

REPORT AND RECOMMENDATIONS OF THE  
TEXAS ACCESS TO LEGAL SERVICES  
WORKING GROUP

December 5, 2023

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## EXECUTIVE SUMMARY

The Access to Legal Services Working Group developed proposals based on research and discussions that occurred over close to a year, with assistance from many people, including National Center for State Courts (NCSC) staff, guest speakers from jurisdictions where similar proposals have been implemented, and subcommittees that included Working Group members and other knowledgeable individuals. The proposals in this report—which include proposed rule modifications attached as Appendix A—respond to the requests of the Supreme Court of Texas (Supreme Court), with the specific goal of facilitating the provision of needed civil legal services for low-income Texans. They include the following:

- Focus on low-income Texans. For the purposes of the proposals in this report, “low income” is defined as at or below 200% of the federal poverty guidelines as determined by the United States Department of Health and Human Services.
- Authorize Supreme Court-licensed (1) paraprofessionals to represent and assist low-income Texans with certain matters in certain areas of the law and (2) Community Justice Workers to provide limited-scope representation in justice court cases, under the supervision of an attorney working for a legal aid entity or other nonprofit entity.
- Create rules, qualifications, licensing, and disciplinary infrastructure within the Judicial Branch Certification Commission (JBCC) to ensure paraprofessionals have the necessary training, skill, and oversight to deliver quality services while protecting the public.
- Create a pilot program, regulated and overseen by the Judicial Branch Certification Commission and the Supreme Court, that permits non-attorney ownership under an exception to Texas Disciplinary Rule of Professional Conduct 5.04 for entities that demonstrate a business model that provides services to low-income Texans and includes infrastructure to protect clients and ensure attorney independence.

## INTRODUCTION

In Texas and throughout the country, there is a well-documented gap between the need for civil legal services among people with low income and the resources available to meet that need. The Legal Services Corporation (LSC), a federal nonprofit corporation that is the single largest funder of civil legal aid for low-income Americans in the nation, has studied this “justice gap” nationally, and has published studies documenting their findings.<sup>1</sup> Released in 2022, the

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<sup>1</sup> Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans*, at 7 (Apr. 2022), available at <https://www.lsc.gov/initiatives/justice-gap-research> (last accessed Dec. 5, 2023) (hereinafter *The Justice Gap*).

most recent LSC report provides that low-income Americans do not receive any or enough legal help for 92% of their civil legal problems.<sup>2</sup>

Lack of access to legal help for issues such as child custody, domestic violence, eviction, wills, probate, and consumer debt has dramatically impacted the way that Americans view the judicial system.<sup>3</sup> The perception that courts exist only to solve problems for people who can afford an attorney creates a civil justice crisis. Public confidence in the justice system and the legal profession are at risk. As Chief Justice Nathan Hecht of the Supreme Court said:

**“Justice for only those who can afford it is neither justice *for all* nor justice *at all*.”**

The United States Census Bureau estimates that more than 4.2 million Texans live in poverty.<sup>4</sup> LSC funds programs that provide free legal services to individuals who live in households with annual incomes at or below 125% of the federal poverty guidelines.<sup>5</sup> In 2021, this meant that nationally, individuals who earned \$16,100 or below, or families of four that earned \$33,125 or below, qualified for LSC-funded legal aid.<sup>6</sup> Under LSC guidelines, about 23% of Texas’ 11 million households qualified for this legal aid in 2022.<sup>7</sup>

The demand for civil legal help is great. The traditional model of delivering legal services to low-income Texans does significant work, serving more than 120,000 low-income Texans annually.<sup>8</sup> But despite this, Texas is still ranked 46<sup>th</sup> for overall access to justice in the 2022 Justice Index.<sup>9</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> GBAO, Memorandum to National Center for State Courts, 2022 State of the State Courts – National Survey Analysis (Nov. 21, 2022), *available at* [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0033/85965/NCSC-State-of-the-State-Courts-Analysis\\_2022.pdf](https://www.ncsc.org/__data/assets/pdf_file/0033/85965/NCSC-State-of-the-State-Courts-Analysis_2022.pdf) (last accessed Dec. 5, 2023).

<sup>4</sup> United States Census Bureau, Quick Facts Texas, *available at* <https://www.census.gov/quickfacts/fact/table/TX/IPE120222> (last accessed Dec. 5, 2023).

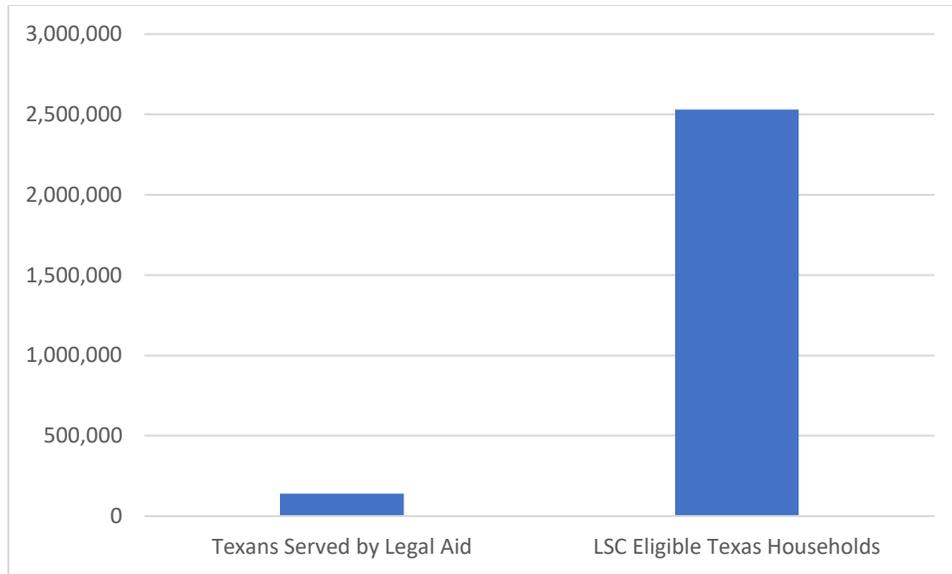
<sup>5</sup> Legal Services Corporation, What Is Legal Aid?, *available at* <https://www.lsc.gov/about-lsc/what-legal-aid> (last accessed Dec. 5, 2023).

<sup>6</sup> *Id.*

<sup>7</sup> LSC-funded programs assist families of four that earn at or below \$33,125. *Id.* The United States Census Bureau reported that 23.5% of Texas households earned \$34,999 or less in 2022. *See* U.S. Census Bureau, Texas profile, *available at* <https://data.census.gov/profile/Texas?g=040XX00US48> (last accessed Dec. 5, 2023) (hereinafter US Census Bureau Texas Profile).

<sup>8</sup> Texas Access to Justice Foundation, Access to Justice Facts, *available at* <https://www.teajf.org/news/statistics.aspx> (last accessed Dec. 5, 2023) (hereinafter Access to Justice Facts).

<sup>9</sup> National Center for Access to Justice, Justice Index State Scores and Rankings, *available at* <https://ncaj.org/state-rankings/justice-index> (last accessed Dec. 5, 2023).



**Figure 1. Number of Texans Served by Legal Services Compared to Texans Eligible**

Many Texas attorneys dedicate substantial time to providing pro bono legal services and contributing funds to organizations that assist low-income Texans with their civil legal needs, but these services and contributions alone are not enough to meet the need.

Millions of low-income individuals go without legal help for myriad basic civil legal issues, including housing, personal safety, economic security, and family matters. Increasing funding for legal aid is critical, but it is not sufficient to close the justice gap. Legal aid organizations are chronically underfunded, with budgets that have not nearly kept pace with inflation as the gap has grown, and they are constantly seeking new ways to meet these needs.

In 2020, the Council of Chief Justices urged states to consider implementing regulatory innovations to increase the provision of legal services.<sup>10</sup> The Council of Chiefs urged states to re-examine barriers that prevent low-income populations from obtaining help that otherwise could be available to them through innovation.<sup>11</sup>

So far, at least 16 states and jurisdictions, including Utah, Arizona, Alaska, and Colorado, have heeded this recommendation, implementing some form of legal regulatory reform to address the justice gap.<sup>12</sup> Alaska’s Community Justice Worker paraprofessional program, which

<sup>10</sup> See Conference of Chief Justices, Resolution 2: Urging Consideration of Regulatory Innovations Regarding the Delivery of Legal Services (2020), available at, [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0010/23500/02052020-urging-consideration-regulatory-innovations.pdf](https://www.ncsc.org/__data/assets/pdf_file/0010/23500/02052020-urging-consideration-regulatory-innovations.pdf) (last accessed Dec. 5, 2023) (hereinafter Conference of Chief Justices, Resolution 2).

<sup>11</sup> *Id.*

<sup>12</sup> Institute for the Advancement of the American Legal System, The Landscape of Allied Legal Professional Programs in the United States (Nov. 2022), available at

leverages existing community resources to provide assistance to low-income Alaskans, is a model for some of the recommendations in this report.<sup>13</sup> Other states have programs under consideration, including Connecticut, New York, and South Carolina.<sup>14</sup>

Recognizing that the need for assistance with civil legal needs is great, and that traditional legal aid is currently unable to meet the need, Justice Brett Busby of the Supreme Court—in his capacity as liaison to the Texas Access to Justice Commission (Commission)—sent a letter to the Commission on October 24, 2022. In the letter, the Supreme Court asked the Commission to examine existing court rules and propose modifications that would:

1. allow qualified paraprofessionals to provide limited legal services directly to low-income Texans; and
2. allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving attorney independence, including recommendations about whether this rule modification be studied through a pilot program or regulatory sandbox and whether modifications should focus on certain services for which there is a particular need.<sup>15</sup>

In early 2023, the Commission convened a Working Group to respond to the Supreme Court’s charge. The Working Group split into three Subcommittees, each focused on one area of the Supreme Court’s charge. The Subcommittees, which included Working Group members and others recruited on the basis of relevant expertise or experience, met 23 times over the course of eight months to discuss the Supreme Court’s charge.

- The **Scope of Practice Subcommittee** analyzed limited legal services that licensed paraprofessionals could provide directly to low-income Texans, including what limits should be placed on the type of work that could be done, in which areas of law such work could be done, what rule and statutory revisions would be needed to authorize and define procedures for limited paraprofessional practice of law, what eligibility criteria for clients should be used, and what potential compensation sources for the licensed paraprofessionals could be.

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[https://iaals.du.edu/sites/default/files/documents/publications/landscape\\_allied\\_legal\\_professionals.pdf](https://iaals.du.edu/sites/default/files/documents/publications/landscape_allied_legal_professionals.pdf) (last accessed Dec. 5, 2023) (hereinafter Landscape of Allied Legal Professional Programs).

<sup>13</sup> See Community Justice Worker Program, Alaska Legal Services Corporation, *available at* <https://www.alsc-law.org/community-justice-worker-program/> (last accessed Dec. 5, 2023) (hereinafter Community Justice Worker Program).

<sup>14</sup> Landscape of Allied Legal Professional Programs, *supra*, note 12.

<sup>15</sup> Supreme Court Letter, October 24, 2022, *available at*

[https://www.texasatj.org/sites/default/files/2022\\_10%20ATJC%20Referral%20Letter%20%281%29.pdf](https://www.texasatj.org/sites/default/files/2022_10%20ATJC%20Referral%20Letter%20%281%29.pdf) (last accessed Dec. 5, 2023) (hereinafter Supreme Court Letter).

- The **Paraprofessional Licensing Subcommittee** studied the content and structure of proposed rules that would be necessary to permit paraprofessional licensing and regulation, as well as licensing and regulation of entities through which limited legal services could be provided directly to low-income Texans.
- The **Non-Attorney Ownership Subcommittee** examined existing rules and evaluated how best to modify rules, as part of a pilot program, to permit non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving professional independence.

Considering national data about the justice gap, as well as Office of Court Administration (OCA) data about the number of self-represented litigants in Texas state court proceedings and data about searches on texaslawhelp.org, together with feedback from stakeholders, including legal aid organizations and the Texas Legal Services Center, the Subcommittees identified four focus practice areas for licensed paraprofessionals: family law, housing (i.e., evictions), estate and probate, and consumer debt.

## THE ACCESS TO JUSTICE CRISIS IN TEXAS

United States Census Bureau data indicates that 14% of Texans live in poverty.<sup>16</sup> To determine who is in poverty, the Bureau uses a set of income thresholds, which vary by family size.<sup>17</sup> If a family’s income is less than the threshold, the family is determined to be in poverty.<sup>18</sup> The official thresholds do not vary by geography, but they are updated for inflation, using the Consumer Price Index.



**Figure 2. United States Census Bureau - Poverty Data 2022**

<sup>16</sup> US Census Bureau Texas Profile, *supra*, note 7.

<sup>17</sup> U.S. Census Bureau, How the Census Bureau Measures Poverty, *available at* <https://www.census.gov/topics/income-poverty/poverty/about.html> (last accessed Dec. 5, 2023).

<sup>18</sup> *Id.*

The Bureau breaks down annual household income into the following categories:<sup>19</sup>

	Texas
	Households
Label	Estimate
▼ Total	11,087,708
Less than \$10,000	5.5%
\$10,000 to \$14,999	3.6%
\$15,000 to \$24,999	6.6%
\$25,000 to \$34,999	7.8%
\$35,000 to \$49,999	11.0%
\$50,000 to \$74,999	17.1%
\$75,000 to \$99,999	12.8%
\$100,000 to \$149,999	16.2%
\$150,000 to \$199,999	8.7%
\$200,000 or more	10.7%

**Figure 3. United States Census Bureau - 2022 Texas Household Income**

The data demonstrates that millions of households in Texas cannot afford to pay an attorney if they need assistance with a civil legal matter. [Stakeholder feedback](#), collected as part of this project, supports this point.

For many low-income Texans, legal aid (or other pro bono assistance) is the only option for legal representation because they cannot afford private counsel. Stakeholders, including attorneys, law school staff, paralegals, nonprofit leaders, and individuals from the State Bar of Texas, reported a high level of unmet need for legal services.<sup>20</sup> They reported that nonprofit legal aid organizations largely bear the burden of providing legal services to low-income Texans, and that the legal aid community is not currently able to meet this need. Legal aid organizations do significant work; Texas lawyers provide more than 2.72 million hours annually in free or indirect legal services to the poor.<sup>21</sup> However, nationally, people do not get any or enough legal help for 92% of the problems that have a substantial impact on them, and legal aid providers

<sup>19</sup> US Census Bureau Texas Profile, *supra*, note 7.

<sup>20</sup> For more information about stakeholder feedback, see the [Stakeholder Feedback](#) section of this report.

<sup>21</sup> See Access to Justice Facts, *supra*, note 8.

must turn away at least 49% of people who seek help.<sup>22</sup> In surveys, Texas stakeholders reported that there are not enough practitioners to meet demand, and those that are available are “spread too thin.” Private law firms partner with legal aid to do pro bono work, but it is limited and does not and cannot meet the overwhelming demand for legal services for low-income Texans. LSC’s recent Justice Gap survey indicates that common areas of unmet civil legal need include housing (eviction, landlord-tenant issues, and foreclosure), family law (child custody, child support, protection from intimate-partner violence, and parentage), consumer debt, public benefits, healthcare, employment-related issues, and education.<sup>23</sup>

Stakeholders identified lack of access to attorneys as a major barrier to accessing the courthouse. A substantial gap in resources means that individuals are forced to either represent themselves or forgo justice. This lack of access undermines public trust and confidence in the courts.

There is no one-sized-fits-all solution to the justice gap. When considering the changes to make, it is important to consider all barriers that prevent the low-income population from obtaining help that otherwise could be available to them through increasing opportunities for legal representation and innovation.

## SUPREME COURT CHARGE

The Supreme Court has exclusive jurisdiction to regulate the practice of law in Texas, including the authority to ensure “efficient administration of the judicial branch,” the power to “promulgate rules of administration . . . for the efficient and uniform administration of justice in the various courts,” and the power to regulate “rules governing the admission to the practice of law.”<sup>24</sup> The Texas Government Code grants the Supreme Court administrative powers, including “supervisory and administrative control over the judicial branch,”<sup>25</sup> and it also provides that “[o]nly the supreme court may issue licenses to practice law” in Texas.<sup>26</sup>

Under the leadership of Chief Justice Hecht, the Supreme Court has focused on a “commitment to the rule of law and access to justice for all.”<sup>27</sup> Recognizing that the need for assistance with civil legal needs is great, and that current budget and staffing constraints make it difficult to

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<sup>22</sup> The Justice Gap, *supra*, note 1, at 8, 75.

<sup>23</sup> *Id.* at 8.

<sup>24</sup> Tex. Const. art. V, § 31(a); Tex. Gov’t Code § 82.021.

<sup>25</sup> Tex. Gov’t Code § 74.021.

<sup>26</sup> *Id.* § 82.021.

<sup>27</sup> Texas Supreme Court, Advisory: At 25 Years and 26 Days, Chief Justice Hecht Marks History as Longest-Serving Justice (Jan. 24, 2014), available at [https://www.txcourts.gov/media/460065/Hecht\\_anniversary\\_012414.pdf](https://www.txcourts.gov/media/460065/Hecht_anniversary_012414.pdf) (last accessed Dec. 5, 2023).

meet the need, Justice Busby—the Court’s liaison for access to justice—sent a letter<sup>28</sup> to the Commission on October 24, 2022. In the letter, the Supreme Court asked the Commission to examine existing court rules and propose modifications that would:

1. allow qualified paraprofessionals to provide limited legal services directly to low-income Texans, including considerations about: qualifications, licensing, practice areas, and oversight of providers; eligibility criteria for clients; and whether compensation for providers should be limited to certain sources, such as government and non-profit funds; and
2. allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving attorney independence, whether such rule changes should have limitations such as a pilot period or regulatory sandbox structure, and whether the modifications should focus on certain services for which there is a particular need.

In early 2023, the Commission formed the Working Group to respond to the Supreme Court’s request. Co-chaired by Lisa Bowlin Hobbs, Hon. Michael Massengale, and Kennon L. Wooten, the Working Group brought together 27 members, who were selected to ensure a broad range of experiences and perspectives.

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<sup>28</sup> Supreme Court Letter, *supra*, note 15.

### Working Group Membership

Linda Acevedo, Austin	Craig Hopper, Austin
Jonathan Bates, Dallas	Monica Karuturi, Houston
Rose Benavidez, Rio Grande City	Prof. Renee Knake Jefferson, Houston
Hon. Nick Chu, Austin*	Richard LaVallo, Austin
Robert Doggett, Austin	Hon. Lora Livingston, Austin
Hon. Royal Furgeson, Dallas	Ellen Lockwood, San Antonio
Katie Fillmore, Austin	Hon. Michael Massengale, Houston
Prof. Susan Fortney, Fort Worth	Rick Melamed, Bellaire
Paul Furrh, Houston	Karen Miller, Austin
Hon. Eva Guzman, Houston	Prof. Mary Spector, Dallas
Hon. Deborah Hankinson, Dallas	Hon. Polly Spencer, San Antonio
Hon. Sid Harle, San Antonio	Maria Thomas Jones, Fort Worth
Lisa Hobbs, Austin	Terry Tottenham, Austin
Hon. Sylvia Holmes, Austin*	Kennon Wooten, Austin

\*In September 2023, Hon. Nick Chu resigned from the Working Group (due to a new judicial position and associated responsibilities) and was replaced by Hon. Sylvia Holmes.

**Figure 4. Working Group Membership**

Justice Busby and Commission Chair Harriet Miers also attended many of the working group's meetings. The Commission contracted with NCSC to provide support for the Working Group and the overall project at hand. NCSC provided substantive expertise on nationwide regulatory reform efforts, as well as administrative support to the Working Group and its Subcommittees.

## REGULATORY REFORM IN THE U.S. AND BEYOND

Texas is one of many states that have implemented or are considering regulatory reform as a mechanism to increase access to justice. At least sixteen states and non-U.S. jurisdictions have considered various aspects of regulatory reform—including the use of non-attorney paraprofessionals and non-attorney financial interests in law firms—to address the need for low-cost legal services and to support innovation in the legal profession.<sup>29</sup>

The Working Group carefully considered reforms in these jurisdictions as potential models, while keeping in mind the unique charge from the Supreme Court to focus the study on the needs of low-income Texans.

## LEGAL PARAPROFESSIONALS NATIONALLY

In the United States, nine states currently permit paraprofessional practice in some form, and others are considering reform.<sup>30</sup> Most paraprofessional programs were created within the past four years.<sup>31</sup> All require initial training and licensure or approval of some type. The extent of these requirements varies from specific education and examinations and licensure by a supreme-court adjacent body to approval by a supervising attorney.

Jurisdictions that permit paraprofessional practice generally fall into two categories: jurisdictions in which paraprofessionals must be supervised by an attorney and jurisdictions in which paraprofessionals can practice independently. States that permit paraprofessional practice without attorney supervision have developed a complaint process where individuals may report concerns about paraprofessional work. Initial data indicates that there have been few complaints about paraprofessional practice.

As discussed in the [Executive Summary](#) and [Recommendations](#) sections of this report, the Working Group recommends that Texas take a hybrid approach, permitting licensed paraprofessionals to perform some tasks independently and other tasks under attorney supervision—without reducing or otherwise impacting the current regulatory regime that allows paraprofessionals to assist attorneys in the provision of legal services to their clients.

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<sup>29</sup> Landscape of Allied Legal Professional Programs, *supra*, note 12.

<sup>30</sup> Alaska, Arizona, Colorado, Hawaii, Minnesota, New Hampshire, Oregon, Utah, and Washington.

<sup>31</sup> The Washington Supreme Court adopted Admission and Practice Rule (APR) 28 in 2013. This rule authorized Limited License Legal Technicians (LLLT) to assist with certain family law matters in Washington State. The Supreme Court sunset the program in 2020. *See generally* APR 28, Limited Practice Rule for Limited License Legal Technicians, *available at* [https://www.courts.wa.gov/court\\_rules/pdf/APR/GA\\_APR\\_28\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_28_00_00.pdf) (last accessed Dec. 5, 2023).

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## ATTORNEY-SUPERVISED PARAPROFESSIONALS

Alaska,<sup>32</sup> Delaware,<sup>33</sup> Hawai'i,<sup>34</sup> New Hampshire,<sup>35</sup> and Minnesota<sup>36</sup> all license paraprofessionals to perform specific tasks with attorney supervision. Key elements of these programs are summarized below.

State	Substantive Areas of Practice	Procedural Tasks Permitted	Other Scope Requirements
Alaska	SNAP applications and appeals, wills, ICWA enforcement, debt collection defense, and domestic violence protective orders.	Consulting with and advising clients; completing and filing necessary court documents; and assisting pro se clients at certain types of hearings and settlement conferences.	
Delaware	Residential landlord tenant cases.	Legal representation, including in-court representation.	Representation for tenants only.
Hawai'i	Family court cases involving issues related to paternity, child custody, and visitation.	Obtaining facts and documents; informing clients about procedures; reviewing documents; performing legal research; drafting and filing documents after review by supervising attorney; participating in mediation and/or settlement negotiations; court representation.	Only available to self-represented parties who qualify under income guidelines established by the Legal Aid Society of Hawai'i.

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<sup>32</sup> Alaska Bar Rule 43.5, available at <https://www.alsc-law.org/wp-content/uploads/2022/12/sco1994.pdf> (last accessed Dec. 5, 2023).

<sup>33</sup> Del. R. Sup. Ct. 57.1, available at <https://courts.delaware.gov/forms/download.aspx?id=167228> (last accessed Dec. 5, 2023).

<sup>34</sup> Order Establishing a Rural Paternity Advocate Pilot Project in the Third Circuit, *In re Rural Paternity Advocate Pilot Project in the Third Circuit* (Haw. May 15, 2023), available at <https://nationalcenterforstatecourts.box.com/s/f9ybxnx8psl5sq9snx5q5ru5gcmw0c4> (last accessed Dec. 5, 2023).

<sup>35</sup> N.H. R. Sup. Ct. 35, available at <https://www.courts.nh.gov/rules-supreme-court-state-new-hampshire/rule-35-appearances-court-eligible-paraprofessionals> (last accessed Dec. 5, 2023).

<sup>36</sup> Order Implementing Legal Paraprofessional Pilot Project, No. ADM19-8002 (Minn. Sept. 29, 2020), available at [https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme Court/RecentRulesOrders/Administrative-Order-Implementing-Legal-Paraprofessional-Pilot-Project.pdf](https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/RecentRulesOrders/Administrative-Order-Implementing-Legal-Paraprofessional-Pilot-Project.pdf) (last accessed Dec. 5, 2023) (Supervised Practice Rule 12).

State	Substantive Areas of Practice	Procedural Tasks Permitted	Other Scope Requirements
New Hampshire	Family and landlord-tenant matters.	Drafting pleadings, parenting plans, protection orders, and financial affidavits; providing “paraprofessional representation” in family and district courts in Manchester, Berlin, and Franklin.	Only available to people who have incomes at or less than 300 percent of the federal poverty level.
Minnesota	Landlord-tenant cases; family law cases where the issues are not significantly complex; and domestic violence order of protection cases.	Providing advice, representing clients in court; and representing clients in mediation.	

Figure 5. States that Permit Paraprofessional Practice with Attorney Supervision

Alaska’s program permits paraprofessional practice under a program called **Community Justice Workers**.<sup>37</sup> This program operates under the auspices of Alaska Legal Services and seeks to build capacity by training individuals with connections to community organizations that already serve low-income people with unmet civil legal needs, particularly in rural and remote communities.<sup>38</sup>

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<sup>37</sup> See Community Justice Worker Program, *supra*, note 13.

<sup>38</sup> *Id.*

## INDEPENDENT PARAPROFESSIONALS

Arizona,<sup>39</sup> Colorado,<sup>40</sup> Oregon,<sup>41</sup> and Utah<sup>42</sup> license paraprofessionals who are permitted to act independently and provide legal services without attorney supervision. Key components of these programs are highlighted here.

State	Substantive Legal Areas	Procedural Tasks Permitted
Arizona	Family law; limited jurisdiction civil cases; limited jurisdiction criminal cases where no jail time is involved; and state administrative law (where allowed by the administrative agency).	Drafting, signing, and filing legal documents; providing advice, opinions, or recommendations about possible legal rights, remedies, defenses, options or strategies; appearing before a court or tribunal; and negotiating on behalf of a client.
Colorado	Some family law matters and name changes.	Providing advice; preparing and reviewing documents and pleadings; advocating for clients in mediation; standing or sitting at counsel table with the client during a court proceeding to provide emotional support and help the client understand proceedings; answering questions posed by the court, addressing the court upon the court's request.
Oregon	Family law and landlord-tenant cases.	Providing advice and assistance (but not in-court representation).

<sup>39</sup> Ariz. Code Jud. Admin. § 7-210, *available at* [https://www.azcourts.gov/Portals/0/admcode/pdfcurrentcode/7-210 Legal Paraprofessional Amended 3\\_29\\_23.pdf?ver=JRgcvRNA51KnJVAv3x9dlg%3d%3d](https://www.azcourts.gov/Portals/0/admcode/pdfcurrentcode/7-210%20Legal%20Paraprofessional%20Amended%203_29_23.pdf?ver=JRgcvRNA51KnJVAv3x9dlg%3d%3d) (last accessed Dec. 5, 2023).

<sup>40</sup> Rules Governing Admission to the Practice of Law in Colorado, Rule 207.1 through Rule 207.14, *available at* [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/Supreme\\_Court/Rule\\_Changes/2023/Rule%20Change%202023\(06\).pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2023/Rule%20Change%202023(06).pdf) (last accessed Dec. 5, 2023).

<sup>41</sup> Supreme Court of Oregon, Rules for Admission for Licensing Paralegals, *available at* [https://www.osbar.org/\\_docs/rulesregs/RulesforLicensingParalegals.pdf](https://www.osbar.org/_docs/rulesregs/RulesforLicensingParalegals.pdf) (last accessed Dec. 5, 2023); Rules of Professional Conduct for Licensed Paralegals, *available at* [https://www.osbar.org/\\_docs/rulesregs/orpc-lp.pdf](https://www.osbar.org/_docs/rulesregs/orpc-lp.pdf) (last accessed Dec. 5, 2023); Oregon State Bar Minimum Continuing Legal Education Rules, *available at* [https://www.osbar.org/\\_docs/rulesregs/mclerules.pdf](https://www.osbar.org/_docs/rulesregs/mclerules.pdf) (last accessed Dec. 5, 2023); Oregon State Bar Rules of Procedure, *available at* [https://www.osbar.org/\\_docs/rulesregs/rulesofprocedure.pdf](https://www.osbar.org/_docs/rulesregs/rulesofprocedure.pdf) (last accessed Dec. 5, 2023).

<sup>42</sup> Utah Code Jud. Admin. R. 14-802, *available at* <https://legacy.utcourts.gov/rules/view.php?type=ucja&rule=14-802> (last accessed Dec. 5, 2023).

State	Substantive Legal Areas	Procedural Tasks Permitted
Utah	Family law, debt collection, and landlord-tenant cases.	Identifying legal issues; assisting with approved forms; reviewing documents given by opposing party; completing settlement agreements; communicating with opposing parties.
Washington <sup>43</sup>	Family law	Advising clients, completing and filing court documents, and assisting pro se clients at some hearings and settlement conferences.

Figure 6. States that Permit Paraprofessional Practice Without Supervision

**NON-ATTORNEY OWNERSHIP AND FEE SHARING**

Arizona, D.C., and Utah have modified their rules prohibiting non-attorney ownership of entities that provide legal advice. This has facilitated innovative new modes of delivering legal services, such as by enabling legal organizations to partner with companies that leverage technology to serve low-income clients more efficiently and at lower cost. These modifications include permitting non-attorney ownership interests in law firms and allowing profit sharing with non-attorneys by law firms. The United Kingdom and New South Wales, Australia have also experimented with non-attorney ownership and fee sharing with non-attorneys.

**ARIZONA**

Arizona enacted Arizona Supreme Court Rule 31.1 in 2020. This rule permits non-attorneys to have economic interests and decision-making authority in entities that provide legal services if the entity employs one person who is an active member in good standing with the Arizona State Bar, is licensed, and only permits authorized people to provide legal services. Entities must apply to the Arizona Supreme Court for licensure and are granted a one-year renewable license.<sup>44</sup>

**D.C.**

The District of Columbia’s Rule of Professional Conduct 5.4 permits fee-sharing with non-profits and allows non-attorney ownership of law firms if the sole purpose of the partnership or organization is to provide legal services. Anyone with a financial or managerial interest in the

<sup>43</sup> Washington is not issuing new licenses to paraprofessionals as of July 2023, but licensed paraprofessionals may still practice.  
<sup>44</sup> Ariz. Code of Jud. Admin. § 7-209, available at [https://www.azcourts.gov/Portals/0/admcode/pdfcurrentcode/7-209 Amended 7\\_13\\_22.pdf?ver=U0e16ry0d6dSkHPeGBdngng%3d%3d](https://www.azcourts.gov/Portals/0/admcode/pdfcurrentcode/7-209 Amended 7_13_22.pdf?ver=U0e16ry0d6dSkHPeGBdngng%3d%3d) (last accessed Dec. 5, 2023).

firm must abide by the rules of professional conduct, and attorneys with financial interest or managerial authority must take responsibility for the conduct of non-attorneys.<sup>45</sup>

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## UTAH

Utah modified its Rule of Professional Practice 5.4 in 2020 to allow profit-sharing and allow attorneys to practice in partnerships owned by non-attorneys if authorized by the provisions of Standing Order 15.<sup>46</sup> The Utah Supreme Court created the Office of Legal Services Innovation, a division of the Utah Supreme Court, via Standing Order 15. The Office of Legal Services Innovation regulates and monitors alternative business structures (ABS) and alternative legal providers (i.e., Licensed Paralegal Practitioners), sometimes called ALPs. The Office of Legal Services Innovation also investigates complaints about these entities.<sup>47</sup> There is a reporting process for all entities authorized by the Office of Legal Services Innovation.<sup>48</sup> The Utah program is a seven-year pilot program, and the Utah Supreme Court will assess the program at the end of the pilot period.<sup>49</sup>

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## UNITED KINGDOM

In the United Kingdom, the 2007 Legal Services Act permitted ABSs to operate in England and Wales. The Act includes protections to ensure that attorneys do not compromise their professional independence, a fitness test for non-attorneys who have an ownership interest in law firms, and the appointment of someone in the firm responsible for ensuring compliance with attorney ethics obligations.<sup>50</sup>

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<sup>45</sup> D.C. Rules of Pro. Conduct, Rules 5.4(a) and (b), *available at* [https://www.dcbbar.org/getmedia/85934036-ef28-4a1c-8bda-8e79ecfd4985/DC-Rules-of-Professional-Conduct\\_1220.pdf](https://www.dcbbar.org/getmedia/85934036-ef28-4a1c-8bda-8e79ecfd4985/DC-Rules-of-Professional-Conduct_1220.pdf) (last accessed Dec. 5, 2023).

<sup>46</sup> Utah Supreme Court Standing Order No. 15 (amended Sept. 21, 2022), *available at* <https://utahinnovationoffice.org/wp-content/uploads/2022/10/Standing-Order-No.15-Amended-9.21.22.pdf> (last accessed Dec. 5, 2023) (hereinafter Utah Standing Order No. 15); *see also* Utah Code Jud. Admin. R. 13-5.4, *available at* <https://legacy.utcourts.gov/rules/view.php?type=ucja&rule=13-5.4> (last accessed Dec. 5, 2023).

<sup>47</sup> Utah Standing Order No. 15 *supra*, note 46.

<sup>48</sup> Utah Supreme Court, The Office of Legal Services Innovation, What We Do, *available at* <https://utahinnovationoffice.org/about/what-we-do/> (last accessed Dec. 5, 2023) (hereinafter Utah Office of Legal Services Innovation).

<sup>49</sup> Utah Standing Order No. 15 *supra*, note 46.

<sup>50</sup> Legal Services Act 2007, c. 29 (UK), *available at* <https://www.legislation.gov.uk/ukpga/2007/29> (last accessed Dec. 5, 2023); *see also* D. Engstrom et al., *Legal Innovation After Reform: Evidence from Regulatory Change*, at 19-21 (2022), *available at* <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf> (last accessed Dec. 5, 2023) (assessing existing evidence on the impact of regulatory reform in England and Wales).

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## NEW SOUTH WALES, AUSTRALIA

In 2001, New South Wales, Australia passed legislation allowing attorneys to share fees and provide legal services with non-attorneys, with provisions to ensure attorney independence, including a requirement that at least one director be an attorney and a management structure to ensure that attorneys act within their ethical obligations to clients.<sup>51</sup>

## NATIONAL GUIDANCE ABOUT REGULATORY REFORM

The Working Group carefully reviewed research, discussion, and recommendations from national organizations addressing regulatory reform, including the Conference of Chief Justices, the American Bar Association (ABA), and the Institute for the Advancement of the American Legal System (IAALS).

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## CONFERENCE OF CHIEF JUSTICES RESOLUTION

In 2020, noting that traditional solutions alone are “not likely to resolve the gap,” the Conference of Chief Justices passed Resolution 2, Urging Consideration of Regulatory Innovations Regarding the Delivery of Legal Services.<sup>52</sup> This resolution encouraged states to experiment with regulatory innovations to spur new legal service delivery models that provide greater access while maintaining quality, achieving affordability, and protecting the public interests.<sup>53</sup> It specifies “authorization and regulation of new categories of legal service providers, the consideration of ABS, and the reexamination of provisions related to the unauthorized practice of law” as examples of innovations that might help close the Justice Gap.<sup>54</sup>

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## AMERICAN BAR ASSOCIATION (ABA)

The ABA also encourages jurisdictions to consider new ways to address the access-to-justice crisis, including through regulatory innovations to improve “accessibility, affordability, and quality of civil legal services.”<sup>55</sup>

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<sup>51</sup> Legal Profession Uniform Law (NSW) 2014, *available at* <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2014-16a#sec.6> (last accessed Dec. 5, 2023).

<sup>52</sup> Conference of Chief Justices, Resolution 2, *supra*, note 10.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> American Bar Association, Resolution 115: Encouraging Regulatory Innovation (2020), *available at* <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/r115resandreport.pdf> (last accessed Dec. 5, 2023). In contrast, the ABA, in its 2022 Resolution 402, also has stated that non-attorney ownership of law firms and fee sharing are incompatible with core values of the legal profession. American Bar Association House of Delegates Resolution 402, 2022, *available at* <https://www.americanbar.org/content/dam/aba/administrative/news/2022/08/hod-resolutions/402.pdf> (last accessed Dec. 5, 2023).

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## INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM (IAALS)

IAALS at the University of Denver has issued two reports on regulatory reform highlighting state initiatives and providing guidance and recommendations for states or jurisdictions that are interested in undertaking regulatory reform.<sup>56</sup> The recommendations build on lessons learned from states that have undertaken regulatory reform and encourage jurisdictions to modify their Rules of Professional Conduct to allow non-attorney ownership of law firms and allow representation by paraprofessionals.<sup>57</sup> IAALS also offers recommendations about the structure of programs, including entry requirements for paraprofessionals.<sup>58</sup>

### STAKEHOLDER FEEDBACK

In addition to research and consideration of what other jurisdictions have done in this space, the Working Group also solicited feedback from stakeholders in Texas as a critical source of information to guide their work.

The Working Group collected stakeholder feedback through a variety of means, including an online survey, focus groups, email, and direct outreach to members of the State Bar of Texas. The feedback obtained from surveys and focus groups is summarized here together with a brief overview of the survey and focus group methodology. Email suggestions received at [suggestions@TexasATJ.org](mailto:suggestions@TexasATJ.org) as of December 3, 2023 are included in Appendix B.

### SURVEY AND FOCUS GROUP METHODOLOGY

NCSC recommended categories of stakeholders and compiled a list of individuals to contact for survey and focus-group participation, with input and approval from senior Commission leadership and the co-chairs of the Commission's Access to Legal Services Working Group. NCSC scheduled 10 focus groups and circulated an online survey to all stakeholders on the list.

NCSC drafted questions for the survey and focus groups with input and approval from Commission leadership and the three co-chairs of the Commission's Access to Legal Services Working Group. Focus group and survey questions are attached to this report in Appendix C.

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<sup>56</sup> Landscape of Allied Legal Professional Programs, *supra*, note 12; Institute for the Advancement of the American Legal System, Allied Legal Professionals: A National Framework for Program Growth (June 2023), *available at* [https://iaals.du.edu/sites/default/files/documents/publications/alp\\_national\\_framework.pdf](https://iaals.du.edu/sites/default/files/documents/publications/alp_national_framework.pdf) (last accessed Dec. 5, 2023) (hereinafter Allied Legal Professionals: A National Framework).

<sup>57</sup> Allied Legal Professionals: A National Framework, *supra*, note 56.

<sup>58</sup> *Id.*

The survey and focus group questions were designed to:

- 1) capture information about current Texas initiatives that operate to assist people with free legal services;
- 2) understand barriers that low-income individuals face that obstruct access to the civil-legal system;
- 3) discuss strategies that the Commission believes could help address the justice gap for low-income Texans, as well as barriers and opportunities to implementation; and
- 4) recognize how the Commission can work with legal and justice system stakeholders to propose legal reform.

This report does not include a complete list of individual responses and does not identify focus-group participants or survey respondents by name to preserve anonymity.<sup>59</sup>

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## FOCUS GROUPS

NCSC held focus group sessions via Zoom in March and June 2023. NCSC recommended including individuals from the following stakeholder groups:

- Texas Opportunity and Justice Incubator (TOJI) program
- Nonprofits
- State Bar of Texas committees
- Judges
- Legal aid and pro bono providers
- Paralegals
- Law Schools
- Public Policy
- State Bar of Texas leaders

The co-chairs of the Working Group and Commission leadership recommended individuals that NCSC should contact. NCSC staff invited stakeholders to focus group sessions directly via email. Email invitations contained background information about the project and a link to register for each session. Focus group participation was voluntary. Commission leadership and the Working Group co-chairs helped NCSC by encouraging individuals to register and participate in the focus groups. NCSC sent an email reminder two business days before each of the scheduled focus groups.

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<sup>59</sup> Survey respondents were required to provide their name and contact information to ensure that the Commission had context for their responses.

At the start of each focus group, participants were given a brief overview of the project and NCSC’s role. They were told that their responses would be aggregated to preserve anonymity.

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## ONLINE SURVEY

NCSC also circulated an online survey in June 2023 to 132 stakeholders, including individuals from the following categories:

- Attorney Regulation
- Law Schools
- Legal Aid Providers
- Non-Profits
- Paralegals
- Policy Stakeholders
- Pro-Bono Associations
- State Bar of Texas
- State Bar of Texas Committees
- State Bar of Texas Sections
- TOJI
- Faith-Based Organizations

## FEEDBACK FROM SURVEYS AND FOCUS GROUPS

Stakeholder feedback from the surveys and focus groups was similar, and the following sections summarize all responses together.

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## CURRENT INITIATIVES TO PROVIDE LEGAL SERVICES TO LOW-INCOME TEXANS

Stakeholders reported that nonprofit legal aid organizations largely bear the burden of providing legal services to low-income Texans. Survey participants note that practitioners are “spread too thin” and that there are not enough to meet demand. Private law firms partner with legal aid to do pro bono work, but it is limited. There are many cross referrals between legal aid organizations and nonprofit agencies that provide non-legal services. Some of these non-legal agencies include domestic violence shelters, hospitals, and the Bexar County Family Justice Center.

Stakeholders reported on ways that non-attorneys currently provide services in Texas. A survey respondent reported that many non-attorneys provide legal advice and even appear in court. Third-year law students are permitted to obtain a “bar card” that allows them to provide services under the supervision of an attorney. Stakeholders indicated that law students and

paralegals can spend much more time with clients than an attorney ever could, which is a significant benefit and has the potential to increase access.

Stakeholders reported that non-attorneys are permitted to represent litigants in justice courts in certain circumstances. One stakeholder reported that “Landlords are almost always represented by paraprofessionals in eviction cases,” citing property management companies and other for-profit services like Nationwide. In Texas, tenants may be represented by non-attorneys in justice courts, but stakeholders report that this is uncommon.<sup>60</sup>

The Texas Legal Services Center uses trained qualified representatives, who are non-attorney advocates, to assist with disability, elder care, and administrative proceedings. Non-attorney advocates also participate in special-education and Section 504/ADA meetings at the local school level. Stakeholders note that non-attorney representation is sometimes the only way a child can obtain accommodations or support services needed to get an education. Non-attorney representatives also assist in Social Security benefit proceedings under close supervision of an attorney.<sup>61</sup>

Stakeholders expressed concern about quality of legal services and unauthorized practice of law. One stakeholder noted encountering estate documents, written by a notary, that are incorrect or missing information. Two other stakeholders named “notarios” as examples of individuals who frequently flout the rules and take advantage of consumers. Stakeholders expressed concern that people may not understand the difference between legal help from an attorney and services provided by non-attorneys.

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## BARRIERS TO CIVIL LEGAL SYSTEM ACCESS FOR LOW-INCOME INDIVIDUALS

Common legal issues experienced by low-income Texans include family law, housing/eviction, debt, probate, public benefits, criminal records expungement, and immigration. In the context of family law, child custody, divorce, and child support were mentioned most frequently. Stakeholders reported that the lifting of the eviction moratorium put in place during the COVID-19 pandemic has led to a “drastic increase in the need for housing support.”

Stakeholders identified lack of access to attorneys as a major barrier to access. One stakeholder noted that potential clients face “long wait times and unrealistic financial thresholds.” For many low-income Texans, legal aid (or other pro bono assistance) is the only option for legal representation because they cannot afford private counsel. Legal aid is under resourced and is

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<sup>60</sup> Tex. R. Civ. P. 500.4(a)(2) permits tenants “[to] be represented by an authorized agent in an eviction case” without court approval. Subsection (c) requires “good cause” for a pro se party to be “assisted by a family member or other individual who is not being compensated.”

<sup>61</sup> 20 C.F.R. § 404.1740.

often unable to accept new cases due to large caseloads. Without additional resources, legal aid cannot take on additional cases. Another stakeholder reported that legal services are siloed and compete for the same limited resources.

Stakeholders also identified legal aid eligibility as another barrier. Legal aid programs have strict rules regarding client eligibility, which include income and citizenship, among others. Stakeholders noted that many Texans apply for legal aid but are screened out as ineligible. One survey respondent noted that partners and clients “...become frustrated and cynical about our ability to help...because of the income and scope of service restrictions imposed by grants....”

Stakeholders reported that middle-income Texans also need low-cost legal services and are just as likely as low-income Texans to go without legal help because they cannot afford private counsel. Stakeholders believe that the distinction between low- and moderate-income Texans feels arbitrary to most people.

One stakeholder reported that people are sometimes unable to obtain counsel in discrete areas. For example, in preliminary Veteran Affairs benefits cases, an attorney is not permitted to charge for services, leading to a lack of representation in this area. Therefore, many people proceed pro se.

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## FEEDBACK ON PARAPROFESSIONAL LEGAL SERVICES

The following sections summarized responses received in response to targeted questions about the use of legal paraprofessionals to address the justice gap.

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### OVERVIEW OF STAKEHOLDER OPINIONS ON PARAPROFESSIONAL LEGAL SERVICES

Stakeholders agreed that there is a pressing need to expand access to legal services for low-income Texans but differed on the best approach to take. One stakeholder noted “we could train the staff at our community partner agencies to provide some of the legal advice and representation as directed by legal aid staff attorney [...] This might include public organizations like folks in municipalities, libraries, and hospitals as examples.” Another stakeholder noted that paraprofessionals could “free up practicing attorneys to focus on legal matters.”

