exempts lawyers from jury duty but does not exempt paralegals. The Law Society would regard it as appropriate for paralegals to be treated the same. However, it should be noted that some common law jurisdictions have removed the exemption for lawyers.

**IMMIGRATION AND REFUGEE PROTECTION ACT**

By-law 4 sets out the current scope of practice for paralegals, which includes advocacy work before both provincial and federal tribunals. However, in 2009 the Law Society became aware that the federal Immigration and Refugee Board was refusing to accept Ontario licensed paralegals as representatives. Accordingly, the Law Society
made a number of submissions and representations to the federal government when the relevant legislation, the *Immigration and Refugee Protection Act* was to be amended in 2010. Bill C-35 was referred to the House of Commons Standing Committee on Citizenship and Immigration on September 23, 2010. The Committee reported the Bill to the House on November 24, 2010 having added paralegals to the list of those eligible for an exemption (new section 91(1)(b)). Bill C-35 was passed by the House of Commons on December 7, 2010 with all the amendments proposed by the committee, and was proclaimed in effect in 2011.

**OTHER STATUTES**

In the course of the review, other statutes were mentioned that potentially require consideration, including the *Insurance Act*, the *Private Security and Investigative Services Act*, the *Criminal Code*, and the *Legal Aid Services Act*.

The Law Society continues to work with the government on the necessary updating of statutes, which is an unavoidably complex process.

**By-law 4 Exemptions**

One area that has caused challenges for the Law Society is the development of the appropriate exemptions to regulation. As mentioned above, subsection 1(8) of the *Law Society Act* excludes four groups from Law Society regulation:

- other regulated professions, within the normal course of their work;
- in-house employees preparing documents for their employer;
- persons acting on their own behalf; and
- trade union representatives dealing with members’ trade union matters.

In addition to these four areas, subsection 1(8) gives the Law Society authority to exempt any other persons or classes of persons by by-law, providing wide discretion to determine the areas of legal services that the Law Society regulates. The development of the appropriate list of exemptions has been challenging, and sections 28 to 30 of By-law 4 have already been amended several times. When the initial exemptions list was developed in 2007, the By-law explicitly provided for a review of exemptions to be conducted after two years. This review, which took place over the course of 2009, involved extensive consultations with affected parties and led to a number of revisions, adopted in 2010.

The Law Society has taken the position that it would be desirable for the number of exemptions to be further reduced over time. The large number of exempted persons who applied under the Integration Process may assist in this regard. The Law Society has noted that many employers are now hiring licensed paralegals in exempt positions, which is an indication of the growing respect for the new profession.

Since the 2010 revisions, the most difficult issues have remained those in connection with the exemption for “friends”. This exemption was created for situations such as where someone wishes to help a neighbour or co-worker who may have poor language skills or anxiety about speaking in court, for no fee. However, there is no doubt that it has sometimes been used by unscrupulous persons wishing to evade the law, by claiming to be the friend of large numbers of parties and charging under the table fees. For this reason, the subsection 30 (1) of By-law 4 was amended in June 2010 to limit the exemption to,

An individual:

i. whose profession or occupation is not and does not include the provision of legal services or the practice of law;
ii. who provides the legal services only for and on behalf of a friend or a neighbour;
iii. who provides the legal services in respect of not more than three matters per year; and
iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

The limitation to “not more than three matters per year” has assisted in reducing abuse of the exemption, but has not eliminated it. One of the difficulties is the lack of effective tracking mechanisms regarding how many times a particular individual has appeared as a representative. Since the potential locations for such appearances are in a variety of courts and tribunals throughout Ontario, it is not feasible for the Law Society to keep track. It is hoped that over time it may become possible for individual courts or tribunals to take steps in this regard.
Public Satisfaction with Paralegal Regulation

Assessing the effect of paralegal regulation on the public requires consideration of whether Law Society regulation has succeeded in establishing:

a. reasonable standards of competence for Ontario paralegals such that the public has access to competent services;

b. accessible information about the legal services available in Ontario;

c. fair and transparent complaint procedures for the use of members of the public who have concerns about the conduct or competence of licensed paralegals; and

d. an accessible, transparent discipline process to address breaches of Law Society standards.

Obtaining objective data on public satisfaction with paralegal regulation represents a challenge. Most members of the public have limited awareness of any legal issues, and of who could assist them with legal problems, until they have a specific problem. To obtain representative data, the consultant retained by the Law Society sought as large a sample as possible of Ontarians who had used the services of a paralegal in the last three years. The primary services used related to traffic disputes, small claims court matters, landlord and tenant issues, and workers’ compensation.

Results of the survey indicate a general degree of satisfaction with the paralegal services used:

- 74 per cent of clients were satisfied or very satisfied with the services they had received.
- 87 per cent would use paralegal service again.
- 68 per cent reported that paralegal services were good value.

Understandably, knowledge of the regulation of paralegals was more limited. Only 55 per cent were aware that a dissatisfied client could complain to the Law Society.

Generally, the effect on the members of the public can be assessed in terms of the availability of professional services from a newly regulated profession, and the improved protection of vulnerable clients from substandard services from which there used to be no recourse.
Conclusions

1. The implementation of the regulation of paralegals in Ontario has been a success, and has provided consumer protection while maintaining access to justice. The paramount consideration in the development of the model has been protection of the public interest. Paralegals are now required to be licensed and insured and to pay into a compensation fund in the same manner as lawyers. They are required to observe the Paralegal Rules of Conduct and to have their practices examined regularly under the Law Society’s practice review program, and to engage in Continuing Professional Development. Paralegals are well on the way to establishing a prestigious and well-regarded profession. Among surveyed paralegals, 71 per cent indicate they believe that regulation has been beneficial for them.

2. The Law Society was, and continues to be, the right choice of regulator for paralegals—a view endorsed by about three-quarters of surveyed paralegals. It is implausible that a new regulator created from scratch could have achieved comparable progress in five years. Regulation has been achieved at reasonable cost and without undue burden on licensed paralegals. The Law Society has provided services to paralegals in a wide range of areas. It has also addressed issues and problems as they have arisen, to ensure proper respect for paralegals as professional legal service providers.

3. The large group of paralegals who were providing legal services before regulation have been integrated into the regulated profession. Paralegals report being regarded with more respect, while tribunal adjudicators, judges and justices of the peace report improvements in courtroom and hearing room deportment. The grandparenting process was fair and transparent, although the good character hearings process was perceived as slow. Among surveyed paralegals, 83 per cent report being satisfied with the grandparenting process.

4. The first few cohorts of students have graduated from accredited paralegal college programs. Submissions to the review included arguments that the standards of the college programs should be reviewed with the intention of making them more rigorous. Some have suggested that the education requirement should have a pre-requisite of two years of college. Any changes would have to be balanced with access to justice considerations. The Law Society regularly reviews the appropriate standards of competence for its licensed legal service providers. These issues formed part of the recent Legal Needs Analysis report prepared by the Professional Development and Competence Department. The primary goal is to ensure that competent, ethical and accessible legal services are available to the people of Ontario. Five years is still early in the development of the model. Enhancements and refinements over time will continue to improve regulation for both the public and paralegals.

5. In spite of extensive communications work by the Law Society, public awareness has not kept pace with the changes in the legal services market. Further work is required on communication strategies, especially in explaining the services that lawyers and paralegals provide and the differences between them.

6. The ‘exempt’ categories continue to provide challenges; the Law Society has taken the position that it would be desirable for the number of exemptions to be reduced over time. In addition, more work is required with the courts and tribunals to develop tracking mechanisms to obtain information on exempted persons. While a number of submissions proposed that the Law Society place conditions on unlicensed exempted persons, there is no legal authority for the Law Society to do this.

7. While a large number of provincial statutes were amended as part of the introduction of paralegal regulation, there remain some anomalies in older statutes. The Law Society continues to work with the government on the necessary amendments.

8. The governance structure laid out in the Law Society Act, based on the 2004 Task Force Report, has worked well. Members of the Paralegal Standing Committee (PSC) work together cordially, without tension between the paralegal and non-paralegal members. No PSC report has ever been rejected by Convocation. One report was sent back for further consideration, after which the PSC adopted the view of Convocation. The initial allocation of two paralegal benchers, in addition to having the chair of the PSC attend Convocation with a voice but no vote, will become increasingly disproportionate as the number of licensed paralegals increases. Adjusting this would require a statutory amendment.
9. Most paralegals express satisfaction with overall progress so far; 68 per cent of surveyed paralegals indicate they are ‘satisfied or very satisfied’ with Law Society regulation. Coming under the Law Society’s umbrella has had important advantages in credibility and prestige for paralegals, and has provided access to the wide range of services that the Law Society provides.

10. There are some criticisms, some of them involving dissatisfaction with issues outside the Law Society’s jurisdiction, such as:

- the amendment of provincial statutes;
- the length of the paralegal good-character hearings process, which necessarily adheres to principles of natural justice;
- the increase in the numbers and class size in the paralegal college programs — as noted in a number of the submissions, while the colleges have an incentive to market their programs, there is obviously no guarantee that graduation will lead to employment or a viable practice.

11. Some criticisms relate to the activities of peers — many paralegals are critical of other paralegals’ business names, practices and advertisements, and have taken the position that the Law Society is too lenient when paralegals complain about each other.

12. While 62 per cent of surveyed paralegals indicate satisfaction with the current scope of practice, some paralegals have expressed the view that it should be expanded. The Law Society remains committed to taking an analytical view of the appropriate skills and competencies for specific services, and has been actively researching whether changes to the scope of practice are appropriate, as part of the Legal Needs Analysis referred to above. This report is now being reviewed by Law Society committees and will be forwarded to Convocation for consideration. Following that, a broader framework for consultation will be established, so that the legal community and other stakeholders can provide their views.
Appendices

Submissions Received

GROUPS AND ORGANIZATIONS

The Advocates’ Society
County and District Law Presidents’ Association
Criminal Lawyers’ Association
LawPRO
Legal Aid Ontario
Licensed Paralegal Association
Ontario Bar Association
Ontario Society of Collection Agents
Ontario Trial Lawyers Association
Peel Law Association
Toronto Lawyers Association
Workplace Safety and Insurance Appeals Tribunal

INDIVIDUALS

Mark Brown
Angela Browne
Donna Chaplow
Paul Duarte
Charles Foster
William Grimmett
Henry Lowi
Dan McIntyre
Stephen Parker
Michael Pawlowski
Oleksandr Pichugin
Pamela Thomson & Gary Parker
Shawn Weston
Anonymous
Five Year Review of Paralegal Regulation: Research Findings

Final Report

For The Law Society of Upper Canada

Submitted:
May 6, 2012

Prepared by:
David Kraft, John Willis, Stephanie Beattie and Armand Cousineau
Table of Contents

1.0 INTRODUCTION .................................................................................................................. 4

2.0 METHODS ............................................................................................................................. 5

3.0 SUMMARY OF FINDINGS ..................................................................................................... 7

  3.1 PARALEGALS ....................................................................................................................... 7

  3.2 USERS OF PARALEGAL SERVICES ................................................. ........................................ 11

4.0 PARALEGALS: THE EXPERIENCE OF REGULATION .................................................................. 16

  4.1 PRACTICE CHARACTERISTICS .......................................................................................... 16

      4.1.1 Years Practised and Licensed ......................................................................................... 16

      4.1.2 Area of Practice and Type of Practice ............................................................................ 18

  4.2 IMPRESSIONS OF REGULATION ....................................................................................... 20

      4.2.1 Impact of Regulation on the Public ................................................................................. 20

      4.2.2 Impact of Regulation on Paralegals ................................................................................. 21

  4.3 LICENSING .......................................................................................................................... 23

      4.3.1 The Grandparenting Process .......................................................................................... 23

      4.3.2 College Programs .......................................................................................................... 24

      4.3.3 The Licensing Exam ..................................................................................................... 25

      4.3.4 Good Character Requirement ....................................................................................... 26

      4.3.5 Additional Comments Regarding the Licensing Process ............................................. 26

  4.4 COMPETENCE, CONDUCT AND DISCIPLINE .................................................................... 28

  4.5 GOVERNANCE AND THE LAW SOCIETY AS REGULATOR .................................................. 29

      4.5.1 The Law Society as Regulator ....................................................................................... 29

      4.5.3 Governance .................................................................................................................. 32

      4.5.4 Further Comments on Law Society Regulation ............................................................... 33

  4.6 THE COMPLAINT PROCESS ................................................................................................. 33

5.0 USERS OF PARALEGAL SERVICES: THE EXPERIENCE OF REGULATION .................................. 35

  5.1 SURVEY RESPONDENTS: SOME DEMOGRAPHIC CHARACTERISTICS ................................. 35

  5.2 CONTACT WITH PARALEGAL SERVICES ........................................................................... 35

      5.2.1 Reasons for Choosing Paralegal Services ....................................................................... 35

      5.2.2 Finding Paralegal Services and Information .................................................................... 38

  5.3 THE EXPERIENCE OF USING PARALEGAL SERVICES ......................................................... 41

      5.3.1 Satisfaction with Paralegal Services ................................................................................. 41

      5.3.2 Awareness and Use of the Complaint Process ................................................................. 46

  5.4 THE IMPACT OF PARALEGAL REGULATION ..................................................................... 48

      5.4.1 Paralegal Regulation and the Justice System ................................................................. 48

      5.4.2 Benefits of Paralegal Regulation .................................................................................... 50
## List of Charts

**CHART 1**: How long have you been practising as a paralegal in Ontario? ................................................................. 16  
**CHART 2**: In which year did you receive your Law Society licence? ................................................................. 17  
**CHART 3**: Did you receive your license under the grandparenting provision of the new regulations? ................................. 17  
**CHART 4**: Are you currently practising as a licensed paralegal in Ontario? ................................................................. 18  
**CHART 5**: What are your major areas of practice? ........................................................................................................ 19  
**CHART 6**: Are you... .................................................................................................................................................... 20  
**CHART 7**: For the GENERAL PUBLIC, do you feel that paralegal regulation by the Law Society has... ...................... 21  
**CHART 8**: And for the PARALEGAL PROFESSION, do you feel that paralegal regulation in Ontario has... .................. 22  
**CHART 9**: Are you satisfied, now, that the grandparenting process by which you obtained your license was... .......... 23  
**CHART 10**: With respect to your college program how satisfied are you, now, that it was... ........................................ 24  
**CHART 11**: With respect to licence examination process, how satisfied are you that it was... ...................................... 25  
**CHART 12**: With respect to the good character requirement...how satisfied are you that they are... ............................... 26  
**CHART 13**: How satisfied are you that...the framework for competence & conduct is appropriate... ......................... 28  
**CHART 14**: In your view, is the Law Society of Upper Canada the appropriate agency to regulate paralegals?... 29  
**CHART 15**: Overall, how satisfied are you with the Law Society’s regulation of paralegals? ................................. 30  
**CHART 16**: How satisfied are you with the following aspects of the Law Society’s regulation of paralegals?... ... 31  
**CHART 17**: In your view, are paralegals adequately represented in the governance structure? ............................... 32  
**CHART 18**: How satisfied are you with the way the Law Society handled the complaint against you? .......................... 34  
**CHART 19**: What types of legal services have you received from a paralegal? ............................................................. 36  
**CHART 20**: What made you decide to use the services of a paralegal? ................................................................. 37  
**CHART 21**: How did you choose the services you eventually decided on? ................................................................. 38  
**CHART 22**: How easy was it... ........................................................................................................................................ 39  
**CHART 23**: Apart from searching out the service you chose, did you do anything to confirm...credentials?... ... 40  
**CHART 24**: What did you do to confirm the experience & credentials of the paralegal you chose? ................................. 41  
**CHART 25**: On the occasion that you most recently used the services...how favourable were the results? .................. 42  
**CHART 26**: Regardless of the outcome of your case, were you satisfied with the paralegal services... .......................... 42  
**CHART 27**: Thinking about the paralegal that handled your legal matter, how satisfied were you that... ................. 43  
**CHART 27A**: Thinking about the paralegal that handled your legal matter, how satisfied were you that... ................. 44  
**CHART 28**: Overall, when you most recently used paralegal services, was it good value or poor value?................. 45  
**CHART 29**: Would you use similar paralegal services again, if you encounter a similar situation? ............................ 45  
**CHART 30**: Are you aware of the complaint process and how it works? ................................................................. 47  
**CHART 31**: As a result of your most recent use of paralegal services, please choose one... ........................................ 47  
**CHART 32**: Overall, do you feel that the justice system in Ontario is fair or unfair? .............................................. 48  
**CHART 33**: Is the justice system in Ontario made better...having regulated licensed paralegals in the system... 49  
**CHART 34**: Are you satisfied or dissatisfied with your access to information about legal services in Ontario?........ 50  
**CHART 35**: Which one is closer to your view? ........................................................................................................ 51  
**CHART 36**: Do you believe the services paralegals provide are more competent as a result of being regulated? 52  
**CHART 37**: Are you very confident that the regulatory system will ensure that you receive competent service? .... 52  
**CHART 38**: Do you feel that the regulation of paralegal services in Ontario increases your access to justice?...... 53
1.0 Introduction

The Law Society of Upper Canada assumed responsibility for the regulation of paralegals in 2006, as a result of amendments to the Law Society Act. Under the amended Law Society Act, the Law Society is required to conduct a review of the regulation of paralegals five years after regulation went in to effect on May 1 2007.

This research project was designed to review the manner in which paralegals have been regulated during the five year review period and the effect that such regulation has had on paralegals and members of the public.

With respect to paralegals, research explored:

- Impressions of the impact of regulation on the paralegal profession and the impact of regulation on the public.

- Opinions regarding the manner in which the process of regulation was introduced and the extent to which regulation of paralegals has established:
  - Fair and transparent processes for applicants to obtain a paralegal license;
  - Reasonable standards of competence and conduct for paralegal members of the Law Society; and
  - Fair and transparent discipline processes for situations where it is alleged that licensed paralegals have failed to observe Law Society standards.

- Opinions regarding the role of the Law Society as the regulator of the paralegal profession.

With respect to the public, research explored:

- Awareness and knowledge of paralegal regulation and paralegal services.

- The experience of using paralegal services and impressions regarding the impact of regulation on individuals seeking and using the service of paralegals.

- The extent to which Law Society regulation has succeeded in establishing:
2.0 Methods

Key Informant Interviews

The first phase of the research component of the Law Society’s five year review of paralegal regulation was an organized scan of the context, issues and perspectives associated with the regulation of paralegals. Interviews were conducted with seven individuals, selected for their knowledge of the history, design and implementation of paralegal regulation, and their insight into the issues associated with paralegal regulation. A focus group with 12 members of the Law Society’s Paralegal Standing Committee explored the purpose and objectives, design, and impact of paralegal regulation. A final round of interviews was conducted with eight judges, Justices of the Peace and adjudicators in Ontario courts and tribunals where paralegals appear. Findings from this research were presented in an interpretive memorandum (‘Review of Paralegal Regulation: Summary of Interviews,’ January 16, 2012).

Focus Group Research

In January 2012, nine focus groups were conducted in Toronto (3), London (2), Sudbury (2) and Ottawa (2), including five groups comprised of paralegals and four with individuals who reported having used the services of a paralegal during the past two years. Focus groups with
licensed paralegals explored impressions of the impact of regulation on the paralegal profession and the public who use paralegal services, and the experience of regulation by the Law Society, including licensing requirements, competence and conduct, discipline and other issues. Focus groups with members of the public explored knowledge of paralegals and awareness of regulation, experiences using paralegal services and impressions of the impact of regulation on the public. Results of focus group research were presented in a final report (Review of Paralegal Regulation: Focus Group Research Findings, April 4, 2012).

Online Survey of Paralegals and the Public

Based on the issues identified and hypotheses generated in the first two phases of research, two survey questionnaires were drafted for online administration to paralegals and members of the public who use paralegal services.

The paralegal survey questionnaire was comprised of 29 questions which identified practice characteristics, explored general impressions of the impact of regulation for paralegals and the public, the licensing process, competence and conduct, discipline and the role of the Law Society as regulator. The online survey was promoted on the Law Society website and by regular email communications to all licensed paralegal members of the Law Society. The survey was fielded from March 10 to 29, 2012 and was completed by 1,320 licensed paralegals or 32% of the 4,158 paralegal members of the Law Society. Final results, including three open-ended questions, were coded and analyzed using SPSS 12.0. Results are accurate within +/- 1.8%, 19 times out of 20.

The survey questionnaire administered to members of the public who use paralegal services was comprised of 30 questions which identified demographic characteristics, explored awareness and contact with paralegals, experience using paralegal services and impressions regarding the impact of paralegal regulation. This survey was fielded online using a proprietary panel from March 12 to 21, 2012, resulting in 1,001 completed surveys across Ontario.¹ Final results, including two open-ended questions, were coded and analyzed using SPSS 12.0.

¹ Survey participants were screened for participation with the following question:
Paralegals in Ontario independently represent clients in provincial offences court, summary conviction criminal court, small claims court and administrative tribunals such as the Financial Services Commission of Ontario or the Workplace Safety and Insurance Board. Have you used the services of a paralegal in the past two years for personal or business purposes?
3.0 Summary of Findings

Paralegal regulation is viewed as beneficial and effective by the paralegal profession and the public who use paralegal services. Both groups view regulation as contributing to increased consumer protection and higher professional standards of paralegal service. Both groups were satisfied with most of the aspects of regulation and paralegal services they were asked to assess. Although a significant minority of paralegals and those using paralegal services viewed regulation as making ‘no difference’ to some aspects of the provision of paralegal services, comparatively small numbers of both groups expressed outright dissatisfaction or identified negative impacts arising from the regulation of paralegal services.

3.1 Paralegals

Paralegals view regulation as beneficial, overall, for the paralegal profession: promoting higher professional standards, improving competence and conduct, enhancing the stature of the profession in the view of the public, increasing its credibility before judges and lawyers, and appropriately defining areas of practice. Paralegals also viewed regulation as beneficial for the general public, although only moderately beneficial in areas of improving access to information and increasing public awareness about regulated legal services provided by paralegals.

Grandparented and non-grandparented paralegals indicated high levels of satisfaction with the fairness, objectivity and transparency of the licensing process and the good character requirements, although non-grandparented paralegals were somewhat less satisfied that their college program had been adequate preparation to practise as a paralegal. Both groups were very satisfied with the Paralegal Rules of Conduct and moderately satisfied with the Continuing Professional Development (CPD) requirements and the practice audit process. There is strong overall satisfaction with the complaint process and moderate satisfaction with specific aspects of the Law Society’s handling of complaints against paralegals.

The Law Society is widely viewed as having been and continuing to be the appropriate organization to regulate paralegals. About two-thirds of licensed paralegals are satisfied, overall, with Law Society regulation although satisfaction with specific areas of regulation – enforcement of ethical standards, responding to information requests and regulation of competence among paralegals - is slightly lower. The extent and variety of CPD programs and resources is a source of dissatisfaction for a somewhat higher than average proportion of paralegals (about one-fifth), which may reflect the diversity of needs and expectations.
regarding this program. One source of dissatisfaction among paralegal members is the annual fees paid to the Law Society, which fewer than one-third viewed as reasonable.

Paralegals are divided on the issue of their representation in the governance of the Law Society. About one-quarter agrees and about two-fifths disagree that paralegals are adequately represented at present.

**Practice Characteristics**

- The province-wide survey sample of 1,320 licensed paralegals included 59% of paralegals with less than and 41% with more than six years experience.

- A majority (52%) received their licence in 2008.

- Almost half (48%) of survey respondents were licensed under the grandparenting provisions, and 91% of the grandparented group was licensed in 2008.

- Just over three-fifths (62%) reported practising full-time and 9% reported practising part-time as a licensed paralegal in Ontario.

- Just under half of the survey respondents are in private practice as a sole practitioner (40%), partner (4%) or associate (4%), and just over one-quarter (26%) indicated they are in private legal/paralegal practice as an employee. Nine percent reported they are not currently employed or not employed in Ontario.

- Major areas of practice cited included Small Claims Court (40%), Ontario Court of Justice (Provincial Offences Act) (37%), Landlord and Tenant Board (27%), and the Workplace Safety and Insurance Board (18%).

**Impressions of Regulation**

- Seventy-one percent of survey respondents viewed regulation of paralegals as beneficial, overall, for the general public, and 60% viewed it as helping to establish fair and transparent complaint procedures.

- Paralegals were more qualified in their assessment of other potential benefits of regulation for the public. A majority felt regulation had improved access to legal services (58%) and
access to information about legal services (54%). A narrow majority (51%) felt regulation had increased public awareness about legal services provided by paralegals, but almost one-quarter (24%) felt it had done little or nothing to increase public awareness.

- A strong majority of paralegals felt regulation was beneficial, overall, for the profession (71%), improved overall standards of competence and conduct for paralegals (73%), and improved the competence and conduct of paralegals (70%).

- A majority of survey respondents also felt that regulation had improved the credibility/stature of the paralegal profession in the view of the public (67%), appropriately defined permitted areas of practice for licensed paralegals (62%), and improved the credibility of paralegals in the eyes of judges, lawyers and tribunal members (57%).

**Licensing**

- A very strong majority of paralegals licensed under grandparenting provisions were satisfied with the fairness (84%), transparency (80%) and objectivity of the grandparenting process (79%).

- Seventy percent of non-grandparented respondents indicated they were satisfied that their college program was adequate preparation for the licensing examination and 64% were satisfied that their college program was fair.

- Among non-grandparented respondents barely half were satisfied (50%) and one-quarter were dissatisfied (26%) that their college program had adequately prepared them to practice as a paralegal. Open-ended comments from these respondents revealed a variety of concerns related to the need for improved education and training.

- A very strong majority of all survey respondents were satisfied that the licensing examination process was fair (83%), objective (80%) and transparent (77%). On each of these measures a majority of respondents were ‘very satisfied.’

- A similarly strong majority of survey respondents were satisfied that the good character requirement and the process for determining it is fair (79%), objective (77%) and transparent (75%). On each of these measures about half of the respondents indicated they were ‘very satisfied.’
Competence, Conduct and Discipline

- Eighty-four percent of survey respondents were satisfied with the Paralegals Rules of Conduct, including 51% who were very satisfied.

- Just under two-thirds (65%) were satisfied with the Continuing Professional Development (CPD) requirements.

- A majority of survey respondents (59%) were satisfied with the practice audit process, although 21% answered ‘don’t know.’ Among the 9% of respondents (n=115) who reported having had direct experience with the practice audit process, satisfaction rose to 77% (47% very, 30% somewhat).

Governance and the Law Society as Regulator

- Asked if the Law Society is the appropriate agency to regulate paralegals 74% answered definitely (51%) or probably (23%), while 17% indicated they were unsure of the alternative and 9% answered no.

- Just over two-thirds (68%) of respondents were very (34%) or somewhat satisfied (34%) with the Law Society’s regulation of paralegals.

- A majority of respondents indicated they were satisfied with the manner in which the Law Society enforces ethical and professional standards (61%), how it responds to information requests (62%), and how it regulates competence (59%).

- A bare majority of 54% of survey respondents were satisfied and 20% were dissatisfied with the extent and variety of CPD programs. This comparatively low ratio of satisfaction to dissatisfaction would appear to confirm focus group findings which suggested there are some differences in the needs and expectations of paralegals with respect to the CPD program.

- Just 32% of survey respondents were satisfied with the annual fees paid to the Law Society whereas 39% were dissatisfied. The issue of fees was one of the very few aspects of regulation tested in this survey where negative response was stronger than positive.
• Whereas 27% of respondents agreed that paralegals are adequately represented in the governance structure of the Law Society, 39% disagreed and 34% indicated they were unsure.

The Complaint Process

• Among respondents who reported having been contacted regarding a complaint against them (n=166), 73% indicated they were, overall, satisfied with the way the Law Society had handled their complaint. On specific aspects of the complaint process, 68% were satisfied that the process was reasonable and fair, 67% that it was transparent and 63% that there was a timely resolution of the matter.

3.2 Users of Paralegal Services

Individuals choose the services of paralegals to deal with a range of legal matters because paralegals are less expensive than lawyers, the legal matter is comparatively simple, paralegals have the appropriate specialization and they are easier to manage than a lawyer.

Many rely on friends/coworkers/family or their lawyer to refer them to a paralegal and help them confirm that they have made the correct choice. Individuals also use the internet, although many do not find the internet that helpful to their search for services or information. As focus group and survey findings suggest, users of paralegal services feel the need for more and better information about legal services in Ontario.

Those who use paralegal services are quite satisfied with the quality and value, and they would use those services again in a similar situation. A majority have some awareness that a complaint process exists but less than one-third reported being aware of how the complaint process works, less than one-tenth of respondents reported having considered making a complaint, and just 3% took steps to do so.

Users of paralegal services view regulation as having practical benefits. Reinforced by their own positive experiences of using paralegal services, they are confident that regulation will ensure they receive competent service from paralegals in the future.

A narrow majority of survey respondents viewed paralegal regulation as contributing to a better justice system in Ontario and making paralegal services more competent and
professional, and a large minority endorsed the view that regulation increases access to justice. On all of these issues only a small percentage of respondents viewed regulation as having a negative impact, but a large minority, and in one case half, opted for a neutral response (‘makes no difference’ or ‘don’t know’).

The Survey Sample

- The Ontario-wide sample (n=1001), comprised of individuals who reported having used paralegal services on at least one occasion during the past two years, included 28% from Toronto, 29% from the GTA outside Toronto, 40% from Central and Southern Ontario, and 3% from Northern Ontario.

Deciding to use Paralegal Services

- Just under two-thirds of respondents (57%) reported having used paralegal services on one occasion, 35% on two to four occasions and 8% on five or more occasions during the past two years.

- Respondents listed traffic ticket/traffic violation (40%), Small Claims Court (21%), landlord/tenant disputes (18%), and Workplace Safety and Insurance Board (10%) among the most frequently used types of legal services they had received from paralegals.

- Almost half (46%) cited lower cost as the reason they chose to use the services of a paralegal rather than those of a lawyer. Other reasons included: simple matter/not requiring a lawyer (41%), the paralegal was experienced/specialist in that area of law (33%), and it was easier to hire and manage a paralegal than a lawyer (23%).

- Almost half (49%) chose paralegal services based on the recommendation of friends, coworkers or family members. 19% cited referral from a lawyer, and 16% accessed a website.

Accessing Paralegal Services and Information

- Just over two-thirds (69%) reported that it was very or somewhat easy to locate a paralegal that suited their needs, 62% that it was easy to find the information they
needed about a paralegal service provider and 61% that it was easy to find the
information they needed to manage their legal matter with a paralegal.

• Although most respondents reported using the internet to find paralegal services and
information, many may have been unaware of where to look for services and
information.

• Thirty-eight percent of respondents reported taking specific steps to confirm they had
chosen a paralegal with sufficient experience and credentials. The most common actions
were: seeking assurance from friends, coworkers or family members (47%), asking the
paralegal service provider directly to explain their credentials/experience (44%), and
searching the internet for reviews, comments or online chat (33%) about the service
they had chosen.

The Experience of Using Paralegal Services

• Almost three-quarters (74%) of survey respondents reported they were satisfied with
the paralegal services they had received, whereas 9% reported they were dissatisfied.

• Nine questions explored individuals’ satisfaction/dissatisfaction with how their paralegal
had handled their legal matter. Seventy-nine percent were satisfied that their paralegal
had behaved in a professional manner, 75% that their paralegal had sufficient
knowledge of the law and the relevant legal jurisdiction, 71% that the paralegal
respected their decisions on legal matters, 71% that their paralegal knew how to do
his/her job, and 71% that their paralegal had explained their fees and the estimated
costs.

• Respondents also registered moderate to strong levels of satisfaction on the other four
questions tested. Seventy percent were satisfied that their paralegal had explained
his/her approach to their legal matter and the risks involved, 68% that their paralegal
had explained the range of possible outcomes, 66% that they had been kept informed of
the progress of their case, and 63% that the paralegal had provided an estimate of the
time required for the case.

• On each of the nine questions referred to above, less than one-tenth of respondents
reported they were dissatisfied with the paralegal service they had received.
• Just over two-thirds (68%) of respondents described the paralegal services they had received as very good (32%) or good (36%) value for the fees charged.

• Eighty-eight percent of respondents indicated they would definitely (41%) or probably (47%) use similar paralegal services if they encountered a similar situation.

The Complaint Process

• A narrow majority (55%) reported they were aware that they could make a formal complaint to the Law Society if they had concerns about the paralegal services they had received, and just 31% indicated they were aware of how the complaint process works.

• Four-fifths (80%) of respondents reported having no specific concerns and no reason to consider making a complaint, 11% reported having concerns but not having considered making a complaint, and 5% considered making a complaint but had not followed through. Of the remaining 3%, 1% had made a complaint but did not complete the process, 1% had completed the process and 1% was still involved in the complaint procedure.

The Impact of Regulation

• A narrow majority of survey respondents (53%) indicated that having regulated licensed paralegals in Ontario makes the justice system better and 5% indicated it makes the system worse. Just over two-fifths indicated it ‘makes no difference’ (32%) or answered ‘don’t know’ (10%).

• A narrow majority (52%) reported they were satisfied with their own access to information about legal services in Ontario and 12% were dissatisfied. A further 31% were neither satisfied nor dissatisfied.