Permitting paraprofessionals to provide limited legal services to low-income Texans could be an opportunity to create a framework for controlling, monitoring, and improving the current landscape. Some stakeholders recommended focusing on creating market incentives for attorneys to serve low-income Texans, by offering limited-scope representation and reducing the cost of providing legal services, including expanding public service loan forgiveness programs for attorneys. Another wondered whether funds dedicated to implementing a paraprofessional program in Texas might be better used to support existing programs. Some

stakeholders feared that permitting paraprofessional practice would “open Pandora’s box for predatory practices and sham law shops.”

Some stakeholders wondered, “Is something better than nothing?” One stakeholder noted “I do believe that paraprofessionals could be effective advocates in eviction cases, but only if they were properly trained. Regardless, any type of advocacy on behalf of vulnerable tenants would certainly be better than no advocacy at all. When tenants go to court unrepresented, the data shows they lose most of the time but should have won about 85% of the time an eviction is granted against them. I don't think a paraprofessional acting as an advocate could do any worse or cause any material harm in a system this broken.”

Most stakeholders were curious about the quality of training, oversight, and scope of services a paraprofessional would be permitted to provide. Some stakeholders were uncomfortable with paraprofessionals providing legal advice but were comfortable with them providing legal information.

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## BARRIERS TO IMPLEMENTATION

Stakeholders identified three main categories of implementation barriers: regulation, paraprofessional scope of practice, and training. Paraprofessional training generated the most conversation.

Stakeholders wondered which regulatory body would oversee paraprofessionals. Stakeholders wanted rules of ethics and disciplinary procedures that would apply to paraprofessionals, similar to current rules of professional conduct for attorneys and paralegals. Stakeholders felt that this would ensure higher quality services, but expressed concern about whether this level of oversight would be possible.

Stakeholders expressed concern about possible “collateral consequences” if a paraprofessional provides legal advice based on limited information. They also wondered what remedies would exist if a consumer received bad legal services. Some noted that handling the fall-out in the event of malpractice could be expensive and perhaps more time-consuming than if the matter was initially handled by an attorney.

Stakeholders asked about scope of service and paraprofessional boundaries. They wanted a clear line that delineates when a paraprofessional must “refer a matter to an actual attorney.” Some stakeholders expressed fear about the public relying too much on paraprofessionals and not “understand[ing] why they would need to hire an attorney at all.” Stakeholders also voiced concern that “paraprofessional practice would cheapen the profession,” and “services will be subpar and further disadvantage low-income Texans.”

Stakeholders felt that rigorous and extensive training would be needed for any form of paraprofessional practice. Stakeholders believed that the level of training should correspond to the level of services a paraprofessional is permitted to provide. When asked about training, most stakeholders agreed that nothing could replace on-the-job training. Shadowing, paraprofessional observation of a licensed attorney, attorney supervision, and in-person education were considered “essential” parts of any implementation plan. One stakeholder noted that training should include “a mix of easily accessible, free training and experience which can be verified by a former employer or a sponsoring organization where the paraprofessional plans to volunteer at.” Stakeholders who supported paraprofessional practice in the area of domestic violence recommended training on “trauma informed care, ethics, and procedure.”

Some stakeholders felt that no current training program would be sufficient to train paraprofessionals, and that no one, including paralegals, should be permitted to participate without meeting certain training requirements. One stakeholder noted, “Even though I adore my paralegal, I would never give them a limited license.”

Some stakeholders believe that education should be in-person, noting that in-person training creates more “accountability” and could “weed out individuals who would not take the responsibility as seriously as they need to.” Conversely, some stakeholders noted that in-person education would be more costly and might reduce the potential pool of candidates. One stakeholder recommended that “foundational legal principles and how the court work[s] could be online modules, but any focused or directed learning needs to be in person.”

Stakeholders offered ideas that included creating a “pseudo-apprenticeship structure akin to the ‘baby bar.’” Some stakeholders thought that paraprofessionals could be given the option to complete one year of law school, and then apprentice with a local organization in lieu of two additional years of law school followed by the bar exam. One stakeholder suggested the Commission “consider modeling the program after the paralegal certification process that currently exists in Texas.”

There was a consensus that upon completion of any training program, a paraprofessional should obtain certification from a qualified organization with high standards and requirements. Stakeholders also widely agreed that continuing legal education to maintain certification should be required, including “an annual refresher on the general prohibitions on paralegals, ethics, and privacy training.”

One stakeholder made a comparison to nurse practitioners and how “they are trained to do everything, but still need a doctor in the room.” There was a concern that this program would “create [...] inefficiencies if attorneys are required to supervise paraprofessionals.”

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## OPPORTUNITIES FOR IMPLEMENTATION

Stakeholders who supported paraprofessional certification noted limitations to the scope of practice that they would be comfortable with. Suggestions ranged from specialization in a specific legal area to limiting paraprofessionals to assisting with intake only. One stakeholder specifically recommended requiring training “in the areas the person is permitted to practice.”

Most stakeholders reported that they would be comfortable with paraprofessionals answering procedural questions, issue spotting, and helping with court forms. One stakeholder stated: “If an organization has good forms, a paraprofessional could assist a low-income Texan with filling it out.” Some stakeholders were uncomfortable with the idea of a paraprofessional representing clients in court.

Stakeholders were more comfortable with the idea of paraprofessionals working in courts of limited jurisdiction. Stakeholders noted a need for “advocates” in matters such as truancy, regardless of whether the advocates provided legal services or were just there to support the child. Stakeholders who were open to the idea of paraprofessional practice agreed that designating specialized areas of focus would make them more comfortable with expanding the roles and responsibilities of paraprofessionals. Framing paraprofessional licensure with limited scope practice areas as a “proof of concept” that could “later be expanded to other areas could reduce backlash.”

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## FEEDBACK ON NON-ATTORNEY OWNERSHIP

The following sections reflect feedback received in response to targeted questions about the use of non-attorney ownership to address the justice gap.

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### OVERVIEW OF STAKEHOLDER OPINIONS ON NON-ATTORNEY OWNERSHIP

Some stakeholders expressed confusion about how permitting non-attorneys to have economic interests in entities that provide legal services to low-income Texans would expand access to justice. One noted “I don’t see the payoff for non-attorneys.” Another noted “non-attorney ownership seems to indicate a for-profit business interest, which feels counter intuitive to serving indigent Texans who currently qualify for free legal services.”

Most stakeholder concerns stemmed from a lack of understanding about how a rule change would create a “financial opportunity” when the target consumers are low-income Texans who generally cannot afford legal services. Stakeholders expressed concern about potential predatory practices that could be amplified when money is involved. One stakeholder worried that changes would “gut the practice of lawyers who currently help low-income Texans.” Another stakeholder noted that probate and family law issues often go unaddressed because of

low-income Texans' inability to afford counsel, noting "Texas lawyers do not take these types of pro bono cases because they can be lengthy and complicated." This stakeholder also recommended raising the maximum income level to qualify for services.

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## BARRIERS TO IMPLEMENTATION

Stakeholders reported that they did not trust non-attorney owned entities. They were concerned about predatory entities like payday lenders and did not see an incentive for for-profit entities in situations where clients would be unable to pay. Some stakeholders feared that non-attorney ownership would result in a "fundamental change to the fabric of legal services" that would create a "slippery slope and dismantling of quality legal representation."

Stakeholders were unclear about how opening investment opportunities for legal services would improve services and access for low-income Texans. One stakeholder noted "If businesses wanted to invest in legal aid they would already be doing so." One stakeholder noted that entities owned by non-attorneys, such as "notarios," already exist. They are frequently reported, and "nothing is done to shut them down."

Stakeholders also expressed concern about regulation if different professional standards existed for different entities. Many stakeholders felt that non-attorney ownership would create "conflicts of interest in the fiduciary duties owed to clients," regardless of the rules created.

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## OPPORTUNITIES FOR IMPLEMENTATION

Most of the focus-group discussion and survey responses around implementation focused not on non-attorney ownership but on how to increase legal services for low-income Texans. When asked about opportunities for implementation of non-attorney ownership, stakeholders reiterated that there are not enough programs and services available to meet the current needs of low-income Texans. One stakeholder noted that "there are some good models that have been used by LSC-funded organizations [...] Take the best aspects of those and expand to other areas while preserving the scaffolding that supervision, training, and lawyer support provide."

Stakeholders suggested increasing incentives and support for pro-bono and fortifying relationships between law schools and legal service providers. Stakeholders identified four areas that are ripe for service expansion: improving referral networks, legal kiosks, medical-legal partnerships, and improving referrals from the bench to extrajudicial programs and services. One stakeholder noted: "The leaders of law school pro bono programs [...] see low-income clients up close and have experience in helping law students serve them. In many ways, an inexperienced law student may be similar to a paraprofessional."

Stakeholders recommended that providers coordinate on larger issues and take a “collaborative and holistic approach” to legal services, partnering with social services and other providers to provide help to address needs of low-income populations. One stakeholder noted that partnerships would allow for “wrap around services” which could elevate a person’s life by providing “resources for more than just legal obstacles.”

Stakeholders opined that fee reforms, such as allowing organizations to charge commissions, could help expand access for low-income Texans. They also recommended sliding scale fee structures.

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## FUTURE COLLABORATION BETWEEN THE COMMISSION AND JUSTICE SYSTEM STAKEHOLDERS

Stakeholders provided many solutions for the Commission to consider in addition to paraprofessionals and non-attorney ownership to assist in address the justice gap. Some of these suggestions are included here as areas for potential opportunity. They include:

- Process simplification, including: making legal information more available; redesigning citations and court forms; creating better technology solutions to connect individuals in need with available programs and services; reducing initial disclosure requirements; improving self-service tools, websites, and educational modules; and reducing the number of interactions a litigant must have with the court.
- Legal information hubs or kiosks in the community where people can obtain information about their legal issues.
- Creating incentives for attorneys to take cases pro bono. Some suggested allowing pro bono hours to convert to CLE hours, bar dues being waived if an attorney performed a certain number of pro bono hours, and incentives for law firms and attorneys who reach certain pro bono benchmarks.
- Instituting mandatory pro bono.
- Increasing funding for existing legal services providers and providing more structural support to them.
- Creating a pathway for Bar exam “near passers” who have a law degree from an ABA-accredited law school to become paraprofessionals. They could work under the supervision of an attorney for a certain amount of time, after which they would be a fully licensed attorney. This would allow them to work and make money, instead of studying for the Bar full-time or giving up on the practice of law.

Stakeholders expressed significant interest in this project and were invested in seeing it through. They asked to be included in the conversation as it progressed. Individuals affiliated with Texas law schools seemed excited and willing to host education programs, noting that they have significant training materials and expansive clinic opportunities already in place for students. Legal aid providers and nonprofits would like to be a part of the discussion regarding income eligibility. Many stakeholders noted that the current income threshold is very low and significant numbers of Texans are slightly above the line but are still unable to afford private counsel.

## WORK OF THE ACCESS TO LEGAL SERVICES WORKING GROUP

The [Working Group](#) was a guiding body for this project, formed to assist the Commission in making ultimate recommendations to the Supreme Court. The Working Group met five times in 2023. Over the course of these meetings, members discussed the justice gap and potential ways to address it in Texas, received information from guest speakers (including individuals from jurisdictions that have implemented legal reform involving paraprofessionals), heard updates from the Subcommittees, provided feedback and suggestions to guide the Subcommittees' work, and discussed and voted on Subcommittee proposals.

- January 26, 2023: Organizational meeting, information sharing by Professor Rebecca Sandefur, Lucy Ricca, Professor Stacy Butler, and Nickole Nelson.
- April 26, 2023: Subcommittee reports, discussion regarding, among other things, communications and outreach, as well as stakeholder feedback.
- July 27, 2023: Subcommittee reports, discussion, communication update, stakeholder feedback report.
- September 26, 2023: Subcommittee reports, discussion, votes.
- November 2, 2023: Subcommittee reports and recommendations, discussion, votes, approval of certain recommendations.

Materials from the five Working Group meetings, including agendas, materials, minutes, and recordings are available [here](#). A survey of Working Group members was conducted after the November 2, 2023 meeting, as described and with results reported in Appendix D.

## ACCESS TO LEGAL SERVICES WORKING GROUP SUBCOMMITTEES

The Working Group formed three Subcommittees, each of which was tasked with specific elements of the Texas Supreme Court's charge:

1. [Scope of Practice Subcommittee](#)
2. [Paraprofessional Licensing Subcommittee](#)
3. [Non-Attorney Ownership Subcommittee](#)

The Subcommittees spent significant time developing recommendations, learning from representatives from other states that had undertaken regulatory reforms, researching Texas rules and statutes that would be impacted by regulatory reform, and evaluating current Texas regulatory frameworks that could be adapted to incorporate regulatory reform. The work and research of each Subcommittee is summarized below. Recommendations are available [here](#).

### SCOPE OF PRACTICE SUBCOMMITTEE

The Scope of Practice Subcommittee analyzed whether qualified paraprofessionals should be licensed to provide limited legal services directly to low-income Texans, and, if such services are authorized, (1) potential limits on the type of work that could be done and the areas of law in which such work could be done by the paraprofessionals, (2) potential rule revisions needed to authorize and define procedures for this limited practice of law, (3) eligibility criteria for clients of the paraprofessionals, and (4) potential compensation sources.

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## SCOPE OF PRACTICE SUBCOMMITTEE MEMBERSHIP AND MEETINGS

<b>Scope of Practice Subcommittee</b>	
Kennon Wooten (Chair), Austin	Sandy Garcia Hoy, Austin
Paul Furrh (Vice-Chair), Houston	Paige D. Hoyt, Weatherford
Jonathan Bates, Dallas	Misti Janes, Austin
Anne Chandler, Houston	John Jones, Katy
Hon. Nicholas Chu, Austin*	Richard LaVallo, Austin
Robert Doggett, Austin	Hon. Lora Livingston, Austin
Katie Fillmore, Austin	Rick Melamed, Bellaire
Hon. Phyllis Martinez Gonzalez, El Paso	Karen Miller, Austin
John J. Grieger, Wichita Falls	Prof. Shawn Slack, Austin
Hon. Sylvia Holmes, Austin*	Prof. Mary Spector, Dallas
Hon. Justice Deborah Hankinson, Ret., Dallas	Hon. Polly Spencer, San Antonio
Rob Henneke, Austin/Kerrville (formerly)	Terry Tottenham, Austin
Craig Hopper, Austin	Kimberly Pack Wilson, Stephenville
Hon. Phyllis Martinez Gonzalez, El Paso	

\*In September 2023, Hon. Nick Chu resigned from the Scope of Practice Subcommittee (due to a new judicial position and associated responsibilities) and was replaced by Hon. Sylvia Holmes.

**Figure 7. Scope of Practice Subcommittee Membership**

The Subcommittee met eight times on the following dates:

- March 20, 2023: organizational meeting and discussion regarding forming subgroups to focus on specific subject matter areas contemplated for paraprofessionals. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- April 14, 2023: Subgroup reports, Community Justice Worker presentation by Professor Shawn Slack, discussion of potential rule amendments. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).

- June 2, 2023: Formation of new subgroup—Consumer Debt Subgroup, discussion of Family Law Subgroup recommendations, presentation by Katie Fillmore on Texas laws potentially impacted or implicated by contemplated proposals. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- June 27, 2023: Continued discussion of Community Justice Worker model, Texas laws impacted, and Family Law Subgroup recommendations, approval of Probate/Estate Subgroup recommendations. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- August 25, 2023: Report from Members of the Immigration & Nationality Law Section of the State Bar of Texas and the American Immigration Lawyers Association (AILA TX) Texas Chapter, discussion of Housing Subgroup and Consumer-Debt Subgroup work. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- September 22, 2023: Discussion of Housing Subgroup work, discussion of recommendations from Consumer-Debt Subgroup. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- October 10, 2023: Review and discussion of proposed rules, discussion regarding eligibility criteria for clients. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- October 23, 2023: Presentation from Falak Momin, St. Mary’s University School of Law, continued discussion and votes on proposed rules and eligibility criteria. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).

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## SCOPE OF PRACTICE SUBCOMMITTEE WORK

The Subcommittee identified areas of high legal need for low-income Texans. The Subcommittee looked to many sources to identify areas of need, including [stakeholder feedback](#), data from the Office of Court Administration,<sup>62</sup> data from the Texas Access to Justice Foundation,<sup>63</sup> and the 2022 Legal Service Corporation Legal Needs Report.<sup>64</sup> To maximize

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<sup>62</sup> See Texas Judicial Branch, Office of Court Administration, Annual Statistical Report for the Texas Judiciary (FY 2022), available at <https://www.txcourts.gov/media/1456803/ar-statistical-fy-22-final.pdf> (last accessed Dec. 5, 2023).

<sup>63</sup> Roger Enriquez et al., Texas Unmet Legal Needs Survey, at 2 (July 22, 2015), available at [https://www.teajf.org/news/docs/Final\\_TAJF\\_Report\\_summer\\_2015.pdf](https://www.teajf.org/news/docs/Final_TAJF_Report_summer_2015.pdf) (last accessed Dec. 5, 2023) (hereinafter Texas Unmet Legal Needs Survey).

<sup>64</sup> The Justice Gap, *supra*, note 1, at 33.

productivity and efficiency, members broke into Subgroups that aligned with each of the four areas of law identified:

- 1. Family Law**
- 2. Housing/Eviction**
- 3. Probate and Estate**
- 4. Consumer Debt**

The Subgroup members met and worked between Subcommittee meetings. The Subgroups made specific recommendations about tasks that paraprofessionals could undertake in each area. Subcommittee members voted on Subgroup recommendations during Subcommittee meetings; however, final Subcommittee votes on the Family Law Subgroup's recommendations occurred via email, with assistance from Jonathan Bates. Proposed rules were developed based on recommendations approved by the Subcommittee and on feedback from the Working Group. Subcommittee members voted on components of the proposed rules, including eligibility criteria, during the meeting on October 23, 2023. Final votes on the proposed rules, as well as on potential compensation sources for paraprofessionals providing limited legal services, occurred via an electronic survey conducted after the meeting on October 23, 2023. (The survey questions and associated votes are summarized in a memo that was considered by the Working Group during its final meeting on November 2, 2023.)

The Subcommittee recommended a new scope-of-practice rule addressing limited legal services that could be provided by licensed paraprofessionals directly to low-income Texans, in the areas of family law, probate and estate law, and consumer-debt law. The proposed rule does not address eviction cases specifically because existing Texas rules allow representation by, and assistance from, paraprofessionals in eviction cases in justice courts.

The Subcommittee assessed whether and to what extent Texas paraprofessionals could function in a manner similar to the Community Justice Workers in Alaska (e.g., by working with legal aid entities and other Texas nonprofit entities that provide legal services to low-income Texans) and developed recommendations for how a Community Justice Worker program could operate in justice courts. The Subcommittee considered amending existing Texas Rules of Civil Procedure that allow specified representation by and assistance from paraprofessionals in justice courts, not only to incorporate standards for Community Justice Workers in Texas, but also to incorporate standards for paraprofessionals licensed to provide limited legal services in particular practice areas, to modify standards governing assistance from paraprofessionals, and to modify standards for citations issued to defendants in eviction cases in justice courts.

Subcommittee members had diverse views about how to define "low income" in this context, and two Subcommittee members expressed the belief that the paraprofessional legal services

contemplated should not be restricted to low-income Texans. Information considered during discussions of eligibility criteria included the following summaries of approaches taken:

1. **Texas Access to Justice Foundation (TAJF):** TAJF “is the leading funding source for legal aid in Texas.”<sup>65</sup> Annually, it “adopts criteria relating to income, assets, and liabilities defining the indigent persons eligible to benefit from TAJF grants. Household income-eligibility guidelines are based on the Department of Health and Human Services’ (DHHS) most recent federal poverty guidelines.”<sup>66</sup>
2. **Texas Legal Services Center (TLSC):** TLSC serves clients within 200% of the federal poverty guidelines, and also has grants with specific funding criteria. Most of TLSC’s funding restricts services to clients within 125% of federal poverty guidelines. This is lower than the LSC standard of 187% of the federal poverty guidelines and has been described as extremely low income. For people meeting these criteria, paying for legal services usually means going without some other basic necessity, such as utilities, food, or medicine. This chart breaks down what it means to be within 125% of the federal poverty guidelines.

<b>125% of Federal Poverty Guidelines</b>			
Number of People in the household	Poverty Guidelines <b>Yearly Income</b>	Poverty Guidelines <b>Monthly Income</b>	Poverty Guidelines <b>Weekly Income</b>
1	\$18,225	\$1,518.75	\$350.48
2	\$24,650	\$2,054.17	\$474.04
3	\$31,075	\$2,589.58	\$597.60
4	\$37,500	\$3,125.00	\$721.15

**Figure 8. Income Eligibility Guidelines**

3. **Texas RioGrande Legal Aid (TRLA):** Although different funding sources have different limits for legal aid entities like TRLA, the standard here is 200% of the federal poverty guidelines.
4. **Houston Volunteer Lawyers (HVL):** HVL’s general rule is to strive to help families at 200% or less of the federal poverty guidelines. Like other entities increasing access to justice in

<sup>65</sup> Texas Access to Justice Foundation, <https://www.teajf.org> (last accessed Dec. 5, 2023).

<sup>66</sup> Texas Access to Justice Foundation, 2023 Income & Asset Requirements for Persons to be Eligible For Assistance with Foundation Grants, at 1, *available at* <https://www.teajf.org/grants/docs/2023/2023%20TAJF%20Grant%20Eligibility%20Income%20Guideline.pdf> (last accessed Dec. 5, 2023).

our state, HVL also manages grants with different income and asset tests that must be applied.

5. **San Antonio Legal Services Association (SALSA):** Generally, SALSA applies a standard of 300% of the federal poverty limit. Some programs have lower limitations. But SALSA strives to marry funding to get everything as close to 300% as possible to maximize clients served.
  
6. **Unfunded Pro Bono Providers:** Texas has several pro bono providers that do not receive funding and thus have no funding criteria to guide their client base. For example, the State Bar of Texas Appellate Section has an active program that provides representation to low-income Texans in the appellate courts on a purely volunteer basis. The program does not use precise income testing but considers income as one factor for admission into the program. The program often considers a Rule 145 affidavit in its analysis and widely considers clients at 400% of federal poverty guidelines as qualifying under the right circumstances. This chart demonstrates what these figures mean in 2023:

48 Contiguous States

# of Persons in Household	2023 Federal Poverty Level for the 48 Contiguous States (Annual Income)						
	100%	133%	138%	150%	200%	300%	400%
1	\$14,580	\$19,391	\$20,120	\$21,870	\$29,160	\$43,740	\$58,320
2	\$19,720	\$26,228	\$27,214	\$29,580	\$39,440	\$59,160	\$78,880
3	\$24,860	\$33,064	\$34,307	\$37,290	\$49,720	\$74,580	\$99,440
4	\$30,000	\$39,900	\$41,400	\$45,000	\$60,000	\$90,000	\$120,000
5	\$35,140	\$46,736	\$48,493	\$52,710	\$70,280	\$105,420	\$140,560
6	\$40,280	\$53,572	\$55,586	\$60,420	\$80,560	\$120,840	\$161,120
7	\$45,420	\$60,409	\$62,680	\$68,130	\$90,840	\$136,260	\$181,680
8	\$50,560	\$67,245	\$69,773	\$75,840	\$101,120	\$151,680	\$202,240

Add \$5,140 for each person in household over 8 persons

**Figure 9. 2023 Federal Poverty Level and Annual Income**

The Working Group anticipates that many licensed paraprofessionals will be employed by legal aid and other nonprofit entities. There are many funding opportunities from the federal government that may provide funding to organizations that would employ paraprofessionals to provide legal services to low-income Texans. These below funding sources offer new opportunities for entities and recommend expansion of underutilized sources.

Federal funding streams may be categorized as:

1. Direct or discretionary grants, and
2. Federal “pass-through” funds.

Pass-through funds are granted to state and local governments, often known as formula, block, or open-end reimbursement grants. These governments administer funds by sub-granting to eligible local entities.

Discretionary grants are a competitive merit-based award of funds to eligible applicants. Here, a Federal grantmaking agency accepts applications from across the country for discretionary funding, determines eligibility, reviews the contents of the application, and determines which applicants receive awards and the amount of funding to be awarded. Legal aid programs and courts routinely apply to federal agencies for these funds, including, for example, the DOJ Bureau of Justice Assistance’s Veterans Treatment Court Discretionary Grant Program and HUD’s Eviction Prevention Grant Program.

Pass-through funding is also available for state and local governments. One of the key differences between pass-through and discretionary funds is to whom the courts and legal aid programs apply: pass-through fund applications are made to the administering state and/or local government agencies. And while the amount each jurisdiction receives and spending constraints are set by federal statute and federal agencies’ rules and guidance, all pass-through funds have varying levels of flexibility to spend funds based on local priorities. Familiar examples of pass-through funds include the DOJ Office on Violence Against Women STOP Formula Grant Funds and state commission administered AmeriCorps funds.

For both categories of funds, courts and legal aid programs may be eligible as the applicant or in collaboration with or as a subrecipient or subcontractor to an eligible partner. See examples of potential funding opportunities in Appendix E.

When considering how licensed paraprofessionals would be compensated for their services, Subcommittee members responded to a survey question asking them to indicate whether compensation for licensed paraprofessionals should be limited to certain sources, such as government and nonprofit funds. About half of the Subcommittee indicated that they prefer to limit compensation to certain sources. Some liked the idea of a sliding-scale basis. Other Subcommittee members expressed concern about paraprofessionals competing with legal aid organizations for funds. Half of the Subcommittee did not think that compensation should be limited to certain sources.

The Subcommittee also considered potential rule and statutory revisions that would be needed to authorize and define procedures for the limited practice of law by licensed

paraprofessionals. Research on potential rule and statutory impacts of the proposal is contained in Appendix F of this Report.

## PARAPROFESSIONAL LICENSING SUBCOMMITTEE

The Paraprofessional Licensing Subcommittee was tasked with making recommendations about the content and structure of proposed rules or statutory amendments that would be necessary to permit licensing of qualified non-attorney paraprofessionals and/or entities who could provide limited legal services directly to low-income Texans. The Subcommittee considered scope and entry qualifications for those regulated, complaints and discipline and ongoing reporting requirements to monitor the success of any program established.

### PARAPROFESSIONAL LICENSING SUBCOMMITTEE MEMBERSHIP AND MEETINGS

<b>Paraprofessional Licensing Subcommittee</b>	
Lisa Bowlin Hobbs, Chair, Austin	Leo D. Figueroa, Austin
Linda Acevedo, Austin	Hon. Sid Harle, San Antonio
Dr. Lynn Crossett, San Marcos	Nahdiah Hoang, Austin
Robert Doggett, Austin	Ellen Lockwood, San Antonio
Hon. Royal Furgeson, Dallas	

**Figure 10. Paraprofessional Licensing Subcommittee**

The Paraprofessional Licensing Subcommittee met seven times on the following dates:

- May 17, 2023: Organizational meeting, presentation by NCSC on licensing requirements in other states, discussion of existing regulation of non-attorneys in Texas. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- June 7, 2023: Discussion of examination requirements, Judicial Branch Certification Commission regulatory structure, Texas and national paralegal certification and specialization options. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- July 13, 2023: Discussion of draft rules regarding paraprofessional qualifications and discipline. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).

- August 28, 2023: Guests from the Oregon State Bar and Oregon Paraprofessional Licensing Implementation Committee to present on non-exam eligibility, discussion of proposed CLE recommendation. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- September 25, 2023: Discussion of draft qualification and discipline rules, discussion of liability insurance requirements. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- October 16, 2023: Further discussion of draft qualifications, character and fitness, CLE recommendations, dues, and reporting. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- October 24, 2023: Review of draft rules, including for Community Justice Workers. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).

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#### PARAPROFESSIONAL LICENSING SUBCOMMITTEE WORK

The Subcommittee developed [recommendations](#) in the following areas:

- Qualifications for paraprofessional applicants
- Examination requirements
- Character and fitness assessment for paraprofessional applicants
- Code of ethics for licensed paraprofessionals
- Discipline for licensed paraprofessionals
- Continuing legal education for licensed paraprofessionals
- Annual reporting requirements for licensed paraprofessionals
- Liability insurance considerations for licensed paraprofessionals

In developing these recommendations, the Subcommittee reviewed licensing requirements in other jurisdictions that permit paraprofessional practice and looked to current Texas regulatory structures that oversee non-attorney legal system actors, such as paralegals, guardians, court reporters, court interpreters, and process servers.

The Subcommittee used various Texas-based models to guide its work and recommendations including:

- State Bar of Texas Paralegal Division qualifications
- Texas Board of Legal Specialization subject matter-based requirements
- Texas Board of Law Examiners character and fitness assessment requirements

- The Judicial Branch Certification Commission (JBCC) disciplinary process for court-appointed guardians

In developing recommendations, the Subcommittee balanced the need for appropriate oversight and qualification with the need to make entry to the legal paraprofessional profession accessible.

## NON-ATTORNEY OWNERSHIP SUBCOMMITTEE

The Non-Attorney Ownership Subcommittee was tasked with making recommendations regarding non-attorney ownership of law firms. The Subcommittee studied current Texas statutes and rules that would need to be modified including the purpose and history of these statutes and rules; investigation of structures to protect attorney independence in entities that allow non-attorney ownership or profit sharing; and discussion of benefits and risks of such entities, particularly as these entities related to expanding access to low-income populations.

### NON-ATTORNEY OWNERSHIP SUBCOMMITTEE MEMBERSHIP AND MEETINGS

<b>Non-Attorney Ownership Subcommittee</b>	
Rose Benavidez, Rio Grande City	Prof. Renee Knake Jefferson, Houston
Prof. Susan Fortney, Fort Worth	Hon. Michael Massengale (Chair), Houston
Hon. Sid Harle, San Antonio	Chris Nickelson, Fort Worth
Monica Karuturi, Houston	Maria Thomas Jones, Fort Worth

**Figure 11. Non-Attorney Ownership Subcommittee**

The Non-Attorney Ownership Subcommittee met eight times on the following dates:

- March 31, 2023: Organizational meeting. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- May 3, 2023: Overview of Arizona and Utah reforms; brainstorming. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- June 22, 2023: Guest speaker Noella Sudbury and initial discussion of draft working proposal document. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- July 12, 2023: Discussion of protections for attorney independence. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).

- August 21, 2023: Informal discussion of regulating entity and additional desirable criteria, restrictions, or prohibitions. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- September 19, 2023: Continued informal discussion of regulating entity and additional desirable criteria, restrictions, or prohibitions. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- October 13, 2023: Discussion of whether and how the proposal should include criteria for “providing legal services to low-income Texans,” restrictions on who can own entities, recommendations for protecting attorney independence, discussion on intersection between this Subcommittee and other Subcommittee recommendations. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).
- October 18, 2023: Review and discussion of the Subcommittee’s final report to the Working Group. The recording of this Subcommittee meeting, an agenda, and minutes are available [here](#).

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## NON-ATTORNEY OWNERSHIP SUBCOMMITTEE WORK

To guide its work, the Non-Attorney Ownership Subcommittee reviewed the current Texas regulatory landscape, evaluated the benefits and risks of permitting non-attorney ownership of firms providing legal services, and considered the potential for innovation to improve access to justice that might occur if exceptions were allowed in the current rules. The Subcommittee examined existing rules and statutes that might be implicated, with a focus on Rule 5.04 of the Texas Disciplinary Rules of Professional Conduct.

The Subcommittee studied the way in which the existing rules and statutes protect attorney independence and how attorney independence could be ensured through other models including attorney compliance officers in entities permitting non-attorney ownership or profit sharing and Proactive Management-Based Regulation (PMBR).

The Subcommittee also examined risks and benefits of non-attorney ownership, including:

### Potential Benefits

- **Expanded access to justice through innovation:** Proponents contend that allowing ABSs will incentivize innovation in the delivery of legal services, which can result in expanding access to justice. People could gain access to civil legal services when they otherwise would be forced to represent themselves without assistance, or entirely forgo civil legal remedies. Risks to consumers can be minimized through safeguards, such as ensuring protection for attorneys’ professional independence, and by licensing and limiting tasks

that can be undertaken by a paraprofessional. Reporting requirements, such as those in Utah, permit information gathering about the types of entities that provide quality low- or no-cost services, and consumer complaints.

- **Increasing law firm capacity:** Allowing investment from non-attorneys can increase a law firm’s capacity, including firms that provide legal services to low-income populations.<sup>67</sup>

### Potential Risks<sup>68</sup>

- **Compromising attorney competence and independence:** One purpose of ABA Model Rule 5.4 is “to prevent nonlawyers from interfering with the lawyer’s independent judgment,”<sup>69</sup> and eliminating or limiting the comparable Texas rule may create conflicts between a lawyer’s ethical obligations to clients and financial obligations to firm owners. States that permit non-attorney ownership ameliorate the risk of client harm in different ways, including reporting based on the risk of consumer harm, designating compliance lawyers, and providing a forum for consumer complaints.<sup>70</sup>
- **Potential for limited effectiveness:** Opponents contend that permitting non-attorney ownership may not increase access for low-income populations because it does not lead to more attorneys or entities that provide free or low-cost legal services. Steven Younger notes that in Australia, and in England and Wales, where non-attorney ownership is permitted, the justice gap has not closed.<sup>71</sup> However, in those jurisdictions, the ABSs are primarily profit-based.<sup>72</sup> This also may be true of the ABSs operating in Arizona and Utah, as many are owned by private equity firms, litigation-finance companies, hedge funds, and alternative legal service providers.<sup>73</sup>

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<sup>67</sup> See Ralph Baxter, *Dereliction of Duty: State-Bar Inaction in Response to America’s Access-to-Justice Crisis*, *Yale Law Journal Forum*, at 253 (Oct. 19, 2022), available at <https://www.yalelawjournal.org/forum/dereliction-of-duty> (last accessed Dec. 5, 2023).

<sup>68</sup> For general discussion of counterarguments against the risks, see Jessica Bednarz, *A Closer Look: Three Common Arguments Against Regulatory Reform*, (June 13, 2023), available at <https://iaals.du.edu/blog/closer-look-three-common-arguments-against-regulatory-reform> (last accessed Dec. 5, 2023).

<sup>69</sup> Steven Younger, *The Pitfalls and False Promises of Nonlawyer Ownership of Law Firms*, *The Yale Law Journal Forum*, at 267-68 (Oct. 19, 2022), available at <https://www.yalelawjournal.org/forum/the-pitfalls-and-false-promises-of-nonlawyer-ownership-of-law-firms> (last accessed Dec. 5, 2023) (hereinafter Younger).

<sup>70</sup> See Utah Office of Legal Services Innovation, *supra*, note 48; Ariz. R. Sup. Ct. 31.1, available at <https://casetext.com/rule/arizona-court-rules/arizona-rules-of-the-supreme-court/regulation-of-the-practice-of-law/supreme-court-jurisdiction-over-the-practice-of-law/rule-311-authorized-practice-of-law> (last accessed Dec. 5, 2023).

<sup>71</sup> Younger, *supra*, note 69, at 267-68.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 277.

- **Potential for exploitation:** Some have expressed concern that permitting non-attorneys to take an economic interest in entities providing services to low-income clients may increase the chances of predatory or exploitative practices.
- **Concern about profiting from low-income clients:** Various stakeholders have expressed discomfort about the concept of for-profit non-attorney-owned firms providing legal services to low-income clients.

The Subcommittee reviewed Arizona and Utah statutes and rules governing non-attorney ownership and protections for attorney independence and consumer protection in place in these jurisdictions and looked at entities in Arizona and Utah that might act as models to provide services to low-income individuals.

Finally, the Subcommittee solicited and considered feedback from the Family Law Section, Immigration Law Section, and Tax Law Section of the State Bar of Texas. This feedback is included in the stakeholder feedback information in Appendix B.

A full memo outlining the Non-Attorney Ownership Subcommittee’s research on the regulatory status quo, Texas rules and statutes, and attorney independence is included in this report as Appendix G.

## WORKING GROUP RECOMMENDATIONS

The following sections summarize the Working Group’s recommendations developed in response to the Supreme Court’s charge in the letter dated October 24, 2022, as approved in votes taken at the final Working Group meeting on November 2, 2023, and in a follow-up survey conducted after the meeting.<sup>74</sup>

### THE ROLE OF THE JUDICIAL BRANCH CERTIFICATION COMMISSION

The Working Group recommends that the Judicial Branch Certification Commission (JBCC) act as the regulatory agency to administer these proposals.<sup>75</sup> The JBCC is administratively attached to OCA.<sup>76</sup> The JBCC is the most suitable pre-existing regulatory entity to administer the process of approving, licensing, and overseeing legal paraprofessionals and non-attorney-owned firms

<sup>74</sup> More information about the Working Group’s discussion of non-attorney ownership proposals and results of the Working Group survey on the components of those proposals is available in Appendix G.

<sup>75</sup> The JBCC is governed generally by chapter 152 of the Government Code. *See also* Texas Judicial Branch, Judicial Branch Certification Commission, [www.txcourts.gov/jbcc/jbcc-statutes-rules-policies/](http://www.txcourts.gov/jbcc/jbcc-statutes-rules-policies/) (last accessed Dec. 5, 2023) (collecting statutes, rules, and policies applicable or related to the JBCC). The JBCC is composed of nine members appointed by the Supreme Court. Tex. Gov’t Code § 152.052.

<sup>76</sup> *See* Tex. Gov’t Code § 152.103; *see also* Rules of the Judicial Branch Certification Commission, Rule 2.3, *available at* <https://www.txcourts.gov/media/1457541/jbcc-rules.pdf> (last accessed Dec. 5, 2023).

providing legal services.<sup>77</sup> The Supreme Court is authorized by statute to assign regulatory programs to the JBCC,<sup>78</sup> and to promulgate rules to be administered by it.<sup>79</sup>

## DEFINITION OF LOW-INCOME

The Supreme Court's charge asked the Commission to make proposals about paraprofessionals and non-attorney ownership that were designed to increase access for "low-income"<sup>80</sup> Texans. With this in mind, the Working Group studied and considered how "low-income" is defined in Texas and nationally. There is not one uniform definition. The Working Group reviewed the eligibility threshold for legal aid organizations funded by LSC which are currently 125% of the federal poverty guidelines, as well as eligibility criteria for the various funding sources discussed in the overview of the [Access to Legal Services Working Group](#) and the [Scope of Practice Subcommittee](#)'s work.

For these proposals, the Working Group recommends defining "low-income" as at or below 200% of the federal poverty guidelines as determined by the United States Department of Health and Human Services. The Working Group further recommends that income be established through a Texas resident's self-certification in a sworn affidavit or in an unsworn declaration that complies with Chapter 132 of the Texas Civil Practice and Remedies Code. This recommendation is reflected in the proposed draft rules included in Appendix A of this report.

## LICENSED PARAPROFESSIONALS

Consistent with recommendations from the Scope of Practice Subcommittee, the Working Group recommends that the Texas Supreme Court license paraprofessionals to engage in particular types of legal representation in certain substantive legal areas. As discussed more

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<sup>77</sup> The JBCC qualifies well on all four criteria identified by the Non-Attorney Ownership Subcommittee as important factors relating to regulating entities: public perception, available resources, existing legal authority, and capacity to increase scale. These criteria are important for oversight and regulation of paraprofessionals as well. Notably with respect to available resources, the JBCC is required to "set fees in amounts reasonable and necessary to cover the costs of administering the programs or activities administered by the commission, including examinations and issuance and renewal of certifications, registrations, and licenses." *See* Tex. Gov't Code § 152.151(a)(4). Other discussed options for an oversight body included the Access to Justice Commission, the Legal Access Division of the State Bar, or an entirely new office.

<sup>78</sup> *See id.* § 152.051.

<sup>79</sup> The JBCC operates subject to rules promulgated by the Supreme Court. *See* Misc. Docket No. 23-9094 (Tex. Nov. 17, 2023) (order approving rules), *available at* <https://www.txcourts.gov/media/1457541/jbcc-rules.pdf> (last accessed Dec. 5, 2023); *see also* Tex. Gov't Code § 152.051. These rules could be supplemented by the Supreme Court (or with the Court's authorization, by the JBCC) to include rules for the examination and certification of non-lawyer-owned entities proposing to provide legal services, *see* Tex. Gov't Code § 152.101, ineligibility criteria for applicants, *see id.* § 152.203, and continuing education, *see id.* § 152.204. The JBCC is required to establish qualifications for certification, registration, and licensing, *see id.* § 152.151(a)(5); it must develop and recommend a code of ethics for those it regulates, *see id.* § 152.205; and it may establish advisory boards to advise it on policy and those regulated, *see id.* § 152.152.

<sup>80</sup> Supreme Court Letter, *supra*, note 15.

fully below, the Working Group recommends that some of these tasks would require attorney supervision, and some could be performed independently.

## PARAPROFESSIONAL SCOPE OF PRACTICE

Paraprofessional practice should generally be limited to specific subject matter areas where there is high demand for legal help from low-income individuals. The Working Group recommends that paraprofessionals be licensed in one or more of the following subject matter areas: family law, probate and estate, and consumer-debt law. The Working Group has defined, voted on, and approved specific tasks that paraprofessionals could be allowed to perform both with and without attorney supervision in each of these subject matter areas as outlined below. The recommendations are not meant to limit, in any way, the work that paraprofessionals, including paralegals and legal assistants, can already do in Texas with attorney supervision.

Relatedly, the Working Group also voted on and approved a proposed new scope-of-practice rule and amendments to the existing justice-court rules reflecting, among other things, the scope-of-practice recommendations in each substantive area of law (included in Appendix A).

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## GENERAL DEFINITIONS AND PROVISIONS RELATED TO SCOPE OF PRACTICE

**Uncontested.** In these recommendations, “uncontested” means cases in which there is no opposition by another party to any issue before the court. Uncontested cases include no-answer default-judgment cases. The filing of a general denial without a request for affirmative relief does not cause a case to be contested unless the general denial includes a contrary position on an issue before the court. The serving of process upon a party does not cause the case to be contested. A case becomes “contested” when any party files any pleading or motion with the court which takes a contrary position on any issue before the court or otherwise communicates with the court, in a hearing or otherwise, any contrary position on any issue before the court.

**Contested.** In these recommendations, a case becomes “contested” when any party does one of the following actions:

- Files any pleading or motion with the court which takes a contrary position on any issue before the court; or
- Communicates with the court, in a hearing or otherwise, any contrary position on any issue before the court.

**Disclosures.** The Working Group recommended that paraprofessionals must make certain written disclosures (in engagement agreements) about the scope of their practice and must take certain steps to withdraw and/or otherwise protect client interests if the representation

exceeds the scope of their licensure. For example, if a case becomes contested or evolves to include issues that are outside the scope of a particular subject matter area. The disclosure provision is based on attorney rules about withdrawal but contains additional guidance to ensure client interests are protected and paraprofessionals understand their responsibilities. The recommended disclosures are captured in the proposed rules in Appendix A.

**With attorney supervision.** This means that an attorney reviews all documents before they are filed by the paraprofessional and is available to answer any of the paraprofessional’s questions relating to the tasks being completed with attorney supervision. The supervising attorney need not be present for court appearances by the paraprofessional but must be identified in any filings the paraprofessional handles with the attorney’s supervision.

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## FAMILY LAW

**Without attorney supervision,** paraprofessionals licensed in family law may do the following things in **uncontested divorce cases that do not involve suits affecting the parent-child relationship and that have limited property issues** (e.g., cases involving no third-party sale/title transfer of real estate or division/transfer of retirement benefits owned by the parties):

- (1) Assist a client with completing forms and file forms for the client in family-law matters within the scope of this rule, if such forms have been approved by statute, the Supreme Court of Texas, an organization the Supreme Court of Texas has tasked with generating such forms, or any Texas court that has published such forms on the Office of Court Administration’s website consistent with Texas Rule of Judicial Administration 10;
- (2) Represent a client in uncontested courtroom proceedings (e.g., prove-up hearings or scheduling conferences), including preparation of affidavits in support of uncontested temporary orders and uncontested divorce decrees;
- (3) Provide procedural information (as opposed to legal advice) to an otherwise unrepresented litigant regarding procedural steps to be taken to initiate, advance, or finalize a suit; and
- (4) Communicate with court staff and an attorney or paraprofessional retained by the opposing party regarding the issues described in (1)–(3) above.

**With attorney supervision in uncontested suits under Title IV of the Texas Family Code and in uncontested suits affecting the parent-child relationship** (including uncontested suits under Title I and V of the Texas Family Code) that involve only standard conservatorship provisions, standard possession schedules, and guideline child support issues, paraprofessionals licensed in family law may do the following things in the following types of cases:

- (1) Assist a client with completing forms and file forms for the client in family-law matters within the scope of this rule, if such forms have been approved by statute, the Supreme Court of Texas, an organization the Supreme Court of Texas has tasked with generating such forms, or any Texas court that has published such forms on the Office of Court Administration's website consistent with Texas Rule of Judicial Administration 10;
- (2) Represent a client in uncontested courtroom proceedings (e.g., prove-up hearings or scheduling conferences), including through preparation of affidavits in support of uncontested temporary orders and uncontested final orders;
- (3) In addition to the matters described in (1)–(2) above, provide procedural information (as opposed to legal advice) to an otherwise unrepresented litigant regarding procedural steps to be taken to initiate, advance, or finalize a suit; and
- (4) Communicate with court staff and an attorney or paraprofessional retained by the opposing party regarding the issues described in (1)–(3) above;

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#### PROBATE AND ESTATE LAW

**Without attorney supervision**, paraprofessionals licensed in estate planning and probate law may do the following things:

- (1) Assist a client with completing forms and file forms for the client in estate-planning or probate-law matters within the scope of this rule, if such forms have been approved by statute, the Supreme Court of Texas, an organization the Supreme Court of Texas has tasked with generating such forms, or any Texas court that has published such forms on the Office of Court Administration's website consistent with Texas Rule of Judicial Administration 10;
- (2) Represent a client in uncontested courtroom proceedings to the extent that such proceedings pertain to a muniment of title;
- (3) If and to the extent not covered by (1) above, assist a client with completing the following forms and, as needed, file the following forms: a Health Insurance Portability and Accountability Act (HIPAA) Release, Annual Reports of Person in Guardianship, a Medical Power of Attorney (MPOA), a Declaration of Guardian, a Directive to Physicians (DTP), a Declaration for Mental Health Treatment, Supported Decision Making Agreements (SDMA), a Statutory Durable Power of Attorney (SDPOA), a Transfer on Death Deed (TODD), a Small Estate Affidavit (SEA), and a Muniment of Title Application;
- (4) In addition to the matters described in (1)–(3) above, provide procedural information (as opposed to legal advice) to an otherwise unrepresented litigant regarding how to participate in a probate or guardianship proceeding; and

(5) Communicate with court staff and an attorney or paraprofessional retained by an opposing party regarding the issues described in (1)–(4) above, provided that such communication with court staff is limited to matters pertaining to Annual Reports of Person in Guardianship, SEAs, and Muniment of Title Applications.

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## CONSUMER-DEBT LAW

**Without attorney supervision**, paraprofessionals licensed in consumer-debt law may do the following things:

- (1) Assist a client with completing forms and file forms for the client in consumer-debt-law matters within the scope of this rule, if such forms have been approved by statute, the Supreme Court of Texas, an organization the Supreme Court of Texas has tasked with generating such forms, or any Texas court that has published such forms on the Office of Court Administration’s website consistent with Texas Rule of Judicial Administration 10;
- (2) Represent a client in uncontested courtroom proceedings;
- (3) In a debt-claim case in justice court, appear for and represent any party who is an individual (rather than any entity of any type), with any matter involved with the preparation, litigation, and settlement of a debt-claim case, including by perfecting an appeal of a judgment from justice court to county court and by handling any matter related to post-judgment collection, discovery, and receiverships; and
- (4) In addition to the matters described in subsections (1)–(3) above, provide procedural information (as opposed to legal advice) to an otherwise unrepresented litigant regarding procedural steps to be taken to initiate, advance, or finalize a suit; and
- (5) Communicate with court staff and an attorney or paraprofessional retained by the opposing party regarding the issues described in subsections (1)–(4) above.

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## JUSTICE COURT REPRESENTATION AND RULE AMENDMENTS

The following recommendations about Justice Court representation stem in part from the work of the Housing Subgroup. Existing justice-court rules already allow an individual in justice court cases to be (1) *represented by* an “authorized agent” in eviction cases (consistent with Section 24.011 of the Texas Property Code) and (2) *assisted by* a family member or other individuals in all types of cases in justice court. Tex. R. Civ. P. 500.4(a), (c). The existing rules do not define “authorized agent” and do not explain the difference between representation and assistance. Regardless, because those rules allow paraprofessional representation of individuals in eviction cases, the new scope-of-practice rule does not address eviction cases. Instead, proposed amendments to Rule 500.4(a) expand representation by non-attorneys to include two new

categories: (1) licensed paraprofessionals, who can provide representation within the scope of their license (as described in the new scope-of-practice rule); and (2) Community Justice Workers, who are envisioned as receiving licenses and training that are focused on specific tasks, as providing representation in relation to those tasks alone, and as working under the supervision of an attorney who is employed by a legal aid entity or other nonprofit entity. Specifically, the Working Group adopted the following recommendations:

- Allow paraprofessional representation in justice-court cases if the representation is within the scope of the paraprofessional licensure.
- Amend Texas Rule of Civil Procedure Rule 500.4(c) to permit assistance by non-attorneys in justice-court cases unless the court finds good cause not to allow assistance. (The current rule requires the court to make a finding of good cause before allowing assistance.) The Working Group also recommends requiring that the party being assisted be present at all proceedings at which such assistance is provided.
- Require citations in eviction cases to reference Rule 500.4 and TexasLawHelp.org to give people information about assistance and representation options available.
- Allow task-specific, supervised representation by Community Justice Workers in all types of justice-court cases. This recommendation is discussed more fully below.

These rule amendment recommendations are captured in the proposed rules in Appendix A.

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## COMMUNITY JUSTICE WORKER PROGRAM

The Working Group recommends amending existing justice court rules (set forth in Texas Rule of Civil Procedure 500.4) to permit Community Justice Workers to practice on a limited basis in all types of justice court cases, if they meet certain requirements. Specifically, these Community Justice Workers would have to be licensed by the Supreme Court, would have to be supervised by an attorney, and would have to completed training mandated by the Supreme Court. Additionally, in this context, the supervising attorney would have to work for a legal aid entity or other nonprofit entity, and the representation permitted would be confined to the tasks the Community Justice Worker has been trained to complete in justice court cases.<sup>81</sup>

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<sup>81</sup> One Working Group member proposed also authorizing Community Justice Workers to represent clients in other adjudicatory forums, including in administrative proceedings. The Court should consider using data from the new program to consider whether expansion of the program could increase access to justice in other forums.

## LICENSING AND REGULATION OF PARAPROFESSIONALS

The Working Group recommends that licensing and regulating paraprofessionals encompass the following areas:

- Qualification
- Examination
- Character and Fitness Assessment
- Continuing Legal Education
- Ethics Codes and Requirements
- Liability Insurance Considerations
- Annual Dues and Reporting
- Discipline

The Working Group developed recommendations in each of these areas, using existing Texas regulatory structures as guideposts. Proposed rules encompassing these recommendations are included as Appendix A of this report.

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### QUALIFICATIONS

Paraprofessional applicants should have a combination of training and subject-matter specific expertise. The proposed qualifications for paraprofessionals were informed by from the Active Membership criteria for the Paralegal Division of the Texas State Bar, the Texas Board of Legal Specialization for paralegals, and contain new subject matter requirements based on subject matter practice areas recommended for legal paraprofessionals.

To be considered for licensure, a paraprofessional applicant must meet the following qualifications:

#### **General Qualifications**

An individual must have at least a high school education or equivalent and meet one of the following criteria:

- be a Board-Certified Paralegal through the Texas Board of Legal Specialization;
- be a Certified Legal Assistant or Certified Paralegal through the National Association of Legal Assistants;
- be a Registered Paralegal through National Federation of Paralegal Associations;
- have received a bachelor's or higher degree in a field other than legal studies;
- have completed an ABA approved paralegal program/college;
- have completed a paralegal program/college that consists of a minimum of 60 semester credit hours (or equivalent quarter hours) of which 15 are substantive legal courses;

- have completed a paralegal program/college that consists of 15 semester credit hours of substantive legal courses;
- have completed a paralegal program that requires a bachelor's degree, associate's degree or higher AND consists of a minimum of 15 semester credit hours or a minimum of 100 clock hours;
- have been employed as a paralegal for at least five consecutive years performing at least 80% substantive legal work under direct supervision of an attorney;
- have a J.D. from an ABA-approved law school.

### **Subject Matter Specific Qualifications**

A candidate must also meet one of the following criteria for the subject matter area in which they are requesting licensure:

- Be a paralegal certified in the practice area for which they are seeking licensure by the Texas Board of Legal Specialization.
- Have been employed as a paralegal in Texas with at least 50 percent of the candidate's practice for three (3) of the past five (5) years in the subject matter area for which the candidate is seeking licensure.
- Have completed training approved by the JBCC in the specific subject matter area for which they are seeking licensure.

The proposed rules in Appendix A contain definitions of "paralegal" and "substantive legal work" related to the qualification provisions.

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## **EXAMINATION**

To be licensed as a legal paraprofessional, in addition to meeting the qualifications listed above, candidates must:

- (a.) Pass a one-hour examination that covers ethics rules for paraprofessionals, including ethics related to paraprofessional scope of practice; **and**
- (b.) Pass a one-hour competency examination that covers the subject matter area(s) in which the candidate seeks to be licensed. The competency examination can be waived if:
  - (1) the candidate has received a score of 260 on the Texas Bar Exam;
  - (2) has taken another examination that tests competency in that subject matter, including an exam by the Texas Board of Legal Specialization or the National Association of Legal Assistants; or
  - (3) otherwise meets a waiver standard set by the JBCC.

An applicant who, after a combined total of five examinations, has failed to pass the exams above cannot become a licensed legal paraprofessional. For good cause, the JBCC may waive

this prohibition.

The Working Group recommends limiting the examinations to one-hour to ensure that requirements for entry do not create unnecessary barriers and to ensure that the examination is tailored to test candidate knowledge of what they actually need to know to succeed as paraprofessionals under the proposed program.

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## CHARACTER AND FITNESS ASSESSMENT

In addition to satisfying qualification and examination requirements, the Working Group recommends that paraprofessional candidates be required to undergo a character and fitness assessment that takes into account the following:

- Academic discipline.
- Criminal history information including a criminal background check.
- Professional licenses and certifications held by a candidate and any discipline history related to those licenses or certifications.
- Reports of unauthorized practice of law either to the Unauthorized Practice of Law Commission or the Paralegal Division of the State Bar of Texas.
- Some information about employment history.
- Military service information.
- Legal and financial information including information about participation in a legal proceeding, child support judgments and arrearages, and past-due debts.
- Information about whether a candidate has ever offered immigration-based services or used the term “notario” to refer to their work. (This is not disqualifying, particularly if the person has acted as a licensed notario in a country in which this is permitted.)

This character and fitness assessment is intended to capture information that might limit a person’s ability to serve as a paraprofessional, although it will not be as extensive as the character and fitness assessment required for attorney Bar admission to avoid creating unnecessary barriers.

A model character and fitness application is included in this report in Appendix A.

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## CODE OF ETHICS

The Working Group recommends that legal paraprofessionals be required to follow a code of ethics. The draft code of ethics in the proposed rules (Appendix A) is modeled on the Paralegal Division’s Canon of Paralegal Ethics<sup>82</sup> and the confidentiality, conflict of interest, and advertising provisions for attorneys in the Texas Disciplinary Rules of Professional Conduct.

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<sup>82</sup> State Bar of Texas Paralegal Division, Code of Ethics and Professional Responsibility, *available at* <https://txpd.org/ethics-pages/professional-ethics-and-the-paralegal/> (last accessed Dec. 5, 2023).

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## DISCIPLINE

The Working Group proposes that paraprofessional discipline be governed by the Rules of the JBCC and the JBCC's administrative dismissal policy. The JBCC rules cover complaint initiation and review; administrative dismissal of improper complaints; settlement; hearing and appeals; and sanctions. Using the JBCC rules will result in a process that ensures complaints against paraprofessionals are examined and investigated thoroughly but do not rise to the level of complexity of attorney discipline processes. This will also ensure consistency with other JBCC-monitored professions.

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## CONTINUING LEGAL EDUCATION

The Working Group recommends that paraprofessionals complete ten hours of continuing legal education annually, at least three of which be ethics education. This is a hybrid approach, that takes into consideration current paralegal and Texas attorney CLE rules.

A draft CLE rule is included in Appendix A of this report.

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## LIABILITY INSURANCE CONSIDERATIONS

The Working Group does not recommend that paraprofessionals be required to carry liability insurance. Although liability insurance is a best practice, Texas attorneys are not required to carry liability insurance, and the Working Group prefers to track attorney requirements for liability insurance, as is the standard in other states that permit paraprofessional practice.

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## ENTITIES WITH NON-ATTORNEY OWNERSHIP

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### PROPOSAL OVERVIEW

To address the Supreme Court's request regarding non-attorney ownership of entities providing legal services, the Working Group proposes the following:

- The Supreme Court could implement a pilot program to be overseen by the JBCC, which is administered by the OCA.<sup>83</sup>
- An exception to application of Rule 5.04(a), (b), (d)(1), and (d)(2) of the Texas Disciplinary Rules of Professional Conduct could be created for entities that are certified by the JBCC and issued a license by the Supreme Court to perform a defined scope of legal services, strictly limited to services requested by the entity and approved by the JBCC.

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<sup>83</sup> Dental Support Organizations, which currently exist in Texas, might act as potential model for what non-attorney investment might look like. See Tex. Bus. & Com. Code §§ 73.001-.008.

- Application procedure and rule guidance could be promulgated by the Supreme Court and the JBCC to ensure that approved entities actually will provide needed legal services to low-income Texans. Application procedure and guidance should include the following:
  - The application will describe proposed legal services in detail, and demonstrate how they will expand civil access to justice for low-income Texans.
  - Each entity must disclose in the application any of its owners' potential conflicts with the proposed legal services.
  - Each entity must make detailed commitments, provide regular reports, and agree to JBCC monitoring to ensure that: (1) the entity provides quality legal services to low-income Texans either pro bono or at affordable and transparent rates, (2) the services are rendered in compliance with all attorney ethics rules, which also will apply to the entity (including protection of attorney independence and client confidentiality, advertising restrictions, avoidance of conflicts of interest, and safekeeping of client funds), and (3) clients are protected from exploitation and inferior services that cause more harm than good.
  - A Texas-licensed attorney must be employed by the entity, designated and identifiable to the public as the person responsible for ensuring the entity's compliance with ethical and regulatory standards.
  - All legal advice provided through the entity will be rendered by licensed attorneys or paraprofessionals, and not by generative artificial intelligence or algorithms unless reviewed for accuracy by a licensed attorney or paraprofessional.
  - Data collection, reporting, and monitoring will verify that low-income Texans are receiving quality services and facilitate evaluation of renewal requests and overall effectiveness of the pilot program.
  - All clients of entities will receive information about how to lodge complaints with the JBCC and will be contacted to provide feedback on the services received.
  - Certain types of legal services or forms of delivery of legal services that present special concerns will be considered for exclusion from the pilot project, as noted in these recommendations.
  - As reinforcement of this reform's specific purpose to expand access for low-income Texans, the JBCC should act as a gatekeeper and apply its guidelines to ensure a focus on expanding access to justice and to prevent abuse.
  - Approved entities would be prohibited from accessing funding for legal service/legal aid organizations from state or federal governmental entities or from the Texas Access to Justice Foundation.
  - An annual process of re-application and re-certification should be required for approved entities to continue providing legal services.

- The Supreme Court or JBCC should adopt a framework for evaluating whether approved entities adequately increase low-income Texans’ access to free or affordable legal services. A survey of Working Group members demonstrated roughly equal support for two approaches:
  - Adopt a fixed threshold of clients, as a percentage of all clients served, who qualify as a “low-income Texan”; or
  - Evaluate each entity application, exercising discretion on a case-by-case basis, to determine whether the proposal (including the proposed legal services, description of expected clients, proposed funding model and fee structure, and proposed safeguards to satisfy rules for participation), present a sufficient likelihood of addressing expanding access to justice for low-income Texans to justify the entity’s participation in the pilot program.
- An annual process of re-application and re-certification should be required for approved entities to continue providing legal services.

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#### PROPOSED EXEMPTION TO RULE 5.04

The Supreme Court’s charge to the Commission subsumes several criteria. A responsive proposal must (a) enable non-attorneys to have economic interests in entities that provide legal services to low-income Texans, (b) while preserving professional independence. The proposal should (c) address the civil justice gap and expand access to justice for low-income Texans. And finally, it should (d) incorporate recommendations about (i) whether the modifications should be studied through a pilot program or regulatory sandbox, and (ii) whether the modifications should focus on services for which there is a particular need.

Rule 5.04(d) currently prohibits a lawyer<sup>84</sup> from practicing “in the form of a professional corporation or association authorized to practice law for a profit” when ownership interests are held by a non-lawyer. Rule 5.04(a) generally prohibits lawyers from sharing legal fees with non-lawyers, and Rule 5.04(b) prohibits lawyer partnerships with non-lawyers to engage in the practice of law. The recommendation therefore must propose a method to establish an appropriately limited exception to Rule 5.04(a), (b), (d)(1), and (d)(2). The context of the Supreme Court’s charge—both the concern for expanding access to justice, and the admonition to protect attorney independence—invites a proposal for a limited exception that is tailored to expand access to justice while preserving protection for attorneys to fulfill their duties to clients without undue pressure from non-attorneys co-owners or managers.<sup>85</sup> In this respect, the

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<sup>84</sup> This report generally uses the term “attorney” for consistency. However, Rule 5.04 refers to lawyers and when referring to Rule 5.04, this report uses the term “lawyer” to track the language of Rule 5.04.

<sup>85</sup> This is as distinguished from the possibility of abolishing Rule 5.04(d) entirely, which would have major implications for law practice that go well beyond addressing access-to-justice concerns, as well as exposing all areas of practice to concerns for preserving attorney independence.

response to the Supreme Court’s invitation to consider whether modifications should focus on certain services for which there is a particular need is *yes*. While the Working Group does not propose to define in advance those services that may be provided under the exception to Rule 5.04, it does propose a process to authorize only those services that demonstrably serve or propose to serve a particularly identified need of low-income Texans.

To maximize the potential for helpful innovation while also ensuring that the traditional Rule 5.04(d) prohibition is relaxed only to enable opportunities to expand access to justice for low-income Texans,<sup>86</sup> the Working Group recommends allowing *certified and licensed entities* to provide legal services for a profit,<sup>87</sup> within criteria specified either by the text of the rule, or by guidance promulgated by the JBCC, or both. The criteria for the circumstances in which the exception would apply can be articulated both positively (e.g. requiring that the entity actually provide civil legal services in areas of need to low-income Texans) and negatively (e.g. excluding specific practices or particular legal services as may be advisable). Importantly, it is the Working Group’s intention for and expectation of the JBCC that the approval criteria will be used to ensure both that the approved entities actually provide civil legal services to low-income Texans and that they are operated so as to minimize concern related to interference with attorney independence.

This proposal in satisfaction of the Supreme Court’s charge could take the form of a pilot program designed to study the effect of such changes on the availability of civil legal services needed by low-income Texans pending a future decision whether to formally amend Rule 5.04.<sup>88</sup> The Working Group proposes an order by the Supreme Court containing the following language (or language to the same effect):

In order to expand the availability of civil legal services to low-income Texans, the Judicial Branch Certification Commission shall establish qualifications for the certification of professional corporations, associations, or other entities to provide a specified scope of approved legal services. Certified entities then may be issued a license to practice law within the approved scope, and thereby may become a “member

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<sup>86</sup> The Utah Supreme Court’s order establishing its Innovation Office states: “The overarching goal of this reform is to improve access to justice. With this goal firmly in mind, the Innovation Office will be guided by a single regulatory objective: **To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services.**” Utah Standing Order No. 15, *supra*, note 46, at 13. Notably, while the Utah order identifies access to justice as the “overarching goal,” the Utah order apparently does not prioritize access to justice for the low-income community in the same way that the charge from the Supreme Court apparently does. *See also id.* at 2 (“For years, the Utah Supreme Court has made combating the access-to-justice crisis confronting Utahans of all socioeconomic levels a top priority.” (emphasis supplied)).

<sup>87</sup> The Utah regulatory scheme expressly regulates entities and not individuals. *See* Utah Standing Order No. 15, *supra*, note 46, at 8.

<sup>88</sup> *See* Utah Standing Order No. 15, *supra*, note 46, at 6 & nn. 13-15; Tex. Const. art. V, § 31; Tex. Gov’t Code §§ 82.021 & 82.022(a); *cf. Ashford v. Goodwin*, 131 S.W. 535, 538 (Tex. 1910).

of the bar” for purposes of all statutes and rules regulating unauthorized practice of law. Paragraphs (a), (b), (d)(1), and (d)(2) of Rule 5.04 of the Texas Disciplinary Rules of Professional Conduct shall not apply to a licensed professional corporation, association, or other entity providing legal services within the scope approved and certified by the Commission. Entities certified and licensed to provide legal services pursuant to this exception must provide legal services to low-income Texans and must satisfy any other conditions imposed by the Commission. Legal services provided by the licensee shall be limited to those proposed by the entity and specifically approved by the Commission, subject to any regulations and other limitations imposed by the Commission. Annual renewal of licensure must be obtained to continue providing legal services under this exception.

This proposed modification would create two tiers of criteria for, or limitations on, the entities certified and licensed to provide legal services under the exception. The first tier is built into the top-line parameters establishing the pilot program (or ultimately in any future revision to the Rules), such as the example given above. The second tier of criteria and limitations would be established through the rules and conditions applied by the JBCC to permit entities to obtain and maintain licensure, and these rules should be susceptible to modification as needed over time and based on experience, under the ultimate supervision of the Supreme Court.

Both in the text establishing an exception to Rule 5.04 and in guidelines promulgated by the JBCC, it should be made clear that the exception exists for the primary purpose of enabling expanded access to justice by ensuring that legal services are available to low-income Texans who otherwise would be forced to represent themselves or otherwise be deprived of assistance with civil legal matters. This essential criterion should be applied at the initial stage of approving an entity’s proposed scope of services and then on an ongoing basis at the subsequent times for renewing approval, with the benefit of any data the entity would be required to report.

This rule proposal is included in Appendix A to this report.

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## REGULATORY STRUCTURE UNDER JBCC

The JBCC appears to be well situated to be delegated the responsibility of overseeing entities offering legal services under a provisional exception to Rule 5.04, whether characterized as a “pilot program” or “regulatory sandbox.”<sup>89</sup> Under either concept or choice of terminology, the

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<sup>89</sup> The Court asked the Commission to consider whether the rule modifications should be enacted as a pilot program or in a “regulatory sandbox” structure. “A regulatory sandbox is a controlled environment where startups and other innovative businesses can test products or services under regulatory supervision while being temporarily exempt from specific regulations that would otherwise restrict or prohibit operations.” Rod Bordelon, *Reducing Regulatory Uncertainty: Sandboxes and Letters of Interpretation* (Nov. 2022), available at

Court could impose a specific sunset deadline, as the Utah Supreme Court has done.<sup>90</sup> Also, the Court would retain to itself the effective power to wind down the program at any time in the future by withdrawing approval for new or renewed certifications by the JBCC, and by withholding or withdrawing licenses.

The JBCC's registration process to obtain certification leading to licensure (or renewed licensure) to provide legal services under the exception to Rule 5.04 should require disclosure of information necessary to ensure that important civil legal services in an area of need actually would be provided to low-income Texans, and to monitor the effectiveness of each approved entity in that regard. Mandatory disclosures should require descriptions of:

- the scope of the proposed legal services;
- the intended client base, including how the entity will ensure some percentage of its clients meet the low-income requirement;
- how the proposed legal services will increase access to civil legal services needed by low-income Texans;
- the proposed funding model, including client fee structure;
- form client engagement agreement and notification of conclusion of engagement;
- ownership and management structure, identifying the level of participation by non-attorneys and potential conflicts of interest between the entity's owners and the proposed legal services;
- specific written protections for attorney independence; and
- plan for notice and mitigation of prejudice to clients, in the event of discontinuation of the entity, discontinued certification of the entity's authorization to provide legal services, or discontinuation of the exception to Rule 5.04 established through the certification and licensure process.

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<https://www.texaspolicy.com/wp-content/uploads/2022/11/2022-11-RR-AfO-ReducingRegulatoryUncertainty-RodBordelon.pdf> (last accessed September 14, 2023); see also State Policy Network, *Everything You Need to Know About Regulatory Sandboxes* (Oct. 12, 2021), available at [spn.org/articles/what-is-a-regulatory-sandbox/](https://spn.org/articles/what-is-a-regulatory-sandbox/) (last accessed September 14, 2023). The Utah regulatory sandbox for legal services was created by the Utah Supreme Court to operate for a 7-year pilot phase. Utah Standing Order No. 15, *supra*, note 46, at 3.

<sup>90</sup> "At the end of [the pilot phase], the Supreme Court will carefully evaluate the program as a whole, including the Sandbox, to determine if it should continue. Indeed, unless expressly authorized by the Supreme Court, the program will expire at the conclusion of the seven-year study period." Utah Standing Order No. 15, *supra*, note 46, at 3.

As part of the initial and renewed certification processes, approved entities should be required to undertake ongoing obligations, including:

- adherence to rules governing the legal profession when providing legal services, including advertising rules, protection of confidential client information,<sup>91</sup> avoiding conflicts of interest, and management of client funds;
- regular reports, and agreement to JBCC monitoring to ensure that: (1) the entity provides quality legal services to low-income Texans either pro bono or at affordable and transparent rates; (2) the services are rendered in compliance with all attorney ethics rules, which will also apply to the entity (including protection of attorney independence and client confidentiality, advertising restrictions, avoidance of conflicts of interest, and safekeeping of client funds); and (3) clients are protected from exploitation and inferior services that cause more harm than good; prominent disclosure of non-attorney ownership or management to the public and to clients;
- identification of compliance officers or other responsible Texas-licensed attorneys to ensure attorney independence (see Rule 5.04(c)) and general compliance with ethical rules, including protection of client confidences (see Rule 1.05) and non-solicitation of potential clients;
- all legal advice provided through the entity must be rendered by licensed attorneys or paraprofessionals, and not by artificial intelligence or algorithms;
- providing information to clients about how to report complaints to the regulating authority,<sup>92</sup> regular reporting of complaints received, and requiring that clients be contacted to provide feedback on the services received;
- collection and reporting of data about client demographics, including client income,<sup>93</sup> legal services provided, fees collected, and objective outcomes;
- commitment not to seek or accept funding for legal service/legal aid organizations from state or federal governmental entities or from the Texas Access to Justice Foundation; and
- disclosure of whether the entity carries malpractice insurance.

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<sup>91</sup> The requirement for protection of client confidences would preclude the harvesting and profiting from private client information by licensed entities.

<sup>92</sup> For example, see the Judicial Branch Certification Commission's Complaint Form, *available at* [www.txcourts.gov/media/1454805/jbcc-complaint-form-2022.pdf](http://www.txcourts.gov/media/1454805/jbcc-complaint-form-2022.pdf) (last accessed Dec. 5, 2023). *See generally* Texas Judicial Branch, Judicial Branch Certification Commission, Compliance, [www.txcourts.gov/jbcc/compliance](http://www.txcourts.gov/jbcc/compliance) (last accessed Dec. 5, 2023) (describing JBCC's complaint procedure).

<sup>93</sup> For example, Maryland Court Help Centers collect demographic data from clients including income brackets, gender, race/ethnicity, level of education, age, and ZIP code. *See generally* Resources for the Self-Represented in the Maryland Courts (2022).

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## CONSIDERATION OF PARTICULAR PRACTICE AREAS

The JBCC also should provide guidance as part of the entity application process, and it should carefully consider in its certification process, scenarios in which it may not be appropriate to permit partnership with non-attorneys.<sup>94</sup> For example, it generally may not be appropriate to permit non-attorneys to participate in contingent-fee arrangements (or the other scenarios prohibited by Penal Code section 38.123), as these arrangements by their nature and purpose already are accessible by low-income clients, and so approving their use by non-attorney-owned firms seems unlikely to further expand access to justice.<sup>95</sup>

The Working Group's and the Non-Attorney Ownership Subcommittee's engagement with representatives of various practice areas have provided helpful input about whether and how the JBCC should consider entity applications to provide legal services in particular areas of practice.<sup>96</sup> Reports from stakeholders in these practice areas are included in the stakeholder feedback in Appendix E. Considering the deadlines for reporting to the Supreme Court and the certainty of continuing discussions on these subjects to the extent the Supreme Court continues to consider these reforms, and the prospect that the JBCC would be responsible for implementing any reform under the guidance of an advisory board formed for this purpose, it is beyond the scope of what this Working Group could have hoped to accomplish to propose fully comprehensive and definitive proposals for each affected practice area. The Working Group's work has surfaced the following practice-area-specific considerations, which are not intended to reflect comprehensive statements of position as communicated by representatives of the respective practice areas. Additional information can be found in the written input submitted on behalf of the various practice areas included in Appendix E.

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## FAMILY LAW

Family law is an area in which there is great need for civil legal assistance among low-income Texans,<sup>97</sup> but the adequacy of data to support authorizing legal services provided by non-

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<sup>94</sup> See generally 2 G. Hazard et al., *The Law of Lawyering* § 48.03 (4th ed.) (identifying risks of participation by "lay intermediaries" as unauthorized practice of law by nonlawyer participants, lessened protection for client confidences, impairment of lawyers' independent professional judgment, improper solicitation of clients, and encroachment by professionals in other fields).

<sup>95</sup> Guidance also may be desirable concerning referral fees or other types of fee-splitting, such as are applicable to lawyers at different lawyer-owned law firms. See Tex. Discip. R. Prof'l Cond. 1.04(f) & (g).

<sup>96</sup> Notably, some of the feedback from representatives of various practice areas reflected general opposition to the idea of creating an exception to Rule 5.04. Substantial effort has been put into written feedback provided in this process, and many attorneys who were otherwise generally opposed to any proposed reform nevertheless has constructively engaged to respond to the Supreme Court's charge.

<sup>97</sup> See, e.g., *The Justice Gap*, *supra*, note 1, at 35 ("About one-quarter (26%) of all low-income households have experienced at least one problem related to family matters or personal safety. The prevalence is significantly higher among households with children under 12 years old (44%). The most common problems across all households in this area include experience with domestic violence (affecting 10% of all households), problems

attorney-owned firms in Texas has been questioned, at least so far as it applies to family law.<sup>98</sup> In addition to other general concerns expressed by family-law practitioners in opposition to non-attorney ownership of firms by non-attorney, family law is an often complicated area presenting frequent concerns about conflicts of interest, including difficult ethical issues related to fees and misaligned incentives leading to protracted, asset-consuming litigation.<sup>99</sup> Clients with the means to hire attorneys under traditional models already inadvisably try to represent themselves and use inappropriate forms in complicated matters, prompting questions about whether strict means-testing would be appropriate. That said, it seems evident that some areas of family-law practice, such as name changes,<sup>100</sup> could be susceptible to cost-saving innovations that should not present concerns. To the extent Rule 5.04 is reformed over their extensive objections, the Family Law Council proposes certain regulations beyond those contemplated by this Subcommittee,<sup>101</sup> including “strict criteria for determining the eligibility of low-income

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collecting or paying child support (9%), and separation or divorce (9%).”); *see also id.* at 73 (noting, based on LSC’s 2021 Intake Census data, that 28% of all the problems receiving legal help from LSC-funded organizations are related to family and safety).

<sup>98</sup> Written input from the Family Law Council includes the memorandum in Appendix E from the Future of Family Law Committee dated October 17, 2023 regarding “Non-Ownership of Family Law Practices” (hereinafter, FOFLC Memo), including an attachment to that memorandum titled “Analysis of the Conclusions of ‘Access to Justice Facts’ as the Basis for Creating Non-Lawyer Ownership of Law Firms” (hereinafter, FOFLC Analysis of “Access to Justice Facts”). The FOFLC Memo takes issue with the “Texas Unmet Legal Needs Survey,” submitted to the Texas Access to Justice Foundation in July 2015, which is a source of information *supra* supporting statistics underlying the access-to-justice crisis in Texas. *See Texas Unmet Legal Needs Survey, supra*, note 63, at 1 & n.2 (“In Texas, 90% of the civil legal needs of low-income individuals are unmet.” (citing Texas Access to Justice Foundation, Access to Justice Facts, *supra*, note 8)). The FOFLC Analysis of “Access to Justice Facts” interprets the Texas Unmet Legal Needs Survey to show that “at most, approximately 1.5% of low-income individuals have unmet civil legal needs in the area of family law”—a conclusion that they also “reject out of hand...as being far too low.” FOFLC Analysis of “Access to Justice Facts” at 1-2. The FOFLC Memo also critiques a “lack of input from trial judges whose courts have family law jurisdiction.” FOFLC Memo at 2. While there is no known documentation of Texas judges with family-law jurisdiction disagreeing about the substantial unmet civil legal needs of low-income Texans in the area of family law, a survey could be conducted to collect additional information from these trial judges. But it is worth noting now that the FOFLC Memo provides that the Family Law Council “*agrees that there is a crisis in providing affordable legal services to low-income Texans* and supports the Supreme Court of Texas in its efforts to identify effective methods to address this problem.” FOFLC Memo at 1 (emphasis supplied).

<sup>99</sup> *See Tex. Discip. R. Prof’l Cond. 1.04 cmt. 9* (“Contingent and percentage fees in family law matters may tend to promote divorce and may be inconsistent with a lawyer’s obligation to encourage reconciliation. Such fee arrangements also may tend to create a conflict of interest between lawyer and client regarding the appraisal of assets obtained for client. *See also id.* R. 1.08(h). In certain family law matters, such as child custody and adoption, no res is created to fund a fee. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relations cases are rarely justified.”); *see also* FOFLC Memo at 12.

<sup>100</sup> LegalZoom offers legal name changes starting at \$139 plus court filing fees. *See* LegalZoom, Name Change, <https://www.legalzoom.com/personal/marriage-and-divorce/name-change-overview.html> (last accessed Dec. 5, 2023). However, the Family Law Council has asserted that “there is an insufficient market for adult name changes, particularly among low-income individuals, to justify the creation of NLO’s.” FOFLC Memo at 6.

<sup>101</sup> Subject to its general opposition to the reform, the Family Law Council proposes that non-attorney owners of licensed firms be required to satisfy character and fitness requirements similar to those required of Texas-licensed attorneys. FOFLC Memo at 9. They propose that “non-attorney stakeholders” must “undergo continuous legal

Texans” which “could include verifying financial records, employment status, and other relevant factors” and which also may require further review over the life of an engagement.<sup>102</sup>

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## IMMIGRATION LAW<sup>103</sup>

Immigration law is another often-complicated area of practice<sup>104</sup> with a substantial unmet need for services by low-income Texans. It is a practice area that intersects with many federal regulations, including regulation of the practice of immigration law.<sup>105</sup> And the consequences of bad advice can be devastating.

As noted in the July 2023 Report from immigration practitioners:

The consequences of ineffective assistance in an immigration case can be catastrophic; an individual may face loss of employment, family separation, or even removal from the United States with bars to reentry. If someone seeks a green card and has a child approaching 21 years of age, a delayed filing could cause the child to “age out” (lose eligibility to become a permanent resident). Many of our members have had clients with very extensive problems based on an error in a previous case, often something one might assume would be a minor issue. In some cases, the error cannot be corrected.

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training and professional development” that “should match or exceed the requirements of the legal community for CLE and include trauma training.” *Id.* at 10. They propose regular “performance audits,” assessing the quality of licensed entities’ legal representation and “comparing it to traditional legal standards to ensure it meets a certain standard.” *Id.* at 9-10. They also propose “a peer review system where seasoned attorneys periodically evaluate, and review cases handled by these entities.” *Id.* at 10-11.

<sup>102</sup> FOFLC Memo at 9. Subject to its general opposition to the reform, the Family Law Council also proposes that 100% of non-attorney-owned entities offering family-law services meet the standard set for “low-income Texans,” and that fees charged by approved entities must be “less than comparable licensed lawyers” and that at least 25% of their services must be provided at no cost. *Id.* at 8.

<sup>103</sup> Written input from representatives of the Immigration Section of the State Bar includes a memorandum dated July 25, 2023 (hereinafter July 2023 Report) and PowerPoint slides presented to the Scope of Practice Subcommittee on August 25, 2023. These documents are included in the stakeholder feedback in Appendix E.

<sup>104</sup> See generally July 2023 Report at 5-8.

<sup>105</sup> The July 2023 Report noted that “[r]epresentation of noncitizens in immigration matters is exclusively before federal agencies and courts, not state bodies. Federal statutes and regulations create a comprehensive administrative scheme to regulate who may prepare and file immigration cases and provide immigration legal advice.” July 2023 Report at 1. Acknowledging the federal courts’ authority and competence to regulate practice before them, we nevertheless perceive (or at least are not persuaded that there could not be) a potential opportunity for innovative methods of delivering immigration-related legal counseling and other forms of legal services that could be of great assistance to low-income Texans. Even to the extent immigration advice and the preparation and filing of immigration applications, as contemplated by 8 C.F.R. § 1.2, is limited only to those authorized by 8 C.F.R. § 292.1 and who generally may be only lawyers and certain accredited nonprofit organizations, it could be possible that such services could be delivered at lower costs by accredited attorneys working under the auspices of a non-lawyer-owned entity as envisioned by these proposed rule modifications.

Until a noncitizen gains status as a U.S. citizen, immigration impacts every aspect of their life. A single misstep along the way could cost them everything.<sup>106</sup>

The July 2023 Report identifies a consumer-protection concern with respect to “notarios publicos,”<sup>107</sup> which should be considered by the JBCC with respect to any future entity application implicating that nomenclature.

The Subcommittee encouraged the Immigration Section of the State Bar to research the types of immigration-law services being offered by ABS in Arizona and Utah. It does appear that many of those services are business- and employment-related, and therefore they may not be the kind of service needed by low-income Texans. Still, there may be other legal services needed by low-income clients that do not implicate the noted concerns, such as visa applications.

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## TAX LAW

Tax is an area where non-attorneys already have a wide scope of permitted practice. Therefore, the primary issue to be managed by the JBCC may be consumer protection to avoid abuse of the opportunity to provide deceptive or exploitive services that do not genuinely help low-income Texans.

Problematic areas in which the JBCC would want to pay special attention to proposals to provide services include:

- unlicensed tax return preparation services that are exploitive (e.g. charging excessive fees, often in connection with advancing the taxpayer the claimed refund amount), ineffective, or fraudulent;
- offer-in-compromise mills that offer to “settle your tax debts for pennies on the dollar” – some bad actors in this area have been known to charge high fees and prepare an offer, despite knowing very early in the process that the IRS will not accept it, or they charge a high fee and don’t even submit anything to the IRS;
- “Employee Retention Credit” claims; and
- advice on tax reduction, including promotion of abusive “tax shelters.”

The constructive comments received from tax practitioners propose, and the Working Group would encourage the JBCC to consider, that non-attorney-owned entities proposing to provide tax-related legal services should be limited to the categories of qualified and regulated individuals who may communicate with the IRS on behalf of a taxpayer: CPAs and EAs duly authorized by the IRS under the requirements of Circular 230. The tax practitioners observe

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<sup>106</sup> July 2023 Report at 2; *see also id.* at 12-18; *cf. Padilla v. Kentucky*, 559 U.S. 356 (2010) (involving unanticipated immigration consequences of plea agreements).

<sup>107</sup> *See* July 2023 Report at 32-34.

that these individuals are subject to specialized training, education, and certification and therefore do not pose the same risk as unregulated tax return preparers discussed above.

The tax practitioners also note the complexity of tax practice, and the heightened risks to clients of incompetent representation.

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## PROTECTION FOR ATTORNEY INDEPENDENCE

There have been a number of proposals for protecting attorney independence in the context of jurisdictions that already permit non-attorney ownership of law firms, or other scenarios such as proposals to permit multidisciplinary practice.<sup>108</sup> The Working Group proposes that the JBCC implement some or all of these protections utilized in other jurisdictions.

One type of safeguard would involve regulatory requirements designed to ensure protection of professional independence for attorneys working in firms with non-attorney owners or managers. Elements of written assurances could include:

- commitment to no direct or indirect interference with the independence of an attorney's professional judgment by the entity, any member of the entity, or any person or entity controlled by the entity;
- procedures to protect an attorney's professional obligations to maintain proper standards of work, make decisions in the best interest of clients; maintain client confidentiality, and segregate client funds;
- requirement that members of the entity delivering or assisting in the delivery of legal services will abide by the rules of professional conduct;
- acknowledgement of the unique role of the attorney in society as an officer of the legal system, a representative of clients, and a public citizen having special responsibility for the administration of justice—including attorneys' special obligation to render voluntary pro bono legal service;
- process for annual review of procedures and amendment as needed to ensure effectiveness;
- annual certification of compliance, filed with the certifying agency, along with relevant information about each attorney who is a member of the entity; and
- agreement to permit the certifying agency to review and conduct an administrative audit of the entity (at the entity's expense), as each such regulatory authority deems appropriate, to determine and assure compliance.

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<sup>108</sup> Past proposals to amend Model Rule 5.4 in the context of the ABA's study of interdisciplinary practice can be found in *A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013* (Art Garwin, ed.) (hereinafter, "Garwin").

These protections can be documented in writing in attorney employment agreements (or otherwise be provided to the attorneys),<sup>109</sup> in company policies,<sup>110</sup> and in applications for certification to offer legal services with non-attorney ownership or management.<sup>111</sup> The written undertaking could be required to be signed by the CEO (or equivalent officer) or board of directors (or similar body) and filed with a relevant regulating agency.

Another complementary method of ensuring attorney independence in the context of non-attorney ownership or management can be found in the developing field of Proactive Management-Based Regulation or “PMBR.”<sup>112</sup> PMBR entails an entity’s self-assessment to determine if it has effective systems in place. If an entity reports that it is falling short in an area, a regulator can work with it to achieve compliance. This is called “education towards compliance.” Through self-assessment, firms learn about what is required of them and receive support to improve operations. A self-assessment tool could be tailored to work in tandem with any rule-based changes that are promulgated. Initially developed in Australia in response to the development of non-attorney-owned law firms, study and development of PMBR has continued in various jurisdictions, and it has been implemented in Colorado<sup>113</sup> and Illinois.<sup>114</sup> Any implementation of PMBR should include consideration of evidentiary privileges which may be desirable to promote an effective self-assessment process.

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## SAFEGUARDS TO ENSURE PRIORITIZATION OF SERVICES TO LOW-INCOME CLIENTS

As reinforcement of this reform’s specific purpose to expand access for low-income Texans (as distinguished from other jurisdictions that have relaxed or repealed Rule 5.04 without such a limitation), guidelines should be applied to ensure a focus on expanding access to justice for low-income Texans and to prevent abuse.

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<sup>109</sup> See, e.g., ABA Special Committee on Prepaid Legal Services Feb. 1983 proposed amendment to draft Rule 5.4 (*available in* Garwin, *supra*, note 109, at 611).

<sup>110</sup> See, e.g., ABA Commission on Multidisciplinary Practice Aug. 1999 recommendation (*available in* Garwin, *supra*, note 109, at 618-19); see also comments 7-10 and related proposed Rule 5.8(d) making entity that fails to comply with its written undertaking subject to withdrawal of its permission to deliver legal services or to other appropriate remedial measures).

<sup>111</sup> See, e.g., Arizona ABS Code E.2.

<sup>112</sup> See generally American Bar Ass’n, SCPR CPR PMBR Web Resource, *available at* [https://www.americanbar.org/groups/professional\\_responsibility/scpd\\_cpr\\_pnbr\\_web\\_resource/](https://www.americanbar.org/groups/professional_responsibility/scpd_cpr_pnbr_web_resource/) (last accessed Dec. 5, 2023); Susan Saab Fortney, *Promoting Public Protection through an “Attorney Integrity” System: Lessons from the Australian Experience with Proactive Regulation of Lawyers*, 23 *The Prof’l Lawyer* 16 (2015), *available at* [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2906525](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906525) (last accessed Dec. 5, 2023).

<sup>113</sup> See Colorado Supreme Court, Office of Attorney Regulation Counsel, Lawyer Self-Assessment Program, *available at* <https://coloradosupremecourt.com/AboutUs/LawyerSelfAssessmentProgram.asp> (last accessed Dec. 5, 2023).

<sup>114</sup> Ill. S. Ct. R. 756(e)(2) (requiring self-assessment for attorneys who disclose failure to obtain malpractice insurance).

As indicated above, for purposes of this proposal, “low-income Texans” is defined with reference to 200% of the federal poverty guidelines as determined by the United States Department of Health and Human Services.

The Working Group did not reach any consensus about how applicants should be evaluated to determine whether their proposals sufficiently expand access to justice to justify allowing them to operate under the exception to Rule 5.04. Two approaches garnered roughly equal support from members of the Working Group.

One option would establish a minimum amount of service to low-income Texans, likely measured as a percentage of all clients served. To facilitate evaluation in this regard, approved entities should collect and report data supporting the quantification of qualifying low-income clients. But to realize the possibility that innovative services may be offered in Texas benefiting low-income Texans, and to facilitate sustainable business models that make possible the availability of such low- or no-cost services, approved entities need not necessarily be precluded from offering their services at higher prices to clients willing and able to pay for them. Members of the Subcommittee favoring this option proposed minimum thresholds ranging from 20% to 80% of all clients served being low-income Texans. When discussed by the full Working Group, two members voted in favor of requiring that 100% of clients be low-income Texans. Others expressed the concern that restricting too strictly the services that can be offered to fee-paying clients will discourage investment to produce innovative services by restricting the innovators’ opportunities to achieve a return on their investments.

Another option would vest the JBBC with discretion to exercise its approval authority as a gatekeeping function to exclude proposals that do not appear to be genuine attempts to provide a needed service to an underserved population of low-income Texans. Consistent with the concept of permitting the entry of innovative services, while also preserving resources for other legal providers working to expand access to justice, approved entities should be prohibited from seeking or accepting grants from state or federal entities or the Texas Access to Justice Foundation. Approved entities should be encouraged to prioritize and maximize the provision of services to low-income Texans.

As an element of the process of initially approving and then reapproving entities to provide legal services, the JBBC should be mindful of potential exploitation of low-income clients, and should disqualify providers judged to do more harm than good with respect to the quality of service being provided to low-income clients.