• Asked to choose between two opposing views, 59% agreed that ‘regulation protects the public from incompetent and unethical paralegals,’ 18% agreed that ‘regulation is red tape that raises legal costs,’ and 23% indicated that neither statement was close to their own view.
Narrowing the “Justice Gap”: Roles for Nonlawyer Practitioners

COMMITTEE ON PROFESSIONAL RESPONSIBILITY

JUNE 2013
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. Introduction</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>II. The Justice Gap</strong></td>
<td>4</td>
</tr>
<tr>
<td>A. The Need Is Extreme</td>
<td></td>
</tr>
<tr>
<td>B. Current Efforts By the Legal Profession Are Valuable and Deserve</td>
<td></td>
</tr>
<tr>
<td>Support, But Much More Is Needed</td>
<td></td>
</tr>
<tr>
<td>1. The private bar’s pro bono efforts</td>
<td></td>
</tr>
<tr>
<td>2. The civil legal aid bar</td>
<td></td>
</tr>
<tr>
<td>3. Court facilities</td>
<td></td>
</tr>
<tr>
<td>4. Law school developments</td>
<td></td>
</tr>
<tr>
<td>5. Unbundled legal services</td>
<td></td>
</tr>
<tr>
<td><strong>III. Nonlawyers Can Play a Potentially Crucial Role in Responding to the Justice Gap</strong></td>
<td>9</td>
</tr>
<tr>
<td>A. Legal Scholars Have Shown That New Roles for Nonlawyers Are</td>
<td></td>
</tr>
<tr>
<td>Necessary and Practical</td>
<td></td>
</tr>
<tr>
<td>B. Nonlawyers May Be Capable of Performing Certain Legal Tasks in</td>
<td></td>
</tr>
<tr>
<td>Appropriate Circumstances</td>
<td></td>
</tr>
<tr>
<td><strong>IV. Nonlawyers Already Provide Legal Services in Limited Circumstances</strong></td>
<td>12</td>
</tr>
<tr>
<td>A. Court Proceedings</td>
<td></td>
</tr>
<tr>
<td>1. Landlord-tenant</td>
<td></td>
</tr>
<tr>
<td>2. Foreclosure</td>
<td></td>
</tr>
<tr>
<td>3. Consumer credit</td>
<td></td>
</tr>
<tr>
<td>4. Family court</td>
<td></td>
</tr>
<tr>
<td>5. Native American Indian courts</td>
<td></td>
</tr>
<tr>
<td>B. Administrative Proceedings</td>
<td></td>
</tr>
<tr>
<td>1. Social Security benefits</td>
<td></td>
</tr>
<tr>
<td>2. Immigration</td>
<td></td>
</tr>
<tr>
<td>3. Unemployment insurance benefits</td>
<td></td>
</tr>
<tr>
<td>4. Workers’ compensation benefits</td>
<td></td>
</tr>
<tr>
<td><strong>V. Roles for Nonlawyers Are Already Being Expanded</strong></td>
<td>21</td>
</tr>
<tr>
<td>A. Nonlawyer Advisers in England and Wales</td>
<td></td>
</tr>
<tr>
<td>1. “McKenzie Friends”</td>
<td></td>
</tr>
<tr>
<td>2. “Lay advocates”</td>
<td></td>
</tr>
<tr>
<td>B. “Limited License Legal Technicians”</td>
<td></td>
</tr>
<tr>
<td>C. “Independent Paralegals”</td>
<td></td>
</tr>
<tr>
<td><strong>VI. Overview of New York’s Prohibition of the Unauthorized Practice of Law</strong></td>
<td>27</td>
</tr>
<tr>
<td><strong>VII. The Committee’s Recommendations</strong></td>
<td>29</td>
</tr>
<tr>
<td>A. Recognize a Role for “Courtroom Aides” in Judicial and Administrative Hearings</td>
<td></td>
</tr>
<tr>
<td>B. Recognize a Role for “Legal Technicians” Outside Judicial and Administrative Hearings</td>
<td></td>
</tr>
<tr>
<td>C. Consider Additional Roles for Nonlawyers</td>
<td></td>
</tr>
<tr>
<td>D. Address Concerns</td>
<td></td>
</tr>
<tr>
<td><strong>VIII. Conclusion</strong></td>
<td>32</td>
</tr>
</tbody>
</table>
“Not everything that is faced can be changed, but nothing can be changed until it is faced.”
– James Baldwin

I. Introduction

Each year more than 2.3 million low-income New Yorkers face the complexities of the State’s civil justice system without access to even minimal professional assistance. As a result, they often forfeit essential rights involving basic necessities of life – in stark contrast to the outcomes obtained by litigants who can afford to hire a lawyer or the small minority who receive pro bono assistance. This “justice gap” is a fundamental, long-term crisis in our legal system. It demands attention and action by the Bar.

Under the auspices of the Unified New York Court System, a Task Force to Expand Access to Civil Legal Services in New York (“the New York Task Force”) has sought to develop responses to this crisis. In a November 2012 report to Chief Judge Jonathan Lippman, the New York Task Force recommended the establishment of a pilot project “that would test models of practice in which nonlawyers are entrusted to provide legal assistance, outside the courtroom, to individuals who are otherwise unrepresented.” The report stated:

In the Task Force’s view, particularly given the level of nonlawyer assistance that is already being provided with limited or no oversight and regulation, further development of the role of nonlawyer advocates can be an important element in helping to address the substantial access-to-justice gap in the State. Based on its own consideration of these matters, the Task Force recommends the implementation of a pilot program to permit appropriately trained nonlawyer advocates to provide out-of-court assistance in a discrete substantive area. Given the extent to which nonlawyer advocates and entities – such as housing counselors in the foreclosure area and credit counselors in the consumer credit area – are already providing help to low-income New Yorkers, the Task Force recommends that the pilot program be in an area such as housing assistance, consumer credit or, possibly, foreclosure.

The report recommended further that the Chief Judge appoint an advisory committee to develop the pilot program and propose ways to expand the role of nonlawyers in the civil justice system.

The Committee applauds this initiative. Indeed, expanding the role of nonlawyers has been a subject of discussion by the New York City Bar Association, and particularly by the Committee on Professional Responsibility, for almost two decades. In 1995, this Committee issued a report that endorsed the concept of increased reliance on nonlawyer assistance. In


3 Id. at 39.
In revisiting the subject now, the Committee notes significant developments that have occurred since 1995. Medicine and other professions have continued to innovate by expanding the areas in which practitioners with lesser qualifications may provide specified services, at rates lower than those traditionally charged by more highly qualified practitioners. Moreover, even within the field of law, nonlawyers increasingly perform some of the services traditionally provided exclusively by lawyers. Nonlawyers already provide advice and even advocacy in certain judicial and administrative settings, in New York and other U.S. jurisdictions. Notable examples also have developed in England, Wales, and Canada, where nonlawyers now perform important roles both inside and outside the courtroom. The need to consider and adapt these experiences to appropriate situations in New York has never been more pressing, as low-income New Yorkers’ access to essential legal services has only worsened over the years.

In light of these developments, the Committee today takes a fresh look at the possibility of expanding further the role of nonlawyers in limited respects. Whether the Committee’s recommendations require amendments of current rules or statutes (such as the prohibition of the unauthorized practice of law) will depend on the specific nature and extent of any proposals that may be adopted. The line between providing information or administrative assistance on the one hand, and legal advice or advocacy on the other, may not always be clear, but the Committee sees an urgent need to examine the issue in various settings and to develop frameworks that would substantially increase the assistance available to unrepresented New Yorkers, at a cost they can afford. The Committee offers its recommendations provisionally, with the understanding that they may be reconsidered by the organized bar (including this Committee), the judiciary, and other interested parties in view of the results of the New York Task Force’s pilot project, which will soon be launched.

In particular, the Committee offers these recommendations:

1. **Recognize a role for “courtroom aides” in judicial and administrative hearings.** This proposal would allow a nonlawyer in the role of “courtroom aide” to assist litigants in proceedings before selected courts and
agencies, subject to varying degrees of regulation and oversight. In some settings, friends or relatives should be allowed to provide moral support and other assistance without formal training or regulation, subject to approval and oversight by the presiding judge or administrator, as long as the nonlawyer does so without financial compensation. The Committee also suggests considering whether, in a more limited range of cases, it may be appropriate for nonlawyers to render assistance for a fee, subject to formal regulation regarding matters such as qualifications, mandatory disclosures, fee arrangements, and standards of conduct, in addition to on-the-scene supervision by the adjudicator. Nonlawyers already perform roles equivalent to that of a courtroom aide, in varying forms and on a paid or unpaid basis, in certain federal and state agency proceedings, in New York’s Family Court, and in courts in England and Wales. This approach is a humane and modest step forward that should be extended beyond its current narrow applications. Nonlawyers serving this function are not expected to match the skill level of a lawyer, but can facilitate communication between the litigant and the tribunal, offer legitimate arguments that might otherwise be overlooked, and provide emotional support to litigants who may be thoroughly bewildered by judicial or administrative procedures.

2. **Recognize a role for “legal technicians” outside judicial and administrative hearings.** This concept has already been adopted by the Supreme Court of Washington State. Trained and licensed nonlawyers would be allowed to provide for a fee certain specified services – e.g., explaining procedures, gathering facts and documents, and assisting in the completion of court forms – but would not be allowed to participate in court hearings. In New York and elsewhere, such services (and more) already are provided in specialized settings by nonlawyers with varying levels of expertise. Creation of a regulatory regime that places undue burdens on those activities should be avoided. Nevertheless, the Committee sees value in establishing a legal framework that would attract more people to the field while ensuring the quality of the services provided. In some respects, this proposal also may require changes in existing law.

3. **Study additional roles for nonlawyers.** Given the profound severity of the justice gap, the Committee also recommends the study of broader roles for nonlawyers beyond the two modest proposals noted above. Further expansion of nonlawyers’ roles rests on two basic premises: First, without additional reforms, the justice gap will continue to exist for millions of New Yorkers. Second, a number of currently unfulfilled tasks can be performed by someone without special training, or with a level of training below that of an attorney, subject to varying degrees of regulation and oversight. The study of broader roles for nonlawyers should focus on increasing consumer choice while providing appropriate safeguards against consumer confusion (including, for example, mandatory disclosures regarding the limitations of nonlawyer services). The Committee sees an urgent need to examine greater possibilities for providing nonlawyer assistance in selected settings. At this time, however, the Committee has decided not to adopt particular additional proposals.
The Committee makes these recommendations with the recognition that prior proposals to expand the role of nonlawyers have faced a range of objections. Some have asserted that nonlawyers will charge at least as much as lawyers, lack competence to handle legal matters, necessitate the creation of regulatory regimes that are doomed to fail, and more. This is a longstanding debate. Almost half a century ago, Justice William O. Douglas warned against labeling services as “legal” and reserving them for lawyers in situations where nonlawyers may be able to function just as capably:

The so-called “legal” problem of the poor is often an unidentified strand in a complex of social, economic, psychological, and psychiatric problems. Identification of the “legal” problem at times is for the expert. But even a “lay” person can often perform that function and mark the path that leads to the school board, the school principal, the welfare agency, the Veterans Administration, the police review board, or the urban renewal agency.\(^5\)

More than four decades later, the Supreme Court observed that nonlawyers such as social workers may adequately protect the interests of unrepresented litigants in at least some civil proceedings that are simple enough to render the assistance of an attorney unnecessary.\(^6\) The Court’s observation stands in tension with the traditional view that legal tasks are inherently too complicated for performance by nonlawyers, and by implication supports expanding the role of nonlawyer advocates in appropriate cases.\(^7\)

The New York Task Force’s pilot project provides a timely and important opportunity to study broader roles for nonlawyers in real-world circumstances, to test legitimate concerns that may be raised, and, if necessary, to consider a change of course or provide additional protections. The Committee looks forward to reviewing the results of the pilot project. At the same time, the Committee believes that it should move forward with its own recommendations in view of the growing severity of the justice gap and the need to promote a broad-based discussion of solutions within New York’s organized bar.

II. The Justice Gap

A. The Need Is Extreme

For the past three years, the New York Task Force has issued annual reports that studied low-income New Yorkers’ access to legal assistance in civil cases. Each year the Task Force has found a continuing and growing crisis. Without legal assistance, millions of people in our State


\(^7\) For a discussion of *Turner*’s potential implications (after oral argument but before decision), see [http://www.concurringopinions.com/?s=tribe+rogers](http://www.concurringopinions.com/?s=tribe+rogers).
face “losing the roof over their heads, suffering the breakup of their families, or having their very livelihood threatened.”

In 2010, the Task Force reported that more than 2.3 million New Yorkers lacked legal assistance in potentially life-altering civil cases. Unassisted litigants included:

- 99% of tenants in eviction cases in New York City and 98% of tenants in New York State;
- 99% of borrowers in consumer credit cases in New York City (nearly a quarter million of which are filed annually);
- 97% of parents in child support proceedings in New York City and 95% of parents in New York State;
- 44% of homeowners in foreclosure cases in New York State.

These four categories alone – landlord-tenant, consumer credit, family law, and foreclosure actions – represent 70% of the caseload pending on New York State dockets.

In 2011, the Task Force found that the crisis was continuing throughout the State:

This year, the Task Force has concluded that the key findings of the Task Force’s legal needs study have not changed. Indeed, the continuing high rates of poverty in New York State validate those findings. . . . [D]ata indicates that 1.2 million low-income New Yorkers had three or more legal problems over the course of the year and thereby experienced the most pressing need for civil legal help. . . . [In such cases,] at best, 20 percent of the need for civil legal services is being met.

In 2012, the Task Force reaffirmed its previous findings in light of more recent data, noting again that no more than 20% “of the legal needs of low-income New Yorkers involving the essentials of life are being met.”

The Task Force’s findings are supported by a wealth of data from a variety of sources. For example, in testimony presented to the Task Force in 2010, the Legal Aid Society stated that, because of a lack of resources, it was “able to help only one out of every nine New Yorkers who seek [the Society’s] help with civil legal problems.” Among many other examples of the problem, the Society noted that since the economic downturn began in 2008, it had seen “a 40% increase in requests for health law assistance and help obtaining Medicaid, Medicare, and other health care coverage,” and “a stunning 800% increase in requests for foreclosure defense

---

9 Id. at 1, 16.
10 Id. at 16.
assistance.”

Similarly, the Legal Services Corporation examined data from across the country in 2009 and found that at least 50% of eligible individuals seeking assistance from the Corporation’s recipient programs were turned away each year because the programs lacked sufficient resources. Data compiled by the Corporation’s New York State recipient programs (outside New York City) showed that this national problem was mirrored locally. In 2009 alone, for example, the New York programs were forced to turn away approximately 100,000 people seeking help.

These problems are long-standing and structural. They cannot be attributed solely to the recent recession, nor can they be expected to disappear as the economy recovers. Studies have shown a consistently wide justice gap for at least the past quarter century. In the late 1980’s, for example, data indicated that 70-80% of low-income Americans were unable to obtain necessary legal assistance, and 86% or more of low-income New Yorkers had unmet legal needs. Those numbers have persisted, or even worsened, over the last 25 years. Effective action is long overdue.

B. Current Efforts By the Legal Profession Are Valuable and Deserve Support, But Much More Is Needed

New York’s courts, lawyers, and law schools are making substantial efforts to narrow the justice gap. Those efforts are laudable, but the Committee recognizes – along with the New York Task Force and other observers – that much more must be done. We briefly note some of the legal profession’s current efforts here.

1. Pro bono efforts by the private bar

Pro bono work performed by experienced lawyers is critically important and, in many cases, literally life-saving. The Committee applauds that work and those who perform it. In its 2012 Report, the Task Force recommended measures to increase pro bono work and monetary contributions by New York lawyers, including a biennial pro bono reporting requirement for the private bar.

In addition, under a recently adopted rule, New York bar applicants must now complete 50 hours of pro bono service. The new rule will likely increase the amount of service provided.

---

14 Id.
18 2012 Task Force Report, at 32.
by law students and recent law graduates who are not yet admitted to the bar. Nevertheless, any foreseeable increase in pro bono work – by bar applicants or by experienced lawyers – is unlikely to close the justice gap.

2. The civil legal aid bar

The civil legal aid bar provides crucial assistance to individuals both in and out of court. The bar’s efforts also have a salutary impact on the culture of our courts and the legal profession generally. A network of civil legal aid programs receives funds appropriated by Congress and distributed by the Legal Services Corporation, as well as funds from state, local, and private sources. Programs in New York include the Legal Aid Society and Legal Services for New York City, among many others.

As noted above, however, civil legal aid programs can reach only a minority of those who urgently need their services. Our nation’s failure to commit adequate financial and other resources reflects a lack of political will but may also stem from a basic limitation of our legal system. Although the right to counsel in criminal cases has been recognized broadly under federal and state constitutions, no corresponding right has been recognized in civil cases, even though many civil matters – landlord-tenant, foreclosure, debt collection, and other cases – may entail life-changing consequences comparable to the effects of criminal proceedings. Indeed, even in the criminal context, the right to counsel often is ineffective due to a lack of resources. Our society has not yet made the necessary commitments to provide appropriate legal assistance in either civil or criminal cases.

3. Court facilities

Courthouse personnel and facilities provide important assistance to unrepresented litigants. Clerks’ offices, court forms on websites, and courthouse help desks furnish basic information, but they cannot provide individualized advice, much less in-court representation. The limitations are evident. Many litigants, for example, may be unable to read and understand even simplified court forms, and the utility of standardized forms often diminishes in the later phases of litigation, when an advocate’s skills and judgment typically are most useful.

In addition, judges themselves have sought to provide greater assistance to unrepresented individuals in their courtrooms. In recent years, New York has become a national leader in encouraging judges to take a more active role in ensuring that pro se litigants have a basic understanding of the proceedings and are treated fairly at hearings. But here, too, the limitations are evident. Judges cannot abandon their neutrality in an effort to mitigate the often gross disparities in knowledge and expertise between unrepresented individuals and their represented opponents. The disparities can be narrowed substantially only if pro se litigants have access to someone who can take their side and legitimately promote their interests.

20 See, e.g., Turner v. Rogers, supra (rejecting a constitutional right to counsel in certain civil contempt proceedings).
21 See generally D. Cantrell, The Obligation of Legal Aid Lawyers To Champion Practice by Nonlawyers, 73 Fordham L. Rev. 883 (2004) (noting that the legal services bar has called for abolition of “unauthorized practice of law” restrictions).
4. Law school developments

In a step that may expand access to lower-cost legal services, Arizona recently adopted a rule that allows law students to take the bar examination before completing three full years of law school. Prof. Samuel Estreicher of New York University Law School, a leading advocate of this approach, argues that it will “reduce the cost of legal education for many and enable them to pursue lower-paying careers in the public service, if they are so inclined or situated.”

In addition, law schools in New York and elsewhere have begun “incubator” programs to help recent law graduates establish small firm practices aimed at responding to the justice gap. Indeed, some schools are creating their own law firms for such purposes. Yet even if these efforts take root and flourish, the new firms will reach only a small number of unrepresented individuals in the foreseeable future.

5. Unbundled legal services

New York’s Rules of Professional Conduct permit the “unbundling” of legal services—that is, arrangements in which a lawyer performs some, but not all, of the work involved in traditional full-service representation, while clients undertake the remaining work themselves. Among other things, this approach encourages attorneys to perform discrete tasks at lower cost, without the need to commit to comprehensive or long-term representation.

The “unbundling” concept has been endorsed by the American Bar Association as well. An ABA study recognized the concept as a method of providing low-cost services almost 20 years ago. In February 2013, the ABA resolved to “encourage practitioners, when appropriate, to consider limiting the scope of their representation, including the unbundling of legal services as a means of increasing access to legal services.” The ABA’s accompanying report explains:

Research clearly indicates that a growing number of people are foregoing the assistance of lawyers when confronted with a civil legal issue and are addressing their matters through self-representation. In many instances, people are turning to self-help alternatives, such as document preparation services available over the

25 Rule 1.2(c) of the New York Rules of Professional Conduct provides: “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel.” See ABA Nonlawyer Study at 85-88.
Lawyers who provide some of their services in a limited scope manner facilitate greater access to competent legal services. Limited scope representation has taken on several names, including “discrete task representation,” “limited assistance representation,” and “unbundled legal services.”

To be clear, limited scope representation is used in pro bono and legal aid settings, but is not limited to free legal services. Lawyers who unbundle their services in the marketplace are able to serve a broader range of clients because the cost per case is more affordable.28

Like some other innovations, “unbundling” may allow lawyers to provide services at more affordable costs. The Committee believes, however, that adequate responses to the justice gap must include innovations that significantly expand the services provided by nonlawyers.

III. Nonlawyers Can Play a Potentially Crucial Role in Responding to the Justice Gap

A. Legal Scholars Have Shown That New Models of Representation Are Necessary and Practical

This Committee’s 1995 report recognized that nonlawyer services offer potentially significant benefits for unrepresented persons. In the intervening years, other voices have likewise called for serious consideration of new models of representation. The calls have come from many sectors of the profession, including scholars whose work has done much to promote recent court initiatives. We highlight some of that work here.

One of the leading voices for reform is Gillian K. Hadfield, professor of law and economics at the University of Southern California. In testimony prominently featured in the New York Task Force’s 2012 Report, she argued forcefully for expanding the role of nonlawyers as a means to address the justice gap, pointing to the medical profession as a useful analogy:

Does a full fledged MD have to deliver every service needed to address every medical issue you face in order to receive quality care? No. Medical care is a team sport, provided by a wide variety of medical professionals: nurses, radiologic technologists, pharmacists, nurse practitioners, physical therapists, chiropractors, registered massage therapists, certified nurse midwives, certified registered nurse anesthetists, etc. Many of these providers are licensed and authorized to provide services directly to those with medical problems. They are not limited to working under the direct supervision of MDs. Thank goodness. Because if they were, we’d be paying MD rates for every sore throat and backache.29

Prof. Hadfield also noted that the role of nonlawyers has dramatically expanded in countries with legal systems closely related to ours: “The United Kingdom, for example, has a

---

28 Id., Report at 1.
long history of allowing a wide variety of differently trained individuals and organizations to provide legal assistance. And fortunately some very fine legal scholars have studied how well this works. Their key finding: it works very well. . .”

Likewise, Prof. Laurel Rigertas at Northern Illinois University Law School cites the medical profession as a model and calls for a similar “stratification” of legal roles:

[S]tratification would involve the training, education and licensure of professionals – other than lawyers – to provide some legal services. For example, a one-year program that focused on housing law could lead to a limited license as a housing advocate. This might be an effective way for the private marketplace to provide affordable legal services in areas of high consumer demand while protecting consumers from incompetent services.

Prof. Renee Knake at Michigan State University Law School has offered additional arguments for new models of representation, with an emphasis on possible market solutions. Although corporate ownership of legal practices remains prohibited in the United States, Prof. Knake suggests that allowing such ownership could channel substantial economic resources into serving the unmet needs of a large portion of the population, particularly through retail outlets. She notes, for example, that Wal-Mart aims to serve an estimated 30 million households that never or rarely use bank accounts – the very same households that could benefit from, but are least likely to have access to, affordable legal representation.

Other scholars emphasize that although specific arrangements may vary, broadening the role of nonlawyers is inevitable and necessary. Prof. Herbert Kritzer at the University of Minnesota Law School argues that expanding the role of “those who do not possess the full credentials of a legal professional has the potential of greatly widening access to legal services.” Initially, he suggests, this will occur as a broader array of standardized services are offered through firms headed by lawyers but with services actually provided by specialized nonlawyers” at lower cost. At later stages, “[a]s the standardized services become increasingly accepted, legal services firms would not necessarily require the employment of any lawyers.”

B. Nonlawyers May Be Capable of Performing Certain Legal Tasks in Appropriate Circumstances

Much of the scholarly work described above rests on a basic observation: some of the tasks involved in assisting low-income individuals are relatively simple and, in appropriate circumstances, could be performed effectively by nonlawyers with some degree of training, or

30 Id. at 39.
32 R. Knake, Democratizing the Delivery of Legal Services, 73 Ohio St. L.J. 1 (2012).
33 Id. at 7.
35 Id.; see also Cantrell, supra note 21, at 886-88.
even by untrained but intelligent laypersons. This observation applies in a variety of contexts, including litigation. As Prof. Deborah Rhode of Stanford Law School has pointed out, nonlawyers can play increased roles as courts continue to streamline proceedings in the types of cases that most frequently involve pro se litigants.\(^\text{36}\)

New York is a leader in the effort to simplify such proceedings. For example, the New York State Courts Access to Justice Program has developed technologies called “Advocate Document Assembly Programs” for collecting court forms and providing “advocates with a much faster method of interviewing a litigant and producing court papers.” The expectation is that “a trained advocate will assist the litigant through the process and will be available to ensure that a prima facie pleading is produced and terms and concepts are explained.”\(^\text{37}\)

More exploration is needed to determine which tasks of potential benefit to unrepresented individuals could be performed effectively by nonlawyers, which types of cases would be appropriate for such services, and what forms of training, regulation, or other forms of oversight would be needed. Consider, for example, the tasks that might be helpful to persons in debt collection or eviction proceedings:

- explain how representation by an attorney differs from assistance by a nonlawyer, and how both differ from proceeding pro se;
- explain the complaint and other legal filings;
- explain court procedures and what the litigant is required to do next;
- assemble necessary facts and documents;
- help the litigant obtain, complete, and file required court forms;
- help organize statements, questions, and documents the litigant wants to present in court;
- advise the litigant with regard to preserving documents, communicating by certified or registered mail, making notes of relevant phone calls or other communications, etc.;
- advise the litigant with regard to appropriate dress and comportment in court;
- remind the litigant of court dates, and accompany him or her to the courthouse to provide moral and emotional support.


We consider now some examples of how these and similar tasks are already being performed by nonlawyers in certain judicial and administrative settings.

IV. Nonlawyers Already Provide Legal Services in Limited Circumstances

In evaluating models for expanding the role of nonlawyers, it is useful to consider the range of services that nonlawyers already are authorized to perform in various circumstances. Such services fall into three broad categories:

- providing legal information outside court or agency proceedings;
- providing moral support inside court or agency hearing rooms; and
- providing legal advice (not just information) and actual representation in some court and agency proceedings.

Nonlawyers also operate in a variety of employment capacities, including:

- as an employee of a nonprofit social services agency or legal services organization, which does not charge a fee and provides attorney supervision;
- as an employee of a law firm, which charges a fee and provides attorney supervision;
- as an employee of a nonlawyer firm, which charges a fee and does not provide attorney supervision;
- as an independent service provider, who may or may not charge a fee and does not work under attorney supervision.

A. Court Proceedings

1. Landlord-tenant

Each year millions of New Yorkers are involved in landlord-tenant proceedings. In New York City, cases are heard in the Housing Part of Civil Court; in 99% of those cases, the tenants lack counsel.\(^{38}\) Elsewhere in the State, cases are heard in civil courts, town and village courts, county courts, and district courts; in 98% of those cases, the tenants lack counsel.\(^{39}\)

Some limited sources of nonlawyer assistance are available in landlord-tenant cases:

- **Housing Court help desks.** Housing Court Answers, a nonprofit organization, operates help desks within New York City’s Housing Court.

---

\(^{38}\) 2010 Task Force Report, at 1.

\(^{39}\) Id.
The desks are staffed by nonlawyers who provide information about the Court’s proceedings, explaining, for example, the roles of various court personnel and identifying possible sources of additional assistance.

- **Court-sponsored courses.** Some courts offer courses to the public, taught by nonlawyer staff, regarding basic matters such as defenses to non-payment proceedings and nuisance holdovers, proceedings to obtain repairs, and information about public benefits and housing rights.

- **Student volunteers.** Law students and undergraduates from participating schools can volunteer to assist pro se tenants and landlords in nonpayment proceedings through the New York City Civil Court’s Resolution Assistance Program (RAP). RAP assistants provide support in hallway negotiations concerning parties’ claims or defenses, encourage parties to discuss settlement with the court where appropriate, and provide information regarding sources of legal and other assistance. RAP assistants may not provide legal advice or participate in actual negotiations or settlement conferences. RAP assistants must attend a brief training course and commit to providing a minimum of six hours of service per year.40

- **Guardians ad litem (“GAL’s”).** Nonlawyer volunteers may advocate on behalf of mentally or physically impaired litigants facing eviction through the New York City Civil Court’s Housing Court Guardian Ad Litem Program. GAL’s make court appearances, negotiate settlements between tenants and landlords, obtain help for litigants from social services agencies, and provide other assistance. GAL’s do not have the legal authority to manage personal affairs. Candidates must submit background information, provide professional references, and complete a training course. Once accepted, they are placed on a list of available GAL’s circulated to the court’s supervising judges for appointment in individual cases. Volunteers commit to serving a minimum of three appointments over the course of one year.41 In some instances, GAL’s receive compensation by the Human Resources Administration.42

2. **Foreclosure**

In residential foreclosure actions, over 75% of the defendants in New York City and over 66% in New York State are unrepresented.43 By contrast, the plaintiffs in such actions are typically sophisticated lenders with highly experienced counsel. Many proceedings are

---


complicated and involve numerous potential defenses and counterclaims, which unrepresented litigants often lack the ability to understand, much less assert. In addition, settlement conferences are mandatory and often involve a lengthy process of four to eight sessions.

Sources of nonlawyer assistance in such cases include:

- **Nonprofit counseling agencies.** The U.S. Department of Housing and Urban Development certifies nonprofit counseling agencies to provide borrowers with specialized assistance in foreclosure cases. Among other things, nonlawyer counselors working for certified agencies explain the settlement process, help assemble documents, seek accommodations such as extensions of time and loan modifications, prepare loan modification papers, and arrange short sales. They are not authorized to provide legal or tax advice, and do not appear in court. The program is funded with assistance from the Office of the New York Attorney General.

- **Nonprofit legal services agencies.** Free assistance is also available from nonlawyers at legal services organizations, operating under attorney supervision. The nonlawyers cannot provide legal advice but can explain the foreclosure process and help prepare loan modification applications or a pro se answer.

- **For-profit counseling businesses.** Companies operating for profit may offer similar assistance – particularly loan modification services – for a fee, but are prohibited from collecting fees in advance.

### 3. Consumer credit

In 2009, over 240,000 debt collection cases were filed in New York City Civil Court. In 99% of those cases, the debtors were unrepresented, while 100% of creditors had legal counsel. Indeed, creditors typically are represented by a cadre of highly experienced law firms. The disparity in expertise is reflected by a striking imbalance in outcomes. It has been found that 80% of these cases result in default judgments.

When default judgments are entered, creditors’ submissions are often legally inadequate but go unopposed because debtors lack the basic knowledge to evaluate and challenge them.

---

45. Id. at 1, 16.
47. Id. at 1, 9.
48. Id. at 9-10; see also Pavlov v. Debt Resolvers USA, Inc., 28 Misc. 3d 1061, 1076, 907 N.Y.S.2d 798, 810 (N.Y. Civ. Ct., Richmond Cty. 2010) (the “vast majority” of consumer debt cases in New York City Civil Court result in default judgments against defendants; only about 30% of defendants appear and answer, and the “vast majority” of those are unrepresented).
other cases, pro se debtors appear but fail to recognize and assert valid defenses.\textsuperscript{49} In many such cases, debtors may forego legal representation because the cost of hiring a lawyer exceeds the amount in issue. Yet an adverse judgment can have devastating effects on a low-income debtor. The judgment creditor can garnish wages and freeze bank accounts, crippling the debtor’s ability to pay for basic needs such as food, rent, utilities, and medical care. The resulting negative credit record may impair the debtor’s long-term ability to find work and housing.

New York expressly bars nonlawyers from providing certain types of services to debtors except on a pro bono basis. In particular, for-profit businesses are prohibited from offering “budget planning services,” which involve the distribution of a debtor’s funds to creditors.\textsuperscript{50} The prohibition stems from the long history of fraud and abuse associated with businesses that purport to provide debt negotiation and credit counseling.\textsuperscript{51} A report issued recently by the New York City Bar Association’s Civil Court Committee and Consumer Affairs Committee formally opposed a proposal to relax New York’s prohibition.\textsuperscript{52} The report supports a broad ban on “any debt relief service – whether debt settlement, debt negotiation (otherwise known as debt management), or credit counseling – for a fee that is more than nominal.”\textsuperscript{53}

Debtors may still obtain limited assistance from nonlawyers, particularly from these sources:

- \textit{Law school and college students, acting under attorney supervision.} Debtors may obtain free legal information and advice from the Civil Legal Advice and Resource Office (“CLARO”), which operates under the auspices of the New York State Unified Court System’s Access to Justice Program. CLARO runs court-based, walk-in clinics in all five boroughs of New York City. The clinics are staffed by law school and college students who are supervised by volunteer attorneys. CLARO typically deals with non-bankruptcy cases involving credit card debt, medical debt, student loans, car loans, and utilities. Staffers explain the court process, educate debtors on what to expect at their court hearings, and help draft court filings such as answers and motions to open default judgments. They do not represent debtors in court.

- \textit{Civil Court clerks.} New York City Civil Court clerks may help debtors answer a complaint by assisting them in completing a pre-printed form (the “Consumer Credit Transaction Answer in Person”), which provides a list of defenses. The clerk fills out the form based on information

\textsuperscript{49} Debt Weight at 1.
\textsuperscript{50} N.Y. Gen. Bus. Law § 455.
\textsuperscript{53} Id. at 4.
provided by the debtor, sends the answer to the plaintiff, and advises the debtor of the hearing date. In addition, the Court’s website provides litigants with information regarding defenses and counterclaims, definitions, and explanations of procedure.  

4. Family courts

New York’s Family Court and State Supreme Court address a wide spectrum of family law matters, including divorce, child and spousal support, child custody, abuse and neglect charges, termination of parental rights, guardianship, placement, and delinquency. At least 80% of family law cases involve one or more pro se parties. In many cases, a pro se party faces a represented opponent.

Sources of nonlawyer assistance include:

- **Family Court clerks.** Court clerks help pro se litigants fill out paperwork, such as the petition necessary to obtain an order of protection.

- **Court-appointed special advocates/assistants (CASAs).** CASAs are appointed by Family Court judges to serve as advocates for abused, neglected, or at-risk children. All CASAs receive at least 30 hours of training, take an oath to uphold the best interests of the children, and are sworn in by the Family Court. They function as “friends of the court,” attending all court hearings and certain other proceedings, monitoring court orders, and reporting directly to the court. CASAs are supervised by the CASA program’s directors or volunteer coordinators, and attorney supervision is not required.

- **Friends and relatives.** New York’s Family Court Act provides that “[u]nless the court shall find it undesirable,” a petitioner may bring a non-witness friend, relative, counselor, or social worker to the courtroom. Such a person has no right to participate in the proceedings, but the court may call him or her as a witness.

5. Tribal courts

Some Native American tribal courts allow nonlawyer advocates, called “lay counselors,” to perform all of the functions of a professional attorney in both civil and criminal proceedings. In the tribal courts of the Ute Indian Tribe, for example, any party in any proceeding may choose to be represented by a lay counselor instead of a professional attorney.

---

56 See [http://www.courts.state.ny.us/wp/casa/publications/Chapter1-TheCASAProgramInNYS.pdf](http://www.courts.state.ny.us/wp/casa/publications/Chapter1-TheCASAProgramInNYS.pdf).
57 N.Y. Family Court Act § 838.
58 Law and Order Code of the Ute Indian Tribe of the Uintah and Ouray Reservation § 1-5-1 et seq., available at [http://www.narf.org/nill/Codes/uteuocode/utebodytt1.htm](http://www.narf.org/nill/Codes/uteuocode/utebodytt1.htm).
The Tribe’s Law and Order Code effectively places lay counselors on the same footing as professional attorneys, although no special training or certification appears to be required for lay counselors. When acting as representatives, lay counselors:

- bear “the same ethical obligations of honesty and confidentiality” as professional attorneys;
- are subject to the same attorney-client privilege, which attaches “in appropriate circumstances”;
- are “deemed officers of the Court” and governed by the same disciplinary rules as professional attorneys, including “the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the American Bar Association”;
- like professional attorneys, may be required to represent “without compensation or without full compensation” persons who are deemed by a Tribal Court judge to have “a particularly urgent need for such representation but are personally unable to afford to pay for such legal help.”

Similar provisions can be found in other Native American tribal codes. Some codes, however, require that lay counselors pass a “bar examination” (administered by a tribal executive board) or a “certified paralegal training program.”

B. Administrative Proceedings

Some federal and New York State agencies allow nonlawyers to represent clients in administrative proceedings, and in some cases allow the nonlawyers to charge fees. In federal Social Security proceedings, for example, nonlawyers may be compensated from a claimant’s award of retroactive benefits; and in immigration cases, firms employing nonlawyers may charge a nominal fee for their services. Nonlawyers may also appear in state unemployment and workers’ compensation proceedings. The federal and state agencies impose various regulatory requirements on nonlawyers who practice before them. Often these include minimum requirements of education, training, and experience; a showing of good moral character; insurance or bonding requirements; disciplinary procedures; and fee limitations.

1. Social Security benefits

59 Id. §§ 1-5-1, 1-5-6; see also id. § 1-5-7 (identical oath prescribed for attorneys and lay counselors upon admission).
The Social Security Administration allows nonlawyers to represent claimants seeking Social Security disability insurance benefits. A relative, friend, or “other spokesman” may serve in that capacity, provided that he or she “is generally known to have a good character and reputation,” is “capable of giving valuable help” in connection with the claim, and is not disqualified or legally prohibited from doing so.

Additional requirements apply to nonlawyer representatives who seek compensation for their services. In such cases, the nonlawyer must (1) have a bachelor’s degree from an accredited institution, or at least four years of relevant professional experience and either a high school diploma or GED certificate; (2) pass a written examination regarding relevant Social Security Act provisions and recent court decisions; (3) maintain professional liability insurance of at least $500,000; (4) pass a criminal background check; and (5) meet continuing education requirements. If the claimant is successful, the agency is authorized to withhold up to 25% of the past-due benefits awarded or $4,000 (whichever is less) as payment for the nonlawyer’s services, subject to certain other requirements.

2. Immigration

Immigration decisions are made in the first instance by the U.S. Citizenship and Immigration Services (“USCIS”), which reviews applications for visas, green cards, and asylum. The application process requires knowledge of immigration law and procedures (which are complex and subject to frequent change), factual development, and pursuit of a Freedom of Information Act request to discover the applicant’s history of interaction with the government. Initial decisions are based on written submissions and in some cases an interview.

Applicants denied relief at the USCIS level may be subject to deportation or removal. The next stage involves Immigration Court proceedings conducted by the Department of Justice’s Executive Office for Immigration Review. Matters may also reach that level if a noncitizen is arrested and detained upon discovery of unlawful status. Immigration Court decisions are subject to review by the Board of Immigration Appeals, and its decisions in turn are subject to review by the U.S. Court of Appeals.

Many individuals lack representation in Immigration Court proceedings. One recent study showed that 67% of detained individuals were unrepresented in New York removal proceedings. Moreover, even where individuals are represented, the quality of representation is often considered inadequate by the presiding judges.

Nonlawyers may play limited but important roles in immigration cases:

---

62 20 C.F.R. § 404.1705.
Accredited representatives of recognized nonprofit organizations.

“Accredited representatives” of a “recognized” nonprofit organization may participate in Immigration Court proceedings to the same extent as attorneys. However, the organization may charge only a “nominal” fee for its services, and must demonstrate that its “knowledge, information and experience” are adequate to provide appropriate representation. There is no requirement that the organization employ a supervisory attorney, although many authorized organizations with adequate funding do. Examples of such organizations in New York City include Catholic Charities, CUNY Citizenship NOW, and Sanctuaries for Families.66

“Other qualified representatives,” including “reputable individuals.”

Federal regulations also permit other categories of nonlawyers to provide representation in immigration cases. These include law graduates who are not yet admitted to the bar and law students, under specified conditions. Another category consists of “reputable individuals” who are “of good moral character”; appear on an “individual case basis” at the noncitizen’s request; receive no compensation; and have a pre-existing relationship with the noncitizen (for example, as a relative or friend), although the last requirement may be waived “where adequate representation” is otherwise unavailable.67

The Committee notes that, in contrast to these legitimate representatives, so-called “notarios” and “travel agents/translators” in minority communities often victimize immigrants through the unauthorized practice of law and other forms of misconduct. The unauthorized services include, for example, the selection, preparation, and submission of USCIS forms. In many cases, the nonlawyers charge more than immigration lawyers for similar services. Although efforts to eliminate the abuses have been made, more needs to be done.68

3. Unemployment insurance benefits

New York State’s Unemployment Insurance Appeals Board allows nonlawyers to serve as “registered representatives” of claimants seeking unemployment insurance benefits. At Board hearings, registered representatives are authorized to present a claimant’s case, introduce

66 The Department of Justice lists recognized organizations and accredited representatives at http://www.justice.gov/eoir/statspub/raroster.htm.
67 See 8 C.F.R. § 292.1.
68 See, e.g., Cantrell, supra note 21, at 893. In an effort to protect immigrants in this context, New York City’s Local Law 31 attempts to regulate – but does not license or certify – nonlawyers who provide “immigration assistance services” for profit. See N.Y.C. Admin. Code §§ 20-770 to 20-780. Whether the regulation is effective in preventing fraud or ensuring adequate representation is open to question. See generally C. Shannon, “To License or Not to License? A Look at Differing Approaches to Policing the Activities of Nonlawyer Immigration Service Providers,” 33 Cardozo L. Rev. 437, 457-65 (2011).
documentary evidence, cross-examine opposing parties and their witnesses, and give a closing summation.  

To qualify as a registered representative, a nonlawyer must (1) have a high school diploma or its equivalent; (2) have at least 16 hours of work experience or have taken courses in specified areas (administrative law and procedure, labor law, unemployment insurance, or civil practice and procedure); and (3) be of good moral character. In addition, the applicant “may” have to pass an examination, and “should have some experience with hearings and a working knowledge” of Article 18 of New York’s Labor Law and the Board’s rules and recent decisions.  

As part of the application process, a nonlawyer must submit a detailed resume and five references, must indicate whether he or she intends to engage full-time in representing claimants for a fee, must be interviewed by the Board, and upon certification must obtain a surety bond of $500.

The Board maintains a list of registered representatives and their contact information, which is supplied to claimants and available online. Registered representatives may charge a fee only if their client has won an award. Payments are limited to $75 per hour for nonlawyers ($100 per hour for lawyers). The representative must present a detailed certification of the services performed. The Board then approves a fee based on the total benefit to the claimant, the time spent on the representation, the legal and factual complexities of the case, and any other factors the Board deems relevant.

4. Workers’ compensation benefits

The New York State Workers’ Compensation Board authorizes nonlawyers to practice before the Board, subject to a licensing requirement. To qualify for a license, an applicant must be at least 18 years old and a U.S. citizen or lawful permanent resident, have a high school diploma or its equivalent, reside or have a regular place of business in New York State, be of good moral character, and have “competent knowledge of the law and regulations relating to workers’ compensation matters and the necessary qualifications to render service to his or her client.” The nonlawyer must also pass a written examination, submit to possible “oral review at the Board’s discretion,” and participate in an orientation program covering Board procedures and the legal and ethical responsibilities of practitioners.

---

70 Id.
71 Id.
74 Id. § 302-1.2.
75 Id. §§ 302-1.4, 302-1.7. Law graduates who are not yet admitted to the bar and law students may also practice before the Board, under a separate set of conditions. Id. §§ 302-1.1, 302-1.6.
The regulations specify representatives’ duties to their clients and the Board. Among other things, representatives are expected to have full knowledge of their client’s case, prepare diligently for handling all matters relating to the case, ascertain and fully disclose to the client the relevant facts and questions of law, fairly advise the client as to the merits of the case, disclose to the client in writing any potential conflicts of interest, transfer or accept transfer of a case only with approval by the Board, and withdraw from representing a client only after giving five days’ written notice to the client (which must also be filed with the Board). 76

The regulations also require representatives to conduct themselves as lawyers would in a court; maintain a register of their cases for Board inspection; display their licenses; and appear only in connection with cases in which they have been directly retained. Representatives may receive fees only if authorized by the Board or by a referee, and are strictly prohibited from receiving any other compensation for their services. 77

V. Roles for Nonlawyers Are Already Being Expanded

In recent years, several jurisdictions have extended the activities of nonlawyers substantially beyond the limited practices described above. We describe some of those developments here: the “McKenzie Friend” and “lay advocate” concepts in England and Wales; Washington State’s authorization of “Limited License Legal Technicians”; and the “independent paralegal” model, variations of which have been adopted in California, Arizona, and Canada.

A. Nonlawyer Advisers in England and Wales

In England and Wales, nonlawyers are allowed to render legal advice to a far greater extent than nonlawyers in the United States. As a general matter, those other countries do not limit to attorneys what we would consider the “practice of law.” Instead, they reserve for attorneys the right to provide particular services including the right to conduct litigation, appear before certain courts, prepare various types of contracts, engage in specific probate and notarial activities, and administer oaths. On the other hand, nonlawyers are permitted to write wills, consult on employment disputes, and manage personal injury and other types of claims out of court – all without licensing or regulation. Nonlawyers can also provide immigration advice, although that activity is subject to regulation. 78

Given this scheme, numerous “advice agencies” offer nonlawyer counseling and other services on a broad range of issues. For example, the Citizens’ Advice Bureau announces on its website that it operates in 3,500 locations and provides free advice to more than two million people a year on “any issue,” including debt, employment, housing, immigration, “plus everything in between.” 79 The advice bureaus direct clients who need more specialized legal advice to trained lawyers, while nonlawyers handle more routine matters.

76 Id. § 302-2.1.
77 Id. §§ 302-2.2, 302-2.4.
1. “McKenzie Friends”

In England and Wales, lay persons known as “McKenzie Friends” may appear alongside litigants in some court proceedings.\(^{80}\) Anyone can serve as a Friend, including a family member, neighbor, trained volunteer affiliated with an organization, or someone who regularly serves as a Friend.\(^{81}\) With disclosure to the court, the Friend can be paid.

The role of McKenzie Friend was established by the courts and is regulated under a court-issued “Practice Guidance.”\(^{82}\) Although litigants have a general right to “reasonable assistance,” courts have the discretion to decide in a particular case that “the interests of justice and fairness” do not require assistance by a McKenzie Friend.\(^{83}\) If assistance is allowed, the Friend is authorized to “provide moral support” to the litigant, “take notes,” “help with case papers,” and “quietly give advice on any aspect of the conduct of the case.”\(^{84}\) The Friend may not, however “(i) act as the litigants’ agent in relation to the proceedings; (ii) manage litigants’ cases outside court, for example by signing court documents; or (iii) address the court, make oral submissions or examine witnesses.”\(^{85}\) The emphasis, thus, is on “quiet” advice.

In exceptional circumstances, a court may allow a Friend to take on the additional role of “lay advocate” (described further below), who may then cross-examine witnesses and present oral argument.

Courts “ordinarily” allow the participation of a Friend,\(^{86}\) but may decline to do so if participation “might undermine or has undermined the efficient administration of justice.”\(^{87}\) The “Practice Guidance” offers the following examples of circumstances in which a Friend may be denied permission to participate:

- the assistance is being provided for an improper purpose;

---

\(^{80}\) The name “McKenzie Friend” derives from an English divorce case, *McKenzie v. McKenzie*, [1971] P33, [1970] 3 All ER 1034, [1970] 3 WLR 472, in which a lawyer who was qualified to practice in Australia but not in England sought to accompany the husband and offer assistance at trial. The trial court denied permission, but the appellate court, citing precedent going back to 1831, ruled that the lawyer should have been allowed to sit with the husband, take notes, and pass questions to the husband for cross-examination, but not advocate directly to the court.

\(^{81}\) See, e.g., Cantrell, *supra* note 21, at 888-91. U.K. social service and advocacy groups (such as “Families Need Fathers,” www.fnf.org.uk) often provide lists of “trained” McKenzie Friends.


\(^{83}\) *Id.* at 1; see also *Regina v. Leicester City Justices et al., ex parte Barrow et al.*, 2 QB 260, [1991] 3 WLR 368.

\(^{84}\) *Practice Guidance*, at 1.

\(^{85}\) *Id.*

\(^{86}\) *Id.*; see also *In the Matter of the Children of Mr. O’Connell, Mr. Whelan and Mr. Watson*, [2005] EWCA Civ. 759, [2005] 3 WLR 1191, [2005] 2 FLR 967.

\(^{87}\) *Practice Guidance*, at 3.
• the assistance is unreasonable in nature or degree;
• the Friend is subject to a civil proceedings order or a civil restraint order;
• the Friend is using the litigant as a “puppet”;  
• the Friend is directly or indirectly conducting the litigation;
• the court is not satisfied that the Friend fully understands the duty of confidentiality.\textsuperscript{88}

A report by the Civil Justice Council of England and Wales states that “the general view from judges and staff was that on balance it was better to have McKenzie Friends than not.”\textsuperscript{89} The Council recommended that courts encourage the use of McKenzie Friends.\textsuperscript{90} It also stated that courts should allow non-paid Friends to speak in some circumstances, but should be “very resistant” to allowing paid Friends to do so.\textsuperscript{91} The Council proposed a code of conduct that guides Friends to be honest, avoid disruption, follow the court’s directives, disclose to the court any payments for the Friend’s assistance, and reveal to the court and the litigant if the Friend serves that function regularly. The Council also stated that the Friend should “normally decline” to participate in a case if the Friend has “a financial interest in the outcome of the case.”\textsuperscript{92}

2. “Lay advocates”

As noted above, courts in England and Wales may permit a McKenzie Friend to take on the additional role of oral advocate for an otherwise unrepresented litigant, with authority to examine witnesses and present argument. In such cases, the Friend becomes a “lay advocate.”

Courts rarely grant permission to serve as a lay advocate. They are particularly reluctant to grant permission to individuals who charge a fee for their services, or serve repeatedly as lay advocates.\textsuperscript{93} Circumstances that have been held to justify lay advocacy include: the lay advocate is a close relative of the litigant; the litigant cannot afford a lawyer and has health problems that preclude self-representation; or the litigant is relatively inarticulate and prompting

\textsuperscript{88} Id.
\textsuperscript{90} Id. at 53-54.
\textsuperscript{91} Id. at 54.
\textsuperscript{92} Id. at 91-92.
by a non-speaking adviser may unnecessarily prolong the proceedings. The “Practice Guidance” observes:

[A] person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the court. These requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice.

Finally, representation by lay advocates in specific types of proceedings may be authorized by legislation. For example, a Scottish statute allows lay advocacy in cases involving repossession of homes in Scotland.

B. “Limited License Legal Technicians”

In July 2012, the Supreme Court of Washington adopted a “Limited Practice Rule for Limited License Legal Technicians.” The Rule establishes a regime under which legal technicians will be licensed to provide services in specific practice areas, to be defined by further regulation. If a client’s legal problem does not fall within an authorized practice area, the legal technician must decline the engagement and advise the client to seek the assistance of a lawyer. The Rule does not allow legal technicians to represent clients in court proceedings or out-of-court negotiations.

In authorized practice areas, legal technicians will be allowed to undertake the following tasks:

- obtain relevant information and explain its relevance to the client;
- inform the client of applicable procedures, including deadlines, documents that must be filed, and the anticipated course of legal proceedings;
- inform the client of applicable procedures for proper service of process and the filing of legal documents;
- provide the client with certain approved materials that contain relevant information about legal requirements, case law relevant to the client’s claim, and venue and jurisdictional requirements;

94 Practice Guidance at 4.
95 Practice Guidance, at 3; see also Portelli v. Goh [2002] NSWSC 997.
• review documents or exhibits that the client has received from the opposing side, and explain them to the client;

• select and complete forms that have been approved by certain specified authorities, and advise the client of their significance;

• perform legal research and draft “legal letters” and other documents (beyond the forms noted immediately above), if the work is reviewed and approved by a Washington lawyer;

• advise the client as to other documents that may be necessary to the case (such as exhibits, witness declarations, or party declarations) and explain how they may affect the case;

• assist the client in obtaining necessary documents such as birth, marriage, or death certificates. 98

The Rule holds legal technicians to the standard of care of a Washington lawyer, and extends to legal technicians the attorney-client privilege and the fiduciary duties of a lawyer. The Rule also specifies essential terms of the legal technician’s contract with a client. Before any services are performed for a fee, both parties must sign a written contract that includes these provisions:

• an explanation of the services to be performed, including a conspicuous statement that the legal technician may not represent the client in court, “formal administrative adjudicative proceedings,” 99 or any other formal dispute resolution process, and may not negotiate the client's legal rights or responsibilities;

• an identification of all fees and costs to be charged to the client;

• a conspicuous statement on the first page that the legal technician is not a lawyer and may only perform limited legal services;

• a statement that upon the client's request the legal technician will deliver to the client any documents submitted by the client to the legal technician;

• a statement describing the legal technician’s duty to protect the confidentiality of information provided by the client and the legal technician’s work product;

98 Wash. APR 28(F).
• a conspicuous statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees; and

• any other conditions required by rules or regulations to be issued later.  

The Rule imposes certain additional requirements, including:

• completion of an ABA-approved paralegal training program;

• two or three years’ work experience as a paralegal under the supervision of a lawyer;

• admission requirements, including an examination and proof of good moral character;

• maintenance of a principal place of business with a physical street address; and

• ongoing requirements for maintenance of legal technician status, including continuing education requirements, payment of an annual fee, and annual “proof of fiscal responsibility.”

The Rule establishes a Limited License Legal Technicians Board, which is tasked with developing more detailed regulations and administering the program on a day-to-day basis. The Board’s responsibilities include recommending to the Washington Supreme Court specific areas in which legal technicians will be authorized to practice; specifying more detailed licensing requirements; developing rules of professional conduct and procedures for disciplinary actions; processing applications; and administering required examinations. In light of the multiplicity of open issues that the Board must address, the program is not expected to begin operation until 2014.

C. “Independent Paralegals”

Another expansion of nonlawyer roles has taken place under the rubric of “independent paralegals.” This type of practitioner has some legal training and provides service for a fee directly to clients without attorney supervision, rather than to clients of a lawyer who employs or retains the paralegal and remains responsible for his or her work.

100 Wash. APR 28(G)(3).
101 Wash. APR 28(C).
103 Confusingly, the term “independent paralegal” also may be used to refer to nonlawyers who provide services for a fee in certain administrative proceedings (described in Section IV.B above).
In addition to the term “independent paralegal,” various other titles may be used to describe providers of such services. For example, California and Arizona have authorized nonlawyers to provide certain types of services as “legal document preparers” and “legal document assistants,” respectively. The scope of services is essentially the same for both: assisting clients with the preparation of legal documents without attorney supervision. Under Arizona’s rules, “legal document preparers” must meet initial and continuing educational requirements, pass an examination, and abide by a code of conduct; the rules explicitly prohibit the provision of legal advice, opinions, or recommendations. Similarly, California prohibits “legal document assistants” from providing legal advice or explanation. (Whether such prohibitions are violated by internet and in-person businesses that sell document assembly and related services is the subject of ongoing debate and, in some instances, legal action.)

Similar developments have taken place outside the United States. In 2007, for example, Ontario’s regulatory body for the legal profession, the Law Society of Upper Canada, allowed “licensed paralegals” to begin providing fee-based legal services to clients in minor civil and criminal matters. The regulatory framework established there resembles in some respects Washington State’s more recent legal technicians rule, discussed above. Ontario, however, has gone further: licensed paralegals may provide certain types of litigation advice, prepare court filings, and negotiate for clients with respect to small claims court cases, traffic offenses, landlord-tenant disputes, administrative matters, and minor criminal offenses. In a five-year review of Ontario’s program, the Law Society reported that “regulation of paralegals has been successful.” The Law Society concluded that “[c]onsumer protection has been balanced with maintaining access to justice and the public has thereby been protected.”

VI. Overview of New York’s Prohibition of the Unauthorized Practice of Law

In New York and many other jurisdictions, nonlawyers are prohibited from engaging in the practice of law or from holding themselves out as able to practice law. The prohibition has salutary goals that include preventing fraudulent impersonations and incompetent services by nonlawyers who lack the necessary qualifications and skill. The prohibition is relevant to a consideration of new models for nonlawyer services.

We briefly review New York’s law here. The extent to which changes in the law may be needed depends on the particular proposal in question. The Committee invites discussion of the models as general concepts and looks forward to building a consensus for particularized versions of those models. As that occurs, the Committee will be able to address whether changes in the law are necessary to accommodate the specific proposals under consideration.

\footnote{Cal. Bus. & Prof. Code § 6400.}
\footnote{See, e.g., ABA Nonlawyer Study at 36-39, 46-48, 59-60.}
\footnote{The Law Society of Upper Canada, Report to the Attorney General of Ontario (June 2012), at 3, available at \url{http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488010}.}
\footnote{For a history and survey of state laws prohibiting the unauthorized practice of law, see ABA Nonlawyer Study at 1, 13-32, 60-72; see also Cantrell, supra note 21, at 892-94 (questioning whether UPL prohibitions are effective tools for protecting consumers).}
New York’s Judiciary Law broadly prohibits nonlawyers from engaging in the practice of law. Although “the “practice of law” is a malleable term, the statute generally bars unlicensed individuals from providing legal advice, holding oneself out as a lawyer, and preparing certain legal documents. Judiciary Law § 478 declares:

It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself in a court of record in this state, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath.

Because § 478 refers to proceedings in a “court of record,” it does not prohibit various nonlawyer services described above in connection with administrative proceedings.\(^\text{109}\)

In addition, Judiciary Law § 484 designates specific activities that constitute the unauthorized practice of law:

No natural person shall ask or receive, directly or indirectly, compensation for appearing for a person other than himself as attorney in any court or before any magistrate, or for preparing deeds, mortgages, assignments, discharges, leases or any other instruments affecting real estate, wills, codicils, or any other instrument affecting the disposition of property after death, or decedents’ estates, or pleadings of any kind in any action brought before any court of record in this state, or make it a business to practice for another as an attorney in any court or before any magistrate unless he has been regularly admitted.

Similarly, courts have defined the unauthorized practice of law as including “rendering legal advice,” “appearing in court and holding oneself out to be a lawyer,” and preparing legal documents for a lay person.\(^\text{110}\) In addition, Rule 5.5(b) of the New York Rules of Professional

---


\(^{110}\) El Gemayel v. Seaman, 72 N.Y.2d 701, 706 (1988) (citing Spivak v. Sachs, 16 N.Y.2d 163, 168 (1965)); In re Roel, 3 N.Y.2d 224, 230 (1957). As of November 1, 2013, violation of Judiciary Law § 478 or § 484 will constitute a class E felony if a nonlawyer “(1) falsely holds himself or herself out as a person licensed to practice law in this state, a person otherwise permitted to practice law in this state, or a person who can provide services that only attorneys are authorized to provide; and (2) causes another
Conduct prohibits a lawyer from aiding a nonlawyer in the practice of law. Comment 2 notes that “[t]he definition of the ‘practice of law’ is established by law and varies from one jurisdiction to another.” It also notes that the Rule “does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work.”

VII. The Committee’s Recommendations

A. Recognize a Role for “Courtroom Aides” in Judicial and Administrative Hearings

As already discussed, nonlawyers are authorized to assist individuals in various federal and state administrative settings and certain court proceedings. (See Section IV above.) Similarly, courts in England and Wales allow “quiet” assistance by a McKenzie Friend, and sometimes allow the Friend to present evidence and argument as a lay advocate. (See Section V.A above.) In some circumstances, the nonlawyer is allowed to charge a fee.

The Committee endorses this concept, referred to here as the “courtroom aide” model, and recommends its application in appropriate forms to a broader range of forums. Assistance by a courtroom aide can be expected to facilitate proceedings in ways that benefit the litigant, the tribunal, and the justice system as a whole. For individuals with educational, language, or cognitive limitations, the courtroom aide can be especially helpful, not only as a source of information and emotional and administrative support, but also as an advocate.

In appropriate categories of cases, unpaid friends or relatives should be allowed to provide such assistance without elaborate regulation, but subject to approval and oversight by the presiding judge or administrator.

In addition, consideration should be given to whether, in a more limited range of cases, it may be appropriate for a nonlawyer to be compensated for work done in the role of a courtroom aide, recognizing that nonlawyers who are paid for their services should be subject to formal regulation regarding matters such as qualifications, mandatory disclosures, fee arrangements, and standards of conduct, in addition to on-the-scene supervision by the adjudicator.

We do not suggest an unthinking adoption of the courtroom aide model. It is particularly important to identify those judicial or administrative proceedings in which a role for a courtroom aide person to suffer monetary loss or damages exceeding one thousand dollars or other material damage resulting from impairment of a legal right to which he or she is entitled.” N.Y. Judiciary Law § 485-a.

111 See, e.g., David Rubel, Stem the Tide: A New Certification Program for Government Benefits Advocates as a Response to the Growing Crisis in Poor Communities (Nov. 2007) (suggesting that certification of “government benefits advocates” would reduce the burden on the legal services bar by drawing more people into roles as advocates in social services agencies), available at http://www.davidrubelconsultant.com/publications/1997%20govt%20advocates%20certification%20concept%20paper.pdf.

112 The Committee does not suggest that a courtroom aide’s assistance would be equivalent to that of lawyers, interpreters, or other professional participants in the proceedings, or that such assistance would relieve the court or agency of any of its responsibilities to the parties before it.
aide would provide the greatest benefits, and to provide standards under which the tribunal may decide that nonlawyer assistance is inappropriate.

Finally, our current proposal should not be viewed as attempting to modify any tribunal’s existing regime for nonlawyer advocacy.

B. Recognize a Role for “Legal Technicians” Outside Judicial and Administrative Hearings

The Committee also recommends that New York adopt some form of Washington State’s legal technician model for nonlawyer assistance, performed for compensation, outside of judicial and administrative hearings. (See Section V.B above.)

In making this recommendation, the Committee recognizes, as did Washington’s Supreme Court, that properly trained nonlawyers are potentially capable of performing a range of law-related tasks responsive to the unmet needs of low-income people.

The Committee recognizes the need for regulation and oversight to ensure the quality of services provided by nonlawyers. In particular, the Committee endorses Washington State’s set of mandatory disclosures to be embodied in a written contract between the legal technician and the client. The Committee is also mindful that excessive regulation may impose costs, burdens, and delays that will undercut the impact that such services may have in closing the justice gap. Achieving the proper balance between these two considerations is essential.

C. Consider Additional Roles for Nonlawyers

The Committee believes that the sheer size of the justice gap requires consideration of additional roles for nonlawyers. At best, the Committee’s current proposals will narrow the gap incrementally; they cannot eliminate it completely. We therefore believe that it is important to consider additional steps, including limited authorizations of nonlawyers to render certain types of legal advice, conduct financial negotiations, and advocate in court beyond the parameters of the Committee’s current proposals. Such steps would require careful analysis of the need for additional services and the concomitant need for additional safeguards and oversight. Without further study, the Committee cannot endorse such proposals at this time. Nevertheless, the Committee believes that further study by this Committee and by other committees of the New York City Bar is warranted.

D. Address Concerns

The Committee recognizes that concerns will be raised in response to its proposals. For example: Will nonlawyers be competent to perform the additional services? What kinds of regulatory regimes will be effective and practical? Will there be a market demand for the proposed services? And will expanding the role of nonlawyers promote a “two-tier” justice system? We offer some brief responses here. At the same time, we look forward to addressing the full range of concerns in greater detail as public debate continues.
Will nonlawyers be competent to handle the proposed services? The Committee acknowledges the need for detailed specifications of the additional tasks that nonlawyers may perform in particular settings, and the types of training and oversight necessary to ensure that those tasks are performed competently. At the same time, the Committee is reassured by the record of success achieved by many nonlawyers in guiding claimants through proceedings before federal and state agencies. In many respects, the tasks they fulfill are more complex and demanding than the tasks proposed in this report for courtroom aides in judicial or administrative proceedings, or for legal technicians outside such proceedings.

What kinds of regulatory regimes should be established? As discussed above, a number of federal and state agencies have already established formal regimes for the training, licensing, and supervision of nonlawyer advocates. The Committee does not propose altering any agency’s existing rules and practices. A basic premise of the Committee’s approach is that each tribunal should retain discretion to tailor its regulations in accordance with the special features of its caseload and jurisdiction. At the same time, the regimes already in place can inform the development of models for other judicial and administrative settings. Likewise, Washington State’s legal technician regime can guide the development of models for nonlawyer services outside judicial and administrative hearings.113

The Committee does not recommend wholesale adoption of these or any other models. The appropriate type of regulation depends on the particular setting and the specified scope of the nonlawyer’s activity. For example, where a courtroom aide is authorized to speak only when called upon by the court, the court retains direct control of the proceedings, reducing the need for independent oversight – although in some circumstances further regulation and even licensing will be appropriate, particularly if a nonlawyer advocate provides services for a fee. Similarly, the appropriate types of oversight in non-adjudicative contexts will depend on the breadth and complexity of the tasks to be performed. In any context, however, a balance must be struck between ensuring the quality of services and facilitating entry into the field.114

Will the new models be economically viable? The Washington Supreme Court specifically addressed this issue, observing that “[n]o one has a crystal ball,” and “[t]here is simply no way to know the answer to this question without trying it.” Some have questioned the existence of a significant consumer demand for nonlawyer services, arguing that if the demand existed, it would have been satisfied by now by the many recent law graduates who are currently unemployed. But an unmet demand for such services clearly does exist. It is often fulfilled – inadequately – by notarios and others who operate in the shadows of our legal system, without training or competency requirements. The legal technician model offers an opportunity to bring that activity out of the shadows and expose it to regulation. In any event, economic arguments against expanding nonlawyer services are hardly persuasive enough to preclude even modest experimentation. The limited proposals presented here deserve real-world tests.

113 Various other models have been suggested as well. For example, Prof. Rigertas has suggested a licensing scheme for “housing advocates,” who would provide legal advice in connection with real estate closings, landlord-tenant disputes, and foreclosures. Advocates would be required to complete courses in substantive law and professional responsibility, receive clinical training, and pass a qualifying examination. See Rigertas, supra note 31, at 98.