## OTHER POTENTIAL RULE REVISIONS

The Working Group’s rule proposals should not be analyzed in a vacuum. For example, if the proposals are adopted, they will necessitate corresponding revisions to Texas privilege rules (e.g., to protect communications between licensed paraprofessionals and their clients) and may necessitate revisions to other Texas procedural rules that are not phrased broadly enough to cover licensed paraprofessionals (e.g., because they address “lawyers” providing legal services).

## Appendix A

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## **Paraprofessional Scope of Practice and Licensing Rule Proposals**

### **Proposed New Paraprofessional Scope-of-Practice Rule**

- (a) A paraprofessional licensed by the Supreme Court of Texas may perform limited legal services, as set forth in this rule, for Texas residents with low income. For purposes of this rule, “low income” means at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services, and it can be established through a Texas resident’s self-certification in a sworn affidavit or in an unsworn declaration that complies with Chapter 132 of the Texas Civil Practice and Remedies Code.
  
- (b) Without attorney supervision, paraprofessionals licensed in family law may do the following things in uncontested divorce cases that do not involve suits affecting the parent-child relationship and that have limited property issues (e.g., cases involving no third-party sale/title transfer of real estate or division/transfer of retirement benefits owned by the parties):
  - (1) Assist a client with completing forms and file forms for the client in family-law matters within the scope of this rule, if such forms have been approved by statute, the Supreme Court of Texas, an organization the Supreme Court of Texas has tasked with generating such forms, or any Texas court that has published such forms on the Office of Court Administration’s website consistent with Texas Rule of Judicial Administration 10;
  - (2) Represent a client in uncontested courtroom proceedings (e.g., prove-up hearings or scheduling conferences), including preparation of affidavits in support of uncontested temporary orders and uncontested divorce decrees;
  - (3) Provide procedural information (as opposed to legal advice) to an otherwise unrepresented litigant regarding procedural steps to be taken to initiate, advance, or finalize a suit; and
  - (4) Communicate with court staff and an attorney or paraprofessional retained by the opposing party regarding the issues described in subsections (b)(1)–(3) above.
  
- (c) With attorney supervision in uncontested suits under Title IV of the Texas Family Code and in uncontested suits affecting the parent-child relationship (including uncontested suits under Title I and V of the Texas Family Code) that involve only standard conservatorship provisions, standard possession schedules, and guideline child support issues, paraprofessionals licensed in family law may do the following things in the following types of cases:
  - (1) Assist a client with completing forms and file forms for the client in family-law matters within the scope of this rule, if such forms have been approved by statute, the Supreme Court of Texas, an organization the Supreme Court of Texas has tasked with generating such forms, or any Texas court that has published such forms on the Office of Court Administration’s website consistent with Texas Rule of Judicial Administration 10;
  - (2) Represent a client in uncontested courtroom proceedings (e.g., prove-up hearings or scheduling conferences), including through preparation of affidavits in support of uncontested temporary orders and uncontested final orders;
  - (3) In addition to the matters described in subsections (c)(1)–(2) above, provide procedural information (as opposed to legal advice) to an otherwise unrepresented litigant regarding procedural steps to be taken to initiate, advance, or finalize a suit; and
  - (4) Communicate with court staff and an attorney or paraprofessional retained by the opposing party regarding the issues described in subsections (c)(1)–(3) above;

- (d) Without attorney supervision, paraprofessionals licensed in estate planning and probate law may do the following things:
- (1) Assist a client with completing forms and file forms for the client in estate-planning or probate-law matters within the scope of this rule, if such forms have been approved by statute, the Supreme Court of Texas, an organization the Supreme Court of Texas has tasked with generating such forms, or any Texas court that has published such forms on the Office of Court Administration's website consistent with Texas Rule of Judicial Administration 10;
  - (2) Represent a client in uncontested courtroom proceedings to the extent that such proceedings pertain to a muniment of title;
  - (3) If and to the extent not covered by subsection (d)(1) above, assist a client with completing the following forms and, as needed, file the following forms: a Health Insurance Portability and Accountability Act (HIPAA) Release, Annual Reports of Person in Guardianship, a Medical Power of Attorney (MPOA), a Declaration of Guardian, a Directive to Physicians (DTP), a Declaration for Mental Health Treatment, Supported Decision Making Agreements (SDMA), a Statutory Durable Power of Attorney (SDPOA), a Transfer on Death Deed (TODD), a Small Estate Affidavit (SEA), and a Muniment of Title Application;
  - (4) In addition to the matters described in subsections (d)(1)–(3) above, provide procedural information (as opposed to legal advice) to an otherwise unrepresented litigant regarding how to participate in a probate or guardianship proceeding; and
  - (5) Communicate with court staff and an attorney or paraprofessional retained by an opposing party regarding the issues described in subsections (d)(1)–(4) above, provided that such communication with court staff is limited to matters pertaining to Annual Reports of Person in Guardianship, SEAs, and Muniment of Title Applications.
- (e) Without attorney supervision, paraprofessionals licensed in consumer-debt law may do the following things:
- (1) Assist a client with completing forms and file forms for the client in consumer-debt-law matters within the scope of this rule, if such forms have been approved by statute, the Supreme Court of Texas, an organization the Supreme Court of Texas has tasked with generating such forms, or any Texas court that has published such forms on the Office of Court Administration's website consistent with Texas Rule of Judicial Administration 10;
  - (2) Represent a client in uncontested courtroom proceedings;
  - (3) In a debt-claim case in justice court, appear for and represent any party who is an individual (rather than any entity of any type), with any matter involved with the preparation, litigation, and settlement of a debt-claim case, including by perfecting an appeal of a judgment from justice court to county court and by handling any matter related to post-judgment collection, discovery, and receiverships; and
  - (4) In addition to the matters described in subsections (e)(1)–(3) above, provide procedural information (as opposed to legal advice) to an otherwise unrepresented litigant regarding procedural steps to be taken to initiate, advance, or finalize a suit; and
  - (5) Communicate with court staff and an attorney or paraprofessional retained by the opposing party regarding the issues described in subsections (e)(1)–(4) above.

- (f) As used in this rule, the following terms have the following meanings:
- (1) “Uncontested” means cases in which there is no opposition by another party to any issue before the court. Uncontested cases include no-answer default-judgment cases. The filing of a general denial without a request for affirmative relief does not cause a case to be contested unless the general denial includes a contrary position on an issue before the court. The serving of process upon a party does not cause the case to be contested. A case becomes “contested” when any party files any pleading or motion with the court which takes a contrary position on any issue before the court or otherwise communicates with the court, in a hearing or otherwise, any contrary position on any issue before the court.
  - (2) “With attorney supervision” means that an attorney reviews all documents before they are filed by the paraprofessional and is available to answer any of the paraprofessional’s questions relating to the tasks being completed with attorney supervision. The supervising attorney need not be present for court appearances by the paraprofessional but must be identified in any filings the paraprofessional handles with the attorney’s supervision.
- (g) Whenever a licensed paraprofessional limits the scope of representation of a client to be consistent with the scope of the paraprofessional’s license, the paraprofessional must explain the limits in a written engagement agreement with the client, and the client must consent to the limits by signing the engagement agreement.
- (h) If a paraprofessional who has been retained to work on a case discovers that the case requires the performance of additional tasks beyond the scope of the paraprofessional’s license and the engagement, the paraprofessional must promptly take steps to the extent reasonably practicable to protect the client’s interests. These steps include notifying the client in writing, directing the client to any known resources for further representation or self-representation, and surrendering papers and property to which the client is entitled. If the case develops in a manner that makes it wholly beyond the scope of the paraprofessional’s license, then the paraprofessional is further required to withdraw from representation of the client in accordance with Texas Rule of Civil Procedure 10 and, if necessary, move for a continuance of any court proceeding at which the paraprofessional would represent the client. A withdrawal under these circumstances constitutes good cause for a continuance of a courtroom proceeding if it occurs shortly before or during the proceeding.
- (i) Except as permitted under Texas law,
- (1) a licensed paraprofessional may not charge or receive, either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property; and
  - (2) a licensed paraprofessional who is also a notary public in Texas may not solicit or accept compensation either (A) to prepare documents for, or otherwise represent the interest of another, in a judicial or administrative proceeding or (B) to obtain relief of any kind on behalf of another from any officer, agency, or employee of Texas or the United States.
- (j) Nothing in this new rule should be construed to limit or otherwise reduce any task that a paraprofessional, including a paralegal or any type of legal assistant, may perform with attorney supervision, pursuant to existing Texas statutes, rules, and other law. Likewise, nothing in this should be construed to limit or otherwise reduce any task that an authorized agent or other individual can perform in justice-court cases, pursuant to existing Texas statutes and the rules set forth for justice courts in Section 500 of the Texas Rules of Civil Procedure.

## Proposed Amendments to Texas Rules of Civil Procedure<sup>1</sup>

### **Rule 500.4. Representation in Justice Court Cases**

(a) *Representation of an Individual.* An individual may:

(1) represent himself or herself;

(2) be represented by:

(A) an attorney;

(B) an authorized agent in an eviction case;

(C) a paraprofessional licensed by the Supreme Court of Texas, in any other type of case, if such representation is within the scope of the paraprofessional's license; or

(D) a Community Justice Worker who is licensed by the Supreme Court of Texas, is supervised by an attorney, and has completed training mandated by the Supreme Court of Texas; or (3) be represented by an attorney. For purposes of this rule, the supervising attorney must work for a legal aid entity or other nonprofit entity, and the representation permitted is confined to the tasks the Community Justice Worker has been trained to complete in justice court cases.

(b) *Representation of a Corporation or Other Entity.* A corporation or other entity may:

(1) be represented by an employee, owner, officer, or partner of the entity who is not an attorney;

(2) be represented by a property manager or other authorized agent in an eviction case; or

(3) be represented by an attorney.

(c) *Assisted Representation.* The court ~~must stay, for good cause,~~ allow a self-represented litigant an individual representing himself or herself to be assisted in court by a family member or other individual who is not being compensated by the self-represented litigant, unless the court determines there is good cause not to allow such assistance. The self-represented litigant must be present for any proceeding in which such assistance is provided.

### **Rule 510.4. Issuance, Service, and Return of Citation [applicable to eviction cases]**

(a) Issuance of Citation; Contents. When a petition is filed, the court must immediately issue citation directed to each defendant. The citation must:

....

(14) include the following statement: “For further information, visit [www.texaslawhelp.org](http://www.texaslawhelp.org) and consult Part V of the Texas Rules of Civil Procedure, which ~~are~~ available online and also at the court listed on this citation. To determine whether you may represent yourself or be represented by an attorney or other individual in this case, consult Texas Rule of Civil Procedure 500.4.”

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<sup>1</sup> Proposed additions are underlined, and proposed deletions are indicated by strikethrough text.

## Proposed Paraprofessional Licensing Rules

### **Qualifications for Paraprofessional Applicants**

(a.) To apply for licensure as a legal paraprofessional, an individual must have at least a high school education or equivalent and meet one of the following criteria:

- (1) be a Board Certified Paralegal through the Texas Board of Legal Specialization.
- (2) be a Certified Legal Assistant or Certified Paralegal through the National Association of Legal Assistants.
- (3) be a Registered Paralegal through National Federation of Paralegal Associations.
- (4) have received a bachelor's or higher degree in a field other than legal studies.
- (5) have completed an ABA approved paralegal program/ college.
- (6) have completed a paralegal program/college that consists of a minimum of sixty (60) semester credit hours (or equivalent quarter hours) of which fifteen (15) are substantive legal courses.
- (7) have completed a paralegal program/college that consists of fifteen (15) semester credit hours of substantive legal courses.
- (8) have completed a paralegal program that requires a bachelor's degree, associate's degree or higher AND consists of a minimum of 15 semester credit hours or a minimum of 100 clock hours.
- (9) have been employed as a paralegal for at least five consecutive years performing at least 80% substantive legal work under direct supervision of an attorney.
- (10) have a J.D. from an ABA-approved law school.

(b.) A candidate must also meet one of the following criteria for the subject matter area in which they are requesting licensure:

- (1) Be a paralegal certified in the practice area for which they are seeking licensure by the Texas Board of Legal Specialization.
- (2) Have been employed as a paralegal in Texas with at least 50 percent of the candidate's practice for three (3) of the past five (5) years in the subject matter area for which the candidate is seeking licensure.
- (3) Have completed training approved by the JBCC in the specific subject matter area for which they are seeking licensure.

For purposes of qualifying for a paraprofessional license, a "paralegal" is defined as "a person, qualified through various 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."

"Substantive legal work" 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. “Substantive legal work” does not include clerical or administrative work.

## **Examination**

To be licensed as a legal paraprofessional, in addition to meeting the qualifications listed above, candidates must:

- (a.) Pass a one-hour examination that covers ethics rules for paraprofessionals, including ethics related to paraprofessional scope of practice; and
- (b.) Pass a one-hour competency examination that covers the subject matter area(s) in which the candidate seeks to be licensed. The competency examination can be waived if:
  - (1) the candidate has received a score of 260 on the Texas Bar Exam;
  - (2) has taken another examination that tests competency in that subject matter, including an exam by the Texas Board of Legal Specialization or the National Association of Legal Assistants; or
  - (3) otherwise meets a waiver standard set by the Commission.
- (c) An applicant who, after a combined total of five examinations, has failed to pass the exams above cannot become a licensed legal paraprofessional. For good cause, the Commission may waive this prohibition.

## **Character and Fitness**

In addition to satisfying qualification and examination requirements, paraprofessional candidates will be required to undergo a character and fitness assessment that takes into account the following:

- School-related discipline
- Criminal history information including a criminal background check
- Professional licenses and certifications held by a candidate and any discipline history related to those licenses or certifications.
- Reports of unauthorized practice of law either to the Unauthorized Practice of Law Commission or the Paralegal Division of the State Bar of Texas.
- Some information about employment history.
- Military service information.
- Legal and financial information including information about participation in a legal proceeding, child support judgments and arrearages, and past-due debts.
- Information about whether a candidate has ever offered immigration-based services or used the term “notario” to refer to their work.

A model Character and Fitness Assessment application is attached to the end of these draft rules.

## Code of Ethics

- (a.) A licensed legal paraprofessional shall only engage in the practice of law as permitted by the Paraprofessional Scope of Practice Rules or as otherwise authorized by statute, court or agency rules; the paraprofessional shall assist in preventing the unauthorized practice of law.
- (b.) A licensed legal paraprofessional shall exercise care in using independent professional judgment and in determining the extent to which a client may be assisted within the scope of the paraprofessional's license.
- (c.) A licensed legal paraprofessional shall inform the client in writing that a legal paraprofessional is not a lawyer and give the client information about tasks that the paraprofessional can and cannot do pursuant to their license. The paraprofessional must also provide the client with an approved brochure explaining the scope of their license and how to report concerns or protentional violations.
- (d.) A licensed legal paraprofessional shall preserve and protect the confidences and secrets of a client as required by attorneys under Texas Disciplinary Rules of Professional Conduct, Rule 1.05, and shall have the same privileges as are legally recognized with the attorney-client relationship.
- (e.) A licensed legal paraprofessional shall avoid, if at all possible, any interest or association which constitutes a conflict of interest pertaining to a client matter, including the following situations:
  - (1.) A licensed legal paraprofessional shall not represent opposing parties to the same litigation.
  - (2.) In other situations, and except to the extent permitted by paragraph (c), a licensed legal paraprofessional shall not represent a person if the representation of that person:
    - (A) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the licensed legal paraprofessional or the paraprofessional's firm; or
    - (B) reasonably appears to be or become adversely limited by the licensed legal paraprofessional's or paraprofessional's firm's responsibilities to another client or to a third person or by the paraprofessional's or paraprofessional's firm's own interests.
  - (3.) A licensed legal paraprofessional who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.
  - (4.) If a licensed legal paraprofessional has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the paraprofessional shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.
- (f.) A licensed legal paraprofessional shall maintain a high standard of ethical conduct and shall contribute to the integrity of the legal profession.
- (g.) A licensed legal paraprofessional shall maintain a high degree of competency to better assist the legal profession in fulfilling its duty to provide quality legal services to the

public.

- (h.) A licensed legal paraprofessional shall do all other things incidental, necessary or expedient to enhance professional responsibility and the participation of legal paraprofessionals in the administration of justice and public service in cooperation with the legal profession.
- (i.) A licensed legal paraprofessional shall not make or sponsor a false or misleading communication about the paraprofessional's qualifications or services and, to the extent applicable, should follow the advertising rules applicable to lawyers under Section VII of the Texas Disciplinary Rules of Professional Conduct.

### **Annual Licensing Requirements**

#### (1) Annual Dues (less than attorneys)

#### (2) Continuing Legal Education

- (a.) Every licensed legal paraprofessional must complete 10 hours of continuing legal education during each compliance year as provided by this article. Continuing legal education must be in the subject matter area in which the legal paraprofessional is licensed to practice.
- (b.) At least 3 of the 10 hours must be devoted to legal ethics/professional responsibility subjects.
- (c.) Accredited continuing legal education completed within a 12-month period immediately preceding a licensed legal paraprofessional member's initial compliance year may be used to meet the educational requirement for the initial compliance year.
- (d.) Accredited continuing legal education completed during any compliance year in excess of the minimum 10 hour requirement for such period will be applied to the following compliance year's requirement. This carryover provision applies to one year only.

#### (3) Reporting Requirements

Annual reporting should include:

- reporting of any disciplinary grievance or sanctions filed against the licensed legal paraprofessional and reporting of any arrests during the reporting period (within 30 days of the event); and
- reporting on the number of low-income Texans served by the licensed legal paraprofessional or other data the Governing Body or Texas Supreme Court deems helpful

#### (4) Failure to Comply.

A licensed legal paraprofessional may be suspended or, with appropriate notice, the paraprofessional's license revoked for failure to comply with the educational or reporting requirements above.

## **Rule 5.04 Exception to Allow Non-Attorney Ownership**

Proposed language for Supreme Court Order, creating a limited exception to Rule 5.04:

In order to expand the availability of civil legal services to low-income Texans, the Judicial Branch Certification Commission shall establish qualifications for the certification of professional corporations, associations, or other entities to provide a specified scope of approved legal services. Certified entities then may be issued a license to practice law within the approved scope, and thereby may become a “member of the bar” for purposes of all statutes and rules regulating unauthorized practice of law. Paragraphs (a), (b), (d)(1), and (d)(2) of Rule 5.04 of the Texas Disciplinary Rules of Professional Conduct shall not apply to a licensed professional corporation, association, or other entity providing legal services within the scope approved and certified by the Commission. Entities certified and licensed to provide legal services pursuant to this exception must provide legal services to low-income Texans and must satisfy any other conditions imposed by the Commission. Legal services provided by the licensee shall be limited to those proposed by the entity and specifically approved by the Commission, subject to any regulations and other limitations imposed by the Commission. Annual renewal of licensure must be obtained to continue providing legal services under this exception.

## Sample Character and Fitness Application for Texas Legal Paraprofessionals

### Personal information

#### Identifying information

Full legal name  
Date of birth  
Driver's license/ID No  
Issuing jurisdiction  
Place of birth

#### Contact information

Mailing address  
Phone number  
Email address

#### Have you ever been known by any other name or surname?

*If yes:*

Full name  
Dates used  
Explanation of change

### School-related discipline

**Have you been disciplined in any way for any matter by any college, university, law school, or other institution of higher learning, or by any professor, administrator, employee, or entity representing any such institution of higher learning, or have you been allowed to withdraw from such an institution to avoid such discipline, whether or not the record of such action was retained in your file?**

“Discipline” includes, without limitation, a letter or other written notice of reprimand or warning, suspension, expulsion, adjustment of grade, assignment of community service, any form of probation, or any other adverse action.

“Entity” includes, without limitation, residential facilities or other facilities owned or managed by a college, university, law school or other institution of higher learning.

*If yes:*

Name of school where discipline occurred  
Location (city and state)  
Date of discipline

Description of discipline

**Have you been the subject of a determination of misconduct or irregularity in connection with the SAT, LSAT, MCAT, GRE, or any other standardized entrance exam?**

*If yes:*

Exam

Date of alleged misconduct

Date of determination

Description

### Professional and occupational licenses or certificates

**Do you currently hold, or have you ever held, a law license, a limited law license or certificate, a professional license or certificate, or an occupational license or certificate in any state (including Texas) or foreign jurisdiction?**

*If yes:*

Type of license or certificate

Jurisdiction

Date issued

Was this license or certificate ever inactive?

*If yes:* For each period of inactivity, list the date your license or certificate became inactive, the date it became active again (if applicable), and the reason it was inactive.

In connection with this license or certificate, were you ever disbarred, suspended, disciplined, disqualified, placed on a diversion program, or allowed to resign in lieu of disciplinary action, or was the license or certificate ever qualified or conditioned in any way?

*If yes:*

Jurisdiction

Disciplinary authority

Date of disciplinary action

Type of disciplinary action

Current status of disciplinary action

Detailed explanation

In connection with this license or certificate, were any formal or informal charges, complaints, or grievances ever filed against you (regardless of the outcome)?

*If yes:*

Jurisdiction

Name of investigating authority

Date

Current status

Detailed explanation

**Do you currently have an application for a law license, a limited law license, a professional license or certificate, or an occupational license or certificate pending in any state (including Texas) or foreign jurisdiction?**

*If yes:*

Type of license or certificate

Jurisdiction

Date applied

Current status of application

In connection with this application, were you ever asked to appear for a hearing or inquiry before any board, committee, or admissions authority?

*If yes:*

Date of inquiry

Detailed explanation

**Have you ever applied for a law license, limited law license, professional license or certificate, or occupational license or certificate in any state (including Texas) or foreign jurisdiction and did not receive that license or certificate?**

*If yes:*

Name of jurisdiction

Date applied

Detailed explanation

In connection with this application, were you ever asked to appear for a hearing or inquiry before any board, committee, or admissions authority?

*If yes:*

Date of inquiry

Detailed explanation

**Employment**

**List your employment for the 3 years (36 months) immediately preceding the date you submit this application.**

Name of employer

Mailing address

Name of supervisor or person who can verify employment

Email address of supervisor or person who can verify your employment. (Do not provide your own email address, even if you are self-employed.)

Position

Date started

Date ended, if any

*If date ended:*

Were you terminated, suspended, disciplined, or permitted to resign in lieu of termination suspension or discipline, from this employment?

*If yes:*

Explain

**Have you ever practiced law, other than pro hac vice, in any U.S. or foreign jurisdiction without holding a valid, active license issued by the jurisdiction in which the practice occurred?**

*If yes:*

Explain how this practice was authorized.

**Military Service**

**Have you served in any of the armed forces of the United States?**

*If yes:*

Have you separated from the service?

*If yes:*

Nature of separation

Type of discharge

Attach a copy of your DD form 214

Were any courts martial, Article 15 proceedings, or administrative discharge proceedings lodged against you since the filing of your last application or re-application?

*If yes:*

Charge

Nature of proceedings

Disposition

Attach all relevant documents, including the disposition

## Criminal History Information

**Have you ever been convicted of, placed on probation for, granted deferred adjudication for, or granted any type of pretrial diversion for any offense, other than a Class C misdemeanor traffic violation?**

Do **not** include any matter that is expunged, sealed, subject to an order of nondisclosure, or pardoned.

You must include any offense involving alcohol or drugs.

You must include any failure to appear.

You must include any failure to maintain financial responsibility (legally required auto insurance).

You may exclude Class C misdemeanor traffic violations.

*If yes:*

Date of incident

Location of incident

Arresting/ticketing agency

Location (city and state)

Initial charge(s)

Initial offense type(s)

Ultimate charge(s)

Ultimate offense type(s)

Plea

Disposition

Style/Cause Number

Court

Location (city and state)

Detailed description of events and circumstances leading to arrest, citation, or ticket and/or criminal charge.

Were there any allegations that you engaged in fraud?

*If yes:*

Describe the specific allegations

Describe the disposition of the allegations

**Other than any disclosures you made in response to question 6.1, have you, within the last 3 years, been arrested for, cited for, ticketed for, or charged with any violation of the law, other than a Class C misdemeanor traffic violation?**

Do **not** include any matter that is expunged, sealed, subject to an order of nondisclosure, or pardoned.

You must include any offense involving alcohol or drugs.

You must include any failure to appear.

You must include any failure to maintain financial responsibility (legally required auto insurance).

You may exclude Class C misdemeanor traffic violations.

*If yes:*

Date of incident

Location of incident

Arresting/ticketing agency

Location (city and state)

Initial charge(s)

Initial offense type(s)

Ultimate charge(s)

Ultimate offense type(s)

Plea

Disposition

Style/Cause Number

Court

Location (city and state)

Detailed description of events and circumstances leading to arrest, citation, or ticket and/or criminal charge.

Were there any allegations that you engaged in fraud?

*If yes:*

Describe the specific allegations

Describe the disposition of the allegations

**Are you currently the target or subject of a grand jury or other governmental agency investigation?**

*If yes:*

Name of governmental body conducting inquiry

Location (city and state)

Phone number

Email address

Description of the subject of the inquiry and the current status of that inquiry

## **Fitness Information**

**Within the past 5 years, have you exhibited any conduct or behavior that could call into question your ability to practice law in a competent, ethical, and professional manner?**

*If yes:*

Describe

**Within the past 5 years, have you asserted any condition or impairment as a defense, in mitigation, or as an explanation for your conduct in the course of any inquiry, investigation, or administrative or judicial proceeding by an educational institution, governmental agency, professional organization, or licensing authority; or in connection with an unemployment claim, employer discipline, or termination procedure?**

The purpose of this inquiry is to determine your current fitness to practice law. The mere fact of treatment, monitoring, or participation in a support group is not, in itself, a basis on which a license will be denied. The Body encourages applicants who may benefit from assistance to seek it.

*If yes:*

Name of entity

Location (city and state)

Telephone number

Email address

Type of proceeding

Date of the proceeding  
Disposition (if any)  
Description of conduct at issue  
Defense or mitigation offered

## Civil Litigation

**Have you been a party to any civil suit or proceeding, including bankruptcy?**

*If yes:*

Were there any allegations that you engaged in fraudulent actions?

*If yes:*

Provide a copy of the complaint or petition and documentation showing the resolution of the allegation

**Are you currently past due on any court-ordered child support payment?**

*If yes:*

Name of payee

Mailing address

Telephone number

Email address

Date(s) and amount(s) of past due payments

**Has a child support arrearage judgment been taken against you?**

*If yes:*

Date of judgment

Amount owed

Name of payee

Mailing address

Telephone number

Email address

Has the judgment been satisfied?

**Have you ever been held in contempt of court or sanctioned by a court?**

*If yes:*

Date of contempt or sanction

Court

Location (city and state)

Detailed explanation of events leading to the contempt or sanction  
Provide copy of court order or judgment and proof of satisfaction (if applicable).

## Legal and Financial Responsibility

**Do you have any debts that are 90 days or more past due (including tax debts)?**

*If yes:*

Name of creditor(s)

Mailing address

Telephone number

Total amount owed

Amount past due

Reason for the delinquency

Steps being taken to resolve the delinquency

**Have any judgments been rendered against you which you have not satisfied?**

*If yes:*

Name of judgment creditor

Mailing address

Telephone number

Total judgment

Amount not satisfied

Reason for the not satisfying the judgment

Steps being taken to satisfy the judgments

**Have you failed to timely file any applicable state or federal income tax return or report required by law?**

*If yes:*

Type of tax return not timely filed (1040, 940, 941, etc.)

Tax year/quarter not timely filed

Name of taxing authority

Location (city and state)

Has return been filed?

*If yes:* Date return filed

*If no:* Why not?

**Have you failed to pay any taxes owed pursuant to state or federal law at the time such taxes were due?**

*If yes:*

Type of tax not timely paid (1040, 940, 941, etc.)

Tax year/quarter not timely paid

Name of taxing authority

Location (city and state)

Amount owed

Has tax been paid?

*If yes:* Date paid

*If no:* Why not?

**Have you collected federal withholding, social security, or Medicare taxes from the wages of your employees, and failed to timely report and forward such monies to the Internal Revenue Service?**

*If yes:*

Type of withholding not reported and forwarded to IRS Date

Amount that should have been reported and forwarded

Has amount been reported and forwarded to IRS?

*If yes:* Date

*If no:* Why not?

**Unauthorized practice of law**

**Have you been the subject of an investigation for the unauthorized practice of law in Texas or any other jurisdiction?**

*If yes:*

Date of investigation

Name of entity investigating

Location (city, state)

Telephone number

Outcome of investigation

Description of circumstances

**Within the past 3 years, have you used “notario” in connection with any employment or services you have offered?**

*If yes:*

Provide business cards, screen shots, website or social media addresses, flyers, communications, and all other instances of your use of “notaria” in connection with employment or services.

**Have you ever offered services related to immigration, or debt collection?**

*If yes:*

Provide business cards, screen shots, website or social media addresses, flyers, communications, and other representative examples of your advertising of these services.

### **Verification of Application**

I hereby verify that

- My responses in this application are full, frank, true, and correct.
- All documents I provided to the Body with the application are to the best of my knowledge true and correct copies of the original documents.
- While my application is pending, I am obligated to promptly amend my application as needed so that my responses remain full, frank, true
- While my application is pending, I am obligated to promptly furnish any additional information and documentation requested by the Body.

Signature Date

## Appendix B

## Appendix B Contents

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## Focus Group and Survey Participants

Figure 1. Focus Group Participants

<b>Stakeholder Group</b>	<b>Number of Individuals Invited</b>	<b>Number of Individuals Attended</b>	<b>Date</b>
Texas Community Partners	4	0	3/20/2023
Texas Legal Service Providers	3	1	3/22/2023
Texas Opportunity and Justice Incubator	7	3	06/08/23
Texas Nonprofits	17	2	06/13/23
Texas Bar Committees	10	2	06/13/23
Texas Legal Aid & Pro Bono Providers	11	4	06/15/23
Texas Paralegals	18	7	06/19/23
Texas Law Schools	10	3	06/20/2023
Texas Public Policy	18	0	06/20/2023
Texas State Bar Leaders	9	1	06/22/2023

Figure 2. Online Survey Participants

<b>Stakeholder Group</b>	<b>Number of Individuals invited</b>	<b>Number of Surveys Completed</b>
Attorney Regulation	7	1
Law Schools	11	2
Legal Aid Providers	9	5
Non-Profits	17	4
Paralegals	11	5
Policy Stakeholders	8	0
Pro Bono Association	4	1
State Bar of Texas	5	0
State Bar Committees	10	3
State Bar Sections	31	3
Texas Opportunity and Justice Incubator	7	2
Faith Based Organizations	6	0
Judicial Branch	5	0
Executive Branch	1	0

Email Feedback Received at [suggestions@TexasATJ.org](mailto:suggestions@TexasATJ.org) as  
of December 3, 2023

**From:** [Guy Choate](#)  
**To:** [Suggestions](#)  
**Subject:** Non lawyer ownership of lawfirms  
**Date:** Tuesday, November 21, 2023 1:27:26 PM  
**Attachments:** [image001.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)

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If you believe for one second that non attorney ownership of firms will lower costs and enhance access to justice, I refer you to the medical field. Medical debt is the largest single source of household debt in the country, surpassing student loan debt. This all occurred when for profit healthcare was ushered in in the early 1970's. There is absolutely no reason to allow non attorney ownership of law firms. None.

Guy Choate



Guy Choate  
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**From:** [Laurel Clement](#)  
**To:** [Suggestions](#)  
**Subject:** Non-Lawyer Involvement  
**Date:** Monday, November 20, 2023 9:24:41 AM

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I strongly oppose having non-lawyers involved in family law cases, which is the primary litigation area in which I practice. This particular area of law involves the priorities of a family's life: their children; their household; and possibly their retirement money. It is bad enough when we have to deal with attorneys that are not familiar with our area of law, but I cannot imagine the problems that having paraprofessionals deal with family law clients will create. Unfortunately, part of our practice is cleaning up the decrees that uninformed lawyers created. Allowing paraprofessionals the opportunity to solely handle a family law case is a mistake.

**Laurel Arnold Clement**  
**Attorney at Law &**  
**Licensed Professional Counselor -- Supervisor**  
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**From:** [Carol Wilson](#)  
**To:** [Suggestions](#)  
**Subject:** Non-Lawyer ownership of law firms  
**Date:** Monday, November 20, 2023 11:43:28 AM  
**Attachments:** [image001.png](#)

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You don't often get email from [REDACTED]. [Learn why this is important](#)

Please do not approve non-lawyer ownership of law firms. There is no proof that non-lawyer ownership will do anything to benefit anyone but the non-lawyer owners. SBOT Rules of Professional Conduct must apply to all law firms. Non-lawyer owners have no such obligation.

*Carol A. Wilson*  
*Law Office of Carol A. Wilson, PLLC*  
*Board Certified Family Law, Texas Board of Legal Specialization*  
*3710 Rawlins, Suite 975*  
*Dallas, Texas 75219*  
*214-303-0142*



**From:** [Jenny Rutledge](#)  
**To:** [Suggestions](#)  
**Subject:** Justice Busby's Letter  
**Date:** Monday, September 11, 2023 10:52:40 AM

---

Good morning, sir/ma'am:

I agree with Justice Busby. Limited legal service by paraprofessionals will greatly benefit the low-income families of Texas.

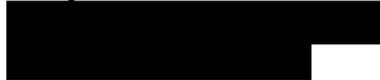
Attorneys are already over worked as it is. To add more pro bono hours to their already full plates would only lessen the quality they strive to provide.

Paraprofessional can easily take some of this load. We would be happy to help the less financially fortunate we simple matters that attorney's do not have the time to address.

Thank you for your time and consideration.

Best regards,

Jenny



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**From:** [ATJMail](#)  
**To:** [Suggestions](#)  
**Subject:** FW: Public comment question  
**Date:** Monday, August 21, 2023 3:33:26 PM

---

**From:** [REDACTED]  
**Sent:** Sunday, August 20, 2023 10:04 AM  
**To:** ATJMail <atjmail@texasatj.org>  
**Subject:** Public comment question

Good morning

I was looking over the website and wanted to know if the public comment period had ended for the limited licensing of paraprofessionals and when the committee might have those discussions once the comment period is closed?

I've been following this issue across the nation and as a paralegal who works in non-profit here in Texas, I'm eager for any news or update that might help to expand my ability to assist clients in the work we do.

Thank you for your time, it's much appreciated!

Kindest regards

L. Veronica Dickerson

**From:** [Mehreen](#)  
**To:** [Suggestions](#)  
**Subject:** Re: 7/27 Zoom discussion  
**Date:** Tuesday, August 8, 2023 10:00:49 AM

---

Good morning,

Following up on my previous email.

Thanks!

On Tue, Aug 1, 2023 at 10:00 AM Mehreen [REDACTED] wrote:

Hi team,

I missed the 7/27 Zoom discussion on your ongoing study on licensed paraprofessionals and non-lawyer financial interests in legal entities.

How do I learn more?

I'm interested in innovations that may increase access to legal services for Texans.

Thanks!

--

MEHREEN ARSHAD

--

MEHREEN ARSHAD

**From:** [Mehreen](#)  
**To:** [Suggestions](#)  
**Subject:** 7/27 Zoom discussion  
**Date:** Tuesday, August 1, 2023 10:01:48 AM

---

Hi team,

I missed the 7/27 Zoom discussion on your ongoing study on licensed paraprofessionals and non-lawyer financial interests in legal entities.

How do I learn more?

I'm interested in innovations that may increase access to legal services for Texans.

Thanks!

--

MEHREEN ARSHAD

**From:** [April Propst](#)  
**To:** [Suggestions](#)  
**Subject:** ATJ and Family Law  
**Date:** Tuesday, August 1, 2023 9:54:53 AM  
**Attachments:** [image002.png](#)  
[image003.png](#)

---

To Whom It May Concern,

I have seen a copy of the ATJ Family Law Subgroup Committee recommendations. The recommendations state they would apply to Title I and V of the Texas Family Code. As you know, there are numerous specialty family law courts across the State for child support and child welfare cases under Title V of the Family Code. Is there anyone on the committee(s) giving input into those specific areas of practice? I did not see anything in the recommendations that excluded them from the proposal. So I'm assuming that the paraprofessionals would also be authorized to do the various actions in those cases. Maybe there is a separate subgroup for those areas of law?

*April R. Propst*

Associate Judge  
Child Protection Court  
Taylor County  
300 Oak Street, Suite 200  
Abilene, Texas 79602  
325-674-1387



**From:** [Lisa Moran](#)  
**To:** [Suggestions](#)  
**Subject:** AGAINST Paraprofessionals  
**Date:** Tuesday, August 1, 2023 3:37:37 AM

---

What other area of law is allowing paraprofessionals to replace attorneys? Bankruptcy etc?

So now we as a profession, are helping non-licensed non-professionals take over our livelihood? Is our knowledge, license worth so little?

If the state believes it is imperative, for all people to have representation, then they should provide financial assistance just as they do for medical assistance. They don't have para professionals to replace doctors.

We start with allowing paraprofessionals to handle uncontested matters, and next, it's gonna slide into them handling contestant matters, and next why would you even need a family law attorney at all when you can get somebody who can get licensed in a matter of months?

Sent from my iPhone

**From:** [Daniel Usiak](#)  
**To:** [Suggestions](#)  
**Subject:** Paraprofessionals in family law cases  
**Date:** Monday, July 31, 2023 3:52:56 PM

---

Other states, such as Colorado, have modified their rules to allow paraprofessionals more freedom to practice in family law. I suggest that instead of rushing to modify Texas rules regarding paraprofessionals, observe the consequences, good or bad, in these other states. That allows Texas to avoid negative consequences and maximize any benefits noticed.

Respectfully,

Daniel K. Usiak, Jr.  
Attorney/Mediator  
Ph: 719.633.1960 Fax:719.453.1212

  
www.usiaklaw.com

Licensed in Colorado & Texas

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**From:** [Derek Brocklebank](#)  
**To:** [Suggestions](#)  
**Subject:** Paraprofessionals and non-attorney ownership in law firms  
**Date:** Thursday, July 20, 2023 8:49:38 PM

---

Thank you for your presentation at the Texas Bar CLE today at the Omni in Frisco.

I whole-heartedly support efforts to enhance access to the justice system. Does your committee have specific needs in developing recommendations/findings?

Derek Brocklebank  
585-727-0390

---

**From:** Derek Brocklebank [REDACTED]  
**Sent:** Thursday, July 20, 2023 3:25 PM  
**To:** Derek Brocklebank [REDACTED]  
**Subject:**



Sent from my iPhone

**From:** [Sevier, Shannon](#)  
**To:** [Suggestions](#)  
**Subject:** Support for the Texas Access to Justice Commission  
**Date:** Tuesday, June 27, 2023 9:50:50 AM

---

Congratulations on this exciting new endeavor to increase the access to legal services for our fellow Texans. I have been watching the roll-out of similar programs in Arizona, Colorado, New Hampshire, Minnesota, Oregon and Utah as well as the progress being made in California, Connecticut, New Mexico, North Carolina and South Carolina.

A central function of each planning process is the identification of standard curricular requirements and the identification of possible providers. As your esteemed group explores options to increase access to legal services the legal landscape continues to evolve with new challenges and complexities emerging every day. In order to meet these challenges head-on, it is imperative for court professionals to have access to an informed and contemporary curriculum. Partnering with Texas law schools to develop this curriculum is a sure bet. We are already in the space teaching our adult learners in a flexible and on-demand framework, we have an online delivery infrastructure in place that can accommodate a course or webinar type module, and we are constantly developing new content, content approved by our tenured faculty.

Here are some key reasons why law faculty led legal education is instrumental in building the capacity of court teams, to include paraprofessionals, and promoting court efficiency:

**Comprehensive Legal Knowledge:** Our curriculum delves into specialized areas of law, providing an in-depth understanding of complex legal frameworks and concepts. By acquiring advanced knowledge, court professionals can make well-informed decisions, interpret statutes accurately, and handle intricate legal matters with confidence.

**Analytical and Critical Thinking:** Advanced legal education fosters analytical and critical thinking skills, enabling court professionals to assess cases from various perspectives. This skill set empowers individuals to develop innovative solutions, streamline processes, and expedite the resolution of legal matters, ultimately improving overall court efficiency.

**Specialized Expertise:** Our curriculum allows individuals to specialize in specific branches of law, such as property law, family law, or criminal justice. By developing specialized expertise, court teams can efficiently address the unique challenges associated with different legal domains, ensuring better outcomes for the public and enhancing access to justice.

**Effective Communication:** Clear and concise communication is essential in the legal field. Our program emphasizes effective legal writing, oral advocacy, and interpersonal communication skills. Enhanced communication abilities enable court professionals to articulate complex legal concepts with clarity, facilitating better understanding and communication with litigants, colleagues, and other stakeholders.

**Research and Evidence-Based Decision Making:** Our curriculum emphasizes research methodologies, enabling court professionals to access and interpret legal literature effectively. This skill helps in making evidence-based decisions, staying updated with legal precedents, and contributing to the development of jurisprudence, which ultimately promotes fairness and consistency within the

judicial system.

At St. Mary's School of Law we understand the importance of continuing education for legal professionals. We take access to the law seriously and endeavor to be a part of future efforts to make this a sustainable option for Texans.

Please let me know if I may be of service to this end.

Sincerely,

Shannon Sevier

Shannon D. Pustka Sevier, M.A.T., J.D., M.P.A.  
Asst. Dean of Graduate Law Programs & Adjunct Professor of Law  
Office of Graduate Law Programs

---

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-

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***Pronouns: she/her/hers***

**From:** [Steve Fischer](#)  
**To:** [Suggestions](#)  
**Subject:** Yes I have a suggeston  
**Date:** Saturday, June 24, 2023 7:48:04 PM

---

I wonder why I was not asked to be part of this working group. I am the creator and Chief Administrator for the Texas Family Lawyers Group 5250 licensed Texas attorneys as well as the same for Texas Estate & Probate Lawyers and Texas Real Estate Lawyers with thousands more Texas Lawyers. In addition I served as two terms as SBOT Director from different districts as well as advisor to the Family Law Council.

Finally I have practiced in each part of the state, have advanced degrees in research and publish most of the attorney demographics articles.

Might you be trying to stack the committee to obtain a specific result?

Thank you

Steve Fischer

--

**Steve Fischer, Attorney at Law**  
525 Corto Way - Sunset Heights  
El Paso, Texas 79902-3817  
(915) 801-5000  
Fischer Pistachio Orchard s - 199 Nogal Canyon Rd., Bent, NM 88314 361 727  
1700  
<http://www.facebook.com/steve.fischer.1253?>

**From:** [Billy Hart](#)  
**To:** [Suggestions](#)  
**Subject:** Interested in Helping  
**Date:** Tuesday, June 20, 2023 3:01:28 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

---

I would be interested in getting involved.

Thanks!



**WEST WEBB  
ALLBRITTON  
& GENTRY**

**Billy Hart • Senior Paralegal**

West, Webb, Allbritton & Gentry, P.C.

1515 Emerald Plaza • College Station, Texas 77845

Ph: (979) 694-7000 Ext. 317

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**From:** [Law Office Of Thomas G. Simchak](#)  
**To:** [Suggestions](#)  
**Subject:** Para-professionals & family law  
**Date:** Tuesday, June 6, 2023 2:35:50 PM

---

Not a great idea to have paralegals and other "para-professionals" serving customers. (not clients) There are more than a few of those doing exactly that right now. Which assistance is helping someone navigate their way through the state-sponsored family law forms.

Prospective litigants misuse the forms all the time. A para-professional with some experience and training could help people out who want to use those forms. But for more complex areas of family law, that's not going to happen. Despite advances in machine learning, a computer aided drafting program is not and cannot be a substitute for a real, live, educated lawyer.

If the State Bar really wants to go ahead with this program there should be a requirement that any such para-professional who desires to work with family law customers needs to:

- 1) operate under the auspices of a licensed attorney, in the same manner as a nurse practitioner does in a stand-alone urgent care center working under the auspices of a licensed physician; and
- 2) obtain and maintain professional liability insurance in the minimum amount of \$100,000 per claim.

These requirement should weed out those people wanting to do this alone, with no supervision or oversight. There are more than a few out there right now who use outdated versions of the Family Law Practice Manual, who have never worked for a family law attorney, etc.

## **Tom Simchak**

Law Office of  
Thomas G. Simchak  
PO Box 40237  
Houston, TX 77240-0237  
TEL: 713-864-6822  
FAX: 877-361-6010

**From:** [Christi Mondrik](#)  
**To:** [Suggestions:](#) [REDACTED]  
**Cc:** [Henry Talavera \(htalavera@polsinelli.com\)](#); [Meyercord, Lee S \(DAL - X61315\)](#); [Probasco, Bob](#); [Sara Giddings](#); [Anne Schwartz](#) [REDACTED]  
**Subject:** SBOT Texas Tax Section Comments on Access to Justice  
**Date:** Thursday, May 25, 2023 2:10:29 PM  
**Attachments:** [FINAL\\_20230525\\_FINAL\\_Comments\\_on\\_Access\\_to\\_Justice-c.pdf](#)

---

Best regards,

**Christi Mondrik**  
Board Certified – Tax Law  
Texas Board of Legal Specialization

[REDACTED]  
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# TAX SECTION

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*Comptroller Representative*  
Sarah F. Berry (Austin)



May 25, 2023

**Via e-mail Only:**  
[suggestions@TexasATJ.org](mailto:suggestions@TexasATJ.org)  
[REDACTED]

**Ms. Harriet Miers**  
**Chair, Texas Access to Justice Commission**  
**Locke Lord LLP**  
Texas Access to Justice Commission  
1414 Colorado  
Austin, TX 78701

RE: *Comments on Texas Access to Justice*

Ladies and Gentlemen:

On behalf of the Tax Section of the State Bar of Texas, I am pleased to submit the enclosed response to the October 24, 2022, request of The Supreme Court of Texas (the "Court") to the Texas Access to Justice Commission ("Commission") for comments on modifications to existing rules that would allow qualified non-attorney professionals to provide limited legal services directly to low-income Texans and also to allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans. These comments address these proposals within the context of the area of tax law and tax legal representation and relate to the recommendations of the Texas Commission to Expand Civil Legal Services in its December 2016 report.