114 For a detailed discussion of analytical criteria relevant to determining the appropriate forms of regulation for different types of nonlawyer activities, see ABA Nonlawyer Study at 136-50.
Will the new roles promote a “two-tier” justice system? The Committee submits that we already confront a stark “two-tier” system, in which represented parties often face pro se litigants, with typically lopsided results. Expanding the scope of nonlawyer assistance will reduce rather than promote the extreme inequalities of the present system. The Committee strongly supports efforts to increase access to traditional legal counsel through pro bono work, legal aid services, and other programs. At the same time, such efforts alone cannot close the justice gap. Much more is needed.

VIII. Conclusion

The Committee has presented two proposals: (1) permit “courtroom aides” to participate in judicial and administrative hearings beyond those in which they are authorized to participate now; and (2) permit “legal technicians” to provide specified forms of assistance outside judicial and administrative hearings. The Committee believes that, with appropriate safeguards, adoption of these proposals will help to narrow the justice gap. The Committee also supports studying additional roles for nonlawyers. Every year millions of low-income New Yorkers face potentially life-changing events in our civil justice system without access to professional assistance. The New York bar can and should work creatively to address this crisis. The Committee joins the growing call for action and looks forward to participating in the search for solutions.

June, 2013

David Lewis
Chair, Committee on Professional Responsibility

Rebecca Ambrose
Secretary, Committee on Professional Responsibility

Access to Justice Sub-Committee

David Udell, Chair
Stuart Altschuler
Justine Borer
Lia Brooks
Sherry Cohen
Guy Dempsey
Judith Mogul
APPENDIX APR 28. REGULATIONS OF THE APR 28 LIMITED LICENSE LEGAL TECHNICIAN BOARD

REGULATION 1: IN GENERAL
Every person desiring to be licensed and to maintain licensure as a Limited License Legal Technician (LLLT) pursuant to Admission to Practice Rule (APR) 28 shall satisfy all of the requirements of APR 28 and Appendix APR 28.

To facilitate prompt administration of APR 28 and these regulations, designated staff of the Washington State Bar Association (WSBA) may act on behalf of the LLLT Board under APR 28 and these regulations.

REGULATION 2: PRACTICE AREAS—SCOPE OF PRACTICE AUTHORIZED BY LIMITED LICENSE LEGAL TECHNICIAN RULE
In each practice area in which an LLLT is licensed, the LLLT shall comply with the provisions defining the scope of practice as found in APR 28 and as described herein.

A. Issues Beyond the Scope of Authorized Practice.
An LLLT has an affirmative duty under APR 28F to inform clients when issues arise that are beyond the authorized scope of the LLLT’s practice. When an affirmative duty under APR 28F arises, then the LLLT shall inform the client in writing that:

1. the issue may exist, describing in general terms the nature of the issue;
2. the LLLT is not authorized to advise or assist on this issue;
3. the failure to obtain a lawyer’s advice could be adverse to the client’s interests; and,
4. the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's interests.

After an issue beyond the LLLT’s scope of practice has been identified, an LLLT may prepare a document related to the issue only if a lawyer acting on behalf of the client has provided appropriate documents and written instructions for the LLLT as to whether and how to proceed with respect to the issue. The LLLT shall then be required to follow the instructions and incorporate the terms of the necessary documents into the final court orders. The LLLT may proceed in this manner only if no other defined prohibitions apply.

B. Domestic Relations.
1. Domestic Relations, Defined. For the purposes of these Regulations, domestic relations shall include only: (a) child support modification actions, (b) dissolution actions, (c) domestic violence actions, except as prohibited by Regulation 2B(3), (d) committed intimate relationship actions only as they pertain to parenting and support issues, (e) legal separation actions, (f) major parenting plan modifications when the terms are agreed to by the parties before the onset of the representation by the LLLT, (g) minor parenting plan modifications,
2. Scope of Practice for Limited License Legal Technicians — LLLTs in domestic relations may provide legal services to clients as provided in APR 28F, except as prohibited by APR 28H and Regulation 2B(3). Unless an issue beyond the scope arises or a prohibited act would be required, LLLTs may advise and assist clients (1) to initiate and respond to actions and (2) regarding motions, discovery, trial preparation, temporary and final orders, and modifications of orders.

3. Prohibited Acts. In addition to the prohibitions set forth in APR 28H, in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:
   a. shall not represent more than one party in any domestic relations matter;
   b. shall not provide legal services:
      i. in defacto parentage or nonparental custody actions; and
      ii. if 25 U.S.C. Chapter 21, the Indian Child Welfare Act, or RCW 13.38, the Washington State Indian Child Welfare Act, applies to the matter;
   c. shall not advise or assist clients regarding:
      i. division of owned real estate, formal business entities, or retirement assets that require a supplemental order to divide and award, which includes division of all defined benefit plans and defined contribution plans;
      ii. bankruptcy, including obtaining a stay from bankruptcy;
      iii. disposition of debts and assets, if one party is in bankruptcy or files a bankruptcy during the pendency of the proceeding, unless: (a) the LLLT’s client has retained a lawyer to represent him/her in the bankruptcy, (b) the client has consulted with a lawyer and the lawyer has provided written instructions for the LLLT as to whether and how to proceed regarding the division of debts and assets in the domestic relations proceeding, or (c) the bankruptcy has been discharged;
      iv. anti-harassment orders, criminal no contact orders, anti-stalking orders, and sexual assault protection orders in domestic violence actions;
      v. pseudo-community property issues in committed intimate relationship actions;
      vi. major parenting plan modifications unless the terms were agreed to by the parties before the onset of the representation by the LLLT;
      vii. the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues under RCW 26.27 or Uniform Interstate Family Support Act issues under RCW 26.21A unless and until jurisdiction has been resolved;
      viii. objections to relocation petitions, responses to objections to relocation petitions, or temporary orders in relocation actions;
      ix. final revised parenting plans in relocation actions except in the event of default or where the terms have been agreed to by the parties.
   d. shall not appear or participate at the taking of a deposition; and
   e. shall not initiate or respond to an appeal to an appellate court.
REGULATION 3: EDUCATION REQUIREMENTS FOR APPLICANTS
An applicant for licensure shall satisfy the following education requirements:

A. Core Curriculum. An applicant for licensure shall have earned the following course credits at an ABA approved law school or ABA approved paralegal program:

1. Civil Procedure, minimum 8 credits;
2. Contracts, minimum 3 credits;
3. Interviewing and Investigation Techniques, minimum 3 credits;
4. Introduction to Law and Legal Process, minimum 3 credits;
5. Law Office Procedures and Technology, minimum 3 credits;
6. Legal Research, Writing and Analysis, minimum 8 credits; and
7. Professional Responsibility, minimum 3 credits.

The core curriculum courses in which credit is earned shall satisfy the curricular requirements approved by the Board and published by the WSBA. If the required core curriculum courses completed by the applicant do not total 45 credits as required by APR 28D(3)(b), then the applicant may earn the remaining credits by taking legal or paralegal elective courses at an ABA approved law school or ABA approved paralegal program.

B. Practice Area Curriculum. An applicant for licensure in a defined practice area shall have completed the prescribed curriculum and earned course credits for that defined practice area, as set forth below and in APR 28D(3)(c). Each practice area curriculum course shall satisfy the curricular requirements approved by the Board and published by the WSBA.

1. Domestic Relations.
   a. Prerequisites: Prior to enrolling in the domestic relations practice area courses, applicants shall complete the following core courses: Civil Procedure; Interviewing and Investigation Techniques; Introduction to Law and Legal Process; Legal Research, Writing, and Analysis; and Professional Responsibility.
   b. Credit Requirements: Applicants shall complete five credit hours in basic domestic relations subjects and ten credit hours in advanced and Washington specific domestic relations subjects.

REGULATION 4: LIMITED TIME WAIVERS
A. Limited Time Waiver, Defined. For the limited time between the date the Board begins to accept applications and December 31, 2016, the Board shall grant a waiver of the minimum associate-level degree requirement and/or the core curriculum education requirement set forth in APR 28D(3) if an applicant meets the requirements set forth in Regulation 4B. The Board shall not grant waivers for applications filed after December 31, 2016. The Board shall not waive the practice area curriculum requirement. The limited time waiver application will be separate from the application process for licensure set forth in these regulations.
B. Waiver Requirements and Applications. To qualify for the limited time waiver, an applicant shall pay the required fee, submit the required waiver application form, and provide proof, in such form as the Board requires, that he/she has:

1. Passed the Certified Paralegal Exam conducted by the National Association of Legal Assistants (NALA) or the Paralegal Advanced Competency Exam (PACE) conducted by the National Federation of Paralegal Associations (NFPA);
2. Active certification as a Certified Paralegal with NALA or as a PACE Registered Paralegal with NFPA; and
3. Completed 10 years of substantive law-related experience supervised by a licensed lawyer within the 15 years preceding the application for the waiver. Proof of 10 years of substantive-law related experience supervised by a licensed lawyer shall include the following:
   a. the name and bar number of the supervising lawyer(s),
   b. certification by the lawyer that the work experience meets the definition of substantive law-related work experience as defined in APR 28, and
   c. the dates of employment or service..

C. Review of Limited Time Waiver Application. WSBA staff shall review each limited time waiver application to determine if the application meets the waiver requirements. Any application that does not meet the limited time waiver requirements as established by this Regulation shall be denied by the WSBA staff on administrative grounds, with a written statement of the reason(s) for denial.

D. Review of Denial. An applicant whose application for waiver has been denied by WSBA staff may request review by the Board chair. Such request shall be filed with WSBA staff within 14 days of the date of the notification of denial. The applicant shall be provided with written notification of the chair’s decision, which is not subject to review.

E. Expiration of Limited Time Waiver Approval. Approval of the limited time waiver application shall expire December 31, 2018. After expiration of the approval, any subsequent application for licensure by the applicant shall meet all of the standard requirements for licensure without waiver.

REGULATION 5: APPLICATIONS
A. Fees. All applications shall be accompanied by the required application fee.

B. Application for Licensure. An applicant for licensure as an LLLT shall complete and file with the WSBA:

1. a completed application for licensure to limited practice under APR 28;
2. all official transcripts demonstrating completion of
a. at a minimum, an associate level degree, except applicants who have been approved for a limited time waiver pursuant to Regulation 4,
b. the core curriculum required pursuant to Regulation 3A, except applicants who have been approved for a limited time waiver pursuant to Regulation 4, and
c. the practice area curriculum required pursuant to Regulation 3B; and
3. a signed and notarized Authorization, Release and Affidavit of Applicant.

C. Application for Additional Practice Area. An LLLT seeking licensure in an additional practice area must complete and file with the WSBA:

1. a completed practice area application for licensure to limited practice under APR 28;
2. an official transcript demonstrating completion of the practice area curriculum required under Regulation 3B; and
3. a signed and notarized Authorization, Release and Affidavit of Applicant.

D. Background Check. Each applicant for licensure shall submit a fingerprint card to the Federal Bureau of Investigation (FBI) for a criminal history record check and provide to the FBI a release for the results of the criminal history check to be sent directly to the WSBA. A Washington LLLT applying for licensure in an additional practice area shall not be required to submit a fingerprint card, unless it has been more than two years since the LLLT was last issued a license.

The applicant shall furnish whatever additional information or proof may be required in the course of investigating the applicant, and failure to furnish such information may be grounds for denial of licensure.

REGULATION 6: APPROVAL OR DENIAL OF APPLICATION ON ADMINISTRATIVE GROUNDS

A. Review of Application. WSBA staff shall review each application to determine if the application meets the criteria for licensure established in APR 28. Any application that does not meet the initial criteria for licensure as established by APR 28 shall be denied by the WSBA staff on administrative grounds, except for those applications where there is a substantial question as to the applicant’s good moral character or fitness to practice. The applicant will be notified whether the application has been approved or denied. If the application has been denied, the applicant will be notified of the grounds for the denial and the review process.

B. Review of Denial. Every applicant who has been denied licensure under APR 28 on administrative grounds may request review by the Board chair. To request review, an applicant shall submit a written request within 14 days of the date the denial of application was issued and state the reason for the request.
C. Procedure for Review. The Board chair shall consider the request for review on the written record only and shall hear no oral arguments. The chair shall enter a written decision which may affirm or reverse the denial of the application or direct further investigation.

REGULATION 7: CHARACTER AND FITNESS HEARINGS
Reserved.

REGULATION 8: EXAMINATIONS; NOTIFICATION OF RESULTS
A. Administration of Examinations. The examinations will be administered at such times and locations as the Board may designate.

An applicant for initial licensure shall pass a core curriculum examination and a practice area examination.

An LLLT who applies for licensure in an additional practice area shall be required to take only the qualifying practice area examination in the practice area for which he or she is seeking licensure.

B. Core Curriculum Examination. The core curriculum examination shall be comprised of three parts: a multiple choice section, an essay section, and a performance section. The passing standard for the core curriculum examination is a score of 75 percent for each section of the exam. A failing grade in one section shall result in failure of the exam, in which case grading of any remaining sections shall not be completed.

C. Practice Area Examination. All practice area examinations shall be comprised of three parts: a multiple choice section, an essay section, and a performance section. The passing standard for the practice area examination is a score of 75 percent for each section of the exam. A failing grade in one section shall result in failure of the exam, in which case grading of any remaining sections shall not be completed.

D. Results and Reapplications. Each applicant will be notified of the applicant's examination results. Those applicants who fail the examination will be informed of their score on each graded section of the examination. Examination scores shall not be disclosed to those applicants who pass the examination. Copies of the examination shall not be available to any applicant.

An applicant who passes the core curriculum examination but fails the practice area examination or vice versa may retake the failed exam at the next two administrations of the exam. The passing score shall be valid for one year from the date the applicant is notified of passing. If the applicant does not pass the failed exam after the next two administrations of the exam, the applicant shall be required to retake the exam he or she passed.
REGULATION 9: SUBSTANTIVE LAW-RELATED WORK EXPERIENCE REQUIREMENT
Each applicant for licensure as a limited license legal technician shall show proof of having completed 3,000 hours of substantive law-related work experience supervised by a licensed lawyer as required by APR 28E(2). The experience requirement shall be completed within three years before or after the date the applicant is notified of passing both the core curriculum and practice area qualifying examinations. The proof shall be provided in such form as the Board requires, but shall include at a minimum:

1. the name and bar number of the supervising lawyer;
2. certification that the work experience meets the definition of substantive law-related work experience as defined in APR 28;
3. the total number of hours of substantive law-related work experience performed under the supervising lawyer; and
4. certification that the requisite work experience was acquired within the time period required by APR 28E(2).

REGULATION 10: CERTIFICATION OF RESULTS TO SUPREME COURT; OATH
A. Recommendation for Licensure. The Board shall recommend to the Washington State Supreme Court the licensure of all applicants who have met all licensing requirements set forth in APR 28 and these regulations, including good moral character and fitness to practice. All recommendations of the Board shall be accompanied by the application for licensure and any other documents deemed pertinent by the Board or requested by the Supreme Court. The recommendation and all accompanying documents and papers shall not be public record.

B. Pre-licensure Requirements. Before an applicant who has passed the qualifying examinations may be licensed, the applicant shall:

1. furnish proof of completion of the requisite hours of substantive law-related work experience supervised by a licensed lawyer as required by Regulation 9;
2. furnish proof of financial responsibility as required by Regulation 12;
3. pay the annual license fee and any assessments for the current year as required by Regulation 11;
4. file any and all licensing forms required for active limited license legal technicians; and
5. take the Oath of Limited License Legal Technician.

The pre-licensure requirements shall be completed within three years of the date the applicant is notified of the examination results. If an applicant fails to satisfy all the requirements for licensure within this period, the applicant shall not be eligible for licensure under APR 28 without submitting a new application for licensure and retaking the examination.
C. Additional Practice Area Pre-licensure Requirements. An LLLT who is seeking licensure in an additional practice area shall:

1. take and pass the additional practice area examination;
2. pay the additional practice area license fee; and
3. file any and all licensing forms required for active limited license legal technicians.

The requirements above shall be completed within one year of the date the applicant is notified of the examination results. If an LLLT fails to satisfy all the requirements for licensure in an additional practice area within this period, the LLLT shall not be eligible for licensure in the additional practice area without submitting a new application and retaking the examination.

D. Oath of Limited License Legal Technician. The Oath of Limited License Legal Technician shall be taken before an elected or appointed judge, excluding judges pro tempore, sitting in open court in the state of Washington.

E. Contents of Oath. The oath which all applicants shall take is as follows:

OATH FOR LIMITED LICENSE LEGAL TECHNICIANS

STATE OF WASHINGTON
COUNTY OF

I, __________, do solemnly declare:

1. I am fully subject to the laws of the State of Washington, the laws of the United States, Rule 28 of the Admission to Practice Rules, and APR 28 Regulations adopted by the Washington State Supreme Court and will abide by the same;
2. I will support the constitutions of the State of Washington and of the United States of America;
3. I will abide by the Limited License Legal Technician Rules of Professional Conduct approved by the Supreme Court of the State of Washington;
4. I will confine my activities as a Limited License Legal Technician to those activities allowed by law, rule and regulation and will only utilize documents approved pursuant to APR 28;
5. I will faithfully disclose the limitations of my services and that I am not a lawyer;
6. I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with the business of my client, unless this compensation is from or with the knowledge and approval of the client or with the approval of the court;
7. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;
8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.
F. Order Admitting to Limited Practice as LLLT. After examining the recommendation and accompanying documents transmitted by the Board, the Supreme Court may enter such order in each case as it deems advisable. For those applicants it deems qualified, the Supreme Court shall enter an order admitting them to limited practice as LLLTs. Applicants shall be admitted under APR 28 only after the order has been entered by the Supreme Court.

G. Order Admitting LLLT to Limited Practice in Additional Practice Area. After examining the recommendation and accompanying documents transmitted by the Board, the Supreme Court may enter such order in each case as it deems advisable. For those LLLTs it deems qualified, the Supreme Court shall enter an order admitting them to limited practice in the additional practice area.

REGULATION 11: ANNUAL LICENSE FEES

A. Except as set forth in section B of this Regulation, every Limited License Legal Technician shall pay an annual license fee in an amount set by the Board with the approval of the Supreme Court, which is due July 1 of each year. Annual license fees paid after July 1 shall be subject to a late fee equal to one half the annual license fee. The annual license fee is for the limited license to practice in one defined practice area.

B. The prorated annual license fee for LLLTs who pass the qualifying examination given in the spring and who request active status prior to July 1 of that same calendar year shall be one half the amount of the annual license fee. LLLTs shall pay the annual license fee set forth in Regulation 11A to retain their active status after June 30 of the calendar year of their licensure.

C. A LLLT shall pay an annual additional practice area fee for each additional practice area in which the LLLT is licensed. The annual additional practice area fee for each additional practice area shall be one half the amount of the annual license fee. The combined annual additional practice area fees and annual license fee shall not exceed the total cost of active lawyer annual license fees. Annual license fee payment due dates and late fees shall apply to additional practice area fees.

D. An LLLT shall provide his or her residential and business addresses, telephone numbers, and business email address to the Board at the time of payment of the annual license fee. An LLLT
whose address, telephone number, or email address changes shall notify the WSBA within 10 days after the change.

REGULATION 12: FINANCIAL RESPONSIBILITY
A. Insurance Requirement. Each limited license legal technician shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 28 by:

1. Submitting an individual professional liability insurance policy in the amount of at least $100,000 per claim and a $300,000 annual aggregate limit; or
2. Submitting a professional liability insurance policy of the employer or the parent company of the employer who has agreed to provide coverage for the LLLT’s ability to respond in damages in the amount of at least $100,000 per claim and a $300,000 annual aggregate limit.

B. Continuing Requirement. Each active LLLT who is covered by insurance shall file with the WSBA an annual certificate of coverage. The certificate of coverage shall name the covered LLLT(s) and the policy limits and dates. Each LLLT shall notify the Board of any cancellation or lapse in coverage.
ADMISSION TO PRACTICE RULES

RULE 28 LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. Purpose. The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribes the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.

B. Definitions. For purposes of this rule, the following definitions will apply:

1. "APR" means the Supreme Court's Admission to Practice Rules.
2. "Board" when used alone means the Limited License Legal Technician Board.
3. "Lawyer" means a person licensed and eligible to practice law in any U.S. jurisdiction.
4. "Limited License Legal Technician" means a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client.
5. "Paralegal/legal assistant" means a person qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive law-related work for which a lawyer is responsible.
6. "Reviewed and approved by a Washington lawyer" means that a Washington lawyer has personally supervised the legal work and documented that supervision by the Washington lawyer's signature and bar number.
7. "Substantive law-related work" means work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.
8. "Supervised" means a lawyer personally directs, approves and has responsibility for work performed by the Limited License Legal Technician.
9. "Washington lawyer" means a person licensed and eligible to practice law in Washington and who is an active or emeritus member of the Washington State Bar Association.
10. Words of authority:
    a. "May" means "has discretion to," "has a right to," or "is permitted to".
(b) "Must" or "shall" mean "is required to.
(c) "Should" means recommended but not required.

C. Limited License Legal Technician Board

(1) Establishment. There is hereby established a Limited License Legal Technician Board. The Board shall consist of 13 members appointed by the Supreme Court of the State of Washington, nine of whom shall be active Washington lawyers, and four of whom shall be nonlawyer Washington residents. At least one member shall be a legal educator. The members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three year terms. No member may serve more than two consecutive full three year terms.

(2) Board Responsibilities. The Board shall be responsible for the following:
   (a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;
   (b) Processing applications and fees, and screening applicants;
   (c) Administering the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to Limited License Legal Technicians, rules relating to the attorney client privilege, procedural rules and substantive law issues related to one or more approved practice areas;
   (d) Determining LLLT Continuing Legal Education (LLLT CLE) requirements and approval of LLLT CLE programs;
   (e) Approving education and experience requirements for licensure in approved practice areas;
   (f) Establishing and over-seeing committees and tenure of members;
   (g) Establishing and collecting examination fees, LLLT CLE fees, annual license fees, and other fees in such amounts approved by the Supreme Court as are necessary to carry out the duties and responsibilities of the Board; and
   (h) Such other activities and functions as are expressly provided for in this rule.

(3) Rules and Regulations. The Board shall propose rules and regulations for adoption by the Supreme Court that:
   (a) Establish procedures for grievances and disciplinary proceedings;
   (b) Establish trust account requirements and procedures;
   (c) Establish rules of professional and ethical conduct; and
   (d) Implement the other provisions of this rule.

D. Requirements for Applicants. An applicant for licensure as a Limited License Legal Technician shall:

(1) Age. Be at least 18 years of age.

(2) Moral Character and Fitness to Practice. Be of good moral character and demonstrate fitness to practice as a Limited License Legal Technician.

(3) Education. Have the following education, unless waived by the Board through regulation:
(a) An associate level degree or higher;
(b) 45 credit hours of core curriculum instruction in paralegal studies as approved by the Board with instruction to occur at an ABA approved law school or ABA approved paralegal education program; and
(c) In each practice area in which an applicant seeks licensure, instruction in the approved practice area, which must be based on a curriculum developed by or in conjunction with an ABA approved law school. For each approved practice area, the Board shall determine the key concepts or topics to be covered in the curriculum and the number of credit hours of instruction required for admission in that practice area.
(d) For the purposes of satisfying APR 28(D)(3), one credit hour shall be equivalent to 450 minutes of instruction.

(4) Application. Execute under oath and file with the Board his/her application, in such form as the Board requires. An applicant's failure to furnish information requested by the Board or pertinent to the pending application may be grounds for denial of the application.

(5) Examination Fee. Pay, upon the filing of the application, the examination fee and any other required application fees as established by the Board and approved by the Supreme Court.

E. Licensing Requirements. In order to be licensed as a Limited License Legal Technician, all applicants must:

(1) Examination. Take and pass the examinations required under these rules;

(2) Experience. Acquire 3,000 hours of substantive law-related work experience supervised by a licensed lawyer. The experience must be acquired no more than three years prior to licensure and no more than three years after passing the examination;

(3) Annual License Fee. Pay the annual license fee;

(4) Financial Responsibility. Show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rules. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe; and

(5) Meet all other licensing requirements set forth in the rules and regulations proposed by the Board and adopted by the Supreme Court.

F. Scope of Practice Authorized by Limited Practice Rule. The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

(1) Obtain relevant facts, and explain the relevancy of such information to the client;

(2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
(3) Inform the client of applicable procedures for proper service of process and filing of legal
documents;

(4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the
Board, which contain information about relevant legal requirements, case law basis for the client’s
claim, and venue and jurisdiction requirements;

(5) Review documents or exhibits that the client has received from the opposing side, and explain them
to the client;

(6) Select, complete, file, and effect service of forms that have been approved by the State of
Washington, either through a governmental agency or by the Administrative Office of the Courts or
the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer;
or forms approved by the Board; and advise the client of the significance of the selected forms to
the client’s case;

(7) Perform legal research and draft legal letters and pleadings documents beyond what is permitted in
the previous paragraph, if the work is reviewed and approved by a Washington lawyer;

(8) Advise a client as to other documents that may be necessary to the client’s case, and explain how
such additional documents or pleadings may affect the client’s case;

(9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

G. Conditions Under Which A Limited License Legal Technician May Provide Services

(1) A Limited License Legal Technician must have a principal place of business having a physical street
address for the acceptance of service of process in the State of Washington;

(2) A Limited License Legal Technician must personally perform the authorized services for the client
and may not delegate these to a nonlicensed person. Nothing in this prohibition shall prevent a
person who is not a licensed LLLT from performing translation services;

(3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter
into a written contract with the client, signed by both the client and the Limited License Legal
Technician that includes the following provisions:

(a) An explanation of the services to be performed, including a conspicuous statement that the
Limited License Legal Technician may not appear or represent the client in court, formal
administrative adjudicative proceedings, or other formal dispute resolution process or negotiate
the client's legal rights or responsibilities, unless permitted under GR 24(b);

(b) Identification of all fees and costs to be charged to the client for the services to be performed;

(c) A statement that upon the client’s request, the LLLT shall provide to the client any documents
submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform
limited legal services. This statement shall be on the face first page of the contract in minimum
twelve-point bold type print;
(e) A statement describing the Limited License Legal Technician’s duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician’s work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the Board.

(4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client requires should seek the services of a lawyer.

(5) A document prepared by an LLLT shall include the LLLT’s name, signature and license number beneath the signature of the client.

H. Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

(2) Retain any fees or costs for services not performed;

(3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client; or

(4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized by the license held by the Limited License Legal Technician;

(5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

(6) Negotiate the client’s legal rights or responsibilities, or communicate with another person the client’s position or convey to the client the position of another party; unless permitted by GR 24(b).

(7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client.

(8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;

(9) Otherwise violate the Limited License Legal Technicians’ Rules of Professional Conduct.

I. Continuing Licensing Requirements

(1) Continuing Education Requirements. Each Limited License Legal Technician annually must complete the Board-approved number of credit hours in courses or activities approved by the Board; provided that the Limited License Legal Technician shall not be required to comply with this subsection during the calendar year in which he or she is initially licensed.
(2) **Financial Responsibility.** Each Limited License Legal Technician shall annually provide proof of financial responsibility in such form and in such amount as the Board may by regulation prescribe.

(3) **Annual Fee.** Each Limited License Legal Technician shall pay the annual license fee established by the Board and approved by the Supreme Court.

**J. Existing Law Unchanged.** This rule shall in no way modify existing law prohibiting nonlawyers from practicing law or giving legal advice other than as authorized under this rule or associated rules and regulations.

**K. Professional Responsibility and Limited License Legal Technician-Client Relationship**

(1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.

(2) Limited License Legal Technicians shall be held to the ethical standards of the Limited License Legal Technicians’ Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

(3) The Washington law of attorney-client privilege and law of a lawyer’s fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.
APPENDIX APR 28. REGULATIONS OF THE APR 28 LIMITED LICENSE LEGAL TECHNICIAN BOARD

REGULATION 1: IN GENERAL
Every person desiring to be licensed and to maintain licensure as a Limited License Legal Technician (LLLT) pursuant to Admission to Practice Rule (APR) 28 shall satisfy all of the requirements of APR 28 and Appendix APR 28.

To facilitate prompt administration of APR 28 and these regulations, designated staff of the Washington State Bar Association (WSBA) may act on behalf of the LLLT Board under APR 28 and these regulations.

REGULATION 2: PRACTICE AREAS—SCOPE OF PRACTICE AUTHORIZED BY LIMITED LICENSE LEGAL TECHNICIAN RULE
In each practice area in which an LLLT is licensed, the LLLT shall comply with the provisions defining the scope of practice as found in APR 28 and as described herein.

A. Issues Beyond the Scope of Authorized Practice.
An LLLT has an affirmative duty under APR 28F to inform clients when issues arise that are beyond the authorized scope of the LLLT’s practice. When an affirmative duty under APR 28F arises, then the LLLT shall inform the client in writing that:

1. the issue may exist, describing in general terms the nature of the issue;
2. the LLLT is not authorized to advise or assist on this issue;
3. the failure to obtain a lawyer’s advice could be adverse to the client’s interests; and,
4. the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's interests.

After an issue beyond the LLLT’s scope of practice has been identified, an LLLT may prepare a document related to the issue only if a lawyer acting on behalf of the client has provided appropriate documents and written instructions for the LLLT as to whether and how to proceed with respect to the issue. The LLLT shall then be required to follow the instructions and incorporate the terms of the necessary documents into the final court orders. The LLLT may proceed in this manner only if no other defined prohibitions apply.

B. Domestic Relations.
1. Domestic Relations, Defined. For the purposes of these Regulations, domestic relations shall include only: (a) child support modification actions, (b) dissolution actions, (c) domestic violence actions, except as prohibited by Regulation 2B(3), (d) committed intimate relationship actions only as they pertain to parenting and support issues, (e) legal separation actions, (f) major parenting plan modifications when the terms are agreed to by the parties before the onset of the representation by the LLLT, (g) minor parenting plan modifications,
(h) parenting and support actions, (i) paternity actions, and (j) relocation actions, except as prohibited by Regulation 2B(3).

2. **Scope of Practice for Limited License Legal Technicians — LLLTs in domestic relations** may provide legal services to clients as provided in APR 28F, except as prohibited by APR 28H and Regulation 2B(3). Unless an issue beyond the scope arises or a prohibited act would be required, LLLTs may advise and assist clients (1) to initiate and respond to actions and (2) regarding motions, discovery, trial preparation, temporary and final orders, and modifications of orders.

3. **Prohibited Acts.** In addition to the prohibitions set forth in APR 28H, in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:
   a. shall not represent more than one party in any domestic relations matter;
   b. shall not provide legal services:
      i. in defacto parentage or nonparental custody actions; and
      ii. if 25 U.S.C. Chapter 21, the Indian Child Welfare Act, or RCW 13.38, the Washington State Indian Child Welfare Act, applies to the matter;
   c. shall not advise or assist clients regarding:
      i. division of owned real estate, formal business entities, or retirement assets that require a supplemental order to divide and award, which includes division of all defined benefit plans and defined contribution plans;
      ii. bankruptcy, including obtaining a stay from bankruptcy;
      iii. disposition of debts and assets, if one party is in bankruptcy or files a bankruptcy during the pendency of the proceeding, unless: (a) the LLLT’s client has retained a lawyer to represent him/her in the bankruptcy, (b) the client has consulted with a lawyer and the lawyer has provided written instructions for the LLLT as to whether and how to proceed regarding the division of debts and assets in the domestic relations proceeding, or (c) the bankruptcy has been discharged;
      iv. anti-harassment orders, criminal no contact orders, anti-stalking orders, and sexual assault protection orders in domestic violence actions;
      v. pseudo-community property issues in committed intimate relationship actions;
      vi. major parenting plan modifications unless the terms were agreed to by the parties before the onset of the representation by the LLLT;
      vii. the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues under RCW 26.27 or Uniform Interstate Family Support Act issues under RCW 26.21A unless and until jurisdiction has been resolved;
      viii. objections to relocation petitions, responses to objections to relocation petitions, or temporary orders in relocation actions;
      ix. final revised parenting plans in relocation actions except in the event of default or where the terms have been agreed to by the parties.
   d. shall not appear or participate at the taking of a deposition; and
   e. shall not initiate or respond to an appeal to an appellate court.
REGULATION 3: EDUCATION REQUIREMENTS FOR APPLICANTS

An applicant for licensure shall satisfy the following education requirements:

A. Core Curriculum. An applicant for licensure shall have earned the following course credits at an ABA approved law school or ABA approved paralegal program:

1. Civil Procedure, minimum 8 credits;
2. Contracts, minimum 3 credits;
3. Interviewing and Investigation Techniques, minimum 3 credits;
4. Introduction to Law and Legal Process, minimum 3 credits;
5. Law Office Procedures and Technology, minimum 3 credits;
6. Legal Research, Writing and Analysis, minimum 8 credits; and
7. Professional Responsibility, minimum 3 credits.

The core curriculum courses in which credit is earned shall satisfy the curricular requirements approved by the Board and published by the WSBA. If the required core curriculum courses completed by the applicant do not total 45 credits as required by APR 28D(3)(b), then the applicant may earn the remaining credits by taking legal or paralegal elective courses at an ABA approved law school or ABA approved paralegal program.

B. Practice Area Curriculum. An applicant for licensure in a defined practice area shall have completed the prescribed curriculum and earned course credits for that defined practice area, as set forth below and in APR 28D(3)(c). Each practice area curriculum course shall satisfy the curricular requirements approved by the Board and published by the WSBA.

1. Domestic Relations.
   a. Prerequisites: Prior to enrolling in the domestic relations practice area courses, applicants shall complete the following core courses: Civil Procedure; Interviewing and Investigation Techniques; Introduction to Law and Legal Process; Legal Research, Writing, and Analysis; and Professional Responsibility.
   b. Credit Requirements: Applicants shall complete five credit hours in basic domestic relations subjects and ten credit hours in advanced and Washington specific domestic relations subjects.

REGULATION 4: LIMITED TIME WAIVERS

A. Limited Time Waiver, Defined. For the limited time between the date the Board begins to accept applications and December 31, 2016, the Board shall grant a waiver of the minimum associate-level degree requirement and/or the core curriculum education requirement set forth in APR 28D(3) if an applicant meets the requirements set forth in Regulation 4B. The Board shall not grant waivers for applications filed after December 31, 2016. The Board shall not waive the practice area curriculum requirement. The limited time waiver application will be separate from the application process for licensure set forth in these regulations.
B. Waiver Requirements and Applications. To qualify for the limited time waiver, an applicant shall pay the required fee, submit the required waiver application form, and provide proof, in such form as the Board requires, that he/she has:

1. Passed the Certified Paralegal Exam conducted by the National Association of Legal Assistants (NALA) or the Paralegal Advanced Competency Exam (PACE) conducted by the National Federation of Paralegal Associations (NFPA);
2. Active certification as a Certified Paralegal with NALA or as a PACE Registered Paralegal with NFPA; and
3. Completed 10 years of substantive law-related experience supervised by a licensed lawyer within the 15 years preceding the application for the waiver. Proof of 10 years of substantive-law related experience supervised by a licensed lawyer shall include the following:
   a. the name and bar number of the supervising lawyer(s),
   b. certification by the lawyer that the work experience meets the definition of substantive law-related work experience as defined in APR 28, and
   c. the dates of employment or service..

C. Review of Limited Time Waiver Application. WSBA staff shall review each limited time waiver application to determine if the application meets the waiver requirements. Any application that does not meet the limited time waiver requirements as established by this Regulation shall be denied by the WSBA staff on administrative grounds, with a written statement of the reason(s) for denial.

D. Review of Denial. An applicant whose application for waiver has been denied by WSBA staff may request review by the Board chair. Such request shall be filed with WSBA staff within 14 days of the date of the notification of denial. The applicant shall be provided with written notification of the chair’s decision, which is not subject to review.

E. Expiration of Limited Time Waiver Approval. Approval of the limited time waiver application shall expire December 31, 2018. After expiration of the approval, any subsequent application for licensure by the applicant shall meet all of the standard requirements for licensure without waiver.

REGULATION 5: APPLICATIONS
A. Fees. All applications shall be accompanied by the required application fee.

B. Application for Licensure. An applicant for licensure as an LLLT shall complete and file with the WSBA:

1. a completed application for licensure to limited practice under APR 28;
2. all official transcripts demonstrating completion of
a. at a minimum, an associate level degree, except applicants who have been approved for a limited time waiver pursuant to Regulation 4,

b. the core curriculum required pursuant to Regulation 3A, except applicants who have been approved for a limited time waiver pursuant to Regulation 4, and

c. the practice area curriculum required pursuant to Regulation 3B; and

3. a signed and notarized Authorization, Release and Affidavit of Applicant.

C. Application for Additional Practice Area. An LLLT seeking licensure in an additional practice area must complete and file with the WSBA:

1. a completed practice area application for licensure to limited practice under APR 28;

2. an official transcript demonstrating completion of the practice area curriculum required under Regulation 3B; and

3. a signed and notarized Authorization, Release and Affidavit of Applicant.

D. Background Check. Each applicant for licensure shall submit a fingerprint card to the Federal Bureau of Investigation (FBI) for a criminal history record check and provide to the FBI a release for the results of the criminal history check to be sent directly to the WSBA. A Washington LLLT applying for licensure in an additional practice area shall not be required to submit a fingerprint card, unless it has been more than two years since the LLLT was last issued a license.

The applicant shall furnish whatever additional information or proof may be required in the course of investigating the applicant, and failure to furnish such information may be grounds for denial of licensure.

REGULATION 6: APPROVAL OR DENIAL OF APPLICATION ON ADMINISTRATIVE GROUNDS

A. Review of Application. WSBA staff shall review each application to determine if the application meets the criteria for licensure established in APR 28. Any application that does not meet the initial criteria for licensure as established by APR 28 shall be denied by the WSBA staff on administrative grounds, except for those applications where there is a substantial question as to the applicant’s good moral character or fitness to practice. The applicant will be notified whether the application has been approved or denied. If the application has been denied, the applicant will be notified of the grounds for the denial and the review process.

B. Review of Denial. Every applicant who has been denied licensure under APR 28 on administrative grounds may request review by the Board chair. To request review, an applicant shall submit a written request within 14 days of the date the denial of application was issued and state the reason for the request.
C. Procedure for Review. The Board chair shall consider the request for review on the written record only and shall hear no oral arguments. The chair shall enter a written decision which may affirm or reverse the denial of the application or direct further investigation.

REGULATION 7: CHARACTER AND FITNESS HEARINGS
Reserved.

REGULATION 8: EXAMINATIONS; NOTIFICATION OF RESULTS
A. Administration of Examinations. The examinations will be administered at such times and locations as the Board may designate.

An applicant for initial licensure shall pass a core curriculum examination and a practice area examination.

An LLLT who applies for licensure in an additional practice area shall be required to take only the qualifying practice area examination in the practice area for which he or she is seeking licensure.

B. Core Curriculum Examination. The core curriculum examination shall be comprised of three parts: a multiple choice section, an essay section, and a performance section. The passing standard for the core curriculum examination is a score of 75 percent for each section of the exam. A failing grade in one section shall result in failure of the exam, in which case grading of any remaining sections shall not be completed.

C. Practice Area Examination. All practice area examinations shall be comprised of three parts: a multiple choice section, an essay section, and a performance section. The passing standard for the practice area examination is a score of 75 percent for each section of the exam. A failing grade in one section shall result in failure of the exam, in which case grading of any remaining sections shall not be completed.

D. Results and Reapplications. Each applicant will be notified of the applicant's examination results. Those applicants who fail the examination will be informed of their score on each graded section of the examination. Examination scores shall not be disclosed to those applicants who pass the examination. Copies of the examination shall not be available to any applicant.

An applicant who passes the core curriculum examination but fails the practice area examination or vice versa may retake the failed exam at the next two administrations of the exam. The passing score shall be valid for one year from the date the applicant is notified of passing. If the applicant does not pass the failed exam after the next two administrations of the exam, the applicant shall be required to retake the exam he or she passed.
REGULATION 9: SUBSTANTIVE LAW-RELATED WORK EXPERIENCE REQUIREMENT
Each applicant for licensure as a limited license legal technician shall show proof of having completed 3,000 hours of substantive law-related work experience supervised by a licensed lawyer as required by APR 28E(2). The experience requirement shall be completed within three years before or after the date the applicant is notified of passing both the core curriculum and practice area qualifying examinations. The proof shall be provided in such form as the Board requires, but shall include at a minimum:

1. the name and bar number of the supervising lawyer;
2. certification that the work experience meets the definition of substantive law-related work experience as defined in APR 28;
3. the total number of hours of substantive law-related work experience performed under the supervising lawyer; and
4. certification that the requisite work experience was acquired within the time period required by APR 28E(2).

REGULATION 10: CERTIFICATION OF RESULTS TO SUPREME COURT; OATH
A. Recommendation for Licensure. The Board shall recommend to the Washington State Supreme Court the licensure of all applicants who have met all licensing requirements set forth in APR 28 and these regulations, including good moral character and fitness to practice. All recommendations of the Board shall be accompanied by the application for licensure and any other documents deemed pertinent by the Board or requested by the Supreme Court. The recommendation and all accompanying documents and papers shall not be public record.

B. Pre-licensure Requirements. Before an applicant who has passed the qualifying examinations may be licensed, the applicant shall:

1. furnish proof of completion of the requisite hours of substantive law-related work experience supervised by a licensed lawyer as required by Regulation 9;
2. furnish proof of financial responsibility as required by Regulation 12;
3. pay the annual license fee and any assessments for the current year as required by Regulation 11;
4. file any and all licensing forms required for active limited license legal technicians; and
5. take the Oath of Limited License Legal Technician.

The pre-licensure requirements shall be completed within three years of the date the applicant is notified of the examination results. If an applicant fails to satisfy all the requirements for licensure within this period, the applicant shall not be eligible for licensure under APR 28 without submitting a new application for licensure and retaking the examination.
C. Additional Practice Area Pre-licensure Requirements. An LLLT who is seeking licensure in an additional practice area shall:

1. take and pass the additional practice area examination;
2. pay the additional practice area license fee; and
3. file any and all licensing forms required for active limited license legal technicians.

The requirements above shall be completed within one year of the date the applicant is notified of the examination results. If an LLLT fails to satisfy all the requirements for licensure in an additional practice area within this period, the LLLT shall not be eligible for licensure in the additional practice area without submitting a new application and retaking the examination.

D. Oath of Limited License Legal Technician. The Oath of Limited License Legal Technician shall be taken before an elected or appointed judge, excluding judges pro tempore, sitting in open court in the state of Washington.

E. Contents of Oath. The oath which all applicants shall take is as follows:

OATH FOR LIMITED LICENSE LEGAL TECHNICIANS

STATE OF WASHINGTON
COUNTY OF

I, __________, do solemnly declare:

1. I am fully subject to the laws of the State of Washington, the laws of the United States, Rule 28 of the Admission to Practice Rules, and APR 28 Regulations adopted by the Washington State Supreme Court and will abide by the same;
2. I will support the constitutions of the State of Washington and of the United States of America;
3. I will abide by the Limited License Legal Technician Rules of Professional Conduct approved by the Supreme Court of the State of Washington;
4. I will confine my activities as a Limited License Legal Technician to those activities allowed by law, rule and regulation and will only utilize documents approved pursuant to APR 28;
5. I will faithfully disclose the limitations of my services and that I am not a lawyer;
6. I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with the business of my client, unless this compensation is from or with the knowledge and approval of the client or with the approval of the court;
7. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;
8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.
F. Order Admitting to Limited Practice as LLLT. After examining the recommendation and accompanying documents transmitted by the Board, the Supreme Court may enter such order in each case as it deems advisable. For those applicants it deems qualified, the Supreme Court shall enter an order admitting them to limited practice as LLLTs. Applicants shall be admitted under APR 28 only after the order has been entered by the Supreme Court.

G. Order Admitting LLLT to Limited Practice in Additional Practice Area. After examining the recommendation and accompanying documents transmitted by the Board, the Supreme Court may enter such order in each case as it deems advisable. For those LLLTs it deems qualified, the Supreme Court shall enter an order admitting them to limited practice in the additional practice area.

REGULATION 11: ANNUAL LICENSE FEES

A. Except as set forth in section B of this Regulation, every Limited License Legal Technician shall pay an annual license fee in an amount set by the Board with the approval of the Supreme Court, which is due July 1 of each year. Annual license fees paid after July 1 shall be subject to a late fee equal to one half the annual license fee. The annual license fee is for the limited license to practice in one defined practice area.

B. The prorated annual license fee for LLLTs who pass the qualifying examination given in the spring and who request active status prior to July 1 of that same calendar year shall be one half the amount of the annual license fee. LLLTs shall pay the annual license fee set forth in Regulation 11A to retain their active status after June 30 of the calendar year of their licensure.

C. A LLLT shall pay an annual additional practice area fee for each additional practice area in which the LLLT is licensed. The annual additional practice area fee for each additional practice area shall be one half the amount of the annual license fee. The combined annual additional practice area fees and annual license fee shall not exceed the total cost of active lawyer annual license fees. Annual license fee payment due dates and late fees shall apply to additional practice area fees.

D. An LLLT shall provide his or her residential and business addresses, telephone numbers, and business email address to the Board at the time of payment of the annual license fee. An LLLT
whose address, telephone number, or email address changes shall notify the WSBA within 10 days after the change.

**REGULATION 12: FINANCIAL RESPONSIBILITY**

**A. Insurance Requirement.** Each limited license legal technician shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 28 by:

1. Submitting an individual professional liability insurance policy in the amount of at least $100,000 per claim and a $300,000 annual aggregate limit; or
2. Submitting a professional liability insurance policy of the employer or the parent company of the employer who has agreed to provide coverage for the LLLT’s ability to respond in damages in the amount of at least $100,000 per claim and a $300,000 annual aggregate limit.

**B. Continuing Requirement.** Each active LLLT who is covered by insurance shall file with the WSBA an annual certificate of coverage. The certificate of coverage shall name the covered LLLT(s) and the policy limits and dates. Each LLLT shall notify the Board of any cancellation or lapse in coverage.
THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW APR 28—LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

ORDER

NO. 25700-A - 1005

The Practice of Law Board having recommended the adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, and the Court having considered the revised rule and comments submitted thereto, and having determined by majority that the rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

That we adopt APR 28, the Limited Practice Rule for Limited License Legal Technicians. It is time. Since this rule was submitted to the Court by the Practice of Law Board in 2008, and revised in 2012, we have reviewed many comments both in support and in opposition to the proposal to establish a limited form of legal practitioner. During this time, we have also witnessed the wide and ever-growing gap in necessary legal and law related services for low and moderate income persons.

We commend the Practice of Law Board for reaching out to a wide spectrum of affected organizations and interests and for revising the rule to address meritorious concerns and suggestions. We also thank the many individuals and organizations whose suggestions to the language of the rule have improved it. The Limited License Legal Technician Rule that we adopt today is narrowly tailored to accomplish its stated objectives, includes appropriate training,
financial responsibility, regulatory oversight and accountability systems, and incorporates ethical and other requirements designed to ensure competency within the narrow spectrum of the services that Limited License Legal Technicians will be allowed to provide. In adopting this rule we are acutely aware of the unregulated activities of many untrained, unsupervised legal practitioners who daily do harm to "clients" and to the public's interest in having high quality civil legal services provided by qualified practitioners.

The practice of law is a professional calling that requires competence, experience, accountability and oversight. Legal License Legal Technicians are not lawyers. They are prohibited from engaging in most activities that lawyers have been trained to provide. They are, under the rule adopted today, authorized to engage in very discrete, limited scope and limited function activities. Many individuals will need far more help than the limited scope of law related activities that a limited license legal technician will be able to offer. These people must still seek help from an attorney. But there are people who need only limited levels of assistance that can be provided by non-lawyers trained and overseen within the framework of the regulatory system developed by the Practice of Law Board. This assistance should be available and affordable. Our system of justice requires it.

1. The Rule

Consistent with GR 25 (the Supreme Court rule establishing the Practice of Law Board), the rule establishes a framework for the licensing and regulation of non-attorneys to engage in discrete activities that currently fall within the definition of the "practice of law" (as defined by GR 24) and which are currently subject to exclusive regulation and oversight by this Court. The rule itself authorizes no one to practice. It simply establishes the regulatory framework for the

---

1 http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr25
2 http://www.wsba.org/Lawyers/groups/practiceoflaw/2006currentruldraftfinal3.doc
3 http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr24
consideration of proposals to allow non-attorneys to practice. As required by GR 25, the rule establishes certification requirements (age, education, experience, pro bono service, examination, etc.),\(^4\) defines the specific types of activities that a limited license legal technician would be authorized to engage in,\(^5\) the circumstances under which the limited license legal technician would be allowed to engage in authorized activities (office location, personal services required, contract for services with appropriate disclosures, prohibitions on serving individuals who require services beyond the scope of authority of the limited license legal technician to perform),\(^6\) a detailed list of prohibitions,\(^7\) and continuing certification and financial responsibility requirements.\(^8\)

In addition to the rule, we are today acting on the Practice of Law Board’s proposal to establish a Limited License Legal Technician Board.\(^9\) This Board will have responsibility for considering and making recommendations to the Supreme Court with respect to specific proposals for the authorization of limited license legal technicians to engage in some or all of the activities authorized under the Limited License Legal Technician Rule, and authority to oversee the activities of and discipline certified limited license legal technicians in the same way the Washington State Bar Association does with respect to attorneys. The Board is authorized to recommend that limited license legal technicians be authorized to engage in specific activities within the framework of — and limited to — those set forth in the rule itself. We reserve the responsibility to review and approve any proposal to authorize limited license legal technicians

---

\(^4\) Exhibit A to January 7, 2008 submission from the Practice of Law Board to the Supreme Court, Proposed APR 28(C) (hereafter Proposed APR 28).

\(^5\) APR 28(D)

\(^6\) APR 28(E)

\(^7\) APR 28(F)

\(^8\) APR 28(G) and (H)

\(^9\) Exhibit B to January 7, 2008 submission from the Practice of Law Board to the Supreme Court (hereafter Regulations)
to engage in specific activities within specific substantive areas of legal and law related practice, and our review is guided by the criteria outlined in GR 25.

Today we adopt that portion of the Practice of Law Board’s proposal which authorizes limited license legal technicians who meet the education, application and other requirements of the rule be authorized to provide limited legal and law related services to members of the public as authorized by this rule.\textsuperscript{10}

\section*{II. The Need for a Limited License Legal Technician Rule}

Our adversarial civil legal system is complex. It is unaffordable not only to low income people but, as the 2003 Civil Legal Needs Study documented, moderate income people as well (defined as families with incomes between 200\% and 400\% of the Federal Poverty Level).\textsuperscript{11} One example of the need for this rule is in the area of family relations which are governed by a myriad of statutes. Decisions relating to changes in family status (divorce, child residential placement, child support, etc.) fall within the exclusive province of our court system. Legal practice is required to conform to specific statewide and local procedures, and practitioners are required to use standard forms developed at both the statewide and local levels. Every day across this state, thousands of unrepresented (pro se) individuals seek to resolve important legal matters in our courts. Many of these are low income people who seek but cannot obtain help from an overtaxed, underfunded civil legal aid system. Many others are moderate income people for whom existing market rates for legal services are cost-prohibitive and who, unfortunately, must search for alternatives in the unregulated marketplace.

Recognizing the difficulties that a ballooning population of unrepresented litigants has created, court managers, legal aid programs and others have embraced a range of strategies to

\textsuperscript{10} Exhibit E to January 7, 2008 submission from the Practice of Law Board to the Supreme Court (Family Law Subcommittee Recommendation as adopted by the Full Practice of Law Board)
provide greater levels of assistance to these unrepresented litigants. Innovations include the establishment of courthouse facilitators in most counties, establishment of courthouse-based self-help resource centers in some counties, establishment of neighborhood legal clinics and other volunteer-based advice and consultation programs, and the creation of a statewide legal aid self-help website. As reflected most recently in a study conducted by the Washington Center for Court Research,¹² some of these innovations – most particularly the creation of courthouse facilitators – have provided some level of increased meaningful support for pro se litigants.

But there are significant limitations in these services and large gaps in the type of services for pro se litigants. Courthouse facilitators serve the courts, not individual litigants. They may not provide individualized legal advice to family law litigants. They are not subject to confidentiality requirements essential to the practitioner/client relationship. They are strictly limited to engaging in “basic services” defined by GR 27.¹³ They have no specific educational/certification requirements, and often find themselves providing assistance to two sides in contested cases. Web-based self-help materials are useful to a point, but many litigants require additional one-on-one help to understand their specific legal rights and prerogatives and make decisions that are best for them under the circumstances.

From the perspective of pro se litigants, the gap places many of these litigants at a substantial legal disadvantage and, for increasing numbers, forces them to seek help from unregulated, untrained, unsupervised “practitioners.” We have a duty to ensure that the public

¹¹ Washington Supreme Court Task Force on Civil Equal Justice Funding, Civil Legal Needs Study at 23 (fig. 1), http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf
¹³ http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr27
can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.

III. Specific Concerns and Responses

A number of specific issues that have been raised both in support of and in opposition to this rule deserve additional discussion and response.

Proponents have suggested that the establishment and licensing of limited license legal technicians should be a primary strategy to close the Justice Gap for low and moderate income people with family related legal problems. While there will be some benefit to pro se litigants in need of limited levels of legal help, we must be careful not to create expectations that adoption of this rule is not intended to achieve.

By design, limited license legal technicians authorized to engage in discrete legal and law related activities will not be able to meet that portion of the public’s need for help in family law matters that requires the provision of individualized legal representation in complex, contested family law matters. Such representation requires the informed professional assistance of attorneys who have met the educational and related requirements necessary to practice law in Washington. Limited purpose practitioners, no matter how well trained within a discrete subject matter, will not have the breadth of substantive legal knowledge or requisite practice skills to apply professional judgment in a manner that can be consistently counted upon to meet the public’s need for competent and skilled legal representation in complex legal cases.

On the other hand, and depending upon how it is implemented, the authorization for limited license legal technicians to engage in certain limited legal and law related activities holds promise to help reduce the level of unmet need for low and moderate income people who have relatively uncomplicated family related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome.
Some opposing the rule believe that limited licensing legal technicians to engage in certain family related legal and law related activities poses a threat to the practicing family law bar.

First, the basis of any regulatory scheme, including our exercise of the exclusive authority to determine who can practice law in this state and under what circumstances, must start and end with the public interest; and any regulatory scheme must be designed to ensure that those who provide legal and law related services have the education, knowledge, skills and abilities to do so. Protecting the monopoly status of attorneys in any practice area is not a legitimate objective.

It is important to observe that members of the family law bar provide high levels of public and pro bono service. In fact, it is fair to say that the demands of pro bono have fallen disproportionately on members of the family law bar. As pointed out in the comments to the Practice of Law Board’s proposal, young lawyers and others have been working for years to develop strategies to provide reduced fee services to moderate income clients who cannot afford market-rate legal help. Over the past year, these efforts have been transformed into the Washington State Bar Association’s newly established Moderate Means program, an initiative which holds substantial promise to deliver greater access to legal representation for greater numbers of individuals between 200% and 400% of the federal poverty guideline being provided services at affordable rates.

In considering the impact that the limited licensing of legal technicians might have on the practicing family law bar it is important to push past the rhetoric and focus on what limited license legal technicians will be allowed to do, and what they cannot do under the rule. With

---

14 http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program
limited exception,\textsuperscript{15} few private attorneys make a living exclusively providing technical legal help to persons in simple family law matters. Most family law attorneys represent clients on matters that require extended levels of personalized legal counsel, advice and representation – including, where necessary, appearing in court – in cases that involve children and/or property.

Stand-alone limited license legal technicians are just what they are described to be – persons who have been trained and authorized to provide technical help (selecting and completing forms, informing clients of applicable procedures and timelines, reviewing and explaining pleadings, identifying additional documents that may be needed, etc.) to clients with fairly simple legal law matters. Under the rule we adopt today, limited license legal technicians would not be able to represent clients in court or contact and negotiate with opposing parties on a client’s behalf. For these reasons, the limited licensing of legal technicians is unlikely to have any appreciable impact on attorney practice.

The Practice of Law Board and other proponents argue that the limited licensing of legal technicians will provide a substantially more affordable product than that which is available from attorneys, and that this will make legal help more accessible to the public. Opponents argue that it will be economically impossible for limited license legal technicians to deliver services at less cost than attorneys and thus, there is no market advantage to be achieved by creating this form of limited practitioner.

No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a

\textsuperscript{15} See, e.g., the All Washington Legal Clinic (http://www.divorcelowcostwa.com)
market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it.

That said, if market economies can be achieved, the public will have a source of relatively affordable technical legal help with uncomplicated legal matters. This may reduce some of the demand on our state’s civil legal aid and pro bono systems and should lead to an increase in the quality and consistency of paperwork presented by pro se litigants.

Further, it may be that non-profit organizations that provide social services with a family law component (e.g., domestic violence shelters; pro bono programs; specialized legal aid programs) will elect to add limited license legal technicians onto their staffs. The cost would be much less than adding an attorney and could enable these programs to add a dimension to their services that will allow for the limited provision of individualized legal help on many cases—especially those involving domestic violence. Relationships might be extended with traditional legal aid programs or private pro bono attorneys so that there might be sufficient attorney supervision of the activities of the limited license legal technicians to enable them to engage in those activities for which “direct and active” attorney supervision is required under the rule.

Some have suggested that there is no need for this rule at all, and that the WSBA’s Moderate Means Program will solve the problem that the limited licensing of legal technicians is intended to address. This is highly unlikely. First, there are large rural areas throughout the state where there are few attorneys. In these areas, many attorneys are barely able to scrape by. Doing reduced fee work through the Moderate Means program (like doing pro bono work) will not be a high priority.

Second, limited licensing of legal technicians complements, rather than competes with, the efforts WSBA is undertaking through the Moderate Means program. We know that there is a huge need for representation in contested cases where court appearances are required. We know
further that pro se litigants are at a decided disadvantage in such cases, especially when the adverse party is represented. Limited license legal technicians are not permitted to provide this level of assistance; they are limited to performing mostly ministerial technical/legal functions. Given the spectrum of unmet legal needs out there, Moderate Means attorneys will be asked to focus their energy on providing the help that is needed most – representing low and moderate income people who cannot secure necessary representation in contested, often complex legal proceedings.

Opponents of the rule argue that the limited licensing of legal technicians presents a threat to clients and the public. To the contrary, the authorization to establish, regulate and oversee the limited practice of legal technicians within the framework of the rule adopted today will serve the public interest and protect the public. The threat of consumer abuse already exists and is, unfortunately, widespread. There are far too many unlicensed, unregulated and unscrupulous “practitioners” preying on those who need legal help but cannot afford an attorney. Establishing a rule for the application, regulation, oversight and discipline of non-attorney practitioners establishes a regulatory framework that reduces the risk that members of the public will fall victim to those who are currently filling the gap in affordable legal services.

Unlike those operating in the unregulated marketplace, limited license legal technicians will practice within a carefully crafted regulatory framework that incorporates a range of safeguards necessary to protect the public. The educational requirements are rigorous. Unlike attorneys, legal technicians are required to demonstrate financial responsibility in ways established by the Board. There is a testing requirement to demonstrate professional competency.

See, e.g., In re the Marriage of King, 162 Wn.2d 378, 404-411 (2007) (Madsen, J., dissenting).
to practice, contracting and disclosure requirements are significant, and there will be a robust oversight and disciplinary process. This rule protects the public.

Another concern that has been raised is that attorneys will be called upon to underwrite the costs of regulating non-attorney limited license legal technicians against whom they are now in competition for market share. This will not happen. GR 25 requires that any recommendation to authorize the limited practice of law by non-attorneys demonstrate that “[t]he costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime.” The Practice of Law Board’s rule expressly provides that the ongoing cost of regulation will be borne by the limited license legal technicians themselves, and will be collected through licensing and examination fees. Experience with the Limited Practice Board demonstrates that a self-sustaining system of regulation can be created and sustained. The Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership.

IV. Conclusion

Today’s adoption of APR 28 is a good start. The licensing of limited license legal technicians will not close the Justice Gap identified in the 2003 Civil Legal Needs Study. Nor will it solve the access to justice crisis for moderate income individuals with legal needs. But it is a limited, narrowly tailored strategy designed to expand the provision of legal and law related services to members of the public in need of individualized legal assistance with non-complex legal problems.

The Limited License Legal Technician Rule is thoughtful and measured. It offers ample protection for members of the public who will purchase or receive services from limited license legal technicians. It offers a sound opportunity to determine whether and, if so, to what degree
the involvement of effectively trained, licensed and regulated non-attorneys may help expand access to necessary legal help in ways that serve the justice system and protect the public.

IT IS FURTHER ORDERED:

(1) That a new rule, APR 28, as attached hereto is adopted.

(2) That the new rule will be published in the Washington Reports and will become effective September 1, 2012.

DATED at Olympia, Washington this 15th day of June, 2012.

Madsen, C. J.

Chambers, J.

G. M. Johnson, J.

Wiggins, J.

Stephan, J.

Cruz, J.
New Admission to Practice Rule 28: Limited Practice Rule for
Limited License Legal Technicians

A) Purpose. The Civil Legal Needs Study (2003), commissioned by the Supreme
Court, clearly established that the legal needs of the consuming public are not
currently being met. The public is entitled to be assured that legal services are
rendered only by qualified trained legal practitioners. Only the legal profession is
authorized to provide such services. The purpose of this rule is to authorize certain
persons to render limited legal assistance or advice in approved practice areas of
law. This rule shall prescribes the conditions of and limitations upon the provision of
such services in order to protect the public and ensure that only trained and qualified
legal practitioners may provide the same. This rule is intended to permit trained
Limited License Legal Technicians to provide limited legal assistance under carefully
regulated circumstances in ways that expand the affordability of quality legal
assistance which protects the public interest.

B) Definitions. For purposes of this rule, the following definitions will apply:

1) “APR” means the Supreme Court’s Admission to Practice Rules.

2) "Board" when used alone means the Limited License Legal Technician Board.

3) “Lawyer” means a person licensed and eligible to practice law in any U.S.
jurisdiction.

4) “Limited License Legal Technician” means a person qualified by education,
training and work experience who is authorized to engage in the limited practice of
law in approved practice areas of law as specified by this rule and related
regulations. The legal technician does not represent the client in court proceedings
or negotiations, but provides limited legal assistance as set forth in this rule to a pro
se client.

5) “Paralegal/legal assistant” means a person qualified by education, training or
work experience, who is employed or retained by a lawyer, law office, corporation,
governmental agency or other entity and who performs specifically delegated
substantive law-related work for which a lawyer is responsible.

6) “Reviewed and approved by a Washington lawyer” means that a Washington
lawyer has personally supervised the legal work and documented that supervision
by the Washington lawyer’s signature and bar number.

7) “Substantive law-related work” means work that requires knowledge of legal
concepts and is customarily, but not necessarily, performed by a lawyer.

8) “Supervised” means a lawyer personally directs, approves and has responsibility
for work performed by the Limited License Legal Technician.

9) "Washington lawyer" means a person licensed and eligible to practice law in Washington and who is an active or emeritus member of the Washington State Bar Association.

10) Words of authority:
   
   a) "May" means "has discretion to," "has a right to," or "is permitted to".
   
   b) "Must" or "shall" mean "is required to."

   c) "Should" means recommended but not required.

C) Limited License Legal Technician Board.

1) Establishment. There is hereby established a Limited License Legal Technician Board. The Board shall consist of 13 members appointed by the Supreme Court of the State of Washington, nine of whom shall be active Washington lawyers, and four of whom shall be non-lawyer Washington residents. At least one member shall be a legal educator. The members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three year terms. No member may serve more than two consecutive full three year terms.

2) Board Responsibilities. The Board shall be responsible for the following:

   (a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;

   (b) Processing applications and fees, and screening applicants;

   (c) Administering the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to Limited License Legal Technicians, rules relating to the attorney-client privilege, procedural rules and substantive law issues related to one or more approved practice areas;

   (d) Determining LLLT Continuing Legal Education (LLLT CLE) requirements and approval of LLLT CLE programs;

   (e) Approving education and experience requirements for licensure in approved practice areas;

   (f) Establishing and over-seeing committees and tenure of members;

   (g) Establishing and collecting examination fees, LLLT CLE fees, annual license fees, and other fees in such amounts approved by the Supreme
Court as are necessary to carry out the duties and responsibilities of the Board; and

(h) Such other activities and functions as are expressly provided for in this rule.

3) Rules and Regulations. The Board shall propose rules and regulations for adoption by the Supreme Court that:

(a) Establish procedures for grievances and disciplinary proceedings;
(b) Establish trust account requirements and procedures;
(c) Establish rules of professional and ethical conduct; and
(d) Implement the other provisions of this rule.

D) Requirements for Applicants. An applicant for licensure as a Limited License Legal Technician shall:

1) Age. Be at least 18 years of age.

2) Moral Character and Fitness to Practice. Be of good moral character and demonstrate fitness to practice as a Limited License Legal Technician.

3) Education and Experience. Have the following education and experience:

   a) (i) An associate degree or equivalent program, or a bachelor degree, in paralegal/legal assistant studies approved by the American Bar Association or the Board, together with a minimum of two years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; or

   (ii) A post-baccalaureate certificate program in paralegal/legal assistant studies approved by the Board, together with a minimum of three years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; and

   b) Complete at least 20 hours of pro bono legal service in Washington as approved by the Board, within two years prior to taking the Limited License Legal Technician examination.

In all cases, the paralegal/legal assistant experience must be acquired after completing the education requirement, unless waived by the Board for good cause shown.
4) Application. Execute under oath and file with the Board two copies of his/her application, in such form as the Board requires. An applicant's failure to furnish information requested by the Board or pertinent to the pending application may be grounds for denial of the application.

5) Examination Fee. Pay, upon the filing of the application, the examination fee and any other required application fees as established by the Board and approved by the Supreme Court.

E) Licensing Requirements. In order to be licensed as a Limited License Legal Technician, all applicants must:

1) Examination. Take and pass the examinations required under these rules;

2) Annual License Fee. Pay the annual license fee;

3) Financial Responsibility. Show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rules. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe; and

4) Meet all other licensing requirements set forth in the rules and regulations proposed by the Board and adopted by the Supreme Court.