THE COMMENTS ENCLOSED WITH THIS LETTER ARE BEING PRESENTED ONLY ON BEHALF OF THE TAX SECTION OF THE STATE BAR OF TEXAS. THE COMMENTS SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF

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DIRECTORS, THE EXECUTIVE COMMITTEE OR THE GENERAL MEMBERSHIP OF THE STATE BAR OF TEXAS. THE TAX SECTION, WHICH HAS SUBMITTED THESE COMMENTS, IS A VOLUNTARY SECTION OF MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

THE COMMENTS ARE SUBMITTED AS A RESULT OF THE APPROVAL OF THE COMMITTEE ON GOVERNMENT SUBMISSIONS OF THE TAX SECTION AND PURSUANT TO THE PROCEDURES ADOPTED BY THE COUNCIL OF THE TAX SECTION, WHICH IS THE GOVERNING BODY OF THAT SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS SECTION HAS BEEN OBTAINED AND THE COMMENTS REPRESENT THE VIEWS OF THE MEMBERS OF THE TAX SECTION WHO PREPARED THEM.

We commend the Court for extending the opportunity to participate in this process.

Respectfully submitted,

A handwritten signature in blue ink that reads "Henry Talavera". The signature is written in a cursive style.

Henry Talavera, Chair  
State Bar of Texas, Tax Section

Enclosure

## COMMENTS ON ACCESS TO JUSTICE

These comments on Access to Justice (the “Comments”) are submitted on behalf of the Tax Section of the State Bar of Texas. Christi Mondrik, Chair of the Committee on Government Submissions and former Chair of the Tax Section, primarily drafted these Comments. Robert Probasco and Lee Meyercord, Vice-Chair of the Committee on Government Submissions, and Sara Giddings, Chair of the Solo and Small Firm Committee, reviewed these Comments and provided substantive comments. Henry Talavera, Chair of the Tax Section, reviewed the Comments and also provided substantive Comments.

Although members of the Tax Section who participated in preparing these Comments have clients who would be affected by the principles addressed by these Comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make this government submission. These are our initial comments and may be expanded by the Tax Section before the deadline in the fall of 2023. If the Court has specific questions or wants more detail, please let us know and we would be glad to address further through the Commission or through the Court as may be requested, but we felt it was important to provide a timely response to give the Court ample time to consider before finalizing any potential expansion in the area of tax. We would be glad to also dialogue further on this matter as the Court and the Commission determine is appropriate.

Contact Persons:

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Mondrik & Associates  
11044 Research Blvd. Ste B-400  
Austin TX 78759

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[REDACTED]

Robert Probasco  
Senior Lecturer  
Director, Tax Dispute Resolution Clinic  
Texas A&M University School of Law

(817) 212-4169  
[REDACTED]

Date: May 25, 2023

## **BACKGROUND**

These Comments are provided in response to the Court's letter dated October 24, 2022, which requested input from the Texas State Bar on modifications to existing rules proposing modifications that the Commission should consider in the following areas:

- Modifications that would allow qualified non-attorney paraprofessionals to provide limited legal services directly to low-income Texans. Among other things, the Court recommended that the Commission consider: qualifications, licensing, practice areas, and oversight of providers; eligibility criteria for clients; and whether compensation for providers should be limited to certain sources, such as government and non-profit funds.
- Modifications that would allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving professional independence. The Commission should consider whether to recommend that these modifications be studied through a pilot program or regulatory sandbox and whether modifications should focus on services for which there is a particular need.

Improving access to legal services is a laudable and important goal, but there are already many non-attorneys who provide tax assistance to low-income individuals. Further, the services provided by unscrupulous tax return preparers discussed below highlight the dangers of expanding the categories of non-lawyers providing tax advice without proper regulation and oversight. If such representation is expanded, significant additional oversight and regulation by the Court would be necessary. In our experience, because of the abuses in this area who already exist, we would strongly recommend against any expansion by the Court or the Commission in the area of tax.

We are particularly concerned about expanding the potential for exploitation if non-attorneys are able to take an economic interest in entities providing services to low-income taxpayers. Providing those services for a profit and a financial return for investors increases the chances of predatory or exploitative practices. In addition, existing resources are available to help low-income taxpayers, including programs provided by the Tax Section. Therefore, allocating resources to those existing programs may be a more effective use of available funds.

## **NON-LAWYERS ALREADY PROVIDE TAX ASSISTANCE TO LOW-INCOME TAXPAYERS**

In the area of tax practice, only lawyers may represent taxpayers before the US Tax Court or the federal district courts. However, tax is unique in that many non-lawyers already provide assistance with tax matters. For example, certified public accountants (CPAs) and enrolled agents (EAs) (either former IRS employees or individuals who have passed a three-part test on individual and business tax returns) may assist taxpayers with the preparation of their tax returns and represent taxpayers before the IRS, including in IRS audits and before the IRS Independent Office of Appeals. Even those who are not CPAs or EAs can prepare tax returns. Neither tax return preparation nor representing taxpayers before the IRS is currently considered unauthorized practice of law under Rules 5.04 and 5.05 of the Texas Disciplinary Rules of Professional Conduct

and sections 81.001 and 83.001 of the Texas Government Code. There are also programs specifically focused on providing tax return preparation assistance to low-income taxpayers, such as the VITA (Volunteer Income Tax Assistance) and Tax Counseling for the Elderly (TCE) programs. There are also low-cost online services (TurboTax and H&R Block) that provide tax-return assistance too as part of the IRS Free-File Alliance and the IRS plans a direct e-file pilot program starting in 2024. The IRS Taxpayer Advocate Service also provides free services for resolving disputes nationwide through Local Taxpayer Advocate offices, including four in Texas (Austin, Dallas, El Paso, and Houston). Therefore, there are a host of non-lawyers in various capacities who already provide free tax assistance to low-income taxpayers.

In addition to the broad spectrum of non-lawyers already assisting taxpayers with tax matters, there are also a variety of programs focused on providing legal advice from a tax lawyer to low-income taxpayers. Notably, the Texas Tax Section of the State Bar of Texas has an active pro bono program that assists unrepresented taxpayers at calendar calls and settlement days before the US Tax Court. In addition, there are many low-income taxpayer clinics offering free tax law representation to low-income taxpayers in US Tax Court cases and IRS administrative proceedings. These include the Texas Taxpayer Assistance Project of Texas RioGrande Legal Aid (covering 68 Southwest Texas counties); the Texas A&M University School of Law, Tax Dispute Resolution Clinic (Fort Worth); the Texas Tech University School of Law LITC (Lubbock); the South Texas College of Law LITC (Houston); the Houston Volunteer Lawyers LITC; the Legal Aid of Northwest Texas LITC (Dallas and Fort Worth); the Lone Star Legal Aid LITC in Bryan, Texas; and the SMU Dedman School of Law Federal Tax Clinic (Dallas). The American Bar Association Section of Taxation also assists low-income taxpayers nationwide, including in Texas.

### **TAX SERVICES BY NON-LAWYERS RAISE SERIOUS CONCERNS OF EXPLOITATION AND ABUSE**

While non-lawyers frequently advise taxpayers on tax matters, our experience highlights the dangers of allowing such advice without significant regulation and oversight. For example, the federal government has enacted many social programs through refundable credits, such as the earned income tax credit and the child tax credit. Unscrupulous tax return preparers (non-lawyers) have taken advantage of low-income taxpayers by providing erroneous advice to obtain one of these refundable credits (frequently for a percentage of the refund) or inflating refunds claimed on the return (whether from inadequate understanding of tax law or deliberately to attract clients) leaving taxpayers to face audit adjustments, plus penalties and interest.

Some tax return preparers offer refund anticipation loans, which are a widespread form of predatory lending with fees and interest rates of several hundred percent. Other potential exploitative schemes include so-called refund anticipation checks or “refund transfers” where the preparer receives the refund and deducts steep tax preparation fees. These tax return preparers sometimes neglect to list themselves as preparers on the tax returns and if they do, they must only obtain a Preparer Tax Identification Number (PTIN). For those tax return preparers who are not lawyers, CPAs, or EAs, the IRS has very limited ability to regulate these tax return preparers.

While there have been efforts to curb these abusive schemes, the National Taxpayer Advocate Erin Collins in her 2022 report to Congress continued to identify return preparer

oversight as one of the most serious problems facing taxpayers.<sup>1</sup> Specifically, “[t]axpayers are harmed by the absence of minimum competency standards for return preparers.”<sup>2</sup> The Internal Revenue Service’s (“IRS”) dirty dozen list includes perennial warnings about scams and schemes (including unscrupulous tax return preparers), during and after tax season.<sup>3</sup> So-called “offer-in-compromise mills” misleadingly suggest that taxpayers may qualify for an offer-in-compromise but may end up costing the taxpayer thousands of dollars. These mills and unscrupulous return preparers target non-English speaking communities who may be unable to evaluate the advice due to the language barrier.

For example, one only needs to search Google to find many “Notarios” or “Notaries” offering tax services. This advertising is deliberate because in Latin America “Notarios” are lawyers who have a higher status than just regular lawyers. This common advertising may mislead the public on the services and the quality of the services that can be provided. A notary here in Texas has no exalted status from a tax practice standpoint. One such service touting its tax and notary services “is offering same day advances up to \$9,500. We guarantee your maximum refund!” At the American Bar Association meeting on February 23, 2023, pro bono practitioners drew attention to unscrupulous return preparers all over the country, including in Texas. The panel was moderated by a federal tax litigator at Texas RioGrande Legal Aid and included a panelist from Lone Star Legal Aid.

Given the current exploitation of low-income taxpayers by unscrupulous tax return preparers, we are concerned that increasing the provision of tax services with the imprimatur of legal services may only exacerbate the current situation and increase the exploitation of low-income taxpayers. At a minimum, we suggest that any expansion should be limited to the categories of qualified and regulated individuals who may communicate with the IRS on behalf of a taxpayer: CPAs and EAs duly authorized by the IRS under the requirements of Circular 230. These individuals are subject to specialized training, education, and certification and therefore do not pose the same risk as the unregulated tax return preparers discussed above.

## **TAX SERVICES BY NON-LAWYERS MAY RESULT IN INCOMPETENT REPRESENTATION**

The practice of tax law is nuanced and requires extensive knowledge of the Internal Revenue Code and the Texas Tax Code. The Texas Disciplinary Rules of Professional Conduct Rule 1.01(a) direct that, “[a] lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer’s competence.”<sup>4</sup> Competence is defined as the “possession or the ability to timely acquire legal knowledge, skill, and training

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<sup>1</sup> Available online at: <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/>

<sup>2</sup> *Id.*

<sup>3</sup> Available online at: <https://www.irs.gov/newsroom/irs-wraps-up-2023-dirty-dozen-list-reminds-taxpayers-and-tax-pros-to-be-wary-of-scams-and-schemes-even-after-tax-season>.

<sup>4</sup> Tex. Rules Disciplinary P. R. 1.01(a).

reasonably necessary for the representation of the client.<sup>5</sup>” When determining whether a matter “is beyond a lawyer’s competence, relevant factors include the relative complexity and specialized nature of the matter.<sup>6</sup>”

Tax law is specialized and complex and incompetent representation can have severe consequences, including civil and criminal penalties. Advising clients on the tax law requires constantly staying up to date on significant changes to the Internal Revenue Code, like the Inflation Reduction Act of 2022, the Patient Protection and Affordable Care Act, and Secure 2.0 Act of 2022 to name just a few. After statutes are enacted, new regulations are promulgated that tax attorneys must study. Tax attorneys frequently stay current on recent legislation and proposed regulations by reading the legislation, public comments (including by the State Bar of Texas Tax Section), and attending continuing legal education courses.

The Texas Disciplinary Rules require that in order for a lawyer to maintain the “requisite knowledge and skill of a competent practitioner<sup>7</sup>” a lawyer should “engage in continuing study and education.<sup>8</sup>” It does not appear that there would be a similar continuing education or competency requirement for non-lawyers. This lack of oversight may result in non-lawyers giving tax advice in areas in which they are not competent. When considering expanding access to representation and legal services, it is important that this increases access to competent representation. By allowing non-lawyers to practice in a highly complex and technical area like tax law without continuing education or competency requirements, there is an increased likelihood that the client will not receive competent representation.

## **CONCERNS ABOUT NON-LAWYER OWNERSHIP OF ENTITIES PROVIDING TAX SERVICES**

Non-lawyer ownership of entities providing tax-based legal services to low-income taxpayers is fraught for exploitation. The concern is that a profit motive may compromise the quality of the tax advice provided. If expansion of ownership is pursued in Texas, great care should be taken to define what a paraprofessional means in this context, and assure that only licensed regulated professionals are making tax decisions for the clients. Ethical obligations require that professionals in firms providing tax-based legal services be properly trained to provide competent advice. In our opinion, it would be better to boost the grants and resources funding low-income taxpayer clinics and legal aid programs rather than potentially compromising the quality of advice provided to low-income taxpayers by introducing profit motives.

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<sup>5</sup> *Id.* at Terminology.

<sup>6</sup> *Id.* at P. R. 1.01 Comment 2.

<sup>7</sup> *Id.* at P. R. 1.01 Comment 8.

<sup>8</sup> *Id.*

**From:** [Savannah Stroud](#)  
**To:** [Suggestions](#)  
**Subject:** Re: Non-Attorney Legal Services  
**Date:** Tuesday, May 30, 2023 11:09:33 AM  
**Attachments:** [REDACTED]

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I have serious concerns about non-attorneys providing legal services, and allowing non-attorneys to have economic interests in entities that provide legal services. First and foremost non-attorneys are not bound to our code of ethics. Second the consideration that a non-lawyer could practice family law, or estates law is of huge concern. We already see individuals working unauthorized in these areas, and they are creating issues for the individuals they serve which often cost the individuals much more in legal fees than they would have spent to hire an attorney in the first place.

Furthermore, my removing the attorney supervision component, you are giving these non-attorneys free range to provide lawyer services. Allowing non-lawyers to represent individuals in court, and give legal advice will cause issues that we have seen in the immigration world with “notaries” who offer legal services to individual detriment.

One only has to view a few online self-help legal type forums to see the travesty that is the non-attorney legal advice. I have seen a number of legal assistants online offering terrible advice to people.

We have a code of ethics, and legal training for a reason. It is to protect the public. If you remove those barriers, people will be further harmed by the court process.

In family law in particular you are dealing with individuals, their families, their children, and everything done in the legal case can affect the future of a child/family dynamics. Allowing non-attorneys to provide advice in navigating these waters will cause harm. There is far too much at stake. Lawyers have been trained on procedure, case law, precedent, to consider all sides of actions. Non-lawyers tend to not think about every aspect of a decision and how it can affect a person down the road.

Also, what exactly would be the point of having lawyers at all if you are going to initiate these changes? What was the point of holding lawyers to such a high ethical standard if non-lawyers can now do lawyer work?

I oppose any such changes.



**Savannah Stroud**  
**Partner**

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## Chris Ritter

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**From:** Karen Miller [REDACTED]  
**Sent:** Tuesday, February 7, 2023 5:24 PM  
**To:** Suggestions  
**Cc:** Trish McAllister; Lisa Hobbs (lisa@kuhnhobbs.com)  
**Subject:** paraprofessionals workgroup, subcommittee work

Good afternoon,

Thank you all for putting together an extraordinary workgroup meeting last week, to begin our work on the Supreme Court's charge. Both the pre-meeting materials and line up of speakers and discussion were very thoughtful and really underscore the Commission's commitment to examining this issue, and providing a unique solution for Texas.

I would very much like to serve on the licensing subcommittee. My understanding is that this subcommittee would be most involved in designing what the Texas model/solution would look like regarding areas of practice and type of supervision. In my capacity as a director of a statewide legal aid program, I feel I can contribute a great deal toward this work—especially given the enthusiasm for the Alaska model. But, of course, I would be happy to serve in any way that you think would be helpful.

-Karen

**TEXAS**  
**LEGAL**  
**SERVICES**  
**CENTER**

**KAREN SPEED MILLER**  
**Executive Director**  
she / her / hers

**o: 512.637.6753**  
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**From:** [Betsy Johnson](#)  
**To:** [Suggestions](#)  
**Subject:** indigent representation  
**Date:** Monday, December 5, 2022 3:27:19 PM

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I applied for a position with a county as a Public Defender handling misdemeanors. One of my references told me I was not a viable candidate because I am not efficient.

I believe this is a problem. The County pays for the representation. And the Judges oversee the representation. Another means of paying for indigent defense needs to be made as there is a conflict. Our democracy is based on checks and balances but here there is none.

Efficiency saves the county money as that is what Judges want. It was really so in the past when the Judges approved the attorney to be on the indigent defense list and also approved the payment of the attorney.

It is still that way in a lot of the counties.

I have always wanted to get a grant to see the discrepancy between the cases where the attorney is hired and where the attorney is on the 'wheel'.

I have always fought any case I handled in the best way possible without regard to payment.

Clara E. "Betsy" Johnson

## Chris Ritter

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**From:** Scott Prescher [REDACTED]  
**Sent:** Thursday, November 24, 2022 6:21 AM  
**To:** Suggestions  
**Subject:** issue of non-attorney paraprofessionals providing legal services to low-income Texans

Dear State Bar of Texas,

Regarding the requested change to allow non-attorney paraprofessionals to provide legal services to low-income individuals – as a licensed attorney I do not agree with this approach. I am a volunteer attorney with my local legal aid office and mediator with my local Dispute Resolution Services – there are lots of attorneys who help volunteer for this to help low-income clients have proper legal representation. To allow non-licensed, and non-law school educated people to work a legal case for low-income individuals would only serve to further harm low-income parties. To assume that a low-income person's case is somehow simpler than a non-low-income person's case, and therefore give that low-income person a non-attorney, is frankly disgusting and beyond prejudiced to that low-income person. Poorer clients deserve the same high degree legal service as any other client. For the State Bar of Texas to assume otherwise would be disturbing and embarrassing. The obvious solution is to better encourage actual attorneys – perhaps REQUIRE them – to donate 10% or 5% of their time in some way instead of making it a suggestion like it is now.

You asked for opinions on this – that is my opinion.

Sincerely,

Scott Prescher, J.D., MTS, BSBA  
Attorney & Certified Mediator  
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not lawyers" - the public will not understand the distinction, especially those in the Latin community who believe notary publics have the knowledge of lawyers in America.

I have seen several sad cases where the wrong form was used for the situation - the children of a marriage were completely overlooked, retirement accounts were not listed or divided, real property is omitted because there isn't room on the form for it - people come in years later and wonder how to enforce a property division that was not in an order. They do not comprehend the simple forms with instructions.

I believe it is too great an ask to believe people will understand the "advice" or instruction they receive from a non-lawyer. They will either question why we have lawyers since they can just go to a lawyer substitute or become angry that their time was wasted talking to someone who really cannot legally help them.

The forms now have a bad reputation amongst some people I've encountered who should use them. There is no trust because there is no understanding. I see this latest proposal headed for the same fate if it is implemented. I don't see this reflecting well on the legal profession.

4. People do not read the things they should. People who seek and need legal services do not comprehend. Whether it is stress or the concepts, people generally don't "get" what their case involves without A LOT of explanation. I am often Lawyer #2 in a case because someone told their friend that I will explain things, so they hire me. All my business is referral.

5. Finally, allowing non-lawyers to have an economic interest in entities that provide legal services is asking for trouble. I worked for a firm run by a lawyer set up to take money from clients and provide limited legal services. This proposal would open up the poor and vulnerable to abuse from non-lawyers - that's not a good idea. Capitalism without legal duty is a bad mix. The optics are bad, and it will bring the whole profession down. I am not in favor of that proposal.

Yours truly,  
Meda Bourland

Meda Bourland, Attorney at Law  
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Fax (817) 759-9118 goes to email



## Chris Ritter

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**From:** Kathryn Craven [REDACTED]  
**Sent:** Monday, November 21, 2022 3:19 PM  
**To:** Suggestions  
**Subject:** non-attorney paraprofessionals

I strongly disagree with any suggestions that a non-attorney assist or provide low-income persons for legal needs.

1- Paraprofessionals are not able to complete basic execution requirements of Wills and other legal instruments. This would cost low income persons more to correct these mistakes and cause a disproportionate legal costs to citizens that do not have additional discretionary funds.

2- I spend time correcting mistakes of pro se litigants in family law and in Wills now. Some mistakes cannot be corrected and cause harm to the persons involved. Financially saving up front on DIY or help from a paralegal costs more to correct the problem once it is known. Sadly, most go unknown and are too late after final orders to correct.

3- Internet services that are not state specific will take more advantage if this is put into effect. Now internet fill in the blank documents are not approved in Texas Courts as valid instruments properly attested and notarized with witnesses causing heirship determinations and other more costly probate matters with a void Will.

As google searches do not replace my legal education and licensing, nor should non-attorneys under the guise of more access to justice. More community access to pro bono attorneys through the state bar or legal aid agencies could be done to show where persons can access no or low cost legal representation. Many attorneys do sliding scale for low income persons.

Watering down the value of my legal education and licensing while causing low income persons higher repair costs to correct mistakes seems a bad idea to me.

Elevating those who think they know it all is a mistake. Paralegals coming out of reputable paralegal education, do not have ability to draft a basic business letter or know where to find statutes to draft legal documents from in my experience interviewing and hiring new grads in the top 1% of their class.

This idea is not the best way to provide legal services. Increasing the funding for Legal Aid agencies across the state would be a better solution. Hire more legal aid staff attorneys.

Sincerely,  
Kathryn

## Chris Ritter

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**From:** Tracy Little [REDACTED]  
**Sent:** Monday, November 21, 2022 1:45 PM  
**To:** Suggestions  
**Subject:** Supreme Court Access to Justice Study

As to the first modification – to allow qualified non-attorney paraprofessionals to provide limited legal services directly to low-income Texans – **I agree**; provided there is some method to determine the qualifications of the non-professionals.

As to the second modification - allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving professional independence – **I disagree**. I think the possibility of abuse by non-attorneys offering other services (e.g. debt relief, legal actions based on a contingency fee) that would profit the owner to be too great.

Tracy L. Little SB# 12426300  
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www.HMOIL.com

## Chris Ritter

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**From:** Louis Dubuque [REDACTED]  
**Sent:** Monday, November 21, 2022 12:38 PM  
**To:** Suggestions  
**Subject:** legal help for low income persons

I have been practicing for 56 years and have a lot of useful knowledge and education (small town solo for 38 years and with the Office of Attorney General for 8 years) to help on many subjects. However the issue I have is the cost for software to produce documents, and the cost of research that is usually needed. The need for some type of software for documents and research on a temporary basis would help keep me active and useful in many different areas of the law.

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Thank you,  
Louis Dubuque

**From:** [Michele Pistone](#)  
**To:** [Suggestions](#)  
**Subject:** Texas Access to Justice  
**Date:** Sunday, November 20, 2022 6:53:44 AM

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I write to encourage the State of Texas to consider licensing paraprofessionals to practice law.

I am a law professor at Villanova University Charles Widger School of Law. I am also the founder of VIISTA, Villanova Interdisciplinary Immigration Studies Training for Advocates. VIISTA is an online certificate program to train paraprofessionals in immigration law.

Pursuant to decades-old regulations, the Executive Office for Immigration Review (EOIR), the administrative immigration court system within the U.S. Department of Justice (DOJ), and the Department of Homeland Security (DHS) authorize “accredited representatives” to represent immigrants before the DHS and immigration courts. Accredited Representatives are authorized to represent clients before the immigration courts and US Citizenship and Immigration Services (USCIS) offices. OLAP recognizes federally tax exempt, non-profit organizations to provide low cost or *pro bono* legal services to low income and indigent immigrant clients. These recognized organizations apply to OLAP for approval of their accredited representatives to work or volunteer with them to provide legal assistance to low income and indigent immigrant clients.

Before I started to design and develop VIISTA, I knew that there was a huge unmet need for immigration legal services. But, because the program was the first of its kind, it was hard to quantify the size or demographics of the potential student body. Now that VIISTA has been offered for two years, I’ve come to realize that large groups of individuals are eager to meet the demand for immigration legal services. But they lacked access to an educational program to teach them what they need to know to be able to make a difference in the lives of immigrant families. The VIISTA educational program is the bridge between passionate champions for immigrant justice eager to help immigrant families and the families in need of immigration legal services.

We launched VIISTA just two years ago and its impact of immigration paraprofessionals is already measurable. VIISTA students and alumni/ae are already making an impact in immigration legal services organizations as Intake and Volunteer Coordinators, Paralegals, Project Managers, and administrative support. They conduct intake, case analysis, fact gathering, draft legal and non-legal documents, complete application forms, and research, and provide other support on cases involving Afghan humanitarian visas, separate families, unaccompanied minors, Temporary Protected Status, asylum seekers in Texas, among many others.

I encourage this investigation. Please let me know if I can be of service as you continue to brainstorm about this possibility.

My best,  
Professor Michele Pistone

*Michele*

**Michele R. Pistone**

Professor of Law

Villanova University, Charles Widger School of Law

Founding Faculty Director, VIISTA: Villanova Interdisciplinary Immigration Studies Training for Advocates

Founder, [VIISTA Villanova Interdisciplinary Immigration Studies Training for Advocates](#)

Director, Clinic for Asylum, Refugee & Emigrant Services (CARES)

Co-Managing Editor, [Journal on Migration and Human Security](#)

@profpistone

## Chris Ritter

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**From:** [REDACTED]  
**Sent:** Friday, November 18, 2022 10:22 AM  
**To:** Suggestions  
**Subject:** Suggestion for access to legal services changes

One thing I would not want to see in any rule changes along these lines is any lessening of ethical requirements for attorneys providing legal services in these cases. Also, thought needs to be put into applying ethical standards and consequences to non-lawyers providing such services. I have had an experience with Lone Star Legal services filing a clearly false affidavit in the appeal of an eviction case, and this false affidavit cost the landlord another thousand dollars or so, to defend and delayed the eviction for another month after the person had lived in the house for almost a year without even trying to pay rent. Of course, the house was also trashed. The judge did the right thing- scheduled a hearing fairly soon, and when the tenant and their lawyer did not show up for the hearing, the petition supported by the affidavit was denied.

## Chris Ritter

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**From:** Lidia Serrata [REDACTED]  
**Sent:** Friday, November 18, 2022 9:59 AM  
**To:** Suggestions  
**Subject:** Member

Is membership in the commission open for additional members?

Sent from my iPhone

## Chris Ritter

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**From:** Meda Bourland [REDACTED]  
**Sent:** Thursday, November 17, 2022 9:31 PM  
**To:** Suggestions  
**Subject:** Commission - Meeting the Needs of Low-income Texans

I received an email that the commission is entertaining the following changes to better serve low-income Texans:

- allow qualified non-attorney paraprofessionals to provide limited legal services directly to low-income Texans; and
- allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving professional independence.

I object to both provisions for the reasons that follow. I believe I am qualified to make these objections because I have provided an excessive amount of legal services to low-income Texans both low-bono and pro-bono.

I practice both family and probate law.

There is no simple family law case. Most of the clients seeking family law services have other related and even unrelated issues in their cases that affect the path the lawyer chooses in a case. Often, it takes time to get all of the essential information out of a client. People don't say things because they don't think it is important. It takes a review of different legal outcomes to bring out some information.

I worked for a big firm for 5 months that would have paralegals, some really outstanding ones, gather information from a client and we would be going down path A, then I would speak with a client and determine we SHOULD be on path B. That is a drawback of paralegals, even really good ones.

In my view, a non-attorney paraprofessional IS the same as a paralegal - not quite a lawyer. Not quite practicing law. So the proposal is for the most vulnerable, the lowest income Texans to receive the least amount of quasi-legal services. I do not see that working out well in either family or probate cases.

1. I am not in favor of allowing 'qualified non-attorney paraprofessional-types' to provide ANY legal services as they are not versed completely in the law or what is appropriate from one case type to another.
2. Non-lawyers practicing law is a slippery slope. Who will have the burden to correct errors the errors non-attorneys introduce into a case? Who will carry the malpractice insurance?
3. The Supreme Court propounded forms for "simple" family cases. The Judge cannot advise the parties and has no duty to determine if they have used the correct form. Do-it-yourself-lawsuits don't always work. Now there is a proposal to give innocent litigants the assistance by "almost lawyers but

## Chris Ritter

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**From:** sunny middleton [REDACTED]  
**Sent:** Thursday, November 17, 2022 5:11 PM  
**To:** Suggestions  
**Subject:** non- attorneys giving legal services

I believe this opens the law field up to scammers who will not be interested in the clients best interests but a fast buck. What is the point of law school if paralegals or others are now allowed to give legal advice? Is the State bar going to be able to discipline these people? Will they be required to attend CLE's and pay dues also? Just my opinion.

## Chris Ritter

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**From:** Yousef Kassim [REDACTED]  
**Sent:** Thursday, November 17, 2022 5:04 PM  
**To:** Suggestions; Reid Jonkers  
**Subject:** Texas ATJ <> EE

Hello,

My name is Yousef Kassim and I am a Texas attorney and CEO of Easy Expunctions. We developed a platform that helps pro-se litigants expunge their criminal records completely and affordably. I am also a founding member of the Justice Technology Association.

I am thrilled to hear that the Texas Supreme Court is working with the State Bar and your organization to study ways we may be able to close the justice gap.

I would welcome the opportunity to share more about our work and provide any suggestions or insights from what we have seen in our experience operating in Texas, as well as best practices we have seen in other jurisdictions.

Thank you for your time and consideration and for the great work you all are doing providing increased access to justice for Texans.

Sincerely,

Yousef Kassim  
CEO - E-Legal, Inc.  
[www.easyexpunctions.com](http://www.easyexpunctions.com)

## Chris Ritter

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**From:** Mike WILLSON [REDACTED]  
**Sent:** Thursday, November 17, 2022 4:00 PM  
**To:** Suggestions  
**Subject:** ATJ

The Bar should fund this program. As a retired appellate judge, access to Jusrice is important. Thanks  
Hon. Mike Willson Ret.

Get [TypeApp for Android](#)

## Chris Ritter

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**From:** Jerel W. Ehlert II [REDACTED]  
**Sent:** Thursday, November 17, 2022 3:44 PM  
**To:** Suggestions  
**Subject:** Suggestions for access to justice

Fully support efforts for a living wage.

Wage issues are directly an access to justice issue. The #1 most complained about factor preventing low- and middle-income people from pressing their rights in every area of law is cost of adequate legal representation. Raising minimum wage to a living wage will go many factors of difference towards alleviating disparities in access to justice.

**Jerel W. Ehlert II**  
Shareholder, Quadros Migl & Crosby PLLC  
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(512) 686-1480 (Office)  
[www.qmclaw.com](http://www.qmclaw.com)  
he, him, his

**From:** [Zubi Anyaoku](#)  
**To:** [Suggestions](#)  
**Subject:** Access to justice study  
**Date:** Thursday, November 17, 2022 2:51:10 PM

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Hello - I do not support this idea. Here is why: this is what has happened in the medical profession and has led to more liabilities and less than satisfactory outcomes arising as a result of less qualified people practicing medicine. A better solution would be to compensate lawyers working in this field more and give them resources to provide adequate services to low income people.

Thank you.

Sent from my iPad

**From:** [Jason Van Dyke](#)  
**To:** [Suggestions](#)  
**Subject:** Suggestions for Commission  
**Date:** Thursday, November 17, 2022 12:32:57 PM

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To Whom It May Concern:

I represent a number of low-income Texans in both civil and criminal proceedings and have some serious recommendation for the commission. Some would need to be dealt with by the legislature but others could be dealt with my amendments to the rules of the civil procedure or by the commission itself:

1. **Change requirements for justices of the peace.** Texas has some of the highest jurisdictional limits for its small claims courts in the nation and many of these courts are not presided over by licensed attorneys. While there are some non-attorney JPs that do a very good job, when the jurisdictional limit is as high as some low-income Texans earns in a year, there need to be changes. The legislature should consider imposing a requirement that justices of the peace in counties with a population over 100,000 people be licensed Texas attorneys. The rules should be modified to ensure that some justices of the peace are permitted to serve on a part-time basis so that attorneys in those positions are allowed to still have their law practice (perhaps the salary of some JPs can be reduced to a part-time wage as well). Additionally, there needs to be a study on the rules of civil procedure so that the rules applicable in district and justice courts can have a greater degree of applicability in justice courts. As things stand currently, there is a great degree of ambiguity and I am seeing lots of low income clients facing JP court proceedings against licensed attorneys who, themselves, are not able to afford an attorney.
2. **New leeway for attorneys representing low-income Texas in debt claim cases.** Some of the biggest problems I have seen facing low income cases are debt claim cases in justice courts. There is presently an initiative that permits legal aid organizations to help low-income individuals facing eviction cases in justice court and there is no reason why this should not be expanded to allow such aid in small claim or debt claim cases.
3. **Legal Aid Organizations.** While I certainly make the representation of low income individuals part of my practice, representing felony and misdemeanor defendants on the court appointment wheel for Wise County, the amount of aid available to low income Texans facing debt claim cases is inadequate and it has been my experience that many such organizations are unable or unwilling to provide meaningful assistance to low income Texans. This needs to change. I propose a system under which legal aid organizations can contract with private firms and provide them with compensation (similar to what would be received for misdemeanor court appointments). For example: Texas ATJ is given a grant for \$10,000,000.00 to help low income Denton County residents facing debt claim issues. Private attorneys apply for referrals from Texas ATJ and agree to accept flat rates on these cases. Say \$400.00 per case. Well, with that money, Texas ATJ would be able to help 25,000 denton county residents secure legal representation on these cases being filed by debt buyers all over the county – people who would be otherwise unable to afford counsel. The legal aid organizations do not have enough attorneys to help all of them; there is no way they do – and I can only accept so many cases

pro bono (and I am only using the numbers above to that I have good round numbers). A program like this would allow the legal aid organizations to focus on the eviction and family law cases which are pretty much their wheelhouse right now and ensure that – at the very least – private attorneys are getting enough compensation to keep the lights on. Right now, I can only accept about two pro bono civil cases a month. If there was a way I could get more of my expenses covered at a rate of 300 – 400 a case, I could do 10 a month.

4. **Remote Appearances.** The Supreme Court needs to issue more guidance and maybe some rules on remote appearances. I understand that some judges don't like them but the fact is that they keep costs low for all Texans. I am in DFW. If I have to travel to Dallas to do a default prove up, argue a motion to compel, or some other issues of that nature, my whole morning is basically shot due to travel time and traffic. I have to build this fact into my billing model. If we had more remote appearances, I would be able to charge less because these minor hearings could be handled by Zoom at my office and I wouldn't have to figure travel time into my billing model.

## **The Marsala Law Group P.L.L.C.**

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[REDACTED]

Licensed to practice law in Texas, Colorado, and the District of Columbia.

**From:** [Bianca Vela-Collins](#)  
**To:** [Suggestions](#)  
**Subject:** ACCESS TO LEGAL SERVICES  
**Date:** Thursday, November 17, 2022 11:44:11 AM

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My name is Bianca Vela-Collins and I am an attorney who is newly licensed but not new to the legal service community as I graduated law school in 2003. I live in a rural county surrounded by many other rural counties. It has been my experience that for individuals who are otherwise qualified for receiving legal services, the need goes unmet because there is such difficulty finding attorneys to take these cases. I have committed myself to taking every case that no one else wants because it is the very reason why I joined the 7th cohort of TOJI.

After reading the proposed changes and study taking place that suggests paralegals provide legal assistance, I began to think. I believe it is a much better idea to recruit solo practitioners such as myself to commit to taking these cases. I have no problem whatsoever accepting \$75 per hour paid by Legal Aid. In fact, I feel more comfortable with that arrangement than charging high hourly rates to people who make little to no money or who live on a fixed income. Those of us who are willing to commit to providing legal services to all who qualify can grow our practices and fill the void. As the practice grows, so too will job opportunities for paralegals who can work under the supervision of licensed attorneys rather than allow paralegals to take cases unsupervised. I would be happy and eager to establish a committee to brainstorm and recruit solo practitioners who are willing to exclusively take these cases. It is troublesome to hear from individuals who qualified for legal services but were denied because Legal Aid could not place them with an attorney, Please allow me to help with this particular matter. I have much experience in grassroots organizing which lends itself to projects and tasks such as the one we face today regarding access to legal services for the indigent. I look forward to hearing back from someone.

Kind Regards,  
Bianca Vela-Collins, Esq  
The Vela-Collins Law Firm  
TBN: 24126554

**From:** [Cole B. Combs](#)  
**To:** [Suggestions](#)  
**Subject:** Low Income Alternate Legal Services Options  
**Date:** Thursday, November 17, 2022 11:20:41 AM

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Madam Chair and Commission Members,

These are my off the cuff thoughts on what concerns and suggestions I have for a non-attorney paraprofessional program in Texas:

### **Concerns**

1. I find it exceptionally difficult to believe that realistically enforceable rules could be crafted which would allow true professional independence if non-lawyer ownership of entities was allowed. Even though such rules might look good on paper, the actual application of the rules would most likely fall short in practice when there is an inevitable conflict between services required to fully represent a client's interest versus the profit motive of a non-lawyer owner. All the more so when perhaps the extra layer of shareholder or other fiduciary responsibility is introduced by a publicly traded company in the event the board of directors must balance services against their duty to maximize shareholder value.
2. I would explicitly prohibit any client contract (which would most certainly be a contract of adhesion) from waiving any right or remedy at law. No arbitration where failings can be kept private, and thus hidden. No waivers of a jury trial. No waivers of class action. No mandatory choice of forum, venue, or law provisions. These prohibitions should not be merely options which the consumer can "choose" to reject after searching them out in a 50 page 8 point font document (presuming the consumer has any wild idea what those waivers mean), they should be void ab initio in any such legal services contract. If the remedies and protections of Texas courts are not good enough for these paraprofessional service providers then they've no business working in the legal field at all.
3. I am concerned that paraprofessionals may not know what they don't know. I am of course no expert on all areas of the law. Practically no one is or can be. Yet I know enough of a broad variety of subjects to realize when I can't fully represent a client and should refer that person to someone more qualified. I am dubious that a non-lawyer would even know the questions to ask to make that decision. I am quite skeptical that such filtering processes would not be stringent enough when the majority of the clients of these services are more likely to have trouble articulating exactly what the legal issues are, or even the facts underlying the issues because of the way poverty and education correlate.

### **Solutions**

1. Non-lawyer ownership should be prohibited in any program or licensing scheme. The sole way I could think of to make this workable would be to prohibit waiver of personal liability for owners or directors. Forcing people to keep some skin in the game will keep them more honest.

2. Quite simply prohibit such waiver of remedies, period.
3. Mandatory CLE by subject matter would be a good start. An affirmative duty with personal liability to pass on representation for which the paraprofessional is not competent would also help.
4. Education is key in the long run. Not of the paraprofessionals, but of the public. A very well resourced website that is mobile friendly is a bare minimum start. In an ideal world Texas colleges and universities would include as a mandatory course a semester on Texas law broadly concerning subjects such as estate planning basics, consumer rights and remedies, family law basics, real estate basics, and a person's rights when dealing with law enforcement and in a criminal prosecution. With the syllabus to be standardized and drafted by the Supreme Court of Texas and the Court of Criminal Appeals. I realize this is really shooting for the moon and would require legislation, but if we don't try then we can't make a difference. I know such a course would be vastly more useful to far more people than the absurd art/music appreciation course that was mandatory for my bachelor's degree.

If the commission desires more feedback or assistance with drafting such rules I would be happy to volunteer my time. Especially to prevent such a program from turning into the unholy lovechild of Walmart and LegalZoom.

--

Cole B. Combs  
Cole Combs Law Firm PLLC  
512-915-8030  
5600 Bell St., Ste. 105 # 298  
Amarillo, Texas 79109



**From:** [REDACTED]  
**To:** [Suggestions](#)  
**Subject:** Supreme Court Access to Justice Study  
**Date:** Thursday, November 17, 2022 11:08:24 AM

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Good morning,

I found Justice Busby's letter a much-needed conversation starter to address an issue that has plagued several states to this date. I believe there is an urgent need for the creation of paraprofessionals to fill this role to provide the services that so many lower-income folks need desperately. While everyone will agree that some kind of training and licensure is necessary in order to provide standards for regulation of this new post, the study of the potential effectiveness of these paraprofessionals is paramount to truly understanding the impact these individuals can provide in our communities.

Like all studies, there should be various groups of potential candidates that are given various conditions and standards to assess the best way to prove that 1) this position can be created under certain conditions and 2) that, once created, there is a reasonable expectation that these professionals will attend to their clients in a competent manner.

**Background Requirements:**

1. Each study would need a sponsor lawyer/law firm to supervise, monitor, and record results of the candidates located at that firm.
2. The Commission would establish initial parameters as to the scope of practice paraprofessionals should be allowed to perform. These may include:
  - a. Cases that would fit into justice court's jurisdiction;
  - b. Uncontested divorces with no children;
  - c. Debt collection/foreclosure defense (non-real property debt not to exceed some amount – perhaps \$15,000.00);
  - d. Domestic abuse claims (application for restraining orders);
  - e. Some Misdemeanor crimes.
3. An Order by the Supreme Court of Texas which allows the study to take place, under these specific conditions, and that such study is not a violation of the UPL prohibition by either the candidate or the sponsoring attorney.
4. A disclosure and consent, signed by any potential client, that states the service is being provided for free, under the supervision of an attorney; but as part of a larger study.

**Group 1: Self-Guided Training Only.**

This group would simulate "typical" professional groups such as: real estate brokers, loan officers, insurance agents where there is a required number of hours of education accompanied with a test for licensure. This group will be given a self-study guide (probably online) to complete all the required coursework. After the completion of the coursework, the individual takes a licensing exam.

After going through the educational coursework and passing the exam, the paraprofessional will be placed with a host law-firm to begin practicing under the supervision of an attorney who has been

licensed for at least 5 years. Obviously the law firm must engage low income individuals.

The paraprofessional will then engage with the clients and perform the services (under the supervision of said attorney). At various stages of the service (intake and explanation of options, filing of any suit or defense, and conclusion) the client will be asked to take a survey asking for feedback and rating the paraprofessional's performance on a scale. The attorney would also provide performance reviews that would focus heavily on demonstrated competence for the specific subject area being reviewed.

**Group 2: Classroom Training Only.**

This group would function exactly as Group 1; but with the exception of taking the required coursework in a classroom setting (taught by a lawyer(s)).

**Group 3: Self-Study Training Accompanied By Apprenticeship.**

This group would go through the same coursework and exam as Group 1 (on a self-study basis).

However, before the paraprofessional is "licensed" and allowed to engage with clients, he/she must shadow the host attorney (same qualifications as above) for a period of 5 months. This is actually required of all attorneys who desire to practice law in the State of Delaware.

After completing the apprenticeship period, the paraprofessional will then engage potential clients, under the supervision of the host attorney, just as the candidates did in Group 1 and Group 2 under the same "limited" parameters of practice areas.

**Time Period.**

All of these studies would take place simultaneously.

**Results.**

At the end of the study the Commission can review the data to determine if 1) there is any scenario in which this program does produce competent paraprofessionals to meet the needs of low income clients in these specific practice areas and 2) If no scenario is perfect, can options be gleaned from the data to create a more ideal program; and 3) if multiple groups satisfy #1, then which program is the most efficient in terms of time, cost, and regulation.

I hope this has provided some constructive help as you iron out your methods for conducting your assessment of this program. If I can be of any further assistance, please do not hesitate to contact me.

Regards,

Michael Hooper

**From:** [David Crampton](#)  
**To:** [Suggestions](#)  
**Subject:** Access to Justice Initiatives  
**Date:** Thursday, November 17, 2022 10:53:02 AM

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Hello,

As you're looking for information on access to justice initiatives, please consider experts that focus on automated (or artificial intelligence-based) solutions. The benefit to these kinds of tools is that they can be easily leveraged via technology to serve larger populations and the underlying "legal advice" can be provided by lawyers and other experts (such as accountants). While not a silver bullet, it may have a place as part of a broader range of solutions (for example, small business compliance with employment laws or dispute resolution between employees and employers).

Professor Dahan at Cornell Law and Queen's University would be a good place to start regarding how to incorporate research on this into the access to justice initiative study. Professor Dahan runs the Conflicts Analytics lab (which provides automated legal assistance and dispute resolution to workers and small businesses in Canada) and was a professor of mine at Cornell Law and came to mind when reading the recent email regarding Justice Busby's letter and the Court's response.