F) Scope of Practice Authorized by Limited Practice Rule. The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

1) Obtain relevant facts, and explain the relevancy of such information to the client;

2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;

3) Inform the client of applicable procedures for proper service of process and filing of legal documents;

4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;

5) Review documents or exhibits that the client has received from the opposing
side, and explain them to the client;

6) Select and complete forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;

7) Perform legal research and draft legal letters and pleadings documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;

8) Advise a client as to other documents that may be necessary to the client's case (such as exhibits, witness declarations, or party declarations), and explain how such additional documents or pleadings may affect the client's case;

9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

G) Conditions Under Which A Limited License Legal Technician May Provide Services.

1) A Limited License Legal Technician must have a principal place of business having a physical street address for the acceptance of service of process in the State of Washington;

2) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a non-licensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;

3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician that includes the following provisions:

   (a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

   (b) Identification of all fees and costs to be charged to the client for the services to be performed;
(c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the face-first page of the contract in minimum twelve-point bold type print;

(e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the Board.

4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client requires should seek the services of a lawyer.

5) A document prepared by an LLLT shall include the LLLT's name, signature and license number beneath the signature of the client.

H) **Prohibited Acts.** In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

2) Retain any fees or costs for services not performed;

3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client; or

4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized
by the license held by the Limited License Legal Technician;

5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

6) Negotiate the client's legal rights or responsibilities, or communicate with another person the client's position or convey to the client the position of another party; unless permitted by GR 24(b).

7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client.

8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;

9) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

I) Continuing Licensing Requirements.

1) Continuing Education Requirements. Each Limited License Legal Technician annually must complete the Board-approved number of credit hours in courses or activities approved by the Board; provided that the Limited License Legal Technician shall not be required to comply with this subsection during the calendar year in which he or she is initially licensed.

2) Financial Responsibility. Each Limited License Legal Technician shall annually provide proof of financial responsibility in such form and in such amount as the Board may by regulation prescribe.

3) Annual Fee. Each Limited License Legal Technician shall pay the annual license fee established by the Board and approved by the Supreme Court.

J) Existing Law Unchanged. This rule shall in no way modify existing law prohibiting non-lawyers from practicing law or giving legal advice other than as authorized under this rule or associated rules and regulations.

K) Professional Responsibility and Limited License Legal Technician-Client Relationship

1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.

2) Limited License Legal Technicians shall be held to the ethical standards of the
Limited License Legal Technicians' Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.
THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW APR 28—LIMITED PRACTICE RULE FOR LEGAL TECHNICIANS AND NEW APR 28—NON-LAWYER PRACTICE COMMISSION REGULATIONS 1-7 No. 25700-A- DISSENT TO ORDER

OWENS, J. (dissenting)—During my years on the Washington Supreme Court, I have not once authored a dissent to an administrative order of this court. I depart from that custom today because I have very strong feelings that our court’s decision to adopt the new Admission to Practice Rule, APR 28, is ill-considered, incorrect, and most of all extremely unfair to the members of the Washington State Bar Association (WSBA).

Let me quickly add that by expressing disagreement with the court’s approval of this new rule, I am not suggesting that the legal needs of all persons in this state are currently being met. Like my judicial colleagues, I know that there is a great unmet need for legal services and we in the judiciary and the legal profession have an obligation to look for appropriate ways to expand the availability of legal assistance to the public.

My opposition to the board’s work product should, therefore, not be considered disagreement with the goal the Practice of Law Board was seeking to achieve—expanding the availability of legal services to individuals who are confronted with legal problems. Rather, my opposition to the rule is based on the fact this rule and its attendant regulations impose an obligation on the members of the WSBA to underwrite the considerable cost of establishing and maintaining what can only be characterized as a mini bar association within the present WSBA. Assuming our court has the inherent
authority to create this new profession of legal technicians, I do not believe that we possess the authority to tax the lawyers of this state to pay “all of the expenses reasonably and necessarily incurred” by the Non-Lawyer Practice Commission, a body which comes into being pursuant to the rule and regulations. See Regulation 3(G).

Pertinent to this point, I note that it is generally acknowledged that it will likely cost several hundred thousand dollars to set up the commission that will oversee this new profession of legal technicians. We have not been informed that the WSBA presently has sufficient money within its treasury to underwrite this considerable expense and I have significant doubts that it has an abundance of cash on hand. In fact, in light of the dues rollback, the opposite is true. Although I recognize that this court’s order delays implementation of the new rule until January 1, 2013, I think it is unrealistic to assume that the WSBA will realize any large windfall of funds in 2013. Consequently, the only way the WSBA will be able to fulfill the considerable financial obligation this court has imposed upon it is to either reduce the amount it budgets for the programs and services it presently supports or increase the yearly dues of its members. Either way you look at it, this court is imposing a tax on lawyers.

The APR 28 regulations suggest that the APR 28 program will eventually support itself through certification fees. In that regard, we have been advised that something in the order of $200,000 may eventually be generated by these fees. In this day and age, $200,000 does not go very far and it is hard for me to see how this APR 28 program with its testing, certification, continuing education, and discipline provisions can be accommodated with a yearly budget of that amount. The hoped for self-sufficiency of the program will, in my view, depend to a large extent on the numbers of persons
achieving legal technician status under the rule. Although this court was earlier led to believe that initially there would be certification of legal technicians only in family law matters, the rule and regulations this court has approved provide the Practice of Law Board with unbridled discretion to recommend to the Supreme Court the areas, within the full range of practice areas encompassed by the GR 24 definition of the practice of law, in which legal technicians can practice.\footnote{The court’s order contains a statement that “we adopt the portion of the Practice of Law Board’s proposal which authorizes legal technicians . . . to provide limited legal and law related services to members of the public in certain defined family law related areas. It is noteworthy that the proposed rule, APR 28, and regulations do not contain the words “family law.”}

I sense that the Practice of Law Board realized that there is uncertainty about whether the certification fees will produce sufficient funds to underwrite the annual cost of the legal technician program and, thus, provided that funding for the commission will be generated by certification fees “as well as commitments from the WSBA.” Regulation 3(G).\footnote{The court’s order expresses confidence that the fee based system will be “cost neutral.” Perhaps it will be self-sufficient someday, but this conclusion does not address the significant start up costs which the court order requires the WSBA to pay.}

The unfairness of imposing what seems beyond doubt a significant obligation on the lawyers of this state is made all the more manifest by the fact that in recent years, the WSBA has undertaken, with the encouragement of this court, a number of efforts designed to address the very problems the new APR 28 purports to mitigate. I am speaking of (1) increased encouragement for Washington lawyers to provide pro-bono service and the provision of free and low cost training for lawyers who wish to provide such service; (2) the highly successful home foreclosure legal aid project, which helps low and moderate income persons deal with the threat of home foreclosure; (3) a major
one-time contribution by the WSBA of cash to the Legal Foundation of Washington in order to offset the impact of reduced interest on Lawyers Trust Accounts revenues coming to the foundation, a contribution which leveraged a $3 million donation from the Gates Foundation to the Legal Foundation of Washington; (4) the statewide moderate means program, which is designed to assist individuals who need the assistance of a lawyer to obtain those services at a reduced cost; and (5) a check off on the annual license fee for lawyers, suggesting an annual contribution of at least $50 by lawyers to the Campaign for Equal Justice to help ensure equal access to justice for all Washingtonians regardless of financial standing.

The WSBA is not required to undertake any of the aforementioned initiatives but it has done so voluntarily with great zeal and enthusiasm endeavoring to address the public's legal needs. Furthermore, all of this was done at great expense to the WSBA. Indeed the WSBA's contribution of $1.5 million to the Legal Foundation of Washington in 2009 was a truly heroic gesture but one which made a major dent in the cash reserves the WSBA had built up over the years. Whether the obligation this court is now imposing on the WSBA will result in eliminating or curtailing any of these programs and initiatives, no one knows for certain. If, however, that is the result of our action, it would be a sad day for the WSBA and the many persons positively affected by the bar's considerable efforts.

Finally, I wish to observe that an impartial observer might wonder why the Supreme Court does not assume responsibility for funding implementation of APR 28. After all, the fact that the legal needs of the public are not being met is a problem that affects the entire community, not just a segment of our state's population like its
Dissent to Adoption of New APR 28
Page 5

attorneys at law. Such a question would not be farfetched because in a number of states the expense associated with the admission and disciplining of lawyers is subsumed within the budget of the highest court in those states. I suspect, though, that if this court had been asked to assume financial responsibility for establishing and administering this major program for certification of legal technicians, with the vague promise that the program may someday be self-supporting, we would have concluded that we presently do not have sufficient funds within our budget with which to undertake this responsibility. Is it fair or equitable for this court to eschew assuming financial responsibility for the program in this time of economic distress, and instead impose the obligation on all of the state's lawyers, many of whom are feeling adverse affects of the current downturn of the economy? I say no. Because the majority by its order says yes, I dissent from the order.

DATED at Olympia, Washington this 14th day of June, 2012.

[Signature]

OWENS, J.

Fairhurst, J.
LEGAL TECHNICIANS TASK FORCE 2013

Agenda
January 24, 2014
2-5 p.m. – note corrected start time
OSB Center, Tigard, Oregon

1. Approve minutes of November 15, 2013 meeting

2. Review subcommittee reports/submissions:
   a. Enabling Legislation (Stevens, Marandas)
   b. Regulation of LLLTs (Greco)
   c. Education and Experience Requirements (Brask, Odermott, Tanner, Harris, Bynum)
   d. LLLTs in Landlord-Tenant Cases (Naucler, Mauger)
   e. LLLTs in Family Law (Howe, Wright, Grable)
   f. LLLTs in Estate Planning (Maier)

3. Next steps
   a. Further consideration of any aspects
   b. Draft report for BOG (April 2014?)
Minutes
OSB Licensed Legal Technicians Task Force
November 15, 2013
OSB Center

Present: Jerry Brask, Guy Greco, Leslie Harris, Bill Howe, Brad Maier, John Marandas, Mitzi Naucler, Linda Odermott, Hon. Jill Tanner, Terry Wright, Josh Ross (BOG), Sylvia Stevens (OSB staff), and Perla Caballero-Hoblit (OPA).

The meeting was called to order at 3:00 p.m. by Chair Terry Wright.

1. Minutes of the September and October meetings were approved as submitted.

2. Ms. Wright announced a “bold step” in suggesting that the task force had spent sufficient time discussing the pros and cons of licensing legal technicians and that is was time to develop a plan to send to the BOG with a report.

3. Following Ms. Wright’s suggestion, task force members began brainstorming a range of ideas relating to what a licensing scheme would look like, including:
   - Use the 1992 task force report as a template because the WSBA plan is too amorphous and risks legal technicians not seeing the borders clearly;
   - Draft broad enabling legislation that authorizes the BOG to appoint a board or committee to oversee a program, and present the BOG with broad outlines;
   - Use the Washington State Bar program as a model, especially with regard to the licensing criteria, insurance requirements, rules of conduct, and disciplinary mechanism;
   - A hybrid of the Oregon and WSBA models would be a good approach;
   - There needs to be a better name than Limited License Legal Technicians;
   - There should be more than one practice area, especially if the family law area is going to be narrower than the WSBA plan;
   - Any program should stay reasonably close to what neighboring states are requiring in the event reciprocity is an issue in the future;
   - Be careful of over-regulation, which protects the public at the expense of access to justice.

4. Five subcommittees were identified:
   - Enabling Legislation (Stevens, Marandas)
   - Client Protection [insurance, client security fund, fee arbitration] (Greco)
   - Education & Licensing (Brask, Odermott, Tanner, Harris, Bynum)
   - Family Law Scope (Howe, Wright, Grable)
   - Other Practice Areas (Naucler, Mauger [landlord/tenant], Maier [estate planning])
Absent task force members will be invited to select a subcommittee to join. Ms. Wright requested that each subcommittee be prepared with recommendations at the next meeting (January 2014) with the goal of having a report for the BOG in February.

5. The meeting adjourned at approximately 4:45 p.m.
1. Subject to the approval of the Supreme Court, the board of governors may adopt a plan to license legal technicians to provide a limited scope of legal services to the public independent of supervision by licensed attorneys. The board may create a Legal Technicians Licensing Board (LTLT Board) which, subject to approval of the Supreme Court, shall have authority to:

(a) establish the education, experience and examination requirements for licensure of legal technicians;

(b) define areas of law for licensed legal technician practice and establish the special requirements for certification in each practice area;

(c) establish continuing education requirements;

(d) promulgate and enforce rules of professional conduct and disciplinary procedures for licensed legal technicians;

(e) require licensed legal technicians to contribute to the OSB Client Security Fund;

(f) establishing financial responsibility requirements; and

(g) establish application, annual licensure, special certification, and any other fees necessary to carry out the duties and responsibilities of the LTLT Board.

2. An applicant for licensure must satisfy all of the requirements of ORS 9.220 (1)-(2) and all other requirements that may be established by the LTLT Board.

3. Oregon law of attorney-client privilege and the law of a lawyer’s fiduciary responsibility to the client shall apply to the Licensed Legal Technician-client relationship to the same extent as to the attorney-client relationship.
LICENSED LEGAL TECHNICIANS

1. Subject to the approval of the Supreme Court, the board of governors may adopt a plan to license legal technicians to provide a limited scope of legal services to the public independent of supervision by licensed attorneys.

2. The board may create a Legal Technicians Licensing Board (LTLT Board). The LTLT Board shall consist of nine members appointed by the Supreme Court from candidates nominated by the board. Three members shall be active members of the Oregon State Bar; three shall be public members who are Oregon residents not licensed to practice law or as a legal technician; and three shall be, or shall become within two years of appointment, Oregon licensed legal technicians. At least one member shall be a legal educator. LTLT Board members shall initially be appointed to staggered terms of one to three years; thereafter appointments shall be for three year terms. No person may serve more than two consecutive full three year terms.

3. Subject to the approval of the Supreme Court, the LTLT Board shall have authority with respect to licensed legal technicians to:
   
   (a) establish the education, experience and examination requirements for licensure;
   
   (b) define areas of law for licensed legal technician practice and establish the special requirements for certification in each practice area;
   
   (c) establish continuing education requirements;
   
   (d) promulgate rules of professional conduct;
   
   (e) establishing financial responsibility requirements; and
   
   (f) establish application, annual licensure, special certification, and any other fees necessary to carry out the duties and responsibilities of the LTLT Board.

4. An applicant for licensure as a Licensed Legal Technician shall:
   
   (a) be at least 18 years of age;
   
   (b) be of good moral character and demonstrate fitness to practice as a Licensed Legal Technician;
   
   (c) have executed under oath and filed with the bar an application in the form required by the LTLT Board;
   
   (d) have paid all required fees;
   
   (e) have completed the education and experience requirements for licensure;
   
   (f) have taken and passed the examination required for licensure; and
   
   (g) meet all other licensing requirements established in rules proposed by the LTLT Board and approved by the Supreme Court.

5. (a) The LTLT Board shall formulate rules of professional conduct for licensed legal technicians and when such rules have been adopted by the Supreme Court, the board shall have the power
Draft Bill

to enforce them in the same manner and under the same authority as with the rules of professional conduct for lawyers.

[ALTERNATIVE: The LTLT Board shall formulate rules of professional conduct for licensed legal technicians and procedures for complaints and disciplinary proceedings and when such rules have been adopted by the Supreme Court, the board shall have the power to enforce them.]

(b) Licensed legal technicians acting within the scope of their authority shall be held to the standard of care of an Oregon lawyer.

(c) Oregon law of attorney-client privilege and the law of a lawyer’s fiduciary responsibility to the client shall apply to the Licensed Legal Technician-client relationship to the same extent as to the attorney-client relationship.
Formulation of Rules of Professional Conduct; Formulation of Rules of Procedure.

(1) The LLLT Board shall formulate rules of professional conduct, and when such rules are adopted by the Supreme Court, they shall be binding upon all LLLTs.

(2) The board, subject to the approval of the Supreme Court, may also adopt rules of procedure relating to the investigation of the conduct of LLLTs and applicants for a LLLT license, the reinstatement of such a license, and relating to the conduct of licensing, reinstatement, and disciplinary proceedings.

Comment:

Subsection (1) is based on ORS 9.490(1). Subsection (2) is based on ORS 9.542(1). It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

Limited Licensed Legal Technician Client Security Fund.

(1) As used in this section “client security fund” means a fund created under subsection (2) of this section.

(2) The board may adopt a plan to relieve or mitigate pecuniary losses to the clients of LLLTs caused by dishonest conduct of those LLLTs in their work as LLLTs. The plan may provide for establishing, administering and dissolving a separate fund and for payments from that fund to reimburse losses and costs and expenses of administering the fund. The board may adopt rules of procedure to carry out the plan. The insurance laws of the state shall not apply to the fund.

(3) A client security fund may include:

   (a) Transfers by the board from other available funds;

   (b) Voluntary contributions and payment by licensees under subsection (4) of this section;

   (c) Claims recovered under subsection (7) of this section; and

   (d) Income from investments of the fund.

(4) To establish and maintain a client security fund, the board may require an annual payment by each active LLLT. The payment authorized by this section shall be due at the same time, and enforced in the same manner, as payment of the annual license fee.

(5) (a) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss under subsection (2) of this section, the board or its designated representatives shall determine if the person named in the
claim as the LLLT whose dishonest conduct caused the loss maintained an office in the State of Oregon at the time of the transaction out of which the claim arose; and

(1) Has been found guilty of a crime arising out of the claimed dishonest conduct which caused the loss;

(2) In the case of a claim of loss of $5,000 or less, has had his or has resigned his or her license due to circumstances arising out of the claimed dishonest conduct which caused the loss; or

(3) Has been the object of a judgment entered in any proceeding arising out of the claimed dishonest conduct which caused the loss and, if the object of a judgment for money entered in favor of the claimant, has failed to pay the judgment, and execution issued on the judgment has been returned uncollected or that issuance of execution would be a useless act.

(b) After complying with subsection (a) of this section, if the board or its representatives require additional information to determine the claim, the board or its representatives may compel by subpoena the person named in the claim as the LLLT whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records, documents and other things pertinent to the claim. The subpoena shall have the same force and effect as in a civil action in circuit court for the county in which the person was served or in the county in which the principal office of the board is located.

(6) (a) Any person who has made a claim with the Board of LLLTs concerning a loss allegedly caused by the dishonest conduct of the person’s LLLT, or who has given information to the board relative to a proposed or pending client security fund claim shall be absolutely immune from civil liability for such acts.

(b) The Board of LLLTs, its officers, the members of any client security fund committee, investigators, agents, and employees shall be absolutely immune from civil liability in the performance of their duties relative to proposed or pending client security fund claims.

(7) Reimbursement from the client security fund is discretionary; however, the board shall not authorize payment unless the conditions of subsection (5)(a) of this section have been found to exist. However, the board may, in its sole discretion, waive one or more of the conditions of subsection (5)(a) of this section in cases of extreme hardship or special and unusual circumstances. The LLLT Board is subrogated, in the amount that a client’s claim is reimbursed from the client security fund, to all rights and
remedies of that client against the LLLT whose dishonest conduct caused the loss, or against the estate of the LLLT, or against any other person liable for the loss.

**Comment:**

This language is taken verbatim from ORS 9.615 through ORS 9.665 which created the Oregon State Bar Client Security Fund. It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

Most client security fund claims arise from the misappropriation of lawyer trust account funds. While this writer is not in favor of authorizing trust accounts for LLLTs, misappropriation of funds could still occur when clients prepay for LLLT services which are not rendered by the practitioner. Therefore, a client security fund is still a necessary regulatory component.

**Professional Liability Coverage**

(1) The board shall require LLLTs to carry professional liability coverage or to secure and provide some other proof of financial responsibility, of a type and amount deemed appropriate by the board, prior to practicing LLLT activities. The board shall be empowered, either itself or in conjunction with other organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization under the laws of the State of Oregon and to establish a LLLT professional liability fund.

(2) This fund, if established, shall pay, on behalf of LLLTs whose principal offices are in Oregon, all sums as may be provided under such plan which any such LLLT shall become legally obligated to pay as money damages because of any claim made against such LLLT as a result of any act or omission of such LLLT in rendering or failing to render services for others in the person’s capacity as a LLLT or caused by any other person for whose acts or omissions the LLLT is legally responsible. The board shall have the authority to assess each LLLT whose principal office is in Oregon for contributions to such fund, to establish definitions of coverage to be provided by such fund and defend and control the defense against any covered claim made against such LLLT. Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.

(3) For the purposes of subsection (2) of this section, the principal office of a LLLT is considered to be the location where the LLLT engages in LLLT activities more than 50 percent of the time. If a LLLT performs LLLT services in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the LLLT is not considered to be in Oregon unless the LLLT engages in LLLT activities in Oregon more than 50 percent of the time engaged in LLLT activities.
**Comment:**

This language is taken from ORS 9.080(2) authorizing the Board of Governors to create the Professional Liability Fund. It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

This language authorizes the governing board to determine what type of financial responsibility is most appropriate for LLLTs.
The Subcommittee on Education and Experience Requirements recommends:

**Both a Voluntary Oregon Registered Paralegal program and Limited License Legal Technician program**

Preliminary Statement: The availability of affordable legal services to the public is a goal to which the Oregon State Bar is committed and which is supported by the longstanding commitment of Oregon lawyers and the Code of Professional Responsibility. The employment of Paralegals is a longstanding practice of some law firms, government agencies, and in-house counsel which reduces the cost of legal services to their clients. Utilization of and reliance upon Paralegals by Attorneys in the delivery of legal services is supported and encouraged by the Bar.

Voluntary registration of Paralegals would provide a standard for the utilization of this valuable profession and provide appropriate recognition for the advancements this paraprofession has made in the legal industry. The creation of a separate professional status of Limited License Legal Technicians to serve the public would further enhance the opportunities available to the public for utilization of alternative legal resources at a reduced cost.

For purposes of this Rule, a **Voluntary Oregon Registered Paralegal** is a person who meets the State's requirements for this profession and who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible, such as: apply substantive knowledge of the law and legal procedures in rendering direct assistance to lawyers engaged in legal research, preparing or interpreting legal documents, drafting procedures, meeting clients and witnesses and other aspects of the operation of a law office, government agency, or in-house counsel.

For purposes of this Rule, a **Limited License Legal Technician** will be someone who meets the State's requirements for this profession and who is permitted to provide limited legal assistance to clients without being under the supervision of a lawyer as defined under these Rules.

**Voluntary Oregon Registered Paralegal**

- A Voluntary Oregon Registered Paralegal is defined as a person who:
  
  1. Is at least 18 years of age; and
  2. Has a minimum Associates level Degree in Paralegal or Legal Studies or related program from an ABA Approved Institution or other college or institution approved by the Oregon State Bar, with:
     
     a) 45 quarter credits (or equivalent) in Paralegal Core Curriculum, as part of an AA or BA/BS;
        
        1. Paralegal Core Curriculum shall be 45 quarter credits (or equivalent) in Paralegal or Legal Studies; as defined in the LLLT Core Education Requirements, including: introductory law, civil procedure, legal research, professional responsibility, law office management, interviewing skills and legal technology; or
     b) A law school degree from an ABA Approved institution provided; however, that the person:
        
        1) is not licensed as a lawyer; or
2) a lawyer who has been disbarred or suspended; and
3. Show proof of continuing learning education courses; and
4. Abides by the Oregon Code of Professional Responsibility; registers and pays required fees; is subject to discipline; and complies with other such regulation as enacted by the Oregon State Bar; and
5. Works under the supervision and direction of a licensed lawyer or government agency.

- Exception to Education Requirements/Grandfather Clause.
  An applicant for Voluntary Oregon Registered Paralegal may request waiver of the Education requirements within 2 years of the effective date of the Voluntary Oregon Registered Paralegal program. The Bar will waive the Education requirement if the applicant has:
  a) Passed the Certified Paralegal Exam (NALA) OR the Paralegal Advanced Competency Exam (NFPA) OR the Professional Paralegal Exam (NALS) OR the Paralegal CORE Competency Exam (NFPA); and
  b) Active certification as a Certified Paralegal OR PACE Registered Paralegal OR Professional Paralegal OR CORE Registered Paralegal; or
  c) Has 10 years of substantive law related experience as a paralegal, supervised by a licensed lawyer in good standing with the Bar, as evidenced by a supervising attorney declaration of same.

*Note: Leslie Harris is abstaining from the Voluntary Oregon Registered Paralegal portion of the subcommittee's recommendations.*
1. Limited License Legal Technicians shall:

- Be at least 18 years of age;
- Have a minimum associate level degree;
- Meet education, examination, and experience requirements;
- Show proof of financial responsibility;
- Show proof of continuing learning education courses – TBD;
- Abide by a code of ethical conduct – TBD;
- Not be a lawyer who has been disbarred or suspended in any state; and
- Be subject to discipline - TBD.

2. To be eligible for licensure, candidate shall complete the following:

- **Education**
  - Minimum associate level degree
  - Complete 45 quarter credit hours of legal studies core curriculum requirements (may be taken as part of the associate degree requirement)
  - Legal studies core curriculum must be taken at an ABA or BAR approved program
  - Complete practice area curriculum - TBD

- **Examination**
  - Core curriculum exam - TBD AND
  - Practice area exam - TBD AND
  - Each consists of a multiple choice, essay, and performance section - TBD

- **Experience**
  - 3,000 4,160 hours or 2 years of substantive law-related experience with 2,080 hours or 1 year of experience in the specialty practice area applicant is requesting licensure AND
  - Supervised by a licensed lawyer in good standing with the Bar AND
  - Within 3 years of passing core curriculum examination
3. Associate Degree and Core Curriculum Requirement Waiver; Grandfather Clause. The applicant may request a waiver of the associate degree and core curriculum requirements within 2 years of the LLLT program effective date (TBD), if:

<table>
<thead>
<tr>
<th>Until 2 years after the effective date of the program - TBD, the Board will waive the associate degree and core curriculum requirements, if the applicant has:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Passed the Certified Paralegal Exam (NALA) OR the Paralegal Advanced Competency Exam (NFPA) OR the Professional Paralegal Exam (NALS)</td>
</tr>
<tr>
<td>2. Active certification as a Certified Paralegal OR PACE Registered Paralegal OR Professional Paralegal</td>
</tr>
<tr>
<td>3. 10 years of substantive law-related experience supervised by a licensed lawyer in good standing with the Bar</td>
</tr>
</tbody>
</table>
4. Legal Studies Core Curriculum; the subcommittee recommends 45 Quarter Credits (or equivalent) to include the following topics:

Intro to Law and Legal Process
Ethics and Professional Responsibility
Legal Research and Library Use
Computer Assisted Legal Research
Applied Legal Research and Legal Writing
Interviewing and Investigation Techniques
Law Office Procedures and Technology /Software
Law Office Management/Administration
Civil Procedure/Litigation

ELECTIVES: Applicant may take remaining credits as paralegal studies or legal elective courses

*Note: the subcommittee would revisit this section and refine it, should the recommendation be approved.

4a. Practice Area Education, recommend requirements:

Practice Area Education

Must be taken in each practice area
Must be developed by or in conjunction with an ABA or BAR approved program
Should include OR law specific topics

TBD based on selected practice area
To be offered by live webcast and in person
5. Examination. The subcommittee recommends the use of an existing National Certification Exam to satisfy the legal studies core curriculum requirement of the Examination. Further, we recommend that the practice area portion of the Exam be created based upon the specific practice area selected for licensure.

6. Experience Requirements, recommend to include:

- **“Substantive law-related work”**
  - Requires knowledge of legal concepts and is customarily but, not necessarily, performed by a lawyer

- **“Supervised”**
  - Lawyer in good standing with the Bar personally directs, approves, and has responsibility for work performed

- **4,160 Hours of Experience**
  - Approx. 2 years full time
  - With 2,080 hours or 1 year of experience in the specialty practice area applicant is requesting licensure
  - Within 3 years before or after notification of passing core curriculum and practice area exams

- **Declaration(s) of Supervising Lawyer(s)**
  - Certification of substantive experience and period of supervision by lawyer
7. Continuing Education Requirements: Subcommittee recommends a two-prong CLE requirement, similar to the OSB Attorney CLE Requirement. We recommend a 45 CLE hour requirement every 3 years with a 3 year rotating reporting cycle. One prong of the CLE component would cover the core CLEs including: ethics (6 hours), mandatory reporting (3 hours), access to justice (3 hours) and practical skills - legal technology (3 hours), office administration, etc…) and the other prong would be specific to the specialty license - TBD.

*Note: the subcommittee would revisit this section and refine it, should the recommendation be approved.

Should the LLLT proposal be approved by the BOG, the Education and Experience Subcommittee members; Shari Bynum, Gerry Brask, Jill Tanner, Leslie Harris, and Linda Odermott, have committed to seeing this project through to final resolution.
Use of Limited License Legal Technicians in Landlord / Tenant Law & Small Claims Advising

Landlord-tenant legal work is likely suitable as an initial area of practice for Limited Legal License Technicians (LLLTs) for several reasons. First, it is a discrete area of the law with discrete tasks. All remedies are statutory and statutes are strictly construed. In an FED, a prevailing landlord is limited to recovery of possession of the property (plus fees and costs). If a tenant prevails her recovery is limited to her fees and costs. There is little overlap with other areas of the law such as business law, torts, family law, bankruptcy, etc.

Generally both parties are self-represented. Parties to these cases are often inexperienced, lack business skills, or are landlords with few units. All parties are potential clients who could benefit by some direction or assistance in navigating the legal process. Simply explaining the process, timeline, potential for technical errors (avoiding them or identifying them), and the likely results at trial would help inform the parties’ as to their options, negotiating strategy, and need to emotionally and financially prepare for what will come next.

Few attorneys are interested in these cases because they usually involve a small amount of billable time and there are relatively small dollar amounts at stake.

There are lots of forms and information available from the various circuit courts, and it would be fairly simple to standardize the forms for uniform, state-wide practice. Many of the notices required by statute are also already formalized by legal form publishing companies and could be standardized by updates to statutes or the UTCR.

The complexities in landlord-tenant cases come in collateral issues such as tenant rights when domestic violence is part of the landlord’s reason for eviction, personal injury claims arising out of tenancy, Fair Housing Act issues and reasonable accommodation requests, violations of local building codes, and the removal of squatters and non-tenants. Training on identifying and appropriately handling these issues would require a modest amount of time, making it an attractive option for LLLTs.

There are some limitations to the value of LLLT for these cases. Most of an attorney’s work in this field often relies on communications with the other party—either settlement negotiations by email, letter, or phone, or by drafting and sending written notice required by the statute. If they are forbidden by ethical rules from this communication, their value to their client may be substantially limited.

Another concern is that eviction cases are designed to progress quickly. If a client needs a letter written, communication to an opposing party, or representation at trial, the time to get a lawyer is very brief. By the time a client has called and set up an appointment with an LLLT, they may not have time to call and set up a separate appointment with an attorney.

A companion set of cases that may be suitable for LLLT work are small claims matters. Many of these cases are a result of landlord-tenant relationships arising as complaints for damages caused by tenant or tenants claiming the return of deposits or the value of personal property. These cases are limited in scope because of the
statutory limit on the amount of damages and the one-year statute of limitations for landlord-tenant claims. Lawyers are generally barred from appearing in small claims matters and because of the small amount at controversy lawyers are usually not hired in these cases. Potential clients often need help with filling out the forms, understanding the substantive rules involved, understanding the presentation of evidence, and preparing their cases for trial or mediation.

The numbers of cases filed show that there is a substantial demand for affordable legal services in these fields of law. In 2011 (the latest numbers available on the OJD website) there were 47,918 family law type cases filed in Oregon Circuit Courts. Of that number about 10,800 were Family Abuse Prevention Restraining Order cases leaving about 37,118 other family law cases. By comparison there were about 23,700 FED cases filed and over 73,600 small claims cases. The FED cases and small claims cases do not include cases that were filed in the various municipal and justice courts across the state. There are more than twice the number of landlord-tenant and small-claims cases filed in Oregon courts than there are family law cases, implying a larger pool of potential clients for LLLTs in this field than in others. However, it should be noted that entity owners and property managers are already allowed to file FEDs without representation and regularly do so. Entities are also permitted to file in small-claims court without an attorney. Because non-attorneys are already sanctioned to “practice law” in these arenas, there may not be much paid demand for advise-only consultations.

On balance, the demand for affordable help in the fields of landlord-tenant law and small-claims cases certainly exists and may well be a good entry point for a limited-license legal technician program to operate.
Outline of Tasks to be Authorized if Licensed Legal Technicians are Recognized in Oregon

LLLT Task Force, Family Law sub, 1/18,14

1. Provide state forms (such as those on the OJD web site) and assist in a purely ministerial capacity in completing these forms.

2. Explain legal options without offering legal opinions. For example:
   - Options for children include joint or separate custody.
   - Define terms such as “joint custody”, “sole custody,” “separate property,” maintenance vs. transitional vs. compensatory spousal support, “custody” vs. “parenting time.”
   - What happens to separately acquired property (gifts, premarital and inheritances): Answer, the court can divide it or not. “The rules are complex, you will need a lawyer to advise you on how the rules apply to your case.”

3. Review documents completed by litigants to determine if they are completely and correctly completed.

4. Review and interpret necessary background documents (eg. review discovery and clients materials) documents and offer limited explanations.

5. Help clients chose which documents may be necessary.

6. Provide generalized explanations of the law without applying it specifically to the client’s case or fact pattern.

7. Providing or suggesting published information to litigants pertaining to legal procedures, litigant’s legal rights and obligations and materials of assistance with children’s issues (eg. Isa Ricci’s Mom’s House, Dad’s House)
   - Any limits? Materials from Planned Parenthood? Advocacy groups such as DV organizations, dad’s rights groups and religious organizations?

8. Explain court procedures without applying it specifically to the litigant’s case or fact pattern (eg. difference between traditional trial and informal domestic relations trial in Deschutes County.

9. Filing and serving legal documents at the litigant’s request.

10. Allow attendance at court proceedings?

ADDITIONAL QUESTIONS:
   - Can the LLLT’s work with both parties to the litigation?
Outline of Tasks to be Authorized if Licensed Legal Technicians are Recognized in Oregon

LLLT Task Force, Family Law sub, 1/18,14

1. Provide state forms (such as those on the OJD web site), help them choose which ones to use, and assist in a purely ministerial capacity in completing these forms without giving legal advice about the case.

2. Provide generalized explanations of the law without applying it specifically to the client’s case or fact pattern.

2. Explain legal options without offering legal opinions. For example:
   - Options for children include joint or separate custody.
   - Define terms such as “joint custody”, “sole custody,” “separate property,” maintenance vs. transitional vs. compensatory spousal support, “custody” vs. “parenting time.”
   - What happens to separately acquired property (gifts, premarital and inheritances): Answer, the court can divide it or not. “The rules are complex, you will need a lawyer to advise you on how the rules apply to your case.”

3. Review documents completed by litigants to determine if they are completely and correctly completed.

4. Review and interpret necessary background documents (eg. review discovery and client’s materials) documents and offer limited explanations.

5. Help clients choose which documents may be necessary.

6. Provide generalized explanations of the law without applying it specifically to the client’s case or fact pattern.

7. Providing or suggesting published information to litigant’s clients pertaining to legal procedures, litigant’s clients’ legal rights and obligations and materials of assistance with children’s issues (eg. Isa Ricci’s Mom’s House, Dad’s House)
   - Any limits? Materials from Planned Parenthood? Advocacy groups such as DV organizations, dad’s rights groups and religious organizations?

8. Explain court procedures without applying it specifically to the litigant’s-client’s case or fact pattern (eg. difference between traditional trial and informal domestic relations trial in Deschutes County.

9. Filing and serving legal documents at the litigant’s-client’s request.
10. Allow attendance at court proceedings?

ADDITIONAL QUESTIONS:

- Can the LLLT’s work with both parties to the litigation?
Outline of Possible Tasks to be Performed by Licensed Legal Technicians in Oregon

Discussion Draft - LLLT Task Force, Family Law Subcommittee, 1/21/14

1. Provide state forms (such as those on the OJD web site), help them choose which ones to use, and assist in completing these forms, in a ministerial capacity and without giving legal advice about the case.

2. Provide generalized explanations of the law without applying it specifically to the client's case or fact pattern. Explain legal options without offering legal opinions. For example:
   - Options for children include joint or separate custody.
   - Define terms such as “joint custody”, “sole custody,” “separate property,” maintenance vs. transitional vs. compensatory spousal support, “custody” vs. “parenting time.”
   - What happens to separately acquired property (gifts, premarital and inheritances): Answer, the court can divide it or not. “The rules are complex, you will need a lawyer to advise you on how the rules apply to your case.”

3. Review documents completed by litigants to determine if they are completely and correctly completed.

4. Review and interpret necessary background documents (for example, review discovery and client’s materials) documents and offer limited explanations.

5. Provide or suggest published information to clients pertaining to legal procedures, client’s legal rights and obligations and materials of assistance with children’s issues (for example, Isa Ricci’s Mom’s House, Dad’s House)
   - Any limits? Materials from Planned Parenthood? Advocacy groups such as DV organizations, dad’s rights groups and religious organizations?

6. Explain court procedures without applying it specifically to the client’s case or fact pattern (for example, difference between traditional trial and informal domestic relations trial in Deschutes County).

7. Filing and serving legal documents at the client’s request.

8. Allow attendance at court proceedings?

ADDITIONAL QUESTIONS:
- Can the LLLT’s work with both parties to the case?
- Any conflict with the PLF if paralegals in firms do this type of work?
For a variety of reasons, estate planning is not a suitable area of practice for Limited Legal License Technicians (“LLLTs”) because there is no demonstrated need for lower cost legal services and no access to justice argument. There is no shortage of low cost attorneys in Oregon willing to handle wills and estate planning matters. Many new and solo attorneys practice in this area in particular and rates already tend to be very low and competitive. There is also no evidence that the approximately 40% of Oregonians who die intestate do so because they could not afford to hire lawyers to prepare will or estate planning documents for them. For estates that end up in probate, most courts compel the heirs to engage legal counsel. The cost of legal fees are controlled and managed by the probate court and the legal fees are paid from the proceeds of the estate. Unlike other areas of the law, consumers do not go without counsel because they can’t afford to pay a lawyer upfront.

Oregon’s intestate succession laws protect the heirs of decedents who die intestate. Simple estate planning template forms are readily available online and from Stevens Ness and many consumers use them. However, people who self-represent tend to cause problems for themselves. Their estates and heirs typically pay out far more in legal fees to resolve disputes caused by poorly drafted wills and related documents than if they had died intestate or paid even a nominal fee to get succession planning advice. The problem with a la carte estate planning documents is that they easily (though usually unintentionally) harm the intended heirs. Will forms are deceptively simple. Common message is that “stakes are high, there is no such thing as a simple will, and the devil is in the details.” Having an LLLT assist with form preparation does not solve this problem. Only sound legal analysis and strategic advice can address and resolve complex issues in the tax and estate planning arena.

Assuming LLLTs become authorized to practice in the estate planning arena, it is unlikely that consumers who die intestate or choose to rely on templates or online forms rather pay even nominal fees for legal services would pay for the advice and assistance of an LLLT. Further, consumers with any wealth at stake, concern about guardianship of their children, or in need of bulletproof advance directives will continue to engage the services of lawyers who specialize in the field. In short, “there is no value added to the consumer by creating a class of non lawyers authorized to prepare estate planning documents.”
Consulted with:

1. Two local practitioners (one small firm, one big firm).

2. Multnomah County Circuit Court Judge who regularly handles probate matters (as well as family law).

3. Chair of OSB Estate Planning Section.

4. Members of Executive Committee of OSB Estate Planning Section.

Concerns:

1. No access to justice argument.

2. People who die intestate or who rely on online forms will do so anyhow (no value added to the consumer).

3. No such thing as a “simple will.”

4. There’s a critical role for paralegals to play in the practice (and they do) but not solo.

5. Lawyers already handle these matters at very low rates.

6. High value clients will pay for lawyers.

7. Concern about whether and how privilege will attach.

8. Who will cover malpractice?

9. How get relevant ad necessary experience in drafting without court litigation?

10. Issue of dual representation.

11. Online and template forms without analysis and a plan are useless and do more harm than good.

12. LTTS’s won’t be able to make any money without charging lawyers rates.

13. High risk with too much at stake.

14. Concern about potential for increased elder abuse due to lack of due diligence, legal analysis.

15. Can only work with fiduciary relationship.
### Alabama

The 1975 Code of Alabama 6-5-572: Refers to paralegals in the context of employment by an attorney.  

Rule 5.3 of Responsibilities regarding Nonlawyer Assistants:  
Encompasses paralegals in “paraprofessionals” reference in comments section, which also refers to attorney responsibility for work product and assumption of non-legal training, and not subject to professional discipline.  
[http://www.sunethics.com/al_5_3.htm](http://www.sunethics.com/al_5_3.htm)

Additionally, Rule 7.6 Professional Cards of Nonlawyers specifically states information must clearly define the role of nonlawyer as “Legal Assistant.” Comments section includes paralegals specifically, among others.  

### Alaska

Restyled in April 2009 under Supreme Court Order 1680 (SCO 1680) Alaska Rule of Professional Conduct 5.3 **Responsibilities Regarding Nonlawyer Assistants.** Changed reference in comment from “paraprofessionals” to “paralegals” as one type of nonlawyer supervised by attorneys  
None – Proposal pending for voluntary Alaska Registered Paralegal Program  
March 2011: Alaska Association of Paralegals solicited support from Fairbanks Legal Assistant Association for their voluntary Alaska Registered Paralegal program through the Alaska Bar Rules. Proposal was presented to the Alaska Bar...
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Arizona</td>
<td>(See comment [1].) The rule states that lawyers must directly supervise their assistants and are responsible for their assistants' conduct. <a href="http://courts.alaska.gov/prof.htm#5.3">http://courts.alaska.gov/prof.htm#5.3</a></td>
<td>Paralegal through Alaska Bar Rules (overseen by AK Supreme Court)</td>
<td>Association in September 2011, and is currently under review. [<a href="http://www.fairbanksparalegal.org/Paralegal">http://www.fairbanksparalegal.org/Paralegal</a> Regulation-Rule44-2.pdf](<a href="http://www.fairbanksparalegal.org/Paralegal">http://www.fairbanksparalegal.org/Paralegal</a> Regulation-Rule44-2.pdf)</td>
</tr>
</tbody>
</table>
### PARALEgal REGULATION BY STATE

**UPDATED MAY 2012**

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
</table>
| II     | Arkansas | Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct. | None | Section 7-208 – Legal Document Preparer: [http://www.supreme.state.az.us/cld/pdf/ACJA%207-208%20FINAL%20for%20Code%20Book.pdf](http://www.supreme.state.az.us/cld/pdf/ACJA%207-208%20FINAL%20for%20Code%20Book.pdf)  
Website for Program Administration: [http://www.supreme.state.az.us/cld/ldp.htm](http://www.supreme.state.az.us/cld/ldp.htm) |
<p>| I      | California | California Business and Professions Code Section 6456-6456: &quot;Paralegal&quot; means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, | Mandatory – statutory compliance for Paralegals | 2001: The California Business and Professions Code defines and regulates “Legal document assistant” and “Unlawful detainer |</p>
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation. (d) Every two years, commencing January 1, 2007, any person that is working as a paralegal shall be required to certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education under CA Business &amp; Professions Code 6450 et seq. Mandatory – statutory compliance for Legal Document Assistants And Unlawful Detainer Assistants under CA Business &amp; Professions Code 6400 et seq. assistant&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><a href="http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&amp;group=06001-07000&amp;file=6400-6401.6">http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&amp;group=06001-07000&amp;file=6400-6401.6</a></td>
<td>Definition of Legal Document Assistant does not apply to paralegals provided that the paralegal does not also perform the duties of a legal document assistant. Legal document assistants must be registered in the county in which they provide services. <a href="http://www.calda.org">www.calda.org</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Paralegals are regulated by statute under CA Business &amp; Professions Code 6450 et seq. requiring mandatory compliance with educational standards, and continuing education. 1993 – Assembly Bill 1287 proposing to register legal technicians (any nonlawyer who holds himself or herself out to the public as a legal technician, or any nonlawyer who offers to provide or who provides legal information and assistance service directly to consumers for compensation or who offers elf-help legal services.&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-----------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>-------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>II</td>
<td>Colorado</td>
<td>Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>None</td>
<td>CA SB709 register independent paralegals (no recent action)</td>
</tr>
</tbody>
</table>

Courses shall meet the requirements of Section 6070. Certification of these continuing education requirements shall be made with the paralegal’s supervising attorney. The paralegal shall be responsible for keeping a record of the paralegal’s certifications.

http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=06001-07000&file=6450-6456

Guidelines for the Utilization of Paralegals were originally drafted by the Legal Assistant Committee (now Paralegal Committee) of the Colorado Bar Association and formally approved by the Board of Governors in July 1986. The first revision was approved in 1998. The Colorado Bar Association Paralegal Committee completed its second revision, update, and attorney review, and the proposed Guidelines were reviewed by the Colorado Supreme Court Office of Attorney Regulation Counsel for the
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
</table>
Footnote in Guidelines discusses the differences between paralegal and legal assistant titles: 1 In 1986, the ABA Board of Governors approved a definition for the term “legal assistant.” In 1997, the ABA amended the definition of legal assistant by adopting the following language: “A legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible.” To eliminate any confusion over the term “legal assistant” since it is used in Colorado for positions other than that of a paralegal, for example, legal secretary, these guidelines use the term “paralegal” rather than “legal assistant,” however, the terms legal assistant and paralegals are often used interchangeably. | None               | 2011: HB 6477 – An Act Concerning the Unauthorized Practice of Law by Notaries |
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>Public and the Outsourcing of the Drafting, Review or Analysis of Legal Documents. It was referred to the Joint Committee on Judiciary on 2/24/11 and a public hearing was held on 4/8/11. At the request of the Connecticut Alliance of Paralegal Associations, NFPA prepared a response to this proposed regulation which can be found at the attached website link, under Public Hearing Testimony. While the intent was to prohibit “Notorios” from practicing law and outsourcing of legal work, the legislation, as proposed, had a far greater impact on the paralegal profession in Connecticut. HB 6477 died in committee.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>CBA Guidelines for Lawyers Who Employ or Retain Legal Assistants and Guidelines For Legal Assistants published 1/13/97: <a href="https://www.ctbar.org/Sections%20Committees/Committees/Paralegals/GuidelinesForLawyersWhoEmployOrRetainLegalAssistants.aspx">https://www.ctbar.org/Sections%20Committees/Committees/Paralegals/GuidelinesForLawyersWhoEmployOrRetainLegalAssistants.aspx</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Paralegals Committee of the Connecticut Bar Association <a href="https://www.ctbar.org/Sections%20Committees/Sections/Paralegals.aspx">https://www.ctbar.org/Sections%20Committees/Sections/Paralegals.aspx</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


1993 bill (HB 5827 introduced into the state legislature providing for the state to develop
## PARALEGAL REGULATION BY STATE
### UPDATED MAY 2012

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>IV</td>
<td>Delaware</td>
<td>Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>Voluntary Certification Through Paralegal Association</td>
<td>Delaware Certified Paralegal Approved by Delaware Paralegal Association on May 12, 2005. Eligibility requires either paralegal experience, education in paralegal studies, NFPA or NALA certifications, or combination of experience and formal education in another discipline. Applicants must be a member of the Delaware Paralegal Association.</td>
</tr>
<tr>
<td></td>
<td>District of Columbia</td>
<td>Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>None</td>
<td>Licensing procedures for nonattorney operated legal document processing businesses. Defeated</td>
</tr>
</tbody>
</table>

HB 5445 – provided for paralegals employed by Public Defendants be given the authority to administer oath.
PARALEGAL REGULATION BY STATE
UPDATED MAY 2012

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>III</td>
<td>Florida</td>
<td>Rule 4-5.3 Responsibilities Regarding Nonlawyer Assistants of the Rules Regulating the Florida Bar refers to paralegals (and others using titles of nonlawyer assistants) as: one who must be under the supervision of a lawyer or law firm.</td>
<td>Registered Paralegal Program (2 tier voluntary program through The Florida Bar)</td>
<td>March 2011: HB 1149 (sponsor: Representative Steinberg) and SB 1612 (sponsored by Senator Richter) propose mandatory licensure of the paralegal profession. Detailed bills proposed by Florida Alliance of Paralegal Association stripped to bare bones from original proposal to allow oversight board to draft rules without return to legislature. Bills also introduced during tea-party governor’s “no new regulation” initiative and died in Civil Justice and Judiciary committees.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rule 10-2.1(b) Generally (Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law) Paralegal or Legal Assistant. A paralegal or legal assistant is a person qualified by education, training, or work experience, who works under the supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible. A nonlawyer or a group of nonlawyers may not offer legal services directly to the public by employing a lawyer to provide the lawyer supervision required under this rule.</td>
<td>Rule 20-2.1 Generally (Florida Registered Paralegal)</td>
<td>June 2009: FRP Committee voted unanimously not to extend current grandfather clause sunset date (March 2011) for those without formal education to qualify. Also defined qualified education programs which are not ABA-approved, but are institutional members of AAFPE, as in substantial compliance with ABA program standards as required under Rule 20-2.1(d).</td>
</tr>
</tbody>
</table>

http://www.floridabar.org/divexe/rrtb.nsf/FV/8C9B4524008595E485256BBC0052DD7B

http://www.floridabar.org/divexe/rrtb.nsf/FV/5DE8883FE14988A585256BC2004522AA
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><em>Program</em>) (a) Paralegal. A paralegal is a person with education, training, or work experience, who works under the direction and supervision of a member of The Florida Bar and who performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) Florida Registered Paralegal. A Florida Registered Paralegal is someone who meets the definition of paralegal and the requirements for registration as set forth elsewhere in these rules.</td>
</tr>
</tbody>
</table>

http://www.floridabar.org/divexe/rrtfb.nsf/FV/B8F1801F71B62CE9852573E5005497A9

Corresponding state statute F.S. §57.104 for computation of attorneys’ fees refers to “legal assistant.”


<table>
<thead>
<tr>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The committee agreed that creation of a sub-committee to study mandatory implementation of the FRP program as paralegal regulation in Florida was needed to move forward with that initiative, but declined to form the sub-committee as “too early.”</td>
</tr>
</tbody>
</table>

On November 15, 2007, the Supreme Court of Florida adopted a voluntary program for the registration of paralegals under Chapter 20 of the Rules Regulating the Florida Bar. The Florida Registered Paralegal Program, “provides for voluntary registration of paralegals who meet certain minimum educational, certification, or work experience criteria and who abide by an established code of ethics in exchange for the ability to refer to themselves as Florida Registered Paralegals.” Disciplinary action may be taken against FRPs found to be in violation of the Rule. Disciplinary measures include revocation of FRP designation. The voluntary Florida Registered Paralegal Program became effective March 1, 2008, at 12:01 a.m. More information is available at: www.flordiasupremecourt.org/decisions/2007/sc06-1622.pdf or http://www.flabar.org/frp |
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
</table>

In September 2006, the South Florida Paralegal Association (SFPA) objected to the Florida Bar’s proposal for regulating paralegals as the proposed plan for registration is not mandatory, among other issues. SFPA participated in the Oral Argument held at the Florida Supreme Court in April 2007.

Link to the Oral Argument may be found here: [http://wfsu.org/gavel2gavel/archives/07-04.html](http://wfsu.org/gavel2gavel/archives/07-04.html) (Case No. SC06-1622)

SFPA established a website for the purpose of monitoring the proposal at [www.floridaregisteredparalegal.com](http://www.floridaregisteredparalegal.com)

On June 2, 2006, the Board approved the rule. It expects to be filed with the Supreme Court of Florida in August 2006 for final action. More information about Chapter 20 is available at [www.floridabar.org/frp](http://www.floridabar.org/frp).

In the summer of 2006, the Special Committee to Study Paralegal Regulation of the Florida Bar presented a final version of
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>proposed Rule 20 to establish the Florida Registered Paralegal program to the Board of Governors of The Florida Bar for approval.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>April 2006 - The Florida Bar derailed the bills that would have placed paralegals under the oversight of the state Department of Business and Professional Regulation.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No forward movement on drafting an acceptable Rule prompts Senator Argenziano and Representative Zapata to re-submit the Paralegal Profession Act in the 2006 Legislative Session.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Committee work on the 2005 Bills are tabled when Representative Zapata agrees to work with the Bar to create a proposal, and joins</td>
<td></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>III</td>
<td>Georgia</td>
<td>Georgia Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional”</td>
<td>None</td>
<td>In 1994 The Committee to Examine the Role of Legal Assistants of the State Bar of</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Voluntary Certification
Through Paralegal Association

In 1983 the Paralegal Association of Florida (PAF) established the Voluntary Certified Florida Legal Assistant Program. In 2009, PAF changed the name of the designation to Florida Certified Paralegal (FCP). Must be a CP to qualify for FCP exam.


The Paralegal Profession Act proposed in the legislature in March of 2005 would have created provisions to regulate paralegals, provide educational requirements, a grandfather clause and reciprocity.
<p>| REGION | STATE  | DEFINITION                                                                                                                                                                                                 | TYPE OF REGULATION | DESCRIPTION                                                                                                                                                       |
|--------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------________________________________|
|        | Hawaii | Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct. | None               | The Hawaii State Bar Association Task Force on Paralegal Certification drafted a proposal to amend the Hawaii Supreme Court Rules and Hawaii Rules of Professional Conduct to require certification of paralegals and only general supervision by attorneys. The proposal included a voluntary national exam, education and experience requirements. In 2001 The |</p>
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Idaho</td>
<td>Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>None</td>
<td>Hawaii State Bar Association rejected this mandatory paralegal certification program</td>
</tr>
<tr>
<td>II</td>
<td>Illinois</td>
<td>Sec. 1.35. Paralegal. &quot;Paralegal&quot; means a person who is qualified through education, training, or work experience and is employed by a lawyer, law office, governmental agency, or other entity to work under the direction of an attorney in a capacity that involves the performance of substantive legal work that usually requires a sufficient knowledge of legal concepts and would be performed by the attorney in the absence of the paralegal. A reference in an Act to attorney fees includes paralegal fees, recoverable at market rates. (Source: P.A. 89-123, eff. 1-1-96.)</td>
<td>None</td>
<td>In 2005 two bills (HB 4686 and SB2253) were introduced creating the Legal document Preparer Act. Both bills have been referred to Rules Committee. These were updated versions of SB0335 which has also been referred to Rules. Both died in committee. <a href="http://www.ilga.gov/legislation/94/HB/0940HB4686.htm">http://www.ilga.gov/legislation/94/HB/0940HB4686.htm</a> <a href="http://www.ilga.gov/legislation/94/SB/0940SB2253.htm">http://www.ilga.gov/legislation/94/SB/0940SB2253.htm</a></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>III</td>
<td>Indiana</td>
<td>General Provisions (5 ILCS 70/1.35) Statute on Statutes: <a href="http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=79&amp;ChapAct=5%26nbsp%3BILCS%26nbsp%3B70%2F&amp;ChapterID=2&amp;ChapterName=GENERAL+PROVISIONS&amp;ActName=Statute+on+Statutes%2E">http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=79&amp;ChapAct=5%26nbsp%3BILCS%26nbsp%3B70%2F&amp;ChapterID=2&amp;ChapterName=GENERAL+PROVISIONS&amp;ActName=Statute+on+Statutes%2E</a> Rule 5.3 of Illinois Rules of Professional Conduct Encompasses paralegals in “paraprofessionals” reference in comments section, which also refers to attorney responsibility for work product and assumption of non-legal training, and not subject to professional discipline. <a href="http://www.state.il.us/court/SupremeCourt/Rules/Art_VIII/ArtVIII_NEW.htm#5.3">http://www.state.il.us/court/SupremeCourt/Rules/Art_VIII/ArtVIII_NEW.htm#5.3</a></td>
<td>Voluntary registration – Indiana Registered Paralegal</td>
<td><a href="http://www.ilga.gov/legislation/94/SB/09400SB0335.htm">http://www.ilga.gov/legislation/94/SB/09400SB0335.htm</a> SB 0776 from the 87th General Assembly and SB2314 from the 86th General Assembly created the Legal Technician Licensing Act. Both were defeated <a href="http://www.ilga.gov">www.ilga.gov</a> September 2008: The Indiana Supreme Court rejected Proposed Rule 2.2. Although the Indiana Rules of Professional Conduct govern an attorney's supervision of paralegals, there's nothing currently in place for governing these individuals directly. The Court did say they would be open to reexamining the issue. Proposed Rule 2.2 continues to move forward. The Board of Governors of the Indiana State Bar Association (ISBA) fully...</td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
</tbody>
</table>
|        |       | performed by the attorney in the absence of the paralegal.  
(b) A reference in the Indiana Code to attorney’s fees includes paralegal’s fees.  
As added by P.L.6-1993, SEC.1.  
http://www.in.gov/legislative/ic/code/title1/ar1/ch4.html  
Guidelines for utilization of Non-lawyer Assistants - Sections 9.1-10 of the Indiana Rules of Professional Conduct, which includes Ethical Standards for Legal Assistants  
http://www.state.in.us/judiciary/rules/prof_conduct/index.html#Toc313019233  
Rule 5.3 of Rules of Professional Conduct – Responsibilities Regarding Nonlawyer Assistants:  
http://www.state.in.us/judiciary/rules/prof_conduct/index.html#Toc313019210 | Bar Association Ethical Rules for Paralegals | supported comments to proposed Rule 2.2 as gathered by John Conlon, the ISBA appointed Chair of the subcommittee on proposed Rule 2.2 Paralegals. A report of the comments gathered was made to the ISBA House of Delegates and additional comments were received from various delegates. Pursuant to his earlier request, all comments will be forwarded by ISBA to Chief Justice Randall T. Shepard for action by the Supreme Court.  
The Indiana Supreme Court is considering an addition to the Rules for Admission to the Bar. Indiana Supreme Court was accepting comments through 4/3/06 on voluntary paralegal registration. The comment period for the rule ended in April 2006; comments were overwhelmingly positive. In October 2006, the Indiana State Bar Association Board of Governors unanimously passed a resolution for a favorable recommendation of support of proposed Rule 2.2. This proposal defines paralegals, establishes educational requirements and bans disbarred attorneys, felons and those convicted of UPL from registering. Paralegals now await adoption by the Indiana Supreme Court. |
## Paralegal Regulation by State

**Updated May 2012**

<table>
<thead>
<tr>
<th>Region</th>
<th>State</th>
<th>Definition</th>
<th>Type of Regulation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>Iowa</td>
<td>Rule of Professional Conduct 32:5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>Paralegal Certification</td>
<td>In October of 1993, the Indiana Supreme Court issued an Order amending the Rules of Professional Conduct, combining the ethical rules and the model guidelines for utilization of legal assistants proposed by the Indiana State Bar Association. [<a href="http://www.iowacourts.gov/wfdata/frame2397-1066/">http://www.iowacourts.gov/wfdata/frame2397-1066/</a> File1.pdf](<a href="http://www.iowacourts.gov/wfdata/frame2397-1066/">http://www.iowacourts.gov/wfdata/frame2397-1066/</a> File1.pdf)</td>
</tr>
<tr>
<td>II</td>
<td>Kansas</td>
<td>Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>None Bar Assoc. Utilization Standards</td>
<td>Kansas Bar Association’s Paralegals Committee providing updated information to Kansas Supreme Court regarding regulation in other states. In February, 2008, Kansas paralegal associations presented a voluntary certification program proposal to the Kansas Bar Board of Governors. This is still pending. <a href="http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=19">http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&amp;r2=19</a></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>III</td>
<td>Kentucky</td>
<td>Guidelines for the Utilization of Legal Assistants/paralegals uses the following definition: A legal assistant or paralegal is a person, qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.</td>
<td>Voluntary Paralegal Certification through Paralegal Association</td>
<td>The Kansas Bar Association adopted Official Standards and Guidelines for the Utilization of Legal Assistants/paralegals in Kansas in 2004. Although referenced, the publication link is no longer available on the website.</td>
</tr>
</tbody>
</table>

**Voluntary Paralegal Certification through Paralegal Association**

Certified Kentucky Paralegal Program – launched in Fall 2010. Program details available here: [http://www.kypa.org/CKP.htm](http://www.kypa.org/CKP.htm)

In 1997 the Kentucky Paralegal Association proposed a statewide voluntary paralegal certification exam. The KPA is developing the exam and study materials. Completion of the exam is pending. Successful completion of the PACE or CLA exams will exempt the paralegal from the general knowledge portion of the exam.
### Region | State | Definition | Type of Regulation | Description
--- | --- | --- | --- | ---
V | Maine | **RULE 5.3 Responsibilities Regarding Nonlawyer Assistants**

Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.

[http://www.courts.state.me.us/rules_adminorders/rules/MRProfCondONLY1-12.pdf](http://www.courts.state.me.us/rules_adminorders/rules/MRProfCondONLY1-12.pdf)

Chapter 18: Paralegals and Legal Assistants §921 - Definitions "Paralegal" and "legal assistant" mean a person, qualified by education, training or work experience, who is employed or retained by an attorney, law |

None | Change to Chapter 18, adding sections 921 and 922 incorporated in Maine statutes in 1999.
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>IV</td>
<td>Maryland</td>
<td>office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which an attorney is responsible.</td>
<td>None</td>
<td>HB 1029 (defeated 1988) providing for the regulation of paralegal/legal assistant; creating a state regulatory board to review the provision of paralegal/legal assistant services</td>
</tr>
</tbody>
</table>

### §921 - Restriction on use of titles

**1. Prohibition.** A person may not use the title "paralegal" or "legal assistant" unless the person meets the definition in section 921, subsection 1.

**2. Penalty.** A person who violates subsection 1 commits a civil violation for which a forfeiture of not more than $1000 may be adjudged. [1999, c. 379, §1 (NEW).]

http://janus.state.me.us/legis/statutes/4/title4sec921.html


Click on “Agree to terms & conditions of access,” button, navigate to Maryland Rules > Appendix:
## PARALEGAL REGULATION BY STATE

**UPDATED MAY 2012**

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>V</td>
<td>Massachusettts</td>
<td>Maryland Lawyers’ Rules of Professional Conduct &gt; Law Firms and Associations &gt; Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>III</td>
<td>Michigan</td>
<td>Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct. (Identical to ABA Model Rule 5.3)</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>Minnesota</td>
<td>Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>None</td>
<td>In 1991, as a result of S.F. 520 (Referred to the Committee on Judiciary) relating to legal services; providing for the creation of a state board of specialized legal assistants;</td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>responsible for their assistants’ conduct. <a href="http://lprb.mncourts.gov/rules/Documents/MN%20Rules%20of%20Professional%20Conduct.pdf">http://lprb.mncourts.gov/rules/Documents/MN%20Rules%20of%20Professional%20Conduct.pdf</a> (Effective October 1, 2005, with Amendments through July 1, 2011.)</td>
<td></td>
<td>requesting the supreme court to adopt rules governing the delivery of legal services by specialized legal assistants; amending Minnesota statutes 1990 section 481.02, subdivision 3 the Minnesota Legislature enacted Chapter 299, Senate File 520 directing the Supreme Court to undertake a study of regulation of legal assistants. This died in committee.</td>
</tr>
<tr>
<td>III</td>
<td>Mississippi</td>
<td>Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct. <a href="http://courts.ms.gov/rules/msrulesofcourt/rules_of_professional_conduct.pdf">http://courts.ms.gov/rules/msrulesofcourt/rules_of_professional_conduct.pdf</a> (scroll to rule 5.3)</td>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>
| II     | Missouri | Rule of Professional Conduct 5.3 Does not define paralegals but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct. [http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dc8b/f264eb01f0599e3186256ca6005211e37OpenDocument](http://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dc8b/f264eb01f0599e3186256ca6005211e37OpenDocument) | None | In 2003 the Southwest Missouri Paralegal Association formed a committee to draft a proposal to be presented to the Missouri Bar Association’s Paralegal Committee. The Paralegal Committee drafted a proposed court rule for the attorney supervision of paralegals that was rejected by SMPA because they wanted a self-governing rule. The committee is drafting a Code of Ethics and Professional Responsibilities for Paralegals based on the Ethics Code."
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Montana</td>
<td>Rule of Professional Conduct 5.3 Does not define paralegals but considers oversight by attorneys of nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>Statutory Regulation of Paralegal's Title, Definition, and Inclusion of Paralegal Fees</td>
<td>May 5, 2009 enacted HB 301 – An Act Including Reasonable Paralegal Fees As A Component Of Attorney Fees That May Be Awarded To A Prevailing Party In Certain Cases; Defining &quot;Paralegal&quot;; Amending Sections 25-10-302 And 37-61-215, <a href="http://data">http://data</a> opi mt gov/bills/2009/billhtml/HB0</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>However, Missouri Bar Committee on Paralegals publishes public information guides which define a paralegal as: “…qualified through education, training or work experience, is employed or retained by an attorney, law firm, government agency, corporation, or other entity to perform substantive and procedural legal work under the ultimate direction and supervision of an attorney or as authorized by administrative, statutory, or court authority.” and defines “Paralegal Experience” as: the performance of substantive legal work, non-clerical or non-administrative in nature, that absent a paralegal, an attorney would perform. (Adopted by the Committee on Paralegals of the Missouri Bar, November 9, 2001)</td>
<td>Statutory Regulation of Paralegal's Title, Definition, and Inclusion of Paralegal Fees</td>
<td>Followed by the State Bar as well as a proposal outlining education and testing for paralegals. In 1991 the Kansas City Association of Legal Assistants drafted a bill for the State of Missouri Relating to Legal Assistants and independent Legal Technicians and their Role in the Delivery of Legal services.</td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Montana Code lists the following definition for “paralegal” or “legal assistant&quot;</td>
<td></td>
<td>301.htm</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“…means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.”</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Montana Code <strong>25-10-304. Paralegal fees as component of attorney fees.</strong> In any case or proceeding in which attorney fees are awarded to the prevailing party, the court may, as a component of the attorney fees, include reasonable fees of a paralegal, as defined in 25-10-305. <strong>History:</strong> En. Sec. 1, Ch. 443, L. 2009.</td>
<td></td>
<td>In September of 1994, the Montana State Bar Board of Trustees voted to petition Montana Supreme Court to adopt rules regulating paralegals which included education and testing requirements. Supreme Court No. 94-577 was denied</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Montana Code <strong>25-10-305. Paralegal defined -- use of title.</strong> (1) As used in 25-10-304 and this section, &quot;paralegal&quot; means a person qualified through education, training, or work experience who is employed or retained to perform, under supervision by a licensed attorney, substantive legal work that:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(a) requires a substantial knowledge of legal concepts; and
   (b) in the absence of the paralegal, would be performed by an attorney.
(2) An individual may use the title "paralegal" if the individual:
   (a) has received an associate's degree in paralegal studies from an accredited institution or a baccalaureate degree in paralegal studies from an accredited college or university;
   (b) has received a baccalaureate degree in any discipline from an accredited college or university and has completed not less than 18 semester credits of course work offered by a qualified paralegal studies program;
   (c) has received certification by the national association of legal assistants or the national federation of paralegal associations;
   (d) has received a high school diploma or its equivalent, has performed not less than 4,800 hours of substantive legal work under the supervision of a licensed attorney documented by the certification of the attorney or attorneys under whom the work was done, and has completed at least 5 hours of approved continuing legal education in the area of legal ethics and professional responsibility; or
   (e) has graduated from an accredited law school and has not been disbarred or suspended from the
### PARALEGAL REGULATION BY STATE

**UPDATED MAY 2012**

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>Nebraska</td>
<td>§ 3-505.3. of the Nebraska Rules of Professional Conduct does not define the term paralegal, but considers “paraprofessional” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>None</td>
<td>In 2001 a Task Force was established by the State Bar of Nevada’s Legal Assistant’s Division to prepare a proposal on a certification program for the state’s legal assistants. No update to proposal or its status available at publication.</td>
</tr>
<tr>
<td>I</td>
<td>Nevada</td>
<td>Nevada Rule of Professional Conduct 5.3 (formerly Supreme Court Rule 186) does not define paralegals, but states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct. (identical to ABA Model Rule 5.2)</td>
<td>None</td>
<td>3/10/93 Assembly Bill 341 defining paralegal as “a person who is not an active member of the State Bar of Nevada and who provides, or holds himself out as providing any form of legal assistance to another person for compensation.” It also provides for a</td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>V</td>
<td>New Hampshire</td>
<td>Rule 35 of the New Hampshire Supreme Court Administrative Rules (Guidelines for the Utilization by Lawyers of the Services of Legal Assistants under the New Hampshire Rules of Professional Conduct) incorporates a comment referring to nonlawyer assistants as those “lay persons often designated as paralegals, legal assistants, law specialists, law clerks, law students, etc.”</td>
<td>None</td>
<td>2003 - New Hampshire Bill SB83</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Paralegal Council composed of 5 licensed paralegals, 1 attorney and a representative of the public who would be responsible for administering an examination for the licensing of paralegals.</td>
</tr>
<tr>
<td>IV</td>
<td>New Jersey</td>
<td>New Jersey Rules of Professional Conduct 5.3 incorporates the standard ABA model code for Responsibilities Regarding Nonlawyer Assistants.</td>
<td>None</td>
<td>November 2010: South Jersey Paralegal Association launched a voluntary paralegal certification program bestowing the New Jersey Certified Paralegal (NJCP) credential on those who meet the standard of formal education and/or paralegal experience as</td>
</tr>
</tbody>
</table>

http://www.courts.state.nh.us/rules/scr/scr-35.htm

http://www.courts.state.nh.us/rules/pcon/pcon-5_3.htm

http://www.judiciary.state.nj.us/rules/apprpc.htm#x5dot3
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
</table>

outlined in their plan, and who are also members of their association. Continued compliance requires completion of CLE credits, and a biennial renewal. A copy of the plan’s guidelines may be found here: [http://www.sjpaparalegals.org/documents/NJCP_Plan.pdf](http://www.sjpaparalegals.org/documents/NJCP_Plan.pdf)

Complete application documents and a list of NJCP paralegals may be found here: [http://www.sjpaparalegals.org/njcertifiedparalegal.php](http://www.sjpaparalegals.org/njcertifiedparalegal.php)

In June 2003, the State Bar’s Board of Trustees met to discuss a registration proposal from the Bar’s Paralegal Committee and ultimately asked the Supreme Court to review and issue a recommendation on the Bar’s ability to oversee paralegals.