<https://law.queensu.ca/directory/samuel-dahan>

<https://conflicanalytics.queenslaw.ca>

**From:** [James Perl](#)  
**To:** [Suggestions](#)  
**Subject:** Supreme Court Access to Justice Study  
**Date:** Thursday, November 17, 2022 10:52:23 AM

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Dear Sir/Madam:

I must disagree vehemently with the proposal of allowing non-attorneys to provide legal services to the poor for several reasons:

1. By decreasing the pool of available work for attorneys, this would drive attorney wages down. In a profession where student loan payments are regularly in the 4-digit range per-month, this would only decrease diversity in the attorney population (economically disadvantaged people would have an even harder time becoming attorneys- law would move even more towards being a "gentleman's profession.")
2. This would also discourage people from becoming attorneys, which would lead to an even bigger problem of our state facing an aging attorney population.
3. This proposal would create an even bigger gap in justice, with the rich able to afford actual attorneys, and the poor relying on these untrained legal technicians. The simple fact is that there is no substitute for an actual legal education; and that takes time and money.
4. By taking the "low-hanging fruit" away from attorneys, there would be fewer opportunities for experiential learning for new attorneys. This would lead to a much harder path towards becoming an experienced attorney; and would unfairly penalize young lawyers.
5. This proposal is insulting to me on a personal level. I spent the first 8 years of my post-law-school career working as a magistrate, and then an attorney, for state governments. I made a low wage, I paid my dues and endured the grind. I feel like I did a lot to provide access to justice for low-income people.
6. The best thing the court could do to promote access to justice is to require any attorney who works for an insurance company, bank, tech company, or oil company to take on 1 misdemeanor appointment, divorce, eviction, or probate matter pro bono each year. These are the people creating the inequality- they shouldn't be allowed to punish the attorneys who sacrifice wealth to do actual justice by making us the equivalent of "assistants" or "technicians."

I feel like this proposal is symptom of a larger problem in our society. In Texas, there will be four or five lawyers (including the judge) in the courtroom for a death penalty case; but every time an oil company gets sued there are a dozen lawyers in the courtroom. If you really want to increase access to justice for the poor, the best answer is simple: higher wages for legal aid attorneys, indigent defense attorneys, and prosecutors. That's it. That's the answer.

Sincerely,  
James D. Perl  
DUNHAM & JONES  
ATTORNEYS AT LAW, P.C.  
310 W. Wall Street, Suite 600  
Midland, Texas 79701  
TEL: (432) 888-8888  
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EMAIL [REDACTED]

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**From:** [Stephen Kaplan](#)  
**To:** [Suggestions](#)  
**Subject:** Alternative Legal Services  
**Date:** Thursday, November 17, 2022 10:29:52 AM  
**Attachments:** [image001.png](#)

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November 17, 2022

Dear Sirs:

While I understand the need for greater availability to legal services for those that have limited ability to afford such services, I have found that the alternative provider and non-lawyer ownership of law firms does not meet those needs. Both the ABA and the Illinois Bar have each rejected those alternatives after very thorough studies of both issues. The paraprofessional program (LLLT) in Washington appears to have not been successful and the Arizona program for non-attorney ownership suggests that the only client beneficiaries of such a program were business entities. May I suggest that before the Texas Bar and the Texas Courts spend funds to undertake such studies, they first review the results of the ABA study of Resolution 402 and the results of the Washington initiative that led to the cessation of the LLLT program.

Very truly yours,

Stephen Kaplan  
Stephen Kaplan, PC  
2537 Windward Boulevard  
Champaign, Illinois 61821  
and  
10440 North Central Expressway  
Suite 800  
Dallas, Texas 75231

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**From:** [Tyler Epstein](#)  
**To:** [Suggestions](#)  
**Subject:** Re: Supreme Court Access to Justice Study  
**Date:** Thursday, November 17, 2022 10:47:47 AM

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Allowing non-legal professionals would be a slippery slop.

We already do not regulate “qualified” legal professionals hard enough.

1) The frivolous filings, blatant disregard for procedure, and uncooperative nature of litigation drives expense through the roof.

2) Trial Dockets still force in person for simple hearings. Will reset something the day of. Makes bad procedural rulings. All with impunity-driving the costs of litigation through the roof.

3) Punishment by the State Bar or sanctions. Why would we take on more clients when that means no pay, full risk exposure, and zero upside?

I try to provide pro-Bono, but it takes the same effort as paying clients, if not more, and they are just as emotional if not more so than paying clients.

Sent from my iPhone

> On Nov 17, 2022, at 10:15 AM, State Bar of Texas <[webmaster@texasbar.com](mailto:webmaster@texasbar.com)> wrote:

>

> [suggestions@texasatj.org](mailto:suggestions@texasatj.org)

**From:** [David Smith](#)  
**To:** [Suggestions](#)  
**Subject:** Study of Unmet Legal Needs  
**Date:** Thursday, November 17, 2022 10:39:02 AM  
**Attachments:** [image001.png](#)

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To whom it may concern,

I am responding to the letter that the Texas Bar to its members in regard to Justice Busby's letter about changing the rules to allow paraprofessionals to provide limited legal services and/or allowing non-attorneys to have an economic interest in entities that provide legal services to low income Texans. The Bar letter solicits suggestions. Instead, I am willing to volunteer my time to assist with the project.

By way of background, I served as a member and then chair of the Board of Trustees for the Texas Center for Legal Ethics. In addition, I was a member and then chair of the MCLE committee for the Texas Bar. I have been a practicing attorney for 35 years and am board certified in Consumer and Commercial Law. I mention the board certification because I have spent the last 20 plus years dealing with consumer finance issues in which I have seen and experienced the concerns of everyday Texans as they deal with financial issues. It is for this reason that I would like to participate in finding ways to assist those folks.

Thank you in advance for your time,  
David



**David Smith**  
General Counsel | Compliance  
**Strike Acceptance, Inc**  
P. (949) 371-8656, x1160

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**From:** [Nathan Kennedy](#)  
**To:** [Suggestions](#)  
**Subject:** Supreme Court Access to Justice Study  
**Date:** Thursday, November 17, 2022 10:35:33 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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Hello,

I am interested in hearing more about this. Particularly, what y'all are doing specifically for the study. I am also interested in volunteering if needed.

Let me know. I started my career as a legal aid lawyer, and my dad was a career legal aid lawyer.

-Nate

**Nathan L. Kennedy**

  
 [512.482.0924](tel:512.482.0924)



GRAY BECKER PC  
900 West Avenue  
Austin Texas 78701





**From:** [Matthew G. Wylie](#)  
**To:** [Suggestions](#)  
**Subject:** Fw: Supreme Court Access to Justice Study  
**Date:** Thursday, November 17, 2022 10:24:39 AM

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You should study the impact of expanding justice court jurisdiction or allowing expedited trials (perhaps without discovery) in county courts at law. Allowing parties with small to medium dollar disputes (perhaps even to \$100K) to "tee-it-up" and go to trial quickly without needing to spend thousands on a lawyer might go a long way to meet this allegedly un-met need. There are disputes where both parties just want and need to have their day in court, without spending thousands on depositions, pre-trial motions, and mediation.

Matthew G. Wylie  
Attorney at Law  
[REDACTED]

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**From:** State Bar of Texas <webmaster@texasbar.com>  
**Sent:** Thursday, November 17, 2022 10:02 AM  
**To:** Matthew G. Wylie <mwylie@wylie-law.com>  
**Subject:** Supreme Court Access to Justice Study

State  Bar of Texas



Dear Member,

Meeting the unmet legal needs of low-income Texans is a challenge that the legal profession takes seriously and has grappled with for years. As part of its ongoing efforts to address this issue, the Texas Supreme Court has asked the Texas Access to Justice Commission to study existing rules and possible modifications that would:

- allow qualified non-attorney paraprofessionals to provide limited legal services directly to low-income Texans; and
- allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving professional independence.

The request was made in a letter from Justice Busby to the Commission that can be read [here](#). The Court has made no decision regarding whether to adopt any changes. At this time, the Court merely seeks a comprehensive study of these possible solutions.

As noted in Justice Busby's letter, the Commission will seek input from State Bar members and other constituencies in developing these proposals by fall 2023. The Commission will consider appropriate limitations on its proposals to achieve the stated goals of addressing the civil justice gap and expanding access to justice for low-income Texans.

Lawyers have long led the way in seeking to address the unmet civil legal needs of low-income Texans. Last year alone, Texas lawyers donated more than \$1.5 million in voluntary access to justice contributions on their bar dues statements while providing 2.7 million hours (valued at \$675 million) of free legal services to the poor. And through the State Bar's Texas Opportunity & Justice Incubator—

**From:** [Marcie Schanfish](#)  
**To:** [Suggestions](#)  
**Subject:** Paralegals practicing law  
**Date:** Thursday, November 17, 2022 10:22:27 AM

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In all sincerity, if paraprofessionals are permitted to practice law, the unauthorized practice and the disciplinary committee should be disbanded. That alone should free up millions for free legal aid. (Not that the UPC is actually prosecuting anyone but suspended lawyers, but I digress.) There should be no further concerns whatever about faulty service or unauthorized practice if this is going to be allowed. Additionally, I would like to be refunded every year of my bar dues, because SBOT membership is apparently also not necessary for practicing law. This is the single most offensive thing the SBOT has ever proposed, out of a long history of offense. It would be impossible for professional association to value its members any less than the SBOT does. NO paraprofessional should be allowed to practice law Full stop. If the Bar and the SCOTX allow this, there is literally no reason for any person to go to law school. I can only hope the Bar sees an immediate and drastic drop in law school enrollment. It will doubtless see the corresponding drop in the quality of legal service to the general public. At the barest minimum, any paraprofessional who practices law must be required to complete 4 year college, have a formal paralegal certificate, and should be required to carry malpractice insurance, and pay Bar dues. This is this most insulting, absurd idea the SBOT has ever had, and I am 100% against it. I'm so glad to be approaching an age when I can retire, so that I can leave this profession before it is entirely gutted.

Marcie J. Schanfish

**From:** [Susan Harrison](#)  
**To:** [Suggestions](#)  
**Subject:** Low income legal assistance  
**Date:** Thursday, November 17, 2022 10:21:28 AM

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While letting paralegal-type professionals help with low income individuals with professional legal supervision is good, I cannot think of ANYTHING more appalling that letting non-legal professionals get some kind of monetary interest.. ie., a chance to PROFIT off of dealing with the legal needs of the poor. IMO, that will just be another pork project of the current Texas regime to offer their donor class a chance at receiving tax dollars for activities that SHOULD be done FOR the public at a NON PROFIT rate. If an investor can make money off of this, then let attorneys make money. I may have misunderstood the premise, but I cannot think of anything more repulsive than allowing the investor class to further vampirize the poor. Give that money to real attorneys who want to help the poor.

Sincerely,  
Susan Harrison

**From:** [Betsy Grubbs](#)  
**To:** [Suggestions](#)  
**Subject:** Paralegals practicing law  
**Date:** Thursday, November 17, 2022 10:13:34 AM  
**Attachments:** [image001.png](#)

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We're already allowing Paralegals, Legal Assistants, Secretaries, Notaries to practice law out there and the UPL can't do anything about it.

So let's regulate it and tax it!

Or **criminalize** UPL.

But seriously, how would the public distinguish between a "qualified Paralegal" and someone that is not qualified....

My vote is no and there doesn't need to be any money spent to determine whether this is a good option.

Betsy L. Grubbs, Attorney  
**TELTSCHIK•GRUBBS**  
14090 SOUTHWEST FREEWAY, SUITE 300  
SUGAR LAND, TX 77478  
Tel (281) 201-0700  
Fax (281) 201-1202



**From:** [Davis Law Group](#)  
**To:** [Suggestions](#)  
**Subject:** Suggestions re; Texas Access to Justice Commission Study  
**Date:** Thursday, November 17, 2022 10:13:48 AM

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### **Qualified Ethicists and Economists**

I strongly suggest the commission engage qualified ethicists and economists to engage these two pivotal issues.

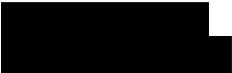
Most significantly the question of non-attorney firm ownership or fee interests. If non-lawyers become financially interested in client matters the motivations for profit and cost-cutting measures may impair quality legal work/placing the client's interests above our own as their fiduciaries. Just based on personal experience, I believe it is hard enough to ensure licensed attorneys place client's interests ahead of our own—how much more difficult will that duty be if banks, hedge funds, or monied interests without regard for that professional obligation are calling the shots?

Qualified experts will help guide the commission as they study these important questions. These kinds of questions are likely to have significant support *and* opposition from financially invested and well-connected lobbies. Those lobbying for their positions will certainly burden the commission's effort to reach the right decision. True and disinterested experts may benefit the commission.

**Josh Davis**  
**Board Certified, *Civil Trial Law & Personal Injury Trial Law*—Texas Board of Legal Specialization**



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Memorandum from the Future of Family Law Committee and Supporting Documents

## MEMORANDUM

TO: Texas Family Law Council Executive Committee  
FROM: Future of Family Law Committee  
RE: Non-Lawyer Ownership of Family Law Practices  
DATE: October 17, 2023

### I PURPOSE OF THIS MEMORANDUM

The Texas Supreme Court is charged with addressing the civil-justice gap and expanding access to justice for low-income Texans. The Supreme Court has requested that the Commission examine existing court rules and suggest modifications that would permit non-attorneys to hold economic interests in entities providing legal services to low-income Texans, all while preserving attorney independence. In a Zoom meeting on October 2, 2023, with the Executive Committee of the Family Law Council<sup>1</sup> and the Chair of the Family Law Council's Future of Family Law Committee, Justices Brett Busby and Michael Massengale asked the Family Law Council to present its views on this issue.

In response to a request by the Executive Committee of the Family Law Council, the Future of Family Law Committee prepared a memorandum that was presented to the Family Law Council on October 13, 2023. During that two-hour meeting, the Family Law Council discussed the proposal to have limited non-lawyer organizations (NLO's) providing family law services. At the conclusion of the meeting, the Chair of the Family Law Section requested this committee to revise its memorandum to incorporate the points discussed during the meeting. Subsequently, the committee was instructed to circulate the revised memorandum to the Family Law Council with the intention of presenting it to Justices Busby and Massengale.

### II THE FAMILY LAW COUNCIL OPPOSES THE CURRENT NLO PROPOSAL

The Family Law Council agrees that there is a crisis in providing affordable legal services to low income Texans and supports the Supreme Court of Texas in its efforts to identify effective methods to address this problem. While the Council shares the goal of expanding access to quality justice for low income family law

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<sup>1</sup> The Family Law Council is the governing body of the State Bar of Texas's Family Law Section.

litigants, the Council opposes the current proposal to permit NLO's to practice family law in Texas.

The Council believes that the Court at this time lacks sufficient data to effectively accomplish this goal, and that further study is needed before such a drastic and historical step is taken that could mislead and harm low income family law litigants, undermine family law outcomes, degrade the quality of representation, and risk the future of the practice of family law in Texas. If the Supreme Court nevertheless proceeds to permit NLO's to practice family law, the Council asks the Court to at a minimum adopt the recommendations in this memorandum.

### III REASONS FOR THE FAMILY LAW COUNCIL'S OPPOSITION TO NLO'S PRACTICING FAMILY LAW

#### 1. Lack of Meaningful Data on the Problems in Providing Family Law Services for Low-income Individuals and the Scope of these Problems

As described in detail in the attached "Analysis of the Conclusions of 'Access to Justice Facts' as the Basis for Creating Non-Lawyer Ownership of Law Firms," the study entitled Access to Justice Facts upon which the "Non-Attorney Ownership Subcommittee Working Document DISCUSSION DRAFT September 14, 2023" relies is fatally flawed at least as far as it concerns family law. A close examination of Access to Justice Facts reveals that this study offers no help in determining the reasons for that crisis in family law, much less the scope of each reason. Access to Justice Facts instead endangers the movement for access to justice for the marginalized each time the study is used to justify legal reform. As a result, the reliance upon this study by the Texas Access to Justice workgroup subcommittee yields a flawed analysis and a poorly founded, if not risky, proposal that would change the fundamental structure of law firms in Texas.

Before implementing a radical solution to the crisis Texas faces, the Access to Justice Commission needs valid data. The failure to have valid data before acting exposes the proposed solution to criticism and raises the realistic concern that the proposed solution is not a solution at all but rather a new problem for the justice system. The attached analysis calls for the collection of current, meaningful data on family law, data addressing each of the points raised in that analysis, and that data be publicized and subjected to review before the Texas Supreme Court undertakes significant changes to the rules governing non-lawyer ownership of law firm practicing family law.

One glaring absence of information has been the lack of input from trial judges whose courts have family law jurisdiction. These judges serve on the front

lines of the access to justice crisis. No stakeholders have a better view of the family law problems faced by low income Texans—and potential solutions—than these judges. These judges are the people most affected by proposed changes to existing law as they are responsible for the quality of justice low-income Texans receive and have no “skin in the game.” Many of these judges are implementing their own solutions to the issue of ensuring justice for low-income individuals, solutions that may not require radical changes.

The Family Law Council strongly recommends that the Office of Court Administration (OCA) send a meaningful, non-biased survey to these judges, one that permits these judges to write responses to open-ended questions. The Family Law Council is willing to assist in reviewing and suggesting improvements to the proposed survey questions, even if given a short timeline to do so. It is essential for OCA to make the survey results publicly available, including all comments, while maintaining the confidentiality of respondents’ identities to encourage candid responses.

The Texas Access to Justice Commission should also seek input from entities that provide free legal services to low-income individuals, including legal aid organizations and law school clinics. The attorneys and staff who work for these entities provide the justice component to “access to justice” and are better placed than most to define the problems and suggest solutions.

## 2. NLO’s Do Not Address the “Justice” Problem

Acknowledging that, without meaningful data, no one can identify the reasons for or impact outcomes of the access to justice crisis in family law, the Family Law Council firmly believes that NLO’s do not offer a solution where it is required. Instead, NLO’s are likely to make the problem worse.

### a. Justice—Not Mere Access—Is the Goal

The acute problem low income Texans face is getting just outcomes from the legal system. Having the ability to file their own family lawsuits, they often jeopardize their rights and the welfare of their children by misunderstanding and misusing forms and by proceeding without legal advice when settling their suits or when having to try their cases in court. As discussed in the attached analysis of Access to Justice Facts, there is a range of help for low income individuals with their family law matters, such as lawyers providing legal services pro bono, law school clinics, legal aid, remote court kiosks, district and county attorneys’ offices, the Office of the Attorney General, Adult Protective Services, Child Protective Services, court websites and standing orders, and, in some suits, court-appointed attorneys. Although each of these methods improves outcomes for self-represented family law litigants, the Council agrees that more effort is needed to

improve justice, including, better, widespread advertising of these existing services to low-income individuals.

b. “Access” is No Longer the Most Pressing Problem in Family Law for Low-Income Litigants

Access is not the problem the Family Law Council perceives in the most common areas of family law. In the last 12 years, in cooperation with and through the Access to Justice Commission, Texas has intentionally encouraged low-income Texans to meet their family law needs without the advice of lawyers. In 2011, the Texas Supreme Court published forms to permit Texans, including but not limited to low-income Texans, to represent themselves in family law cases. More forms have appeared since then. These forms are available on the internet, at legal aid offices, and through district clerks and court websites. Private companies like Legal Zoom offer family law forms specifically designed for self-use, without the involvement of an attorney.

Anyone, including low-income individuals, can access the Texas legal system in the most common areas of family law. According to judges in some areas, a majority of family law litigants now utilize these forms rather than seeking legal representation. There are no indications that the forms are not meeting the legal needs for mere access to justice of low-income Texans.

c. Development and Implementation of Technology to Improve Access Does Not Require the Creation of NLO's

For a decade, Texas family law courts have adapted to the growing number of self-represented litigants—a large portion of which are low-income Texans—in efforts to close the justice gap. Courts are implementing cutting-edge technology to assist low-income family law litigants in effectively utilizing family law forms and obtaining low cost legal advice and assistance. The Council, which interacts frequently with, and includes some, family law judges, believes those efforts have been largely successful.

The infusion of more money through NLO's could accelerate this process, such as by creating, implementing, and assembling new forms more quickly. This small improvement in the race for profit will not address the justice problem or create revolutionary improvements sufficient to justify risking the severe adverse consequences discussed below that NLO's create. Furthermore, if more rapid implementation of cutting-edge technology were the solution, the Texas Supreme Court, Access to Justice Commission, and State Bar of Texas could collaborate with partners and stakeholders to create and license those tools to attorneys and courts without requiring the creation of NLO's, as they did with

Zoom in March of 2020. If the marketplace is the solution, then improving efficiency of representation of family law lawyers in this manner would result in lower cost to litigants and create the desired result from within the legal profession. Family lawyers compete with one another. They adopt technology that improves their law practices and legal services, leading to better outcomes for their clients.

d. There is No Showing of How NLO's Would Improve Family Law Outcomes for Low-Income Litigants

The Family Law Council does not envision how NLO's and the hope of their technology will solve the justice problem for low-income Texans. The case has not been made. At the Family Law Council meeting, it was observed that Arizona and Utah, states permitting NLO's, are dissimilar to Texas in the sizes of their populations and economies and in the number of lawyers per capita. What may work in those states would not necessarily work in Texas. Texas is a proud leader, not a follower, in providing high-quality justice.

Justice requires educating and advising a client regarding the client's individual family law issues. To be profitable, NLO's will not offer individualized legal advice from lawyers like private law firms. They must seek ways, almost certainly through technology, to offer a substitute for individualized legal advice and undercut the existing legal market. Legal advice derived from artificial intelligence (A.I.) and algorithms would jeopardize clients in even simple family cases. One can imagine a situation where a human is not even involved in the decision process. Moreover, low-income family law cases are not inherently simple nor comparatively less important. The range of issues in those cases is the same or more complicated as in suits with greater income, only there are fewer means of addressing those issues. Clients of NLO's would trust that the A.I.-generated advice is equivalent to legal advice from an attorney, just as they have trusted tax preparation services like TurboTax, only their matters are far more complicated and nuanced than numbers.

Those advocating for NLO's have not shown the Family Law Council how NLO's would provide courtroom representation to address the justice gap and still satisfy their business models. Technology has its place in the courtroom, but many courts require in-person appearances by attorneys at hearings. A.I. and remotely located attorneys are no substitute for being in court with the client when the client needs representation most.

Before adopting NLO's in the hopes that their innovation and technology will be unleashed in a way that somehow solves or improves the justice gap, those advocating for NLO's should first show how that can be done and give real-world, long-term examples of where it has worked. The single example of an expunction

program in Arizona fails to persuade. The Family Law Council discussed the only similar application that would work in family law, adult name changes, and agreed that there is an insufficient market for adult name changes, particularly among low-income individuals, to justify the creation of NLO's.<sup>2</sup> Some private attorneys already charge lower than hourly rates for adult name changes as they normally are simple. Adult name changes, like expunctions, can be easily addressed by technology because they require little legal advice; more "access" than "justice" is needed for them. Not so for other areas of family law.

e. Adverse Consequences of NLO's

NLO's can make the legal crisis worse, not better. NLO's are commercial enterprises in a way lawyer-owned and operated law firms can never be due to the ethical responsibilities of lawyers. NLO's offer the advantages of capitalism—and all its detriments. Capitalism requires businesses to compete with the goal of undercutting, beating and, ideally, eliminating all competition. There is great pressure to increase profits each year. That can mean hiring the cheapest and least qualified lawyers. That can mean cutting corners. Even the existence of a compliance officer does not mean the NLO's will act ethically, as compliance officers can quit or be fired. Other major concerns relating to NLO's are discussed in the accompanying Yale Law Journal Forum article from October 19, 2022, entitled "The Pitfalls and False Promises of Nonlawyer Ownership of Law Firms" by Stephen P. Younger and the U.S. Chamber of Commerce Institute for Legal Reform paper from January 2023 entitled "Selling Out: The Dangers of Allowing Non-attorney Investment in Law Firms."

To safeguard Texans, the State of Texas would need to institute a new regulatory system for these NLO's. The Family Law Council is greatly concerned about regulators formulating regulations in the absence of guidelines or requirements. The Family Law Council understands there might not be a mandate for any of the suggested regulators to be lawyers, which, if true, would be a great weakness.

NLO's can undercut private lawyers by using technology to mass market services and reduce labor costs. Volume and fewer lawyers would permit NLO's to undercut private lawyers, with the inherent capitalistic goal of putting those lawyers out of business and filling the vacuum it creates. Society has seen this result in many other professional fields in which private equity has been permitted to own professional services. Once the competition is gone, gone too is the incentive

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<sup>2</sup> Adult name change forms, like many other forms, are already freely available online. See <https://texaslawhelp.org/guide/i-want-to-change-my-name>; <https://selfhelp.efiletexas.gov/SRL/SRL/#>.

for NLO's to offer low-cost legal services and the leverage of Texas to require them to do so.

While initially NLO's may offer significant financial savings to clients, there will be an effect on Texas communities similar to that internet-based companies like Amazon had on those communities. Clients will gravitate to offers of cheap legal services without understanding the dangers A.I. and algorithms pose and without understanding the pressure on the NLO's to offer the least amount of services possible as they constantly cut costs.

The loss of lawyers practicing family law worsens—not improves—the problem of low-income Texans getting justice. As clients no longer hire private lawyers, those lawyers will no longer offer the affected legal services. As private lawyers leave these areas of law, judges will face issues of how to provide court-appointed attorneys in criminal, CPS, and enforcement cases.<sup>3</sup> The NLO's will not have attorneys in most Texas counties, as that would be unprofitable. Judges in those counties cannot appoint the NLO's attorneys in cases, resulting in another advantage to NLO's and another cost to many private attorneys for whom these appointments are a public service, not a business strategy. As has occurred with small businesses faced with internet competition, rural communities will be particularly affected. To survive in a rural community, an attorney must offer a range of services, often including family law. These rural communities already face a grave and increasing shortage of lawyers, hurting low-income individuals who cannot travel for legal services or offer enough for a lawyer to travel to them.

#### **IV RECOMMENDATIONS**

Low-income Texans are uniquely vulnerable to the misuse of their personal and financial information. As a result, low-income family law litigants are in greater need of qualified and dedicated representation and assistance in what may be the most difficult moment of their lives, and of protection from predatory entities—even those unleashed upon them in the name of access to justice. Tech companies, large and small, provide “free” services in exchange for the right to harvest personal information. As opposed to just a consumer's shopping preferences, family law clients can sacrifice their and their children's social security numbers, driver's license numbers, dates of birth, addresses, telephone numbers, e-mail addresses, bank account and credit card information, and income information.

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<sup>3</sup> Additionally, the pool of lawyers available to run for the positions of district attorney and district judge also shrink, resulting in less competition for those positions and raising the danger of lower quality district attorneys and judges, adversely impacting low-income individuals in most areas of the law.

The Family Law Council opposes the subjugation of the legal profession to the money and control of NLO's in the name of access to justice. However, should the Supreme Court improvidently allow NLO's to practice family law in Texas, the Family Law Council, on behalf of its thousands of family law attorney members, makes the following recommendations. While some of these recommendations may apply to other NLO's, like its opposition to any NLO's, the Family Law Council confines its recommendations only to NLO's that practice family law. These recommendations are:

- A comprehensive regulatory system for NLO's, modeled after the framework for attorneys, should be established with clear requirements and guidelines for the regulators. A majority of the governing body of this regulatory system should be lawyers, and there must be lawyers on staff.
- To ensure the NLO's are actually improving access to justice in family law cases, NLOs should have a means test that defines low-income Texans as persons at 150 percent of the federal poverty guidelines.
- 100% of the clients for family law of these NLO's must be defined as low-income Texans.
- NLOs have to demonstrate that they are actually providing legal services only to low-income Texans, either by providing pro bono legal services or charging fees affordable for low-income Texans. There must be a means to evaluate and determine that NLOs are charging less than comparable licensed lawyers. Each NLO should provide at least 25 percent of its services at no cost.
- Any legal services actually provided must be provided by a licensed attorney or paralegal or, subject to the outcome of rulemaking for paraprofessionals, a paraprofessional. Texas would need to establish a similar Rule of Professional Conduct as Arizona, which states, "When a firm includes nonlawyers who have an economic interest or managerial authority in the firm, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules."<sup>4</sup>
- Legal ethical standards should be enforced against nonlawyer owned entities. Violations of ethical standards may result in a loss of their license to operate.
- Non-lawyer owned entities must be prohibited from distributing the clients' information. Non-lawyer entities must be subject to privacy laws that apply

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<sup>4</sup> Ar. St. S. Ct. Rule 42 RPC ER 5.3(d) (Responsibilities Regarding Nonlawyers)

to lawyers, such as the Texas Privacy Act, HIPAA, and Texas Medical Privacy Act.

- Texas must establish guidelines for advertising by non-lawyer owned entities to avoid misleading potential consumers. NLO's must submit their advertising to the licensing agency, which would evaluate them using rules comparable to those that apply to lawyers.
- Set guidelines for trust fund management by non-lawyer entities.
- Establish a short trial time period for any recommendations under the program. Because of the risks inherent with NLO's, the trial period must be short to mitigate harm to clients and prevent the creation of a flawed system that becomes too big to undo. After that time period, the trial changes should "sunset" unless a future review determines that actions under the trial changes actually resulted in substantial benefits for low-income Texans.
- Establish a system to monitor and confirm that the measures taken in line with these program recommendations are genuinely benefiting low-income Texans.
- The non-lawyer owners of the NLO's must satisfy character and fitness requirements similar to those required of lawyers licensed in Texas. Each must take an oath modeled off of that required of persons licensed to practice law in Texas. For a public entity or any entity with many owners, this requirement could apply just to the chief officers and to the board of directors or comparable governing body.

**Ten guideline ideas to monitor this system:**

1. **Eligibility Verification:** Establish strict criteria for determining the eligibility of low-income Texans. This could include verifying financial records, employment status, and other relevant factors. Only those meeting the criteria should be able to access the services. Essentially creating a verification mechanism like courts use for court appointments which would be a government document that potential clients must complete, and the entity would have to review and retain. This evaluation should also consider whether a review of eligibility is necessary if a case takes over a certain period of time or if additional causes of action are plead or additional complexities are added to a particular case (such as if there are intervenors or if an enforcement with criminal consequences is pleaded during a case).
2. **Performance Audits:** Regularly evaluate the performance and outcomes of legal services provided by these entities. This would

entail assessing the quality of legal representation and comparing it to traditional legal services to ensure it meets a certain standard. Legal Insurance providers frequently audit billing statements and verify work products to ensure that fraud is not occurring. We regularly get audited.

3. **Rate Transparency:** Entities must disclose their service rates to the public. Monitoring agencies can regularly audit these rates to ensure they remain affordable for low-income individuals, with comparisons made to prevailing market rates.
4. **Feedback Mechanism:** Establish a straightforward and transparent system for clients to provide feedback and lodge complaints. This system would allow for rapid identification and correction of potential issues.
5. **Regular Training:** Ensure that non-attorney stakeholders undergo continuous legal training and professional development. This would help reduce the risk of incompetence and maintain the quality of representation. The minimum for this training should match or exceed the requirements of the legal community for CLE and include trauma training.
6. **Conflict of Interest Checks:** Regularly audit entities to ensure there's no conflict of interest that could compromise the independence and impartiality of legal services. Non-attorney stakeholders should not be allowed to interfere with the legal strategies or decisions of practicing attorneys. NLO's should be prohibited from mining client data for profit and from referring clients in exchange for compensation from any source, particularly from the person or entity to which the client is referred. NLO's should not serve as marketing agencies for law firms or any commercial ventures.
7. **Client Outcome Tracking:** Implement a system to track long-term outcomes of clients served by these entities. This would help identify if there are any systemic issues causing negative outcomes or if specific entities are underperforming.
8. **Pro Bono Verification:** For entities claiming to offer services for free, there should be regular audits to confirm that no hidden fees or costs are being levied on clients.
9. **Peer Review:** Implement a peer review system where seasoned attorneys periodically evaluate, and review cases handled by these

entities. This could provide invaluable insights into the quality of representation provided.

10. **Public Reporting:** Publish an annual report detailing the activities, successes, challenges, and financial operations of these entities. This would promote transparency and accountability and allow stakeholders, including the public, to gauge the effectiveness of the initiative.

## V CONCERNS AND ANALYSIS

### 1. NLO's May Result in Incompetent Representation

Non-lawyer owned entities that are not required to use licensed attorneys for their legal services may result in incompetent representation. Creating non-lawyer owned services reinforces a misleading belief that family law issues are simple when in fact they can result in long-term financial consequences, and problems for both children and parents. There is no test for how complex a family law case will be. A case that appears to be "simple" from the outside may have underlying complexities that the client does not understand. Non-lawyer owned entities providing services may provide legal forms but fail to provide a lawyer advising the client of potential pitfalls, areas of concern, and other necessary legal advice required to properly complete those forms.

Without broad-based formal legal training, NLO's may fail to identify when legal problems overlap other areas of the law. Family law cases can include every other area of the law. A low-income client may still have legal issues that involve immigration law, property law, criminal law, tort claims, estate law or tax law. Additionally, fifth amendment issues frequently arise in family law due to allegations of cruelty, abuse, neglect, fraud, tax fraud, failure to support, failure to permit possession, etc. There is a potential to risk self-incrimination and the loss of liberty.

### 2. NLO's May Reduce Legal Representation

Non-lawyer owned entities may advertise that they are "affordable representation," leading litigants to believe they cannot afford legal services from lawyers. Many family lawyers provide reduced or pro bono services. Some family lawyers also provide limited scope services. The introduction of NLO's may lead some people to mistakenly believe that legal services are out of their reach when there are services available.

Larger cities offer family law services to low-income litigants. Travis County has a “Match” referral program that provides lawyers at a reduced rate to low-income people. Travis County law library also employs attorneys to help pro se litigants with legal forms. Several law schools offer family law assistance for low-income people. For example, St. Mary’s Law School, Texas Tech School of Law, A&M School of Law, and SMU Dedman School of Law all have family law legal clinics. Additionally, UT Law operates a domestic violence clinic.

### 3. NLO’s with Economic Interests Raise Ethical Concerns

The Supreme Court’s charge subsumes several criteria, including that a responsive proposal must enable non-lawyers to have economic interest in entities that provide legal services to low-income Texans. There are policy reasons that disfavor contingent fee and percentage fees in family law litigation. “Contingent and percentage fees in family law matters may tend to promote divorce and may be inconsistent with a lawyer’s obligation to encourage reconciliation.” Tex. Disciplinary R. Prof’l Conduct 1.04 cmt. 9. Allowing NLO’s to have an economic interest raises ethical concerns, as the company’s financial interests might conflict with the goal of encouraging reconciliation.

### 4. NLO’s Undercut the Legal Profession, Thereby Resulting in More Poorly Represented Individuals

Allowing reduced rate representation may create a new competitive market that is entirely owned by wealthy and subsidized entities providing cut rate quasi-legal services. It would further undercut the legal profession and thus result in more poorly represented individuals, creating a greater need for access to justice efforts in family law rather than a lesser need.

### 5. Mishandled Cases Result in More Litigation, Not Less

Orders involving suits affecting the parent-child relationship, when mishandled, can lead to increased litigation with the filing of modifications to address defects in orders in suits affecting the parent-child relationship and of suits filed to fix property divisions in divorces. These suits are not “do-overs.” The legal relief available to a harmed low-income individual will be more limited than it was at the original suit.

### 6. NLO’s May Not Be Held to the Same Standard as Attorney-Owned Practices

There is a tremendous incentive for attorneys to not lose their licenses. Unethical practices can result in attorney discipline, and a loss of the ability to practice law and own a law firm. Non-lawyer owned entities may not be held to

the same standard of care. If an NLO acts unethically, does the entire company lose the ability to stay in business? A licensed attorney went through years of education, expense, and hard work in order to obtain a license to represent people. Even if the attorney was a non-practicing shareholder overseeing other licensed attorneys, they still have a strong incentive to maintain ethical standards of practice.

NLO's would have an acute conflict between continually increasing profits and providing a high ethical standard of practice. On July 20, 2023, the New Jersey State Bar Association Board of Trustees rejected NLO's citing "serious concerns that attorneys will be stripped of their professional independence and forced to place corporate motives above their legal and ethical obligations."<sup>5</sup>

#### 7. NLO's Should Have Clear Disclosures and Advertising

Non-lawyer owned entities must be mandated to inform potential clients explicitly when they are not receiving counsel from a licensed attorney and that their firm is owned by a non-lawyer. These disclosures must extend into their advertising. Such transparency is crucial in ensuring that individuals seeking legal services are aware of the qualifications of those advising them. By being forthright about the nature of their services, these entities can prevent potential misunderstandings or misrepresentations. A fully informed client is better positioned to make decisions about their legal needs and the type of assistance they desire.

#### 8. NLO's Should Be Subject to a Grievance Redressal Mechanism

Establishing a dedicated channel for clients to voice complaints against NLO's is imperative. Such a mechanism not only ensures these entities remain accountable but also bolsters public trust in the legal service landscape. Clients deserve a clear and accessible means to seek redressal when faced with disputes or unmet expectations. By having this in place, we can promote transparency and uphold service standards across both lawyers and NLO's.

#### 9. Potential for Trust Fund Mismanagement

Regulations of NLO's must strictly enforce rules for trust fund management that are at least as strict as those for lawyers. In Texas, as with many jurisdictions, attorneys are held to stringent ethical and fiduciary standards when it comes to handling client trust funds. Licensed attorneys are trained and continually

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<https://njsba.com/board-of-trustees-report-july-20-2023/#:~:text=The%20trend%20raises%20serious%20concerns,best%20interests%2C%20the%20report%20states.>

educated on the importance and methods of maintaining separate trust accounts, ensuring that client funds are not co-mingled with firm funds, and promptly disbursing any funds owed to clients. With non-lawyers handling trust funds in a legal matter, there is a heightened risk of inadvertent or intentional mismanagement of these funds due to a potential lack of familiarity with these specific fiduciary duties. Moreover, without the looming threat of professional disciplinary actions such as disbarment, non-lawyers might not feel the same level of responsibility and urgency to strictly adhere to trust accounting principles, potentially jeopardizing clients' financial interests and undermining public confidence in the legal system.

#### 10. NLO's Should Be Subject to a Regulatory Sandbox and an Oversight Organization

If implemented, to ensure adherence to standards and to maintain quality, non-lawyer owned entities should be subject to periodic audits by a governing body. These checks would evaluate the quality of advice provided, the efficacy of their services, and their overall compliance with established guidelines. A short trial time period should be established for any recommendations under the program. After that time period, the trial changes should "sunset" unless a future review determines that actions under the trial changes actually resulted in substantial benefits for low-income Texans.

**Analysis of the Conclusions of “Access to Justice Facts”  
As the Basis for Creating Non-Lawyer Ownership of Law Firms**

1. Before Proposing a Radical Solution, We Must Know What the Problems Are and the Scope of Each Problem

Before determining a solution to a crisis, we should first determine what are the problems and the scope of each problem. The “Non-Attorney Ownership Subcommittee Working Document DISCUSSION DRAFT September 14, 2023” (the “Discussion Draft”) attempts to do so by leading with the conclusion “In Texas, 90% of the civil legal needs of low income individuals are unmet.” This statistic is offered as the justification for a serious change to Texas law: allowing non-lawyers to own law firms. The Discussion Draft states, “Since the need for assistance with civil legal needs is so great, and traditional legal aid is insufficient to meet that need, the legal profession must do more to address the situation.”

There is no question that there is a crisis in Texas providing for the civil legal needs of low income individuals. For years, the Family Law Section of the State Bar has been a leader in addressing those needs. There is no question that the legal profession must do more to address the situation. The issue for all stakeholders is what that work should be. The questions each stakeholder must ask before proposing radical solutions to this crisis are:

- (1) what are the civil legal needs of low income individuals in Texas and
- (2) how great are each of those needs.

To answer these questions, all stakeholders need valid data. Without valid data, our solutions may be ineffective to resolve the crisis and may make the crisis worse in the short or long-term. If proposed solutions are grounded on patently invalid data, the invalid data at the very least will critically undermine the credibility of the proposed solutions and the credibility of those endorsing the proposed solutions. As lawyers, we know that we must prove our claims, even if seems clear that we have a right to relief. If we make statements like “In Texas, 90% of the civil legal needs of low income individuals are unmet,” the movement to improve access to justice must possess a solid statistical basis for that claim—even if it is obvious that Texas has a crisis. When people see statistics, they, like no doubt the authors of the Discussion Draft, assume them to be well-founded and truthful. When people learn the data used to persuade them are meaningless, they cannot help but feel betrayed, no matter that those who presented the data used those figures innocently and with good intentions. The movement to increase access to justice for the marginalized must avoid this danger.

2. Critical Flaws in the Data Used to Justify Non-Lawyer Ownership of Law Firms

The Discussion Draft’s statistic comes from Access to Justice Facts, Texas Access to Justice Foundation<sup>1</sup> (the “Access to Justice Facts”). Rather than just accepting the conclusions of Access to Justice Facts, we should closely examine its analysis of the civil legal needs of low income individuals in family law. When we do so, we see that rather than 90% or even 76% of these civil legal needs is being unmet in family law, the percentage Access to Justice Facts shows is that, at most, approximately 1.5% of low income individuals have unmet civil legal needs in the area of

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<sup>1</sup> Available at <https://www.teajf.org/news/statistics.aspx>.

family law. Based on our real world experiences, we reject out of hand this 1.5% figure as being far too low, yet that is what this study shows. The method Access to Justice Facts used is fatally flawed in the area of family law and, in fact, we cannot determine from that document (1) what problems exist for low income individuals in the area of family law and (2) the size of those problems.

While this memo does not address the non-family law portions of Access to Justice Facts, if the portion regarding family law is fatally flawed, those citing Access to Justice Facts for other areas of the law or for the scope of the crisis in general should critically examine Access to Justice Facts to determine if they are hurting the cause of access to justice by doing so.

a. Access to Justice Facts Data is Ten Years Old

Access to Justice Facts is a 2015 report, using 2013 survey data. The data therefore is 10 years old. No one can say if this data is valid anymore. Since 2013, for example, the use of forms by pro se litigants to meet their own family law civil legal needs without lawyers or legal aid has risen dramatically, challenging the very basis of the Access to Justice Facts' conclusions. Since 2013, Texas has taken meaningful steps to make broadband internet more available, allowing greater access to legal information online, including those forms. Between 2013 and 2023, the ownership of smartphones increased from 53% to 91%.<sup>2</sup> These developments and others challenge the reliability of the 2013 data.

b. Sample Size

Access to Justice Facts relies on 630 telephone interviews. This memo takes no position on whether this sample size was adequate for Access to Justice Facts to reach the conclusions that it did. The number of people surveyed is a factor in whether anyone should rely on the conclusions reached from the data from that survey.

c. Suggestion by Interviewers of Unmet Civil Legal Needs

In each telephone interview in the survey, the interviewer asked the respondent 39 possible legal situations that could give rise to a civil legal need. The respondents were not asked an open-ended question if they had a civil legal need and, if so, what was that civil legal need. Instead, the respondents were given examples of civil legal needs and then asked if they or their households had any of them. The interviewers thereby suggested civil legal needs. As a result, the respondents were called upon to consider issues they may never have considered before: whether they or their household had an unmet civil legal need. The difference in technique is the difference between a suggestive leading question and a non-suggestive, non-leading question. The questions themselves had the potential to create unmet civil legal needs, ones the respondents may never have realized or acted upon. The results of the interviews, however, make it appear that these unmet civil legal needs were all active issues in these low income individuals' lives, which they may not have been. The survey never asked that question. As a result, the data inflates the acuteness of the problem of unmet civil legal needs.

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<sup>2</sup><https://www.oberlo.com/statistics/how-many-americans-have-smartphones#:~:text=The%20latest%20US%20cell%20phone,number%20has%20surged%20to%2091%25.>

d. Unmet Civil Legal Needs Do Not Mean They Are Important Unmet Civil Legal Needs

Building on the previous paragraph, Access to Justice Facts acknowledges a problem with its use of the terms “civil legal need” and “unmet civil legal needs.” Access to Justice Facts states,

The term “civil legal need” is used advisedly for two reasons. First, people sometimes find ways of dealing with circumstances they face without turning to a lawyer or legal aid. These circumstances are still considered “civil legal needs” although there is no implication they must be brought to the civil justice system. Secondly, some “civil legal needs” arise from changes in society and from the effects of the civil justice system itself on society. Prominent examples are battles that have become “legal civil matters” as the nation has tried to deal with discrimination on the basis of national origin, race, sex, disability or marital status.

Next, we turn to the issue of “unmet civil legal needs”. Again, we acknowledge that it is not necessary to have every single legal need submitted to a lawyer or legal aid for resolution but the absence of consultation with a legal professional is a strong indicator that these needs are going unmet. In fact, a focus group with project interviewers reveals that in interviews where the respondent indicated that the services of a lawyer or legal aid were not sought to address a legal need, virtually all respondents commented that they “let it go” or “did nothing” although there was a very small number that said something such as “I took care of it myself.”

While Access to Justice Facts includes these statements, it does not provide any numbers, even for the focus group. These issues do not appear to have been raised with the respondents to the telephone interviews, so we cannot determine whether the respondents would have ever acted upon their or their household’s unmet civil legal needs in family law. For example, a person might have a desire one day to change their name (a civil legal need) but might not want that name change enough to ever act upon that desire, including even trying to seek legal assistance. Access to Justice Facts would count this desire as an unmet civil legal need because there was a civil legal need and the person never received help from a lawyer or legal aid.

e. Critical Flaws in the Family Law Survey Questions

Under the label of “family law,” the interviewers asked five questions, each with a follow up question of “Did you receive help from a lawyer or legal aid to resolve the problem?” Those five questions were:

(1) Now, I'd like to ask you about some situations that can come up in families. Again, I'll be asking about 2013 and anyone now living in your household. Did (any of) you need advice or help with legal matters related to the breakup of a marriage or live-in relationship or have a dispute about a property settlement or what would happen to any children after a breakup?

(2) Did a situation arise in which an elderly person in the household or a close elderly relative was suspected of being abused or taken advantage of financially?

(3) Did any other adult living in the household suffer physical, sexual, or emotional abuse?