1999: The New Jersey Supreme Court denied a proposal from its special committee calling for the mandatory licensing of paralegals; however, it encouraged local associations to consider the development of a credentialing system.

[http://www.judiciary.state.nj.us/pressrel/archives/admpara.htm](http://www.judiciary.state.nj.us/pressrel/archives/admpara.htm)
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>II</td>
<td>New Mexico</td>
<td>Rule of Professional Conduct 16-503 – Responsibilities Regarding Nonlawyer Assistants – incorporates the standard ABA model code for Responsibilities Regarding Nonlawyer Assistants.</td>
<td>Statutory definition and Utilization guidelines</td>
<td>In 2004, the state Supreme Court amended its rules to establish minimum standards for calling oneself a “paralegal” and to discourage disbarred or suspended attorneys along with those not qualified from using the title. (Click on 2011 NMSA 1978, then click on “NMRA (Unannotated),” and choose “20. Legal Regulation by State,” and then choose “16. Rules of Professional Conduct,” and then choose “5. Law Firms and Associations.”)</td>
</tr>
</tbody>
</table>

In the early 1990’s a state Supreme Court committee called for paralegal licensure but the state bar objected stating that the process was unnecessarily burdensome. In 1998, the New Jersey Supreme Court Committee on Paralegal Education and Regulation issued a report with its recommendations as to goals, standards and ethics for paralegals. The Committee’s recommendations were defeated by the Supreme Court in 1999. The Court held that lawyers, not the court, are responsible for supervising paralegals and that any credentialing or standards should be worked out from within the profession.
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Rule 20 of Professional Conduct – Rules Governing Paralegal Services outlines all standards with regard to use of paralegals, and includes the following definition: A. a &quot;paralegal&quot; is a person who: (1) contracts with or is employed by an attorney, law firm, corporation, governmental agency or other entity; (2) performs substantive legal work under the supervision of a licensed attorney who assumes professional responsibility for the final work product; and (3) meets one or more of the education, training or work experience qualifications set forth in Rule 20-115 NMRA of these rules; and B. &quot;substantive legal work&quot; is work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. Examples of substantive legal work performed by a paralegal include: case planning, development and management; legal research and analysis; interviewing clients; fact gathering and retrieving information; drafting legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and</td>
<td>Rules Governing Paralegal Services”) 1993 SB 804 proposing to authorize prescribed &quot;legal assistant services&quot; to be delivered directly to the public by nonlawyers. (referred to committee?)</td>
<td></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>--------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| V      | New York | representing clients before a state or federal administrative agency if that representation is authorized by law. Substantive legal work performed by a paralegal for a licensed attorney shall not constitute the unauthorized practice of law. | Statutory licensure bill pending in NY Assembly                                                      | 2012: Assemblywoman Rivera prefies Bill A0853 in 2011 for consideration in 2012 legislative session. Initial drafting was light on details, but took a unique approach by putting under Education arm of government. Many paralegal associations sought input. Rivera’s office reviewed Empire State Alliance of Paralegal Association’s position papers on educational standards and paralegal regulation and is still keen on pursuing paralegal regulation, but may be in a future session. A senate sponsor had not been sought at this writing.  

2010: Empire State Alliance of Paralegal Associations prepares a position paper and proposal for regulation of New York paralegals under NYS Certified Paralegal program: [http://empirestateparalegals.org/yahoo_site_admin/assets/docs/Paralegal_Regulation_in_NYS_-_092510.61114653.pdf](http://empirestateparalegals.org/yahoo_site_admin/assets/docs/Paralegal_Regulation_in_NYS_-_092510.61114653.pdf) |

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2006: Empire State Alliance of Paralegal Associations prepared a position paper on paralegal education standards in New York state.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>In 1997, the New York State Bar Association had adopted Guidelines for the Utilization of Paralegals/Legal Assistants which included the following definition: A legal assistant/paralegal is a person who is qualified through education, training or work experience to be employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function that involves the performance, under the ultimate direction and supervision of, and/or accountability to, an attorney, of substantive legal work, that requires a sufficient knowledge of legal concepts such that, absent such legal assistant/paralegal, the attorney would perform the task.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>The guidelines can no longer be found on the NY State Bar Association’s website.</td>
</tr>
</tbody>
</table>
### PARALEGAL REGULATION BY STATE

**UPDATED MAY 2012**

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>III</td>
<td>North Carolina</td>
<td>Under Subchapter G .0100.0101 – Purpose, the following definition of paralegal is found: “…by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer, and including any individual who may be otherwise authorized by applicable state or federal law to provide legal services directly to the public; and to improve the competency of those individuals by establishing mandatory continuing legal education and other requirements of certification.”</td>
<td>Voluntary Certification Through State Bar</td>
<td>Plan for Certification was adopted by the North Carolina Bar Association on July 16, 2004 and became effective on October 1, 2004.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><a href="http://www.nccertifiedparalegal.org/">http://www.nccertifiedparalegal.org/</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td>North Carolina Rules of Professional Conduct 5.3 - <strong>Responsibilities Regarding Nonlawyer Assistants</strong> incorporates the standard ABA model code for Responsibilities Regarding Nonlawyer Assistants, and comments refers to assistants as paraprofessionals among other titles.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Established Guidelines for the use of paralegals July 23, 2010:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>II</td>
<td>North Dakota</td>
<td>North Dakota Rules of Professional Conduct 5.3 - <strong>Responsibilities Regarding Nonlawyer Assistants</strong> incorporates the standard ABA model code for Responsibilities Regarding Nonlawyer Assistants, but specifically defines Legal assistant as someone who works under the direct supervision of a licensed lawyer and whose work product is the complete responsibility of the attorney. The comments also include guidelines for evaluating education, training and experience of a qualified legal assistant. <a href="http://www.ndcourts.gov/court/rules/Conduct/rule5.3.htm">http://www.ndcourts.gov/court/rules/Conduct/rule5.3.htm</a></td>
<td>None</td>
<td>[4] The following guidelines have been recognized as helpful in evaluating the education, training or experience of a qualified legal assistant. 1) Graduation from one of the following ABA approved legal assistant/paralegal programs: bachelor's degree, associate's degree, or a post-baccalaureate program. If not ABA approved, graduation from a legal assistant/paralegal program that consists of a minimum of 60 semester credit hours or the equivalent, of which eighteen semester credit hours are substantive legal assistant/paralegal courses. 2) A bachelor's degree in any field, and either one-year employer training as a legal assistant/paralegal or eighteen semester credit hours of legal assistant/paralegal substantive courses. 3) Successful completion of a national certifying examination that is specifically designed for legal assistants/paralegals and which includes continuing legal education for maintenance of that certification status.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>III</td>
<td>Ohio</td>
<td>Ohio State Bar Association – Standards for Paralegal Certification defines a paralegal as: A paralegal eligible for certification is a person, qualified by education, training or work experience who is employed or retained by a lawyer,law office, corporation, governmental agency or other entity and who performs substantive legal work for which a lawyer is responsible. <a href="http://downloads.ohiobar.org/pub/PCS_08.pdf">http://downloads.ohiobar.org/pub/PCS_08.pdf</a></td>
<td>Voluntary through State Bar OSBA Certified Paralegal.</td>
<td>4) Seven years or more of experience working as a legal assistant/paralegal who has been employer trained by and under the supervision of a lawyer. The Ohio State Bar Association (OSBA) has established a credentialing program for paralegals. Paralegals interested in earning a certification good for four years must meet educational standards stipulated by the bar association, have sufficient experience and pass an examination. The first exam was offered in March 2007. <a href="https://www.ohiobar.org/ForLawyers/Certification/Paralegal/Pages/StaticPage-785.aspx">https://www.ohiobar.org/ForLawyers/Certification/Paralegal/Pages/StaticPage-785.aspx</a></td>
</tr>
<tr>
<td>II</td>
<td>Oklahoma</td>
<td>Oklahoma Rules Of Professional Conduct Rule 5.3 Responsibilities Regarding Nonlawyer Assistants incorporates the standard ABA model code for Responsibilities Regarding Nonlawyer Assistants, and comments refer to assistants as paraprofessionals among other titles. <a href="http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf">http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf</a></td>
<td>Paralegal Standards</td>
<td>The Oklahoma Bar Association Legal Assistant Services Committee drafted a legal assistant definition and minimum education and skill standards for legal assistants. The OBA's Board of Governor's</td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
</tbody>
</table>
|        |       | paraprofessionals among other titles.  
Oklahoma Bar Association Board of Governors established a definition for paralegals and minimum qualification standards, and specifically state “legal assistant” and “paralegal” are synonymous.  
http://www.okbar.org/members/committees/paralegal/standards.htm  
Definition:  
**Legal Assistant/Paralegal** — a person qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated legal work for which a lawyer is responsible, and absent such assistant, the lawyer would perform the task. | None | In 1991 the Oregon State Bar Task Force on Legal Technicians was formed to recommend the draft plan for the regulatory program for the licensing of paralegals or legal technicians. In 1997 House Bill 3082 was introduced addressing the licensure of paralegals. It was found that the bill was not complete with regard to educational requirements. The bill was amended and approved both. |
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Title 204, Chapter 81, Section 4: Rule 5.3. Responsibilities Regarding Nonlawyer Assistants of the Rules of Professional Conduct incorporates the standard ABA model code for Responsibilities Regarding Nonlawyer Assistants.</td>
<td>Voluntary Certification through Keystone Alliance of Paralegal Associations</td>
<td>In April 2008, the Keystone Alliance started offering a voluntary certification program to those individuals who choose to become a Pennsylvania Certified Paralegal and use the designation of Pa.C.P. to provide paralegal employees and employers a benchmark of qualified individuals that are competent to provide legal services under the supervision of an attorney. <a href="http://www.keystoneparalegals.org/certification.html">http://www.keystoneparalegals.org/certification.html</a></td>
</tr>
<tr>
<td>IV</td>
<td>Pennsylvania</td>
<td>Rule 5.3. Responsibilities Regarding Nonlawyer Assistants - incorporates the standard ABA model code for Responsibilities Regarding Nonlawyer Assistants.</td>
<td>None</td>
<td>resubmitted where it died in committee. SB 379 nonlawyer w/at least four years of experience in Immigration matters to act as an immigration consultant (1993) The bill died in committee. SB 941 providing for the establishment of a State Board of Legal Technician Examiners. The bill died in committee. SB 1068 in the 1991 Regular Session related to legal technicians.</td>
</tr>
</tbody>
</table>

<p>| V      | Rhode Island  | Rule 5.3. Responsibilities Regarding Nonlawyer Assistants - incorporates the standard ABA model code for Responsibilities Regarding Nonlawyer Assistants. | None                                                      |                                                                                                                                         |</p>
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Supreme Court Provisional Order No. 18 was made effective on 2/1/1983, revised 10/31/1990, and revised again on 4/15/2007. It is applicable to the use of Legal Assistants by members of the Rhode Island Bar Association, and defines a legal assistant as: “one who under the supervision of a lawyer, shall apply knowledge of law and legal procedures in rendering direct assistance to lawyers, clients and courts; design, develop and modify procedures, technique, services and processes; prepare and interpret legal documents; detail procedures for practicing in certain fields of law; research, select, assess, compile and use information from the law library and other references; and analyze and handle procedural problems that involve independent decisions. More specifically, a legal assistant is one who engages in the functions set forth in Guideline 2. Nothing contained in these guidelines shall be construed as a determination of the competence of any person performing the functions of a legal assistant, or as conferring status upon any such person serving as a legal assistant.”</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>In addition, enumerated guidelines for the use of legal assistants for attorneys follows at the end of page 194, and continues through to end of page 197.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>---------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| III    | South Carolina | Rule 5.3 of the Supreme Court of South Carolina Rules of Conduct does not define paralegals, but considers “paraprofessionals” as nonlawyer assistants. The rule states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct. [http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=407.0&subRuleID=RULE%205%2E3&ruleType=APP](http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=407.0&subRuleID=RULE%205%2E3&ruleType=APP) | None               | In 2009, the South Carolina Bar was trying to put forth a proposal for a voluntary paralegal registration process aimed at raising the status of Paralegals, years after a similar proposal was rejected. [Click here to view the Task Force's Proposal](http://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article5.pdf) (page numbered 83). After much consideration, the decision was made to table the proposal for this year, to be examined again at a later date.  
In 2008, the Paralegal Task Force, formed by the South Carolina Bar to study the possibility of paralegal certification in South Carolina and the parameters thereof, as well as to consider the development of a law office personnel registry to aid law firms in their hiring decisions.  
In 2003 the South Carolina Alliance of Legal Assistant Associations submitted a proposal for regulation of paralegals to the South |
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>South Dakota</td>
<td>South Dakota Supreme Court Rule 97-25 (South Dakota Codified Law CHAPTER 16-18 - POWERS AND DUTIES OF ATTORNEYS, Section 34) Definition of legal assistant. Legal assistants (also known as paralegals) are a distinguishable group of persons who assist licensed attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system, substantive and procedural law, the ethical considerations of the legal profession, and the Rules of Professional Conduct as stated in chapter 16-18, which qualify them to do work of a legal nature under the employment and direct supervision of a licensed attorney. This rule shall apply to all unlicensed persons employed by a licensed attorney who are represented to the public or clients as possessing training or education which qualifies them to assist in the handling of legal matters or document preparation for the client.</td>
<td>Paralegal Standards</td>
<td>Carolina Bar Association’s Board of Governors which included a definition, educational standards, code of ethics and guidelines for paralegal utilization. The Bar Association’s House of Delegates tabled the proposal. In response to this move, the Bar set up a Task Force to look at the issue of regulation. In December 2006, the State Bar submitted proposed changes to SDCL 16-18-34 to the Supreme Court to revise the definition of paralegal and set minimum qualifications for paralegals. The Supreme Court held hearings in 2007 on the proposal, however, the proposal was rejected. In June 2004 the Legal Assistant’s Committee of the South Dakota State Bar submitted a proposal to the Bar for the consideration of the establishment of educational requirements for the state’s paralegals.</td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>III</td>
<td>Tennessee</td>
<td>Rule 5.3 - Responsibilities Regarding Nonlawyer Assistants – of the Tennessee Rules of Professional Conduct does not define paralegals, but considers “paraprofessionals” as nonlawyer assistants. The rule states that lawyers must direct supervise their assistants and are responsible for their assistants’ work product. <a href="http://www.tba.org/sites/default/files/2011_TRPC_0.pdf">http://www.tba.org/sites/default/files/2011_TRPC_0.pdf</a></td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>Texas</td>
<td>In 2005, the State Bar of Texas Board of Directors, and the Paralegal Division of the State Bar of Texas, adopted a new definition for “Paralegal:&quot; A paralegal is a person, qualified through various voluntary certification through the State Bar of Texas</td>
<td>Voluntary Certification through the State Bar of Texas</td>
<td>In 1994 The State Bar of Texas adopted voluntary specialty certification program for paralegals in Texas, structured after the voluntary specialty certification program for attorneys in Texas, which is governed by the</td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>-------------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>combinations of education, training, or work experience, who is employed or engaged by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such a person, an attorney would be required to perform the task.</td>
<td></td>
<td>Texas Board of Legal Specialization. After passing exam, one becomes a Board Certified Legal Assistant – [Area of Law], Texas Board of Legal Specialization <a href="http://www.tbls.org/Cert/ParaGetStarted.aspx">http://www.tbls.org/Cert/ParaGetStarted.aspx</a>.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>On April 21, 2006, the State Bar of Texas Board of Directors approved amending this definition by including the following standards, which are intended to assist the public in obtaining quality legal services, assist attorneys in their utilization of paralegals, and assist judges in determining whether paralegal work is a reimbursable cost when granting attorney fees:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>A. Support for Education, Training, and Work Experience:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1. Attorneys are encouraged to promote:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>a. paralegal attendance at continuing legal education programs;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. paralegal board certification through the Texas Board of Legal Specialization (TBLS); c. certification through a national paralegal organization such as the National Association of Legal Assistants (NALA) or the National Federation of Paralegal Associations (NFPA); and d. membership in the Paralegal Division of the State Bar and/or local paralegal organizations.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. In hiring paralegals and determining whether they possess the requisite education, attorneys are encouraged to consider the following: a. A specialty certification conferred by TBLS; or b. A CLA/CP certification conferred by NALA.; or c. A PACE certification conferred by NFPA; or d. A bachelor’s or higher degree in any field together with a minimum of one (1) year of employment experience performing substantive legal work under the direct supervision of a duly licensed attorney AND completion of 15 hours of Continuing Legal Education within that year; or e. A certificate of completion from an ABA-approved program of education and training for paralegals; or f. A certificate of completion from a paralegal program administered by any college or university accredited or approved by the Texas Higher Education Coordinating Board or its equivalent in</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### PARALEGAL REGULATION BY STATE

**UPDATED MAY 2012**

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINEATION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>another state.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Although it is desirable that an employer hire a paralegal who has received legal instruction from a formal education program, the State Bar recognizes that some paralegals are nevertheless qualified if they received their training through previous work experience. In the event an applicant does not meet the educational criteria, it is suggested that only those applicants who have obtained a minimum of four (4) years previous work experience in performing substantive legal work, as that term is defined below, be considered a paralegal.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>B. Delegation of Substantive Legal Work:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>&quot;Substantive legal work&quot; includes, but is not limited to, the following: conducting client interviews and maintaining general contact with the client; locating and interviewing witnesses; conducting investigations and statistical and documentary research; drafting documents, correspondence, and pleadings; summarizing depositions, interrogatories, and testimony; and attending executions of wills, real estate closings, depositions, court or administrative hearings, and trials with an attorney.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>&quot;Substantive legal work&quot; does not include clerical or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>administrative work. Accordingly, a court may refuse to provide recovery of paralegal time for such non-substantive work. Gill Sav. Ass'n v. Int'l Supply Co., Inc., 759 S.W.2d 697, 705 (Tex. App. Dallas 1988, writ denied). C. Consideration of Ethical Obligations (See Note* below): 1. Attorney. The employing attorney has the responsibility for ensuring that the conduct of the paralegal performing the services is compatible with the professional obligations of the attorney. It also remains the obligation of the employing or supervising attorney to fully inform a client as to whether a paralegal will work on the legal matter, what the paralegal's fee will be, and whether the client will be billed for any non-substantive work performed by the paralegal. 2. Paralegal. A paralegal is prohibited from engaging in the practice of law, providing legal advice, signing pleadings, negotiating settlement agreements, soliciting legal business on behalf of an attorney, setting a legal fee, accepting a case, or advertising or contracting with members of the general public for the performance of legal functions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>-------------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>*Note: a more expansive list is included in the &quot;General Guidelines for the Utilization of the Services of Legal Assistants by Attorneys&quot; approved by the Board of Directors of the State Bar of Texas, May, 1993. These standards may be found at <a href="http://www.txpd.org">www.txpd.org</a> and on the Texas Bar’s website: <a href="http://www.texasbar.com/Content/NavigationMenu/ForLawyers/Committees/Paralegal_Committee.htm">http://www.texasbar.com/Content/NavigationMenu/ForLawyers/Committees/Paralegal_Committee.htm</a></td>
<td>None</td>
<td>In April of 1998 the Licensing of Legal Assistants Committee of the Legal Assistants Division of the Utah State Bar issued a report recommending mandatory licensing of paralegals to include education, attorney supervision and the NALA exam as</td>
</tr>
<tr>
<td>II</td>
<td>Utah</td>
<td>Chapter 13 of the Judicial Council Rules of Judicial Administration (Supreme Court Rules of Professional Practice) Rule 5.3 - Responsibilities Regarding Nonlawyer Assistants – of the Texas Rules of Professional Conduct does not define paralegals, but considers “paraprofessionals” as nonlawyer assistants. The rule states that lawyers must direct supervise their assistants and are responsible for their assistants’ work product. <a href="http://www.texasbar.com/AM/Template.cfm?Section=Grievance_Info_and_Ethics_Helpline&amp;Template=/CM/ContentDisplay.cfm&amp;ContentFileID=96">http://www.texasbar.com/AM/Template.cfm?Section=Grievance_Info_and_Ethics_Helpline&amp;Template=/CM/ContentDisplay.cfm&amp;ContentFileID=96</a></td>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>

© 2012 National Federation of Paralegal Associations, Inc., All Rights Reserved
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Conduct does not define paralegals, but considers “paraprofessionals” as nonlawyer assistants. The rule states that lawyers must direct supervise their assistants and are responsible for their assistants’ work product.</td>
<td></td>
<td>the most reliable standard for competency. Licensure of the paralegal profession was never passed into law, however.</td>
</tr>
</tbody>
</table>

http://www.utcourts.gov/resources/rules/ucja/ch13/5_3.htm

http://www.utcourts.gov/resources/rules/ucja/

However, Chapter 14, Section 114 of the Rules Regulating the Utah State Bar, created the Paralegal Division and defines a paralegal as: “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.”
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>V</td>
<td>Vermont</td>
<td>Vermont Rule of Professional Conduct 5.3 doesn’t define paralegals, but states that lawyers must directly supervise their assistants and are responsible for their assistants’ conduct.</td>
<td>None</td>
<td>In January of 1994 a house bill (H-727 [<a href="http://www.leg.state.vt.us/docs/1994/BILLS/INTRO/H-727.HTM">http://www.leg.state.vt.us/docs/1994/BILLS/INTRO/H-727.HTM</a>]) was introduced establishing licensed legal technicians and a governing board which included an exam and educational requirements. Died following referral to Judiciary committee. In January 1994 a senate bill was introduced establishing licensed legal technicians but with a different governing body. [<a href="http://www.leg.state.vt.us/docs/1994/BILLS/INTRO/S-333.HTM">http://www.leg.state.vt.us/docs/1994/BILLS/INTRO/S-333.HTM</a>]</td>
</tr>
<tr>
<td>IV</td>
<td>Virginia</td>
<td>Virginia Supreme Court Rule 5.3 doesn’t define paralegals but states that lawyers must directly supervise their assistants are responsible for their assistants’ conduct.</td>
<td>Paralegal Standards through Virginia State Bar</td>
<td>In 1994 the Virginia Alliance of Legal Assistant Associations developed and proposed to the Virginia State Bar educational standards and professional responsibility guidelines for legal assistants. These were adopted by the Virginia State Bar in March of 1995. [<a href="http://www.vaparalegalalliance.org/educational-standards/">http://www.vaparalegalalliance.org/educational-standards/</a>]</td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>I</td>
<td>Washington</td>
<td>Washington Rule of Professional Conduct Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants) doesn’t define paralegals but states that lawyers must directly supervise their assistants are responsible for their assistants’ conduct. <a href="http://www.courts.wa.gov/court_rules/?fa=court_rules_display&amp;group=qa&amp;set=RPC&amp;ruleid=garpc5.3">Link</a></td>
<td>Legal Technician /Limited License Practitioner Rule pending review</td>
<td>2012: Washington State Bar Association proffers a revised version of the Legal Technician Rule (APR 28) submitted by the POLB to the Washington Supreme Court and entitles Limited License Practitioner Rule. Washington Supreme Court due to review in June 2012. <a href="http://www.wsba.org/Events-Calendar/2012/February/~/media/Files/News_Events/News/LLP.ashx">Link</a> 2011: Washington Supreme Court indicates to the legal community that in June 2012 they will again review the Legal Technician Rule proposed by the Practice of Law Board (POLB) in 2008. <a href="http://www.wsba.org/Events-Calendar/2012/February/~/media/Files/News_Events/News/LegalTechnicianRule.ashx">Link</a> In 2008, the Practice of Law Board (POLB) proposed a Legal Technician Rule. Legal technicians are envisioned to be educated, tested and certified nonlawyers authorized to provide limited legal services in specific areas. The Supreme Court is looking at it</td>
</tr>
</tbody>
</table>
### PARALEGAL REGULATION BY STATE

**UPDATED MAY 2012**

<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
</table>

| | | | | and the rule is still pending. |
| | | | | 1997 HB 1451 A bill to license legal assistants was introduced in the legislature but died in subcommittee. |
| | | | | In December 2005, the Washington State Practice of Law Board (POLB) drafted a regulation proposal, which the bar’s Board of Governors considered in early 2006. The Bar’s Board did not endorse the proposal, and it was submitted to the state Supreme Court for consideration. The proposal includes a definition, certification and educational requirements. |
| | | | | Practice of Law Board's Recommendation to Supreme Court: | [http://www.wsba.org/Events-Calendar/2012/February/~/media/Files/News_Events/News/LegalTechnicianRule.ashx](http://www.wsba.org/Events-Calendar/2012/February/~/media/Files/News_Events/News/LegalTechnicianRule.ashx) |
| | | | | Washington State Civil Legal Needs Study: |

© 2012 National Federation of Paralegal Associations, Inc., All Rights Reserved
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>IV</td>
<td>West Virginia</td>
<td>West Virginia Rules of Professional Conduct Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants) doesn’t define paralegals but states that lawyers must directly supervise their assistants are responsible for their assistants’ conduct.</td>
<td>None</td>
<td>January 13, 2010: House Representative Mark Hunt introduced HB 3302 entitled: Certified Legal Assistant Act establishing minimum qualifications for certified legal assistants, and responsibilities of lawyers and certified legal assistants. Referred to Judiciary Committee. View text of introduced bill: <a href="http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?bilstdoc=hb3302%20intr.htm&amp;yr=2010&amp;sesstype=RS&amp;i=3302">http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?bilstdoc=hb3302%20intr.htm&amp;yr=2010&amp;sesstype=RS&amp;i=3302</a>  Bill died in committee.</td>
</tr>
<tr>
<td>II</td>
<td>Wisconsin</td>
<td><strong>SCR 20:5.3 Responsibilities regarding nonlawyer assistants.</strong> doesn’t define paralegals but states that lawyers must directly supervise their assistants are responsible for their assistants’ conduct.</td>
<td>None</td>
<td>April 7, 2008: Wisconsin Supreme Court denied the State Bar paralegal petition which would have established licensure and regulation for paralegals. The court will encourage the Bar to work with other interested groups to consider creating a voluntary certification program using programs currently used in other states as</td>
</tr>
<tr>
<td>REGION</td>
<td>STATE</td>
<td>DEFINITION</td>
<td>TYPE OF REGULATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Supreme Court of Wisconsin took up a petition for a court rule (Rule 23) defining the practice of law at a public hearing on December 10, 2007. Wisconsin Legislative Statute 757.30 adopted a criminal statute for practicing law without being duly licensed, but, did not clearly define what constituted the practice of law. Because of the lack of definition, district attorneys in Wisconsin tend not to investigate or pursue complaints against unlicensed person practicing law. The Supreme Court will discuss this matter and any amendments thereto on March 14, 2008 in an open administration conference.</td>
<td>models. Even though the court denied the petition, the justices emphasized that they recognize the valuable service provided by paralegals. 2007: Wisconsin Supreme Court slated to consider the mandatory licensing of paralegals at a hearing on April 7, 2008. The State Bar of Wisconsin is bringing this issue to the Supreme Court based on their Paralegal Practice Task Force Final Report, which was completed in January 2004. 2004: Report finalized in January; submitted to State Bar in February; Board of Governors of State Bar petitioned the Supreme Court of Wisconsin to establish a system for the licensure and regulation of paralegals in Wisconsin; Wisconsin Supreme Court held a public hearing on October 27, 2004 regarding the Board of Governor's Petition 04-03; Supreme Court met in open administrative conference on December 16, 2004 to discuss Petition 04-03. The petition for licensure remains on the Court's list of Pending Rules and Petitions.</td>
<td>See:</td>
</tr>
</tbody>
</table>

© 2012 National Federation of Paralegal Associations, Inc., All Rights Reserved 53
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
</table>
| II     | Wyoming | Wyoming Rule of Professional Conduct 5.3 doesn't define paralegals but considers “paraprofessionals” as nonlawyer assistants. The rule states lawyers must directly supervise their assistants and are responsible for their assistants' conduct. | None | Paralegal Task Force Final Report, January 2004  
http://www.wisbar.org/AM/Template.cfm?Section=Search&CONTENTID=50550&TEMPLATE=/CM/ContentDisplay.cfm  
1994 The State Bar of Wisconsin created the Paralegal Practice Task Force to both address concerns expressed over unmet legal needs, and to pursue the State Bar of Wisconsin's Commission on the Delivery of Legal Services recommendations. The Task Force's intent is to "establish criteria for the licensure of paralegals in Wisconsin so as to establish recognized standards of training, education and qualifications that will assure attorneys, consumers and the court that the persons providing paralegal services in the State of Wisconsin have achieved a level of ability that can be measured and recognized." |

http://www.courts.state.wy.us/CourtRules_Entities.a
<table>
<thead>
<tr>
<th>REGION</th>
<th>STATE</th>
<th>DEFINITION</th>
<th>TYPE OF REGULATION</th>
<th>DESCRIPTION</th>
</tr>
</thead>
</table>

History:
Revised May 2012, March 2010 by Lisa Vessels, CP, FRP
Revised March 2008 by Wayne Akin
Revised March 2007, July 2006 by Tracey L. Young, RP
Revised April 2006 by Jane F. Sakiewicz, RP