(4) In 2013, you (anyone living in your household) have a biological, adoptive, step-, or Foster child who was under the age of 18 in 2013, whether or not that child was living in your household, about whom he/she was involved in a dispute about child support – either with the other parent or a government agency about the award or payment of child support, who the child’s father is, or some other matter including the adoption or appointment of a guardian for the child, problems with welfare authorities , suspicions of child abuse or neglect or a serious problem with foster care?

(5) Did (you/anyone) need help in administering an estate or dealing with an inheritance problem that arose after someone died?

Looking at the five survey questions asked under Access to Justice Facts’ label of “family law,” we see several defects with them.

First, except for the first question, the questions do not address wholly family law issues or any family law issues, that is, issues that would arise under the Family Code and would be considered to be family law by lawyers, judges, and many clients. Access to Justice Facts states, “This category included five questions that prompt respondents to recall family law related events such as the dissolution of a marriage, child support, creation or change to wills and trust or estate planning and the financial, emotional or sexual abuse of elderly relative or family member.” These questions raise issues of elder abuse, criminal law, guardianships, administrative issues with welfare agencies, and estate law, none of which are family law. Although those issues can arise in family law suits, they are not issues that a family lawyer would address for a client unless the family lawyer also practiced in those areas. By including issues that are not family law under the label “family law,” Access to Justice Facts’ data is of very limited use in determining which family law problems low income individuals have accessing justice in family law cases and the scope of those problems.

Second, the interviewer asked whether the respondent’s *household* had a civil legal need in 2013 but then asked whether the *respondent* received help from a lawyer or legal aid. The follow up question does not directly correlate with the first question. The respondent may not have received legal help because the respondent did not need any. Instead, another member of the respondent’s household needed legal help. For example, an adult daughter living in her parent respondent’s household could have been going through a divorce, but the parent respondent would likely not have received—or sought—help from a lawyer or legal aid. The survey failed to ask if the person in the household needing legal help received legal help. The survey asked the wrong follow up question, resulting in unreliable data that can only overstate, not understate, the problem of unmet civil legal needs. Access to Justice Facts notes that “respondents were considered to represent their household,” but that statement does not tell us whether each respondent answered on the respondent’s behalf or the household’s behalf the question of whether the respondent received help from a lawyer or legal aid.

Third, the interviewer did not ask the respondent if the respondent was aware of existing legal resources other than asking if the respondent received help from a lawyer or legal aid. For example:

- The interviewer did not ask if an issue concerned a criminal law issue and, if it did, whether the respondent was aware that the district and county attorney's offices provide legal assistance to prosecute those cases for victims and the availability of public defenders or court-appointed lawyers for defendants.
- The interviewer did not ask if an issue concerned a protective order and, if it did, whether the respondent was aware that district and county attorney's offices provide legal services to people seeking protective orders.
- The interviewer did not ask whether the respondent was aware the Office of the Attorney General provides legal services for child support issues.
- The interviewer did not ask whether the respondent was aware that Adult Protective Services and Child Protective Services provide assistance for endangered adults and children.
- The interviewer did not ask whether the respondent was aware of the availability of court-appointed lawyers in CPS cases and in enforcement suits seeking contempt.
- The interviewer did not ask whether the respondent was aware of and had access to legal clinics offered by law schools.

By failing to ask these questions, Access to Justice Facts implies that the problem of access to justice in family law is greater than it actually is, as these resources are ready means to access justice. Instead of radically changing how Texas provides legal services, the issue could be one of making these existing services better known to low income individuals and reducing barriers, such as providing transportation to these services, bringing the services to low income neighborhoods, or making broadband internet more available. As with the question of whether the respondent was ever going to do anything to meet their civil legal need, the statistics on "unmet civil legal needs" from these questions are overstated.

Fourth, a "no" answer to the common follow up question does not mean there was an unmet family law civil legal need, even though Access to Justice Facts states that it means just that. Access to Justice Facts fails to address whether any respondents met their own civil legal needs using the forms developed by the Texas Supreme Court's Uniform Forms Task Force. These forms were specifically developed to allow individuals—low income individuals in particular—to meet their own civil legal needs without a lawyer and without legal aid. Other forms, such as those from Legal Zoom, are publicly available for the same purpose. By failing to ask the question of whether the respondent used legal resources other than a lawyer or legal aid to get help, Access to Justice Facts overstates the problem as these forms were available to the public in 2013 and are more widely used in 2023. When a respondent uses one of these forms and successfully resolves the family law civil legal need, the family law civil legal need is met, even though the answer to the question of whether the respondent received help from a lawyer or legal aid is "no."

Fifth, Access to Justice Facts inflates the scope of the perceived problem by looking at the wrong percentages or at least failing to note that the percentages reveal a much smaller problem than

stated. Under the column of “Help from a lawyer or legal aid?”, Access to Justice Facts uses a percentage comparing the number and percentage of those who received help from a lawyer or legal aid to the number and percentage who did not receive help from those sources. The results are striking percentages ranging from 52.9% for the purely family law question number one to 83.3% for the third question concerning abuse of non-elderly adults living in the household.

These percentages misstate the issue, however. The more useful percentage is the number of respondents who did not receive help for the issue or issues in question compared to the total number of respondents, which was 630. If, for example, there were only 100 people in all of Texas with family law civil legal needs and 90 did not receive help from a lawyer or legal aid, the percentage of individuals with an “unmet civil legal need” would be an alarming 90%. That percentage, however, would not justify radical changes to the Texas legal system for family law, however, because only 90 people in the entire state were affected. Less radical, more targeted improvements to the system would be needed instead.

If we compare the percentages of respondents who did not receive help from a lawyer or legal aid in family law—deemed by Access to Justice Facts to have an unmet civil legal need—to the total number of respondents, we get a vastly different picture of the size of the issue using the data provided by Access to Justice Facts. We get a picture of how the stated issue is affecting all low income individuals, which should be the target of the proposed non-lawyer owned law firms.

First Question (addressing solely family law issues): Access to Justice Facts states the unmet civil legal need is 52.9%. The more useful percentage is 9 out of 630 total respondents or 1.43%, with 8 out of 630 respondents or 1.27% getting help from a lawyer or legal aid.

Second Question (addressing elder abuse): Access to Justice Facts states the unmet civil legal need is 70.4%. The more useful percentage is 19 out of 630 total respondents or 3.02%, with 8 out of 630 respondents or 1.27% getting help from a lawyer or legal aid.

Third Question (addressing non-elderly adult abuse): Access to Justice Facts states the unmet civil legal need is 83.3%. The more useful percentage is 10 out of 630 total respondents or 1.59%, with 2 out of 630 respondents or 0.32% getting help from a lawyer or legal aid.

Fourth Question (addressing child support as well as “the adoption or appointment of a guardian for the child, problems with welfare authorities, suspicions of child abuse or neglect or a serious problem with foster care”): Access to Justice Facts states the unmet civil legal need is 76.9%. The more useful percentage is 10 out of 630 total respondents or 1.59%, with 3 out of 630 respondents or 0.48% getting help from a lawyer or legal aid.

Fifth Question (addressing inheritance issue): Access to Justice Facts states the unmet civil legal need is 72.7%. The more useful percentage is 16 out of 630 total respondents or 2.54%, with 6 out of 630 respondents or 0.95% getting help from a lawyer or legal aid.

The data from Access to Justice Facts therefore shows that “unmet civil legal needs” in “family law,” as those terms are defined by Access to Justice Facts, affect a tiny percentage of low income individuals. The bigger percentages concern elder abuse and inheritance issues, neither of which is actually family law. Coupled with factors stated above that show that even these numbers are

overstated, the data from Access to Justice Facts does not support a radical change to how Texas provides access to low income individuals regarding family law.

### 3. Conclusion

Access to Justice Facts concludes,

The family category yielded 71 household [*sic*] with issues and only 17 of them receiving assistance from a lawyer or legal aid. This represents an unmet legal need of 76% for family law related issues.

As we can see from the discussion above, this conclusion is unsupported by the data. No accurate percentage of “unmet legal need” in family law can be determined from Access to Justice Facts. That there were 71 households with issues, a number less than 91 civil legal issues totaled from all five questions, proves some households had more than one issue. Access to Justice Facts, however, fails to state which issues overlapped. That omission hurts the effectiveness of Access to Justice Facts because four out of the five questions asked involved non-family law issues and the issue presented to us is whether non-lawyer ownership of law firms will help or hurt providing access to justice for family law civil legal needs. The percentage of 76% for family law-related issues may be accurate as far as Access to Justice Facts alone defines family law but not as anyone else does and not as family law should be defined for the issue of non-lawyer ownership of law firms.

In conclusion, Access to Justice Facts, at least in the area of family law, tells us nothing upon which anyone can rely. Instead of being an asset to the movement for increasing access to justice, Access to Justice Facts is a tool critics can use to undermine that movement. We strongly urge that it no longer be cited as authority for access to justice issues, at least those affecting family law. Those advocating for greater access to justice should critically and dispassionately examine other studies, including those done in other states or on a national level, to see if those studies share the same or similar defects as Access to Justice Facts. Access to Justice Facts may have copied work done elsewhere.

We strongly urge that current, meaningful data on family law—data addressing each of the points raised above—be compiled, publicized, and subjected to review before the Texas Supreme Court undertakes significant changes to the rules governing non-lawyer ownership of law firm practicing family law. Before instituting a radical solution to our crisis, we should first determine what are the problems and the scope of those problems.

Feedback from the Immigration and Nationality Law Section of the State Bar of  
Texas

**IMMIGRATION & NATIONALITY LAW SECTION**  
*of the*  
**STATE BAR of TEXAS**

Date:  
September 20, 2023

Address Reply to:  
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Supreme Court of Texas  
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The Hon. Michael Massengale  
3733 Westheimer Rd # 682  
Houston, TX 77027

**RE: Follow-Up to Working Group Discussion**

Dear Justices Busby and Massengale:

Thank you very much for inviting our section to present to your working group yesterday. While federal preemption restricts Texas from authorizing additional immigration providers beyond those stipulated by federal regulations, we are confident that there exists a viable approach for your proposal to aid low-income individuals. This approach might not only align with current federal law but could also enhance the overall impact of your proposal.

We propose that Nonlawyer Organizations (NLOs) should be mandated to offer a specific amount of pro bono hours to maintain their licensing. As an illustration, Texas might require that an NLO of a particular size offer 100 hours of pro bono services annually. Services should be exclusively in collaboration with a DOJ-accredited nonprofit described in 8 C.F.R. § 1292.11 (if pro bono services are immigration-related) or a legal aid group (if not immigration-related) and be in partnership with a county bar association or the SBOT.

An enterprise such as Rocketlawyer could potentially sponsor a clinic on behalf of a nonprofit or legal aid. Here, low-income individuals could utilize the company's software for various legal matters, such as immigration, wills, or divorce. Rocketlawyer would be responsible for training legal aid personnel or pro bono attorneys in the software's operation. While a representative from Rocketlawyer would handle technical inquiries, a pro bono attorney or nonprofit staff member would evaluate users for eligibility and potential concerns, advise and guide users in the selection of forms, and oversee the clinic.

Pro bono attorneys also could provide guidance on the submission process and potential legal issues. For the clinic, Rocketlawyer could supply the necessary laptops. This arrangement presents a unique opportunity for the public to interact with Rocketlawyer's services in a supportive setting. Furthermore, this initiative exposes members of the private bar and nonprofits to Rocketlawyer's product suite, potentially leading to future collaborations. This scenario benefits all parties involved.

To ensure that all Texas regions, especially the underprivileged ones, benefit equally, the pro bono hours could be adjusted based on the service location. For instance, a clinic in Harris County might equate to three hours of service, while one in Hidalgo County could be equivalent to six hours. Federal income statistics by county are publicly available.

The above is merely one potential strategy. Broadening the stakeholders providing input for Justice Busby's proposal might yield even more innovative solutions. In this spirit, we urge the Texas Supreme Court to request the participation of the State Bar of Texas (SBOT) Board of Directors. The SBOT could further amplify this proposal by encouraging law firms to collaborate with NLOs. This partnership may lead to decreased operational costs for law firms, ultimately resulting in more affordable legal services for the public.

We emphasize our commitment to ensuring the quality and effectiveness of these pro bono services and our desire to provide affordable legal representation to low-income individuals in Texas. Regular audits, training sessions, and feedback mechanisms for pro bono services should be established to maintain high standards.

Our section genuinely believes that by working together, we can devise a framework that serves the needs of Texans while adhering to federal law. Thank you again for considering our insights.

Respectfully,



Roy Petty  
Immediate Past Chair

RP/amg  
SBOT/Section/NLOs

# NLOs & Paraprofessionals

TAJC Subcommittee Meeting 8/25/2023

# Non- Lawyer Ownership

## The Purpose of Model Rule 5.4:

- Prevent Nonlawyers from Interfering with lawyers' independent professional judgment.
- Uphold the obligation of lawyers to maintain their independent professional judgment.

# Access to Justice?

Neither the 2016 study or any other report on the NLO proposition provide any type of data supporting that in fact the use of alternative business structures (ABS) expands access to justice.

Wealth management firms, accounting firms, litigation –finance companies, hedge funds private-equity firms, other financial institutions and alternative legal-service providers (legal document creation).

- Arizona (LegalZoom)
- Utah (Rocket Lawyer)
- Deloitte
- Ernst & Young

# Access to Justice?

## **Foreign Jurisdictions:**

- 2001 Australia becomes the first common-law jurisdiction to allow for NLOs to provide legal services and share profits with lawyers
- 2007 UK enacts the Legal Services Act.

## **US jurisdictions:**

- Arizona – as of 8/2022 they have 25 ABS - mostly providing transactional, business and financial services.
- Georgia – limited to fee sharing with NLO firms in other jurisdictions.
- Mass. – allows for fee sharing with recognized legal assistance org with full consent by client.
- Utah – “Sandbox” Supreme adopted an experimental regulation valid until 2027. 41 ABS mostly providing legal-technological services (RocketLawyer, LawPal, Law on Call (registered agents/corporate firms all 50 states).
- Washington D.C. – very limited model since 1991 and has explored but not expanded the program.

**There are currently no ABS firms that provide immigration legal services**

# Access to Justice?

- **California** – “unscrupulous actors” have led to legislation prohibiting the CA state bar from spending money or creating any new programs that would allow NLOs or fee sharing with nonlawyers.
- **Florida** – 2019 began to study ABS and in 2021 recommended a “sandbox” approach. By the end of 2021 the bar’s BOG unanimously rejected the proposition and the FL supreme court agreed.
- **New Jersey** - NJSBA rejected the proposition citing “serious concerns that attorneys will be stripped of their professional independence and forced to place corporate motives above their legal and ethical obligations...”
- **New York** – No NLO, but allows paraprofessionals to assist in the technical legal issues in the courthouse. 1<sup>st</sup> to create a public defender’s office for imm. ct.
- **Washington** – 1<sup>st</sup> state to regulate, license and authorize ABS was forced to reverse course.



# Finding Profit in Low Income Legal Needs

Consumers are getting half of what they need from legal-technology firms:

- Savvi Tech, RocketLawyer, LawPal, etc only provide the forms without the legal advice
- **1Law** uses a chatbot to answer the simplest legal questions

**We are asking for-profit corporations to find profit in low-income individuals with complex legal needs & high-risk consequences.**

# Finding Profit in Low Income Legal Needs

**Legal services are not a commodity where you can trade quality for quantity.**

- NLOs/Paras are not held to the same professional and ethical standards as lawyers
- Even providing certain restrictions will not hold NLOs/Paras to the same consequences as lawyers
  - *Lozada* and other ineffective assistance of counsel claims.
  - No legal malpractice or worse increase exposure for lawyers.
  - Frivolous applications, erroneous applications, failure to state a valid claim, PSG issues, non-basis applications, increase in fraud charges, increase backlog at USCIS/EOIR/DOS



# NLOs Will NOT Address the Greatest Need

- **There is at least 1 pro se party in the majority of civil matters in U.S. courts.** (Paula Hanagor-Agor, Scott Graves & Shelly Spacek Miller, *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts*, Nat'l Ctr. For State Cts. Iv (2015)).

## Immigration Context

- **Nationally, 63% of all immigrants are unrepresented in removal proceedings.**
- **86% of Detained immigrants are unrepresented in removal proceedings.** (Ingrid Eagly & Steven Shafer, *Special Report: Access to Counsel in Immigration Court*, American Immigration Council (2016)).

# NLOs Will NOT Address the Greatest Need

- Represented immigrants **in detention** who had a custody hearing were **four times more likely to be released from detention** (44 percent with counsel versus 11 percent without).
- Represented immigrants were much more likely to apply for relief from deportation.
  - Detained immigrants with counsel were **nearly 11 times more likely to seek relief** such as asylum than those without representation (32 percent with counsel versus 3 percent without).
  - Immigrants who were **never detained were five times more likely to seek relief** if they had an attorney (78 percent with counsel versus 15 percent without).
- **Represented immigrants were more likely to obtain the immigration relief they sought.**
  - Among detained immigrants, those with representation were twice as likely as unrepresented immigrants to obtain immigration relief if they sought it (49 percent with counsel versus 23 percent without).
  - Represented immigrants who were never detained were nearly five times more likely than their unrepresented counterparts to obtain relief if they sought it (63 percent with counsel versus 13 percent without).

# Paraprofessionals

- Will not address the greatest gap in access to immigration justice.
- Will increase the backlog and increase the gap in access to justice.
- The complexity of the practice and the high stakes consequences will result in more injustices and findings of misrepresentation.
- Communications are not privileged with paraprofessionals.
- There several legal obstacles that have to be cleared.

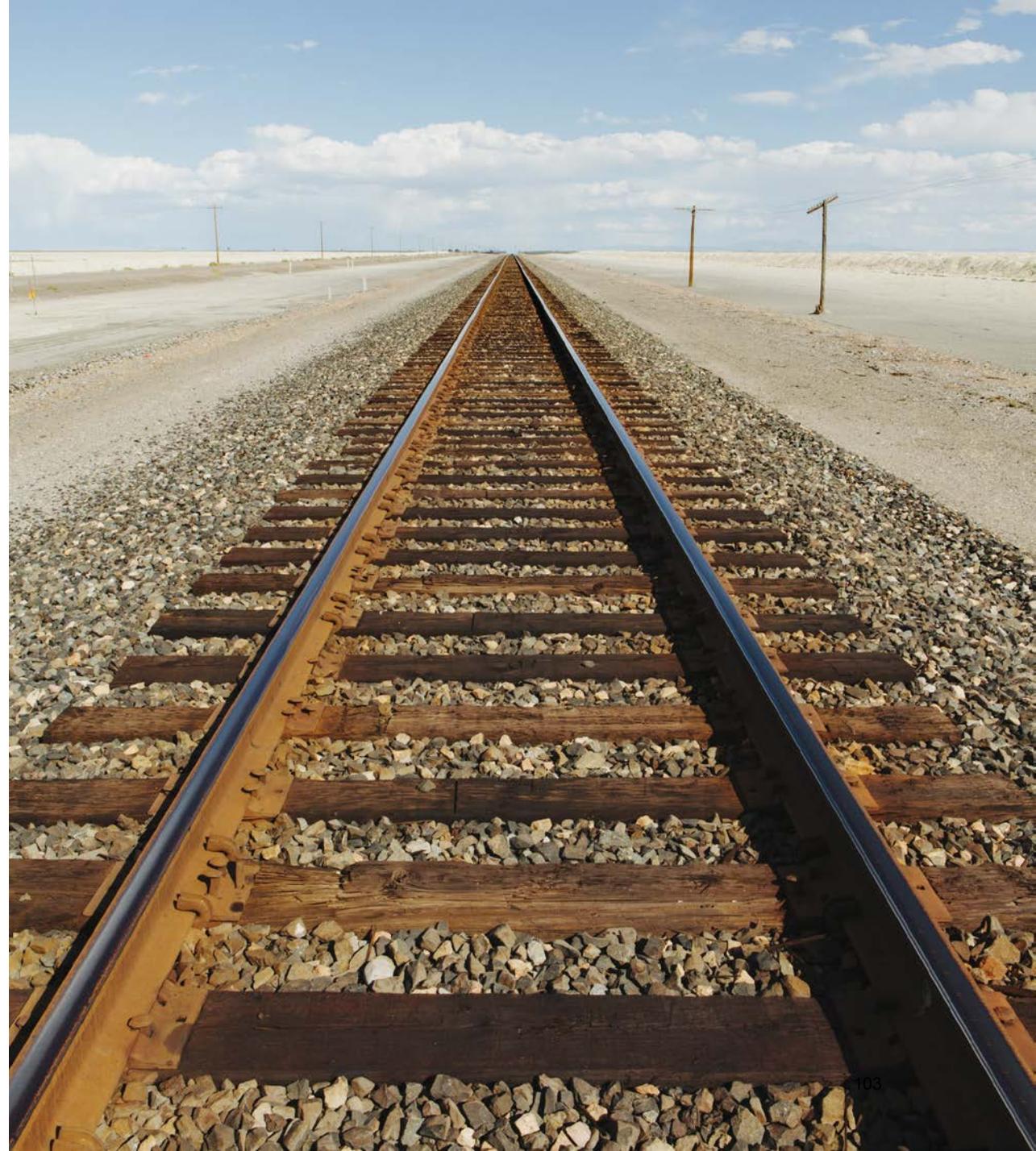
**No other state permits paraprofessionals to dabble in immigration law.**



# Welcome to Texas!

## **Cheap, Low Quality Representation!**

- Will attract more aliens to enter through Texas.
- Will increase the number of frivolous asylum applications.
- Will drain our state resources.
- Will run counter to our State's public policies.



# State Legal Hurdles

1. Our own Supreme Court says paraprofessional cannot prepare a case. They could read the question and fill in the blank, but CANNOT

- Select the form;
- Explain the question; or
- Give advice on what should accompany the form. *SBOT v Cortez*, 692 S.W. 2d 47 (Tex 1985)

2. Texas Govt Code Sec. 81.101(a) defines “practice of law” to include preparing legal documents, giving advice, and rendering services requiring legal skill or knowledge.

3. Texas Deceptive Trade Practices Act Sec. 17.46(b)(28) prohibits the use “attorney”, “immigration consultant”, “immigration expert”, “lawyer”, “licensed”, “notary”, “notary public” by nonlawyers.

4. Barratry Law includes the unauthorized practice of law TPC 38.12

5. TPC 83.001(a) & 38.122 further regulate the practice of law to protect the integrity of our profession.

# Federal Preemption

## Paraprofessional are...

- 8 C.F.R. 292.1 Representation of Others
  - Not an Attorney
  - Not a Law Student
  - Not a Reputable Individual (cannot be paid, do not have a pre-existing relationship or connection)
  - Accredited Rep (must work for a non-profit recognized by BIA)
  - Accredited Official (foreign govt official)
  - Attorney Outside the US
  - Person Authorized to Practice & Service prior to 12/23/1952



**Therefore, they cannot enter an appearance (represent) before USCIS/DHS nor before the EOIR.**

# 103 “Recognized Organizations”

- Organizations recognized by the **IRS** as non-profits 501(c)(3) status - fees are nominal and that it has adequate immigration law knowledge and experience.
  - Attorney supervised
  - Accredited by **DHS & DOJ**
- Recognized “accredited representatives” must be part of a Recognized Org.

## **Eligibility Criteria Professional Conduct Rules**

- Recognized Organizations: 8 C.F.R. § 1292.11 8 C.F.R. § 1003.110(b)
- Accredited Representatives: 8 C.F.R. § 1292.12 8 C.F.R. § 1003.102

*Attorneys and accredited representatives must represent their clients in accordance with the law, including applicable rules of professional conduct. 8 CFR 292.3 Under these rules, attorneys and accredited representatives may be disciplined for criminal, unethical, or unprofessional conduct. (EOIR)*

Memorandum from the Tax Law Section of the State Bar of Texas

# TAX SECTION

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May 25, 2023

**Via e-mail Only:**  
[suggestions@TexasATJ.org](mailto:suggestions@TexasATJ.org)

**Ms. Harriet Miers**  
**Chair, Texas Access to Justice Commission**  
**Locke Lord LLP**  
Texas Access to Justice Commission  
1414 Colorado  
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RE: *Comments on Texas Access to Justice*

Ladies and Gentlemen:

On behalf of the Tax Section of the State Bar of Texas, I am pleased to submit the enclosed response to the October 24, 2022, request of The Supreme Court of Texas (the "Court") to the Texas Access to Justice Commission ("Commission") for comments on modifications to existing rules that would allow qualified non-attorney professionals to provide limited legal services directly to low-income Texans and also to allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans. These comments address these proposals within the context of the area of tax law and tax legal representation and relate to the recommendations of the Texas Commission to Expand Civil Legal Services in its December 2016 report.

THE COMMENTS ENCLOSED WITH THIS LETTER ARE BEING PRESENTED ONLY ON BEHALF OF THE TAX SECTION OF THE STATE BAR OF TEXAS. THE COMMENTS SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF

### PAST CHAIR ADVISORY BOARD

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DIRECTORS, THE EXECUTIVE COMMITTEE OR THE GENERAL MEMBERSHIP OF THE STATE BAR OF TEXAS. THE TAX SECTION, WHICH HAS SUBMITTED THESE COMMENTS, IS A VOLUNTARY SECTION OF MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

THE COMMENTS ARE SUBMITTED AS A RESULT OF THE APPROVAL OF THE COMMITTEE ON GOVERNMENT SUBMISSIONS OF THE TAX SECTION AND PURSUANT TO THE PROCEDURES ADOPTED BY THE COUNCIL OF THE TAX SECTION, WHICH IS THE GOVERNING BODY OF THAT SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS SECTION HAS BEEN OBTAINED AND THE COMMENTS REPRESENT THE VIEWS OF THE MEMBERS OF THE TAX SECTION WHO PREPARED THEM.

We commend the Court for extending the opportunity to participate in this process.

Respectfully submitted,

A handwritten signature in blue ink that reads "Henry Talavera". The signature is written in a cursive style with a small flourish above the 'y' in "Talavera".

Henry Talavera, Chair  
State Bar of Texas, Tax Section

Enclosure

## COMMENTS ON ACCESS TO JUSTICE

These comments on Access to Justice (the “Comments”) are submitted on behalf of the Tax Section of the State Bar of Texas. Christi Mondrik, Chair of the Committee on Government Submissions and former Chair of the Tax Section, primarily drafted these Comments. Robert Probasco and Lee Meyercord, Vice-Chair of the Committee on Government Submissions, and Sara Giddings, Chair of the Solo and Small Firm Committee, reviewed these Comments and provided substantive comments. Henry Talavera, Chair of the Tax Section, reviewed the Comments and also provided substantive Comments.

Although members of the Tax Section who participated in preparing these Comments have clients who would be affected by the principles addressed by these Comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make this government submission. These are our initial comments and may be expanded by the Tax Section before the deadline in the fall of 2023. If the Court has specific questions or wants more detail, please let us know and we would be glad to address further through the Commission or through the Court as may be requested, but we felt it was important to provide a timely response to give the Court ample time to consider before finalizing any potential expansion in the area of tax. We would be glad to also dialogue further on this matter as the Court and the Commission determine is appropriate.

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Date: May 25, 2023

## **BACKGROUND**

These Comments are provided in response to the Court's letter dated October 24, 2022, which requested input from the Texas State Bar on modifications to existing rules proposing modifications that the Commission should consider in the following areas:

- Modifications that would allow qualified non-attorney paraprofessionals to provide limited legal services directly to low-income Texans. Among other things, the Court recommended that the Commission consider: qualifications, licensing, practice areas, and oversight of providers; eligibility criteria for clients; and whether compensation for providers should be limited to certain sources, such as government and non-profit funds.
- Modifications that would allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving professional independence. The Commission should consider whether to recommend that these modifications be studied through a pilot program or regulatory sandbox and whether modifications should focus on services for which there is a particular need.

Improving access to legal services is a laudable and important goal, but there are already many non-attorneys who provide tax assistance to low-income individuals. Further, the services provided by unscrupulous tax return preparers discussed below highlight the dangers of expanding the categories of non-lawyers providing tax advice without proper regulation and oversight. If such representation is expanded, significant additional oversight and regulation by the Court would be necessary. In our experience, because of the abuses in this area who already exist, we would strongly recommend against any expansion by the Court or the Commission in the area of tax.

We are particularly concerned about expanding the potential for exploitation if non-attorneys are able to take an economic interest in entities providing services to low-income taxpayers. Providing those services for a profit and a financial return for investors increases the chances of predatory or exploitative practices. In addition, existing resources are available to help low-income taxpayers, including programs provided by the Tax Section. Therefore, allocating resources to those existing programs may be a more effective use of available funds.

## **NON-LAWYERS ALREADY PROVIDE TAX ASSISTANCE TO LOW-INCOME TAXPAYERS**

In the area of tax practice, only lawyers may represent taxpayers before the US Tax Court or the federal district courts. However, tax is unique in that many non-lawyers already provide assistance with tax matters. For example, certified public accountants (CPAs) and enrolled agents (EAs) (either former IRS employees or individuals who have passed a three-part test on individual and business tax returns) may assist taxpayers with the preparation of their tax returns and represent taxpayers before the IRS, including in IRS audits and before the IRS Independent Office of Appeals. Even those who are not CPAs or EAs can prepare tax returns. Neither tax return preparation nor representing taxpayers before the IRS is currently considered unauthorized practice of law under Rules 5.04 and 5.05 of the Texas Disciplinary Rules of Professional Conduct

and sections 81.001 and 83.001 of the Texas Government Code. There are also programs specifically focused on providing tax return preparation assistance to low-income taxpayers, such as the VITA (Volunteer Income Tax Assistance) and Tax Counseling for the Elderly (TCE) programs. There are also low-cost online services (TurboTax and H&R Block) that provide tax-return assistance too as part of the IRS Free-File Alliance and the IRS plans a direct e-file pilot program starting in 2024. The IRS Taxpayer Advocate Service also provides free services for resolving disputes nationwide through Local Taxpayer Advocate offices, including four in Texas (Austin, Dallas, El Paso, and Houston). Therefore, there are a host of non-lawyers in various capacities who already provide free tax assistance to low-income taxpayers.

In addition to the broad spectrum of non-lawyers already assisting taxpayers with tax matters, there are also a variety of programs focused on providing legal advice from a tax lawyer to low-income taxpayers. Notably, the Texas Tax Section of the State Bar of Texas has an active pro bono program that assists unrepresented taxpayers at calendar calls and settlement days before the US Tax Court. In addition, there are many low-income taxpayer clinics offering free tax law representation to low-income taxpayers in US Tax Court cases and IRS administrative proceedings. These include the Texas Taxpayer Assistance Project of Texas RioGrande Legal Aid (covering 68 Southwest Texas counties); the Texas A&M University School of Law, Tax Dispute Resolution Clinic (Fort Worth); the Texas Tech University School of Law LITC (Lubbock); the South Texas College of Law LITC (Houston); the Houston Volunteer Lawyers LITC; the Legal Aid of Northwest Texas LITC (Dallas and Fort Worth); the Lone Star Legal Aid LITC in Bryan, Texas; and the SMU Dedman School of Law Federal Tax Clinic (Dallas). The American Bar Association Section of Taxation also assists low-income taxpayers nationwide, including in Texas.

## **TAX SERVICES BY NON-LAWYERS RAISE SERIOUS CONCERNS OF EXPLOITATION AND ABUSE**

While non-lawyers frequently advise taxpayers on tax matters, our experience highlights the dangers of allowing such advice without significant regulation and oversight. For example, the federal government has enacted many social programs through refundable credits, such as the earned income tax credit and the child tax credit. Unscrupulous tax return preparers (non-lawyers) have taken advantage of low-income taxpayers by providing erroneous advice to obtain one of these refundable credits (frequently for a percentage of the refund) or inflating refunds claimed on the return (whether from inadequate understanding of tax law or deliberately to attract clients) leaving taxpayers to face audit adjustments, plus penalties and interest.

Some tax return preparers offer refund anticipation loans, which are a widespread form of predatory lending with fees and interest rates of several hundred percent. Other potential exploitative schemes include so-called refund anticipation checks or “refund transfers” where the preparer receives the refund and deducts steep tax preparation fees. These tax return preparers sometimes neglect to list themselves as preparers on the tax returns and if they do, they must only obtain a Preparer Tax Identification Number (PTIN). For those tax return preparers who are not lawyers, CPAs, or EAs, the IRS has very limited ability to regulate these tax return preparers.

While there have been efforts to curb these abusive schemes, the National Taxpayer Advocate Erin Collins in her 2022 report to Congress continued to identify return preparer

oversight as one of the most serious problems facing taxpayers.<sup>1</sup> Specifically, “[t]axpayers are harmed by the absence of minimum competency standards for return preparers.”<sup>2</sup> The Internal Revenue Service’s (“IRS”) dirty dozen list includes perennial warnings about scams and schemes (including unscrupulous tax return preparers), during and after tax season.<sup>3</sup> So-called “offer-in-compromise mills” misleadingly suggest that taxpayers may qualify for an offer-in-compromise but may end up costing the taxpayer thousands of dollars. These mills and unscrupulous return preparers target non-English speaking communities who may be unable to evaluate the advice due to the language barrier.

For example, one only needs to search Google to find many “Notarios” or “Notaries” offering tax services. This advertising is deliberate because in Latin America “Notarios” are lawyers who have a higher status than just regular lawyers. This common advertising may mislead the public on the services and the quality of the services that can be provided. A notary here in Texas has no exalted status from a tax practice standpoint. One such service touting its tax and notary services “is offering same day advances up to \$9,500. We guarantee your maximum refund!” At the American Bar Association meeting on February 23, 2023, pro bono practitioners drew attention to unscrupulous return preparers all over the country, including in Texas. The panel was moderated by a federal tax litigator at Texas RioGrande Legal Aid and included a panelist from Lone Star Legal Aid.

Given the current exploitation of low-income taxpayers by unscrupulous tax return preparers, we are concerned that increasing the provision of tax services with the imprimatur of legal services may only exacerbate the current situation and increase the exploitation of low-income taxpayers. At a minimum, we suggest that any expansion should be limited to the categories of qualified and regulated individuals who may communicate with the IRS on behalf of a taxpayer: CPAs and EAs duly authorized by the IRS under the requirements of Circular 230. These individuals are subject to specialized training, education, and certification and therefore do not pose the same risk as the unregulated tax return preparers discussed above.

## **TAX SERVICES BY NON-LAWYERS MAY RESULT IN INCOMPETENT REPRESENTATION**

The practice of tax law is nuanced and requires extensive knowledge of the Internal Revenue Code and the Texas Tax Code. The Texas Disciplinary Rules of Professional Conduct Rule 1.01(a) direct that, “[a] lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer’s competence.”<sup>4</sup> Competence is defined as the “possession or the ability to timely acquire legal knowledge, skill, and training

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<sup>1</sup> Available online at: <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/>

<sup>2</sup> *Id.*

<sup>3</sup> Available online at: <https://www.irs.gov/newsroom/irs-wraps-up-2023-dirty-dozen-list-reminds-taxpayers-and-tax-pros-to-be-wary-of-scams-and-schemes-even-after-tax-season>.

<sup>4</sup> Tex. Rules Disciplinary P. R. 1.01(a).

reasonably necessary for the representation of the client.<sup>5</sup>” When determining whether a matter “is beyond a lawyer’s competence, relevant factors include the relative complexity and specialized nature of the matter.<sup>6</sup>”

Tax law is specialized and complex and incompetent representation can have severe consequences, including civil and criminal penalties. Advising clients on the tax law requires constantly staying up to date on significant changes to the Internal Revenue Code, like the Inflation Reduction Act of 2022, the Patient Protection and Affordable Care Act, and Secure 2.0 Act of 2022 to name just a few. After statutes are enacted, new regulations are promulgated that tax attorneys must study. Tax attorneys frequently stay current on recent legislation and proposed regulations by reading the legislation, public comments (including by the State Bar of Texas Tax Section), and attending continuing legal education courses.

The Texas Disciplinary Rules require that in order for a lawyer to maintain the “requisite knowledge and skill of a competent practitioner<sup>7</sup>” a lawyer should “engage in continuing study and education.<sup>8</sup>” It does not appear that there would be a similar continuing education or competency requirement for non-lawyers. This lack of oversight may result in non-lawyers giving tax advice in areas in which they are not competent. When considering expanding access to representation and legal services, it is important that this increases access to competent representation. By allowing non-lawyers to practice in a highly complex and technical area like tax law without continuing education or competency requirements, there is an increased likelihood that the client will not receive competent representation.

## **CONCERNS ABOUT NON-LAWYER OWNERSHIP OF ENTITIES PROVIDING TAX SERVICES**

Non-lawyer ownership of entities providing tax-based legal services to low-income taxpayers is fraught for exploitation. The concern is that a profit motive may compromise the quality of the tax advice provided. If expansion of ownership is pursued in Texas, great care should be taken to define what a paraprofessional means in this context, and assure that only licensed regulated professionals are making tax decisions for the clients. Ethical obligations require that professionals in firms providing tax-based legal services be properly trained to provide competent advice. In our opinion, it would be better to boost the grants and resources funding low-income taxpayer clinics and legal aid programs rather than potentially compromising the quality of advice provided to low-income taxpayers by introducing profit motives.

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<sup>5</sup> *Id.* at Terminology.

<sup>6</sup> *Id.* at P. R. 1.01 Comment 2.

<sup>7</sup> *Id.* at P. R. 1.01 Comment 8.

<sup>8</sup> *Id.*

## Appendix C

# Focus Group Questions

## Texas ATJC Access to Legal Services Working Group

Updated: April 17, 2023

### Intro:

Hi, my name is \_\_\_\_\_ and I work with the National Center for State Courts. The National Center for State Courts is working with the Texas Access to Justice Commission to study ways to get more civil legal help to low-income Texans. Thanks for taking the time to speak with us today.

Before we get started, I'm going to provide a little bit of background for you.

Have you heard of the civil justice gap? The justice gap refers to the gap between civil legal needs and the ability of low and moderate-income people to get those needs met. For example, someone may be facing eviction and need help from a lawyer, but they cannot get help because they cannot afford it, or for some other reason.

The Legal Services Corporation reports that low-income Americans do not get any or enough legal help for 92% of their civil legal problems. In Texas, 90% of the civil legal needs of low-income individuals are unmet. More than 5.2 million Texans qualify for civil legal aid, but there is only 1 legal aid lawyer for every 7,000 Texans who qualify. Texas ranks 46<sup>th</sup> in the nation for ensuring access to justice for all people.

The Supreme Court of Texas has asked the Texas Access to Justice Commission to study regulatory innovations that may help address the justice gap. This is called regulatory reform. There are two ideas:

1. Modify Texas rules to allow “qualified non-attorney paraprofessionals to provide limited legal services.” This means maybe a paralegal or other non-lawyer professional would be able to provide services that currently only a lawyer can provide, similar to how nurse practitioners do work that doctors would do.
2. Modify Texas rules to allow “non-attorneys to have economic interests in entities that provide legal services.” Currently the rules allow only lawyers to have economic interests in entities that provide legal services. For example, only lawyers can own law firms. Lawyers have special ethical rules that they have to follow, and the idea is that only lawyers should own entities that provide legal services. By expanding ownership, the hope is that more legal services entities may be formed in Texas to address the needs of low-income people.

Both of these study ideas are limited to providing legal services to low-income Texans. This means individuals who earn less \$16,988 per year or a family of four that earns less than \$34,688 per year. (<https://www.teaif.org/news/statistics.aspx>) So, for example, legal

paraprofessionals like paralegals would not be able to provide legal help to an individual who earns more than \$16,988 annually or \$34,688 for a family of four.

We reached out to you because of your work with low-income communities who may need help with civil legal problems like eviction, foreclosure, debt collection, child support, divorce, or child custody. Your perspective is important so we can understand how Texas can tackle the justice gap most effectively.

**Instructions:**

We are going to ask you a series of questions designed to help us understand the civil-legal aid ecosystem in Texas. Please be open with your responses.

Survey responses are anonymous. Your name will not be attached to any of the responses you give today. Please be candid.

Do you have any questions before we begin?

**Name of participants:**

**Date of Focus Group:**

**Questions:**

1. What types of issues do the people you work with need help with?
2. Other than more funding and more attorneys, if you could wave a magic wand, what do you think would increase the availability of legal services to low-income Texans?
3. The Texas ATJC has a work group studying the possibility of allowing qualified paraprofessionals to provide limited legal services directly to low-income Texans.
  - a. What do you think about this?
  - b. What type of legal help do you think trained non-lawyers could provide?
  - c. Could you see your organization working with paraprofessionals to expand service? If yes, how?
  - d. What type of training should paraprofessionals have?
    - i. Online modules?
    - ii. Shadowing?
    - iii. A specific number of hours?
      1. Number of educational hours?
      2. Number of hours shadowing?
      3. Number of supervised professional hours?
    - iv. Certification?
    - v. Other/additional training?

4. The Texas Access to Justice Commission has a work group studying the possibility of allowing a non-lawyer to have an ownership interest in an entity that provides legal services. In Utah, for example, there are partnerships that help with providing immigration, consumer, and expungement services. Remember, in Texas, we're looking only at ownership interests in entities that provide services to low-income Texans. That means individuals who earn less \$16,988 per year or a family of four that earns less than \$34,688 per year.  
<https://www.teajf.org/news/statistics.aspx>
  - a. Who or what organizations do you or your organization work with to meet the legal needs of clients?
  - b. How do Legal Service organizations work with nonprofits or businesses right now?
  - c. What works well?
  - d. What doesn't work well?
  - e. How might partnerships between attorneys and non-attorneys or non-attorney ownership help expand services to low-income Texans?
  - f. With the focus of these initiatives being on low-income Texans, what potential do you see for non-legal entities to invest in these services?
5. Who should we talk to understand what low-income Texans need? Please provide a name, entity affiliation (law firm/business name, etc.), contact information, and indicate if you are willing to connect us to them.
6. What else should we know about? Is there anything that we didn't ask about that you wish we had? What?
7. Any final thoughts or comments you wish to share with us?

**Closing:**

That concludes our questions. Thank you again for your time and your responses. We appreciate your input.

# Texas Access to Justice Commission's Access to Legal Services Working Group

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Start of Block: Default Question Block

Please complete this survey from the Texas Access to Justice Commission's Access to Legal Services Working Group

The Supreme Court of Texas has asked the Texas Access to Justice Commission to analyze possible ways to increase access to justice for low-income Texans. Nationally, about 92% of people's civil legal needs go unaddressed. In Texas, the number is about 90%. More than 5.2 million Texans qualify for civil legal aid, but there is only 1 legal aid lawyer for every 7,000 Texans who qualify.

Regulatory innovations may help address the justice gap, which refers to the gap between the civil legal needs of low-income people and their ability to get those needs met. In Texas, "low-income" refers to individuals who earn less than \$16,988 per year and families of four that earn less than \$34,688 per year. See: <https://www.teajf.org/news/statistics.aspx>.

The Commission will analyze and advise on potential rule modifications to allow:

- (1) qualified paraprofessionals to provide limited legal services directly to low-income Texans, and
- (2) non-attorneys to have economic interests in entities that provide legal services to low-income Texans.

**Please complete this survey to help us understand what you think about this topic.**

Please be candid and open with your responses. This survey should take about 15-20 minutes to complete.

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1. Please indicate your name, organization (if any), and email address.

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1a. Name\*

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1b. Organization (law firm/business name, etc.)\*

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1c. Email address\*

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Page Break

2. What legal issues do the low income people you work with need help with? Please rank your selections. (Note that the subcategories in parenthesis are meant to be illustrative not exhaustive)

Answer this question by dragging the selections on the left into the "Need help with" box on the right. You may change the order by dragging and dropping your selections.

Need help with (please rank your selections):

\_\_\_\_\_ Civil Rights (discrimination; sexual harassment)

\_\_\_\_\_ Disability (benefits including SSI/SSDI, Medicaid/Medicare, and ABLE accounts; special education/504 plans; ADA accommodation/discrimination; powers of attorney, guardianship, and supported decision-making)

\_\_\_\_\_ Education (special education/504 plans; suspension/expulsion defense; students experiencing homelessness; Title IX)

\_\_\_\_\_ Expungement

\_\_\_\_\_ Family Law (child support; divorce; paternity; child custody; guardianship)

\_\_\_\_\_ Housing (eviction and other landlord-tenant issues; foreclosure; subsidized housing; housing discrimination; housing conditions; homelessness/shelter)

\_\_\_\_\_ Immigration (U.S. citizenship; DACA; SIJS; work authorization; asylum/TPS; family-based immigration; detention; removal; immigration relief for victims of crime; immigration consequences related to expungement of criminal records)

\_\_\_\_\_ Military and Veterans (Veterans benefits; discharge upgrades; healthcare for servicemembers; Servicemembers Civil Relief Act; child custody; housing)

\_\_\_\_\_ Money and Debt (debt collection/garnishment; small claims; installment payment plans; bankruptcy, ID theft; scams and consumer fraud; ABLE accounts)

\_\_\_\_\_ Name and Gender Marker Changes (name change; gender marker change)

\_\_\_\_\_ Personal Safety (domestic violence protection orders; child abuse/neglect; adult abuse/neglect)

\_\_\_\_\_ Public Benefits (means-tested benefits including Medicaid, TANF, SNAP, WIC; Medicare; subsidized housing; unemployment; SSI/SSDI)

\_\_\_\_\_ Taxes (Earned Income Tax Credit; Child Tax Credit; tax refund garnishment)

\_\_\_\_\_ Traffic/Criminal (driver's license reinstatement; traffic tickets; expungement; policing; public defender appointment; victim's resources)

\_\_\_\_\_ Wills and Life Planning (wills and probate; powers of attorney, living wills, and advance directives)

\_\_\_\_\_ Work and Jobs (discrimination; wage theft; worker's compensation; unemployment)

\_\_\_\_\_ Other

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3. Other than more funding and more attorneys, if you could wave a magic wand, what do you think would increase the availability of legal services to low-income Texans?

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4. If you have observed a paraprofessional providing direct legal services to an individual in any context, including in state or federal proceedings, please summarize your observations briefly below. Please include your views on whether the paraprofessional's work was helpful to the individual and/or the proceeding.

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Page Break

5. The Texas Access to Justice Commission has a working group studying the possibility of allowing trained paraprofessionals, such as paralegals or community justice workers, to provide limited legal services directly to low-income Texans.

5a. What do you think about allowing trained paraprofessionals to provide limited legal services directly to low-income Texans?

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5b. What type of legal services do you think trained paraprofessionals could provide?  
Please select all that apply:

- Legal Advice Generally (e.g. analyzing potential legal claims, directing people to file cases or respond to court pleadings, advice about how to prepare for and present in court hearings)
- Legal Issue Spotting
- Document Preparation
- Filling Out Court-Approved Forms
- Advice and Direction about Navigating Court Processes
- Legal Representation of a Client in Court
- Explaining Court Outcomes and Next Steps
- Legal Representation at Mediation
- Legal Representation in Administrative Hearings
- Other

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*Display This Question:*

*If 5b. What type of legal services do you think trained paraprofessionals could provide? Please sele...  
= Other*

If other, please explain.

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5c. For all services you selected in response to question 5b, which services do you think a paraprofessional could provide without a lawyer's supervision?

Please select all that apply:

- Legal Advice Generally (e.g. analyzing potential legal claims, directing people to file cases or respond to court pleadings, advice about how to prepare for and present in court hearings)
- Legal Issue Spotting
- Document Preparation
- Filling Out Court-Approved Forms
- Advice and Direction about Navigating Court Processes
- Legal Representation of a Client in Court
- Explaining Court Outcomes and Next Steps
- Legal Representation at Mediation
- Legal Representation in Administrative Hearings
- Other

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*Display This Question:*

*If 5c. For all services you selected in response to question 5b, which services do you think a parap... = Other*

If other, please explain.

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Page Break

6. If approved, could you see yourself or your organization, as applicable, working with paraprofessionals to expand legal services to low-income Texans?

- Yes
- No

*Display This Question:*  
If 6. If approved, could you see yourself or your organization, as applicable, working with paraprof... = Yes

If yes, how?

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*Display This Question:*  
If 6. If approved, could you see yourself or your organization, as applicable, working with paraprof... = No

If no, why?

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Page Break

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7. If approved, should paraprofessionals be required to have:

- Education only
  - Training only
  - Experience only
  - Both education and training
  - Both training and experience
  - Education, training, and experience
- 

8. If approved, should paraprofessionals have formal education such as a certification program, classes, or online modules?

- Yes
  - No
- 

*Display This Question:*

*If 8. If approved, should paraprofessionals have formal education such as a certification program, c...  
= Yes*

If yes, how many hours should be required?

- 0 – 5
- 6-10
- 11 – 15
- More than 15

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*Display This Question:*

*If 8. If approved, should paraprofessionals have formal education such as a certification program, c...*  
= Yes

Who should provide the education, classes, or online modules?

- Accredited college or university
- Certification body
- Legal service agencies

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*Display This Question:*

*If 8. If approved, should paraprofessionals have formal education such as a certification program, c...*  
= Yes

Should there be a difference in the type of education required depending on the type of assistance provided?

- Yes
- No
- Undecided \_\_\_\_\_

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Page Break \_\_\_\_\_

9. If approved, do you think that paraprofessionals should be required to complete a specific number of training hours? Training could include shadowing an experienced lawyer or practitioner to see how they practice or being supervised as they, the paraprofessional, practice or provide services.

Yes

No

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*Display This Question:*

*If 9. If approved, do you think that paraprofessionals should be required to complete a specific num... = Yes*

If yes, should paraprofessionals be required to shadow an experienced practitioner for a certain number of hours? Shadowing means a paraprofessional follows and closely observes someone else as they perform the same or similar work.

Yes

No

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*Display This Question:*

*If If yes, should paraprofessionals be required to shadow an experienced practitioner for a certain... = Yes*

If yes, how many hours?

0 – 5

6-10

11 – 15

More than 15

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*Display This Question:*

*If 9. If approved, do you think that paraprofessionals should be required to complete a specific num... = Yes*

If yes, should paraprofessionals be required to complete a certain number of supervised professional hours? Supervised hours means the paraprofessional performs work and someone else observes them and provides feedback.

Yes

No

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*Display This Question:*

*If If yes, should paraprofessionals be required to complete a certain number of supervised professio... = Yes*

If yes, how many hours?

0 – 5

6-10

11 – 15

More than 15

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9a. Do you have any other recommendations for training?

Yes

No

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*Display This Question:*

*If 9a. Do you have any other recommendations for training? = Yes*

If yes, please provide your recommendations.

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Page Break

10. If approved, do you think paraprofessionals should be required to be board certified?

- Yes
- No

11. If approved, do you think paraprofessionals should be required to take ongoing training, similar to CLE for lawyers?

- Yes
- No

*Display This Question:*  
If 11. If approved, do you think paraprofessionals should be required to take ongoing training, similar to CLE for lawyers?  
= Yes

If yes, what training?

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12. The Texas Access to Justice Commission is studying whether to allow a non-attorney to have an ownership interest in an entity that provides legal services.

In Utah, for example, there are partnerships that are owned in part by non-attorneys that help with providing immigration, consumer, and expungement services.

In Texas, the Commission is only considering proposals enabling ownership interests in entities that provide services to low-income Texans—individuals who earn less \$16,988 per year or a family of four that earns less than \$34,688 per year.

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12a. What individuals or organizations do you or your employer work with to meet the legal needs of clients?

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12b. How do legal service organizations work with nonprofits or businesses right now? A legal service organization is a non-profit that provides civil legal assistance to low-income Texans.

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12c. What works well?

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12d. What doesn't work well?

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12e. Could partnerships between attorneys and non-attorneys or non-attorney ownership help expand services to low-income Texans?

- Yes
- No

*Display This Question:*  
If 12e. Could partnerships between attorneys and non-attorneys or non-attorney ownership help expand... = Yes

If yes, how?

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*Display This Question:*

*If 12e. Could partnerships between attorneys and non-attorneys or non-attorney ownership help expand... = No*

If no, why?

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12f. Do you think non-attorneys would invest in these services?

- Yes
- No

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*Display This Question:*

*If 12f. Do you think non-attorneys would invest in these services? = No*

If no, why not?

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13. Who should we talk to in order to understand what low-income Texans need? Please provide a name, entity affiliation (law firm/business name, etc.), contact information, and indicate if you are willing to connect us to them.

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13a. Name

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13b. Entity

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13c. Email address

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13d. Telephone

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13e. Are you willing to make a connection?

Yes

No

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Page Break

14. Is there anything that we didn't ask about that you wish we had asked?

Yes

No

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*Display This Question:*

*If 14. Is there anything that we didn't ask about that you wish we had asked? = Yes*

If yes, what?

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15. Do you have any final thoughts or comments you would like to share?

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End of Block: Default Question Block

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## Appendix D

## **Working Group Survey on Non-Attorney Ownership Subcommittee Recommendations**

The Access to Legal Services Working Group had its final meeting on November 2, 2023, to discuss and vote on recommendations for a final report to the Texas Access to Justice Commission.

The Working Group voted to approve the recommendations of the Scope of Practice Subcommittee and the Paraprofessional Licensing Subcommittee. The Working Group also voted to approve a motion to use “200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services” as the definition of low-income Texans.

As to the Non-Attorney Ownership Subcommittee’s recommendations, a motion was made to require that approved entities provide 100% of their services to low-income Texans. During the discussion on the motion, it was suggested that the Texas Supreme Court would benefit from hearing the range of perspectives, and that a survey could elicit that information. A vote was conducted on the motion, and the motion failed by a vote of 7 to 2. There was further discussion about conducting a survey. A motion was made to approve the Non-Attorney Ownership Subcommittee’s recommendations—as reflected in its report but with some additions discussed during the meeting—without taking a position on how firms would be evaluated for whether they are adequately serving low-income Texans (and instead reflecting the spectrum of options discussed, to be supplemented with the results of a survey). The Working Group voted on the motion, and it failed by a vote of 6 to 3. There was discussion about circulating a survey after the meeting to elicit further feedback from the Working Group on the recommendations. No objection was articulated to this course of action, and the meeting adjourned.

The survey was circulated a few days after the meeting. The survey elicited 16 responses by the specified deadline from the 27-member Working Group. The three co-chairs of the Working Group (Lisa Bowlin Hobbs, Justice Massengale, and Kennon Wooten) did not respond to the survey.

### **Survey Executive Summary**

- 75% of the voting Working Group members support responding to the Court with a proposal for a pilot program overseen by the JBBC.
- Responses were split between proposing to require a minimum threshold of service to low-income Texans or alternatively authorizing the JBCC to exercise discretion to approve applicants on a case-by-case basis.
- 75% of the voting Working Group members support responding to the Court with a proposed framework of a limited exception to Rule 5.04 applied to specified services

provided by certified and licensed entities under the conditions described in the proposal (and as modified to reflect Working Group members' input).

The full survey results are as follows:

**Question 2.** In response to the Court's charge, the subcommittee proposed that a pilot program be implemented at the direction of the Texas Supreme Court and overseen by the Judicial Branch Certification Commission (JBCC), which is administered by the Office of Court Administration. The JBCC would establish a body to oversee the program comprised of at least a majority of attorneys. This body would establish policies and procedures, review and approve entities' applications to provide services, and review data and conduct monitoring to ensure services are rendered competently and ethically. Do you support this aspect of the subcommittee's proposal?

**Q2 responses**

75% (12 responses)	Yes.
6% (1 response)	No, because I oppose under any circumstances the idea of allowing non-attorneys to have economic interests in entities that provide legal services.
19% (3 responses)	<p>No, for some other reason (please explain in comments).</p> <p>Comments:</p> <p>i need more information about the JBCC. Whatever group is established, there needs to be attorneys with expertise on legal ethics including a law professor. If this groups is going to be setting standards and monitoring paraprofessionals, there needs to be experience on unauthorized practice of law.</p> <p>I would like to see additional provisions that specify members of teh legal aid community be part of the body that establishes policies and procedures, and reviews the entity applications, data and services</p> <p>A fully informed response to this requires more information about the development and content of the pilot problem. Assuming a detailed pilot program can be appropriately created, I have no objection to the JBCC administering it.</p>

**Question 3.** What standard or standards should be applied by the JBCC (or other regulating entity) to ensure that any entity provisionally approved to provide legal services under an exception to Rule 5.04 is adequately serving the civil legal needs of low-income Texans to justify that entity's participation in the pilot program?

A motion to require 100% of clients served by the entity must qualify as low-income Texans failed at the WG meeting. With that option off the table, please provide further input for the Commission's consideration.

**Q3 responses**

<p>8% (6 responses)</p>	<p>A fixed threshold of clients, as a percentage of all clients served, must qualify as a "low-income Texan" (please provide the threshold in comments, e.g., 25% low-income, 75% low-income, etc.).</p> <p>Proposed thresholds of low-income clients:</p> <p>80% (3 responses)</p> <p>75% (2 responses)</p> <p>20% (1 response)</p>
<p>6% (1 response)</p>	<p>A fixed threshold of legal services, as a percentage of all time spent providing the legal services, must serve clients qualifying as a "low-income Texan" (please provide the threshold in comments, e.g., 25% of time, 75% of time, etc.).</p> <p>Comment on proposed threshold of time serving low-income clients:</p> <p>"50%, these services should not be any less than what would be provided to clients who paid full price for services"</p>

<p>44% (7 responses)</p>	<p>Evaluate each entity application, exercising discretion on a case-by-case basis, to determine whether the proposal (including the proposed legal services, description of expected clients, proposed funding model and fee structure, and proposed safeguards to satisfy rules for participation), present a sufficient likelihood of addressing expanding access to justice for low-income Texans to justify the entity’s participation in the pilot program.</p>
<p>13% (2 responses)</p>	<p>Some other standard (please explain in comments).</p> <p>Comments:</p> <p>i need more information about how non-attorney owned programs are doing in serving low income clients. Without this data, i cannot determine if non-attorney owned programs would benefit low income clients. Since there will be a requirement for poor people to pay for services, I am not sure if people at 200% of the federal poverty guidelines would be able to afford these services. I would like to know if these entities in other states have sliding fee schedules for poor people.</p> <p>Individual evaluation is necessary, but I think thresholds are necessary in order to qualify for submitting an application. I.e., 75% for both threshold options.</p>

**Question 4.** Question 4. In response to the Court’s charge, the subcommittee proposed a pilot project to provisionally establish an exception to application of Rule 5.04(a), (b), (d)(1), and (d)(2) for entities that are certified by the JBCC and issued a license by the Supreme Court to perform a defined scope of legal services, strictly limited to services requested by the entity and approved by the JBCC. An application procedure and rule guidance would be promulgated by the Supreme Court and the JBCC to ensure that approved entities actually will provide needed legal services to low-income Texans, including the following features:

- The application will describe proposed legal services in detail, and demonstrate how they will expand civil access to justice for low-income Texans.
- Each entity must disclose any of its owners’ potential conflicts with the proposed legal services.
- Each entity must make detailed commitments, provide regular reports, and agree to JBCC monitoring to ensure that: (1) the entity provides quality legal services to low-income

Texans either pro bono or at affordable and transparent rates, (2) the services are rendered in compliance with all attorney ethics rules, which will also apply to the entity (including protection of attorney independence and client confidentiality, advertising restrictions, avoidance of conflicts of interest, and safekeeping of client funds), and (3) clients are protected from exploitation and inferior services that cause more harm than good.

- A Texas-licensed attorney must be employed by the entity, designated and identifiable to the public as the person responsible for ensuring the entity’s compliance with ethical and regulatory standards.
- All legal advice provided through the entity will be rendered by licensed attorneys or paraprofessionals, and not by artificial intelligence or algorithms.
- Data collection, reporting, and monitoring will verify that low-income Texans are receiving quality services and facilitate evaluation of renewal requests and overall effectiveness of the pilot program.
- All clients of entities will receive information about how to lodge complaints with the JBCC and will be contacted to provide feedback on the services received.
- Certain types of legal services or forms of delivery of legal services that present special concerns will be considered for exclusion from the pilot project, as noted in the report.
- As reinforcement of this reform’s specific purpose to expand access for low-income Texans, the JBCC should act as a gatekeeper and apply its guidelines to ensure a focus on expanding access to justice and to prevent abuse.
- Approved entities would be prohibited from accessing funding for legal service/legal aid organizations from state or federal governmental entities or from the Texas Access to Justice Foundation.
- An annual process of re-application and re-certification should be required for approved entities to continue providing legal services.

Do you support this aspect of the subcommittee’s proposal?

**Q4 responses**

75% (12 responses)	Yes.
25% (4 responses)	No, for some other reason (please explain in comments).  Comments:  I am opposed to non-attorney ownership Unsure about criteria, e.g., whether fewer or more should be required. i approve the above guidelines. But as i stated in response to the question above, it depends on the make up of the

	<p>JBCC. Without more information about the JBCC I am not comfortable delegating so much authority to this group. I believe the concept of what these proposals may entail is too broad-- we don't honestly know what we are supporting, and relying on the JBCC to make all of those determinations later. Currently, the JBCC regulates court reporters, process servers, and paralegals. This is a step much further-- regulating the delivery of legal services to an especially vulnerable community. When we create a market for profit to be made that will impact some of the very poorest people in the state, we have great responsibility to them. In my experience as a director of a statewide legal aid program, who has worked with this population for most of my career, it has become clear that for profit entities do not often align their values with the needs of low-income people. We have to navigate these waters very carefully, or these vulnerable people will be harmed. I am uncomfortable leaving so much to be determined later by another body, and that is why I cannot support this proposal.</p>
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**Question 5.** Do you approve the Draft Minutes from the Access to Legal Services Working Group meeting on November 2, 2023? The meeting recording is available here. Please describe any proposed changes to the minutes in the comment box.

**Q5 responses**

<p>88% (14 responses)</p>	<p>Yes.</p>
<p>13% (2 responses)</p>	<p>No, for some other reason (please explain in comments).</p> <p>Comments:</p> <p>I object to the minutes to the extent that the do not reflect the substance of my comments on non-attorney ownership, which substance was that all family law leaders are strongly and unanimously opposed to non-attorney ownership. I feel like my comments on non-attorney ownership overall were watered down. I was in attendance and should not vote</p>



## Appendix E

Below are examples of potential federal funding sources. Each funding opportunity either expressly allows for legal help of some kind or has broad language, for example reentry services or supportive services, that has been used to award funds for legal assistance.

“D” indicates discretionary funding.

“PT” identifies pass-through funding, which could be tapped to support both additional Texas lawyers and new tiers of paraprofessionals.

## **AmeriCorps**

**D** [Volunteers in Service to America](#) is an anti-poverty program in which applicants submit a proposal describing how they will utilize Vista volunteers to build or increase capacity; some of the proposals will be invited to submit applications. [AmeriCorps VISTA](#). Most recent [solicitation](#).

**D and PT** [AmeriCorps State and National Grants](#) and [AmeriCorps State and National Native Nations Grants](#) provides funds for discretionary grants, to state commissions, and tribal communities for organizations serving in concentrated poverty, rural communities, tribal communities, and those organizations serving historically underrepresented and underserved individuals, including but not limited to communities of color, immigrants and refugees, people with disabilities, people who identify as part of the LGBTQIA+ community; Veterans and Military Families, Caregivers, and Survivors, people with arrest and/or conviction records, and religious minorities. [AmeriCorps](#).

## **U.S. Department of Health and Human Services**

**D** [Medical-Legal Partnerships Plus](#) funds support comprehensive legal services and wraparound social services to families with low incomes to address health-harming legal needs and improve their overall health. [Administration for Children and Families](#). Most recent [solicitation](#).

**D** [Runaway and Homeless Youth-Prevention Demonstration Program](#) grants support street outreach, emergency shelters and longer-term transitional living and maternity group home programs to serve and protect young people who run away, who are forced to leave their homes, or become homeless. [Centers for Medicare & Medicaid Services](#). Most recent [solicitation](#).

**D** [Connecting Children to Health Coverage Cooperative Agreements](#) support services to educate families about Medicaid and CHIP and help their application and renewal, and includes cooperative agreements specifically for American Indians and Alaska Natives. [Centers for Medicare & Medicaid Services](#). Most recent [solicitation](#).

**D** [Grants for the Benefit of Homeless Individuals](#) support services for individuals experiencing homelessness who have substance use disorders or co-occurring mental and substance use disorders, including enrollment for health insurance, Medicaid, SSI/SSDI, and

other mainstream benefits. Substance Abuse and Mental Health Services Administration. Most recent [solicitation](#).

**D** [Legal Assistance Enhancement Program](#) grants support legal assistance enhancements and innovations, including outreach efforts and the delivery of full-range legal assistance to older adults. Administration for Community Living. Most recent [solicitation](#).

**D** [Advancing Aging Network Capacity to Recognize and Support Family, Kinship and Tribal Caregivers Grants](#) Supports increasing awareness of, and outreach to, family caregivers. Administration for Community Living. Most recent [solicitation](#).

**D** [Elder Justice Innovation Grants](#) support the prevention of elder maltreatment. Administration for Community Living. Most recent [Solicitation](#).

**PT** [Community Mental Health Services Block Grant](#) funds support comprehensive community mental health services and target adults with serious mental health issues and children with serious emotional health disturbances. Substance Abuse and Mental Health Services Administration.

**PT** [Community Services Block Grant](#) provides support services and activities for individuals and families with low incomes that alleviate the causes and conditions of poverty in communities. Services and activities can address employment, education, income and asset building services, housing, nutrition, emergency services, and/or healthcare based on community needs assessments conducted by the local entities. Administration for Children and Families.

**PT** [Social Services Block Grant](#) funds social services directed towards achieving economic self-sufficiency; preventing or remedying neglect, abuse, or the exploitation of children and adults; preventing or reducing inappropriate institutionalization; and securing referrals for institutional care, where appropriate. Administration for Children and Families.

**PT** [State Opioid Response grants](#) fund efforts to increase access to FDA-approved medications for the treatment of opioid use disorder, and for supporting the continuum of prevention, harm reduction, treatment, and recovery support services for opioid use disorder and other concurrent substance use disorders. Substance Abuse and Mental Health Services Administration.

**PT** [Substance Abuse Prevention and Treatment Block Grant](#) funds are dedicated to improving publicly funded substance abuse prevention and treatment systems. Substance Abuse and Mental Health Services Administration.

**PT** [Temporary Assistance for Needy Families](#) funds help low-income families with children achieve economic self-sufficiency. Administration for Children and Families.

**PT** [Title IV-D Child Support](#) funds help states establish paternity, establish and modify child support obligations, collect child support, and enforce child support orders. Administration for Children and Families.

**PT** [Title IV-E Foster Care](#) funds foster care and adoption assistance to help prevent children from being placed in foster care, help children return safely to their homes, help children get adopted, or placed in another other permanent living arrangement. Administration for Children and Families.

## **U.S. Department of Homeland Security**

**D** [Citizenship and Integration Grant Program](#) Supports having an accredited representative appear with clients at the naturalization interview, among other services. US Citizenship & Immigration Services. Most recent [solicitation](#).

## **U.S. Department of Housing and Urban Development**

**D** [Continuum of Care grants](#) Supports homeless individuals, persons fleeing domestic violence, sexual assault, stalking, and youth; efforts to quickly rehouse, but also to promote access to and effective utilization of mainstream programs. Community Planning & Development. Community Planning and Development. Most recent [solicitation](#).

**D** [Eviction Protection Grant Program](#) Supports the provision of no-cost legal assistance to prevent or divert eviction and mitigate the consequences of eviction. Office of Policy Development & Research. Most recent [solicitation](#).

**PT** [Community Development Block Grant \(CDBG\)](#) provides funds to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. Community Planning and Development.

**PT** [Emergency Solutions Grants \(ESG\) Program](#) funds may be used for five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and Homeless Management Information Systems. Community Planning and Development.

**PT** [Housing Opportunities for Persons with AIDS \(HOPWA\) Program](#) addresses the needs of low-income people living with HIV/AIDS and their families. Community Planning and Development.

## U.S. Department of Justice

D [Justice for Families Program](#) grants support improving the capacity of courts and communities to respond to families affected by domestic violence, dating violence, sexual assault, stalking, and child abuse, including court-based and court-related programs and civil legal services. [Office on Violence Against Women.](#) Most recent [solicitation.](#)

D [Training and Services to End Abuse in Later Life Program](#) grants support a comprehensive approach to addressing elder abuse, neglect, and exploitation, including training and cross-training services for criminal justice professionals and professionals working with older victims. [Office on Violence Against Women.](#) Most recent [solicitation.](#)

D [Legal Assistance for Victims Grant Program](#) grants support civil and criminal legal assistance to victims of domestic violence, dating violence, stalking, or sexual assault. [Office on Violence Against Women.](#) Most recent [solicitation.](#)

D [Rural Domestic Violence, Dating Violence, Sexual Assault, and Stalking Program](#) grants support projects that address and prevent sexual assault, domestic violence, dating violence, and stalking crimes in rural areas, including advocacy and legal assistance. [Office on Violence Against Women.](#) Most recent [solicitation.](#)

D [Increasing Options and Expanding Access for Victims of Crime](#) grants support innovative solutions to increasing service options and expanding access points for victims of crime in underrepresented communities. [Office for Victims of Crime.](#) Most recent [solicitation.](#)

D [Developing Future Victim Specialists to Serve American Indian/Alaska Native Victims of Crime](#) grants support workforce development of victim service providers serving American Indian and Alaska Native victims of crimes in remote and hard-to-fill locations. [Office for Victims of Crime.](#) Most recent [solicitation.](#)

D [Tribal Civil and Criminal Legal Assistance \(TCCLA\) Program](#) grants support capacity enhancement, access improvement, and civil and criminal legal services delivery to individuals and tribes within the tribal justice systems, including legal aid and indigent defense for low-income individuals and Indian tribes. [Bureau of Justice Assistance.](#) Most recent [solicitation.](#)

D [Second Chance Act Community-Based Reentry Program](#) grants support evidence-based programs to improve reentry, reduce recidivism, and support transitional planning for individuals currently or formerly involved in the criminal justice system. [Bureau of Justice Assistance.](#) Most recent [solicitation](#)

PT [Victims of Crime Act \(VOCA\) Victim Assistance Formula Grants](#) support thousands of victim assistance programs throughout the Nation each year. The states provide subgrants to local community-based organizations and public agencies that provide services directly to victims. [Office for Victims of Crime.](#)

**PT** [STOP \(Services \\* Training \\* Officers \\* Prosecutors\) Formula Grant Program](#) funds support developing and strengthening effective responses to domestic violence, dating violence, sexual assault, and stalking, including legal assistance and court advocate programs. Office on Violence Against Women

**PT** [Sexual Assault Services Formula Grant Program \(SASP\)](#) grants fund services, direct intervention, and related assistance to victims of sexual assault and their families. Office on Violence Against Women

## **U.S. Department of Labor**

**D** [Building Pathways to Infrastructure Jobs Grant Program](#) invests in public-private partnerships to develop, implement, and scale worker-centered sector strategy training programs that train and prepare a skilled workforce. The “Development Track” targets populations in smaller and/or rural communities, as well as historically marginalized, underrepresented and underserved populations. Intensive “wrap-around supportive services are allowed for participants who need them to ensure they can participate and complete the training program and enter good quality employment. Employment & Training Administration. Most recent [solicitation](#).

## **U.S. Department of the Treasury**

**D** [Low-Income Tax Clinic Grants](#) IRS-funded tax clinics help low-income taxpayers resolve their issues with the IRS and provide education about a variety of tax topics, including rights and responsibilities as U.S. taxpayers. Internal Revenue Service. Most recent [solicitation](#)

**D** [Tax Counsel for the Elderly Grants](#) Funds free tax help to those 60 or older. Internal Revenue Service. Most recent [solicitation](#)

**D** [Volunteer Income Tax Assistance](#) Extends tax services to underserved populations in hardest-to reach areas, both urban and rural. Internal Revenue Service Most recent [solicitation](#)

## **U.S. Department of Veteran Affairs**

**D** [Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program](#) Supports legal services to Veterans experiencing or at risk of homelessness, including housing, family law, income support, criminal defense, and discharge or dismissal upgrades Most recent [solicitation](#).

## Appendix F

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## MEMORANDUM

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**DATE:** July 21, 2023

**TO:** Scope of Practice Subcommittee of Texas ATJC Working Group

**FROM:** Katie A. Fillmore

**SUBJECT:** Analysis of existing law and rules based on search terms relating to legal services provided by paraprofessionals

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This memo is intended to analyze existing references in Texas statutes and rules to terms relating to the paraprofessional study and scope of practice. The goal of this analysis is to identify potential limitations on the contemplated limited-scope representation by paraprofessionals.

The following terms were searched in Texas statutes, rules of court,<sup>1</sup> and the Texas Rule of Disciplinary Procedure: “paralegal,” “paraprofessional,” “authorized agent,” “assisted representation,” and “notario.” “Assisted representation” returned no hits. The term “authorized agent” alone returned 346 results, so the search of that term was then narrowed to the Texas Rules of Civil Procedure, Texas Civil Practice and Remedies Code, and Texas Disciplinary Rules of Professional Conduct.

### **“Notario”**

“Notario” appears only once in Texas law. Government Code § 406.017 prohibits a notary public from representing himself/herself as an “attorney licensed to practice law in this state[.]” Tex. Gov’t Code § 406.017(a)(1). Additionally, the section provides that a notary public commits an offense if he/she “uses the phrase ‘notario’ or ‘notario publico’ to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television.” *Id.* § 406.017(a)(4). The section also provides that a notary public commits an offense if he/she “solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States.” *Id.* § 406.017(a)(2). In addition, the section states that it is an offense to “advertise the services of a notary public in a language other than English” without coupling the advertisement with a specific statutory notice.

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<sup>1</sup> Texas Rules of Civil Procedure, Texas Rules of Evidence, and Texas Rules of Appellate Procedure.

*Id.* § 406.017(a)(5); *see also id.* § 406.017(b) (setting forth the requisite notice). Importantly, however, the section also provides the following exception to prosecution: “It is an exception to prosecution under this section that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas.” *Id.* § 406.017(c).

Although the law does not expressly use the term “notario,” the DTPA also prohibits use of the word. The DTPA laundry list of “false, misleading, or deceptive acts or practices” includes “using the translation into a foreign language of a title or other word, including ‘attorney,’ ‘immigration consultant,’ ‘immigration expert,’ ‘lawyer,’ ‘licensed,’ ‘notary,’ and ‘notary public,’ in any written or electronic material ... in reference to a person who is not an attorney in order to imply that the person is authorized to practice law in the United States.”<sup>2</sup> This law was enacted to address “immigration consultants” who hold themselves out as being able to provide legal services they cannot.<sup>3</sup> A notario publico in many Latin American countries is an individual who has received the equivalent of a law license and who is authorized to represent others before the government. Essentially, a “notario” in Spanish speaking countries is the equivalent of a paraprofessional who is authorized to give legal advice.

If the Working Group recommends rules authorizing paraprofessionals to provide limited-scope representation to low-income Texans, that recommendation should (1) conform to the bounds of the statutes addressed above (e.g., by ensuring that any paraprofessional who provides legal services without supervision is licensed to practice law in the state and is in good standing with the State Bar of Texas) and (2) identify any statutory amendments that may be warranted to ensure that paraprofessionals can provide legal services without fear of prosecution for doing so.

### **“Authorized Agent”**

The word “authorized agent” is used hundreds of times in Texas Statute, for purposes irrelevant to the paraprofessionals study. For example, it is used in various instances regarding a representative who is authorized to act on behalf of a governmental entity with regard to activities outside the scope of a legal action or legal representation.

The term “authorized agent” was included in this analysis because the Texas Property Code<sup>4</sup> and the Texas Rules of Civil Procedure<sup>5</sup> authorize representation in court by an “authorized agent” “who need not be an attorney” in an eviction case in justice of the peace court (“JP Court”). The Property Code takes it a step further by allowing, in *county* or *district court*, the “authorized agent” to appear on behalf of an “owner of a multifamily residential property.”<sup>6</sup> The Rules of Civil

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<sup>2</sup> Tex. Bus. & Comm. Code § 1746(b)(28).

<sup>3</sup> Using consumer law against notorious notarios. Mark E. Steiner, 22 J. Consumer & Com. L. 11, 13 (2018).

<sup>4</sup> Tex. Prop. Code § 24.011.

<sup>5</sup> Tex. R. Civ. P. 500.3(a)(2) and (b)(2).

<sup>6</sup> Tex. Prop. Code § 24.011(b).

Procedure also permit a JP Court to authorize, on a showing of “good case,” an individual to be assisted in court by a “family member or other individual who is not being compensated (outside of just eviction cases).”<sup>7</sup> Neither authority defines “authorized agent,” but an AG Opinion clarifies that the “authorized agent” must be an individual and not a business entity.<sup>8</sup>

ATJ Commissioner and JP Court Judge Nicholas Chu provided anecdotal information on how the assisted representation/authorized agent is used in his court. Judge Chu said it is used pretty frequently, usually more on the landlord side. He stated there are companies like Nationwide Eviction that utilize non-lawyers to handle the eviction filing and proceeding on behalf of landlords. On the tenant side, it is typically a tenant speaking on behalf of all tenants in the unit or a family member speaking for a tenant (such as the parent of a college student). The authorization is simply made through writing or in-person that the non-lawyer has authority to act on the party’s behalf. The subsection that allows assisted representation outside of eviction cases is typically used by a parent who helps their young adult child. Judge Chu stated the eviction subgroup of the scope-of-practice subcommittee is working on two recommendations regarding these rules: (1) expanding authorized-agent representation beyond eviction cases; and (2) allowing assisted representation from a paraprofessional working at a legal aid provider (because technically they are compensated and thus arguably unable to qualify under Tex. R. Civ. P. 500.4(c)).

The term “authorized agent” is used other places in the Rules of Civil Procedure, such as agent for service of process.<sup>9</sup> The Texas Civil Practice and Remedies Code requires presentation of a claim for attorney’s fees to be presented to “the opposing party or to a duly authorized agent.”<sup>10</sup> These terms are also undefined. However, existing statutory and rule language indicates that the above-discussed usage with regard to paraprofessional representation has a different meaning.

### **“Paraprofessional”**

A comment to Texas Rule of Disciplinary Procedure 5.05, addressing the unauthorized practice of law, speaks to paraprofessionals being delegated legal functions. The comment clarifies that it does not prohibit the “employing the services of paraprofessionals....[s]o long as the lawyer supervises the delegated work, retains responsibility for the work, and maintains a direct relationship with the client.”<sup>11</sup>

“Paraprofessional” is used in various education and health services statutes, which have no relevance to this analysis.

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<sup>7</sup> Tex. R. Civ. P. 500.3(c).

<sup>8</sup> Tex. Atty. Gen. Op., No. JM-451 (1986).

<sup>9</sup> Tex. R. Civ. P. 21a(a).

<sup>10</sup> Tex. Civ. Prac. & Rem. Code § 38.002.

<sup>11</sup> Tex. Disciplinary R. of Prof. Conduct § 5.05, cmt. 4.

## **“Paralegal”**

Denton County has a local rule that prohibits attorneys from sending a legal assistant, “paralegal” or non-attorney to a pre-trial conference.<sup>12</sup>

## **Additional Considerations**

Multiple statutes and rules prohibit anyone but a licensed member of the State Bar of Texas from practicing law. Any proposal of the Working Group will need to consider how to address these provisions. The term “unauthorized practice of law” appears in six chapters of Texas Code,<sup>13</sup> as well as in the Texas Disciplinary Rules of Professional Conduct.<sup>14</sup> Perhaps most significantly, the Texas Penal Code makes it a misdemeanor (or felony for subsequent offenses) for any person not “currently licensed to practice law in this state, another state, or a foreign country” or not “in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed” to contract to or provide advice relating to personal injury or property damages claims.<sup>15</sup>

Similarly, there are numerous laws that speak only to the involvement of an attorney as the provider of legal services. For instance, Texas Rule of Evidence 503 protecting “lawyer-client privilege,” defines “client” as someone who consults with a “lawyer.”<sup>16</sup> Also, numerous statutes allow recovery of “attorney’s fees,” particularly in consumer rights statutes.<sup>17</sup> If amendments to current law or rules are made to allow for paraprofessional practice, consideration will need to be given to expanding the privileges and rights that come from an attorney-client relationship.

KAF

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<sup>12</sup> Denton County Rule 3.5.2.

<sup>13</sup> Tex. Gov’t Code Ch. 81, 83, and 411; Tex. Ins. Code Ch. 4102; Tex. Ins. Code Ch. 4102; Tex. Occ. Code Ch. 1101; Tex. Penal Code Ch. 38.

<sup>14</sup> Tex. Disciplinary R. of Prof. Conduct § 5.05.

<sup>15</sup> Tex. Penal Code § 38.123.

<sup>16</sup> Tex. R. Evid. 503(a)(1).

<sup>17</sup> The term “attorney’s fees” appears in 697 Chapters of Texas Code. (e.g., Tex. Bus. & Comm. Code § 17.50 (available relieve under DTPA); Tex. Bus. & Comm. Code § 27.01(e) (available relieve for fraud in real estate and stock transactions)).

## Appendix G

## Non-Attorney Ownership and the Regulatory Status Quo

The Court's charge requests examination of existing rules, particularly the prohibition in the Texas Disciplinary Rules of Professional Conduct of non-lawyer ownership of firms that provide legal services (Rule 5.04(d)). Other rules and statutes also may be implicated. For example, there are statutory prohibitions of unauthorized practice of law by persons other than those licensed by the State Bar of Texas, and Rule 5.05(b) prohibits a lawyer from assisting a person who is not a member of the Bar in activity constituting unauthorized practice of law. There also is regulation of attorney fee splitting.

### Professional independence of a lawyer: Rule 5.04

Based on ABA Model Rule 5.4,<sup>1</sup> and with limited exceptions that are not directly relevant to this study,<sup>2</sup> Rule 5.04(a) of the Texas Disciplinary Rules of Professional Conduct generally prohibits a lawyer or law firm from sharing or promising to share legal fees with a non-lawyer. Rule 5.04(b) prohibits a lawyer from forming a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law. And Rule 5.04(d) prohibits a lawyer from practicing "in the form of a professional corporation or association authorized to practice law for a profit" under specified circumstances, including when ownership interests are held by a nonlawyer<sup>3</sup>; a "nonlawyer is a corporate director or officer thereof," or "a nonlawyer has the right to direct or control the professional judgment of a lawyer." Notably, non-profit firms already are excluded from the prohibition of Rule 5.04(d) by its express terms.<sup>4</sup>

The comments to Rule 5.04 characterize the prohibition on sharing fees or forming a partnership with a nonlawyer to provide legal services as a "traditional limitation" designed to

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<sup>1</sup> For general history of Rule 5.4, see ABA/BNA Lawyers' Manual on Professional Conduct § 91:404; A. Garwin ed., *A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013*, at 609-42 (2013); ABA Center for Professional Responsibility, *The Legislative History of the Model Rules of Professional Conduct: Their Development in the ABA House of Delegates*, at 159-65 (1987). See also *Restatement (Third) of the Law Governing Lawyers* § 10 (2000).

<sup>2</sup> The exceptions provide for dealing with the death of a lawyer and for retirement plans for non-lawyer employees of a lawyer or law firm. See Rule 5.04(a). The comments to Rule 5.04 explain that "[t]he exceptions stated in Rule 5.04(a) involve situations where the sharing of legal fees with a nonlawyer is not likely to encourage improper solicitation or unauthorized practice of law." *Id.* cmt. 2.

<sup>3</sup> There is an exception for "a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration." See Rule 5.04(d).

<sup>4</sup> The comments do address the circumstance of lawyers employed by nonprofits, noting that "[t]he danger of erosion of the lawyer's professional independence sometimes may exist when a lawyer practices with associations or organizations not covered by Rule 5.04(d)." *Id.* cmt. 6. The comment states that lawyers should not accept employment with a legal-aid office administered by a board of directors composed of lawyers and nonlawyers "unless the board sets only broad policies and does not interfere in the relationship of the lawyer and the individual client that the lawyer serves," preferably with a written agreement defining the employment relationship and protecting the lawyer's professional independence. *Id.* (citing Rule 1.13).

“prevent solicitation by lay persons of clients for lawyers and to avoid encouraging or assisting nonlawyers in the practice of law.” The comments further explain that the prohibition on nonlawyer ownership of firms providing legal services applies “in certain specific situations where erosion of the lawyer’s professional independence may be threatened.”<sup>5</sup>

## Unauthorized practice of law

The Texas Supreme Court has, and frequently has exercised, inherent power to regulate the practice of law.<sup>6</sup> To the extent authorized by the Government Code, the Legislature has acknowledged the Supreme Court’s sole and nondelegable power to issue licenses to practice law in Texas.<sup>7</sup> The Court also has express statutory authority to adopt rules on eligibility for examination for the practice of law.<sup>8</sup>

Chapter 81 of the Government Code is known as the State Bar Act.<sup>9</sup> The State Bar Act prohibits practice of law in Texas “unless the person is a member of the state bar.”<sup>10</sup> The Disciplinary Rules further prohibit a lawyer from assisting a person who is not a member of the bar “in the performance of activity that constitutes the unauthorized practice of law.”<sup>11</sup>

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<sup>5</sup> Rule 5.04 cmt. 6; *see also Restatement (Third) of the Law Governing Lawyers* § 10 cmt. b (2000) (“Those limitations are prophylactic and are designed to safeguard the professional independence of lawyers. A person entitled to share a lawyer’s fees is likely to attempt to influence the lawyer’s activities so as to maximize those fees. That could lead to inadequate legal services. The Section should be construed so as to prevent nonlawyer control over lawyers’ services, *not to implement other goals such as preventing new and useful ways of providing legal services* or making sure that nonlawyers do not profit indirectly from legal services in circumstances and under arrangements presenting no significant risk of harm to clients or third persons.” (emphasis supplied)).

<sup>6</sup> *See, e.g.,* Nathan L. Hecht et al., *How Texas Court Rules Are Made*, at 3-4 (2016), available at <https://www.txcourts.gov/media/1374851/How-Court-Rules-Are-Made.pdf> (last visited Sept. 11, 2023); Tex. State Bar Rules preamb. (“These Rules are adopted in aid of the Court’s inherent power to regulate the practice of law and nothing shall be construed as a modification or limitation thereof.”).

<sup>7</sup> Tex. Gov’t Code § 82.021. The Texas Supreme Court has, and frequently has exercised, inherent authority to regulate the practice of law. *See, e.g.,* Hecht et al., *How Texas Court Rules Are Made, supra*, at 3-4; Tex. State Bar Rules preamb. (“These Rules are adopted in aid of the Court’s inherent power to regulate the practice of law and nothing shall be construed as a modification or limitation thereof.”).

<sup>8</sup> Tex. Gov’t Code § 82.022(a).

<sup>9</sup> *Id.* § 81.001. The statute expressly provides that it was enacted “in aid of the judicial department’s powers under the constitution to regulate the practice of law, and not to the exclusion of those powers.” *Id.* § 81.011(b). *See generally* Nathan L. Hecht et al., *Procedural Reform: Whence and Whither* (1998), available at <https://www.txcourts.gov/rules-forms/rules-standards/texas-court-rules-history-process/> (last visited Sept. 11, 2023).

<sup>10</sup> Tex. Gov’t Code § 81.102. The State Bar defines a “member” as “a person licensed to practice law in Texas,” Tex. State Bar Rules art. I(13), citing Tex. Gov’t Code § 81.051(a), which provides: “The state bar is composed of those persons licensed to practice law in this state. Bar members are subject to this chapter and to the rules adopted by the supreme court.”

<sup>11</sup> Rule 5.05(b).

The State Bar Act defines the “practice of law” as follows:

the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.<sup>12</sup>

The statutory definition of “practice of law” excludes “design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney.”<sup>13</sup> There is a separate prohibition of unauthorized practice of law in the form of charging or receiving “either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien.”<sup>14</sup>

The statutory definition of “practice of law” is “not exclusive,” and the statute expressly “does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.”<sup>15</sup>

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<sup>12</sup> Tex. Gov’t Code § 81.101(a).

<sup>13</sup> *Id.* § 81.101(c). “This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.” *Id.* Chapter 83 of the Government Code relates to “preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien.” *Id.* § 83.001(a). Chapter 83 “does not prevent a person from completing lease or rental forms that: (1) have been prepared by an attorney licensed in this state and approved by the attorney for the particular kind of transaction involved; or (2) have been prepared by the property owner or prepared by an attorney and required by the property owner.” *Id.* § 83.003.

<sup>14</sup> *Id.* § 83.001(a); *see also id.* § 83.006 (“A violation of this chapter constitutes the unauthorized practice of law and may be enjoined by a court of competent jurisdiction.”).

<sup>15</sup> *Id.* § 81.101(b); *see also Unauthorized Practice Committee v. Cortez*, 692 S.W.2d 47 (Tex. 1985) (courts decide whether an activity is the practice of law; selecting and preparing immigration forms constitutes the practice of law); *Crain v. Unauthorized Practice of Law Committee*, 11 S.W.3d 328 (Tex. App.—Houston [1st Dist.] 1999, pet. denied) (preparing and filing mechanic’s lien affidavits constitutes the practice of law); *Greene v. Unauthorized Practice of Law Committee*, 883 S.W.2d 293 (Tex. App.—Dallas 1994, no writ) (preparing and sending demand letters on personal injury and property damage claims and negotiating and settling the claims with insurance companies constitutes the practice of law); *Fadia v. Unauthorized Practice of Law Committee*, 830 S.W.2d 162, 165 (Tex. App.—Dallas 1992, writ denied) (selling will forms and manuals constitutes the practice of law); *Brown v. Unauthorized Practice of Law Committee*, 742 S.W.2d 34 (Tex. App.—Dallas 1987, writ denied) (contracting to represent persons with regard to personal injury and property damage claims constitutes the practice of law).

The Penal Code also specifies that a person other than a licensed practitioner of law commits an offence if, with intent to obtain an economic benefit, the person:

- (1) contracts with any person to represent that person with regard to personal causes of action for property damages or personal injury;
- (2) advises any person as to the person's rights and the advisability of making claims for personal injuries or property damages;
- (3) advises any person as to whether or not to accept an offered sum of money in settlement of claims for personal injuries or property damages;
- (4) enters into any contract with another person to represent that person in personal injury or property damage matters on a contingent fee basis with an attempted assignment of a portion of the person's cause of action; or
- (5) enters into any contract with a third person which purports to grant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding.<sup>16</sup>

### Fee splitting

Rule 1.04(f) of the Disciplinary Rules imposes limitations on the circumstances under which lawyers who are not part of the same firm may divide a legal fee.<sup>17</sup>

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<sup>16</sup> Tex. Penal Code § 38.123.

<sup>17</sup> Rule 1.04(f): A division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if: (1) the division is: (i) in proportion to the professional services performed by each lawyer; or (ii) made between lawyers who assume joint responsibility for the representation; and (2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including (i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement, and (ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and (iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and (3) the aggregate fee does not violate paragraph (a). See *also* Rule 1.04 cmts. 10-15.