

Agenda

Working Group on Access to Legal Services

Texas Access to Justice Commission Working Group

November 2, 2023, 10AM to 3PM

On-Site: Texas Law Center, 1414 Colorado Street, Room 101, Austin, Texas 78701

Online – Please register to attend online:

<https://us02web.zoom.us/j/82061284256?pwd=OFJJM1VIN3U1MVFRV3hCNHNFeHZpZz09>

1. **Welcome and Opening** – Co-Chair Lisa Bowlin Hobbs
2. **Review and Approval of September 26, 2023 Meeting Minutes** – Co-Chair Kennon L. Wooten
3. **Public Comment** – Co-Chair Justice Michael Massengale

4. **Subcommittee Reports**

- a. **Non-Attorney Ownership Subcommittee Report** – Hon. Michael Massengale
- b. **Discussion - Non-Attorney Ownership Subcommittee Report**

Lunch Break - 30 minutes

- c. **Paraprofessional Scope of Practice Subcommittee Report** – Chair Kennon L. Wooten
- d. **Discussion – Paraprofessional Scope of Practice Subcommittee Report**

Break - 10 minutes

- e. **Paraprofessional Licensing Subcommittee Report** – Chair Lisa Bowlin Hobbs
 - f. **Discussion – Paraprofessional Licensing Subcommittee Report**
5. **Closing** – Hon. Michael Massengale
 6. **Adjourn**

Working Group on Access to Legal Services

Draft - Meeting Minutes

Texas Access to Justice Commission Working Group

September 26, 2023, 10AM to 3PM - On-Site and Zoom

The meeting agenda and materials are available [here](#).

Recordings of Subcommittee meetings are available at the following links:

- [Scope of Practice](#) - March 20, 2023; April 14, 2023; June 2, 2023; June 27, 2023; August 25, 2023; September 22, 2023
- [Paraprofessional Licensing](#) – May 17, 2023; June 7, 2023; July 13, 2023; August 28, 2023; September 25, 2023
- [Non-Attorney Ownership](#) - March 31, 2023; May 3, 2023; June 22, 2023; July 12, 2023; August 21, 2023; September 19, 2023

Meeting Participants:

Working Group Members: Lisa Bowlin Hobbs (Co-Chair), Hon. Michael Massengale (Co-Chair), Kennon Wooten (Co-Chair), Paul Furrh, Katie Fillmore, Professor Susan Fortney, Hon. Eva Guzman, Craig Hopper, Professor Renee Knake Jefferson, Richard LaVallo, Hon. Lora Livingston, Ellen Lockwood, Richard Melamed, Karen Miller, Professor Mary Spector

Working Group Members Not Present: Linda Acevado, Jonathan Bates, Rose Benavidez, Robert Doggett, Hon. Royal Ferguson, Maria Thomas Jones, Hon. Deborah Hankinson, Hon. Sid Harle, Monica Karuturi, Hon. Polly Spencer, Terry Tottenham

Guests: Harriet Miers (TX ATJ Commission Chair), Ali Guerrero, Hon. Sylvia Holmes, Nahdiah Hoang, Paige Hoyt, and Kim Pack Wilson, proxy for Working Group member Jonathan Bates

Staff: Lonni Summers (NCSC)

1. **Welcome and Introductions.** Co-Chair Kennon L. Wooten called the meeting to order at 10:02 a.m. She introduced several guests who will present on Subcommittee work.
2. **Review and Approval of July 27, 2023 Meeting Minutes.** The Working Group approved the minutes unanimously.
3. **Subcommittee Reports.** Subcommittee Chairs reported on the work of their Subcommittees and asked for input and feedback from the Working Group.
 - a. **Paraprofessional Scope of Practice Subcommittee. Chair Kennon L. Wooten.** Since the last time the Working Group met, the Consumer-Debt and Housing/Landlord-Tenant Subgroups provided recommendations to the Subcommittee, which have been approved. They are included in the meeting materials.

Paige Hoyt provided an overview of the Consumer-Debt Subgroup's recommendations. The Subgroup limited their recommendations to matters that are heard in Justice Court, though paraprofessionals may perfect an appeal.

Kim Wilson recommended adding a statement of inability to pay under Texas Rule of Civil Procedure 502.3. Hon. Sylvia Holmes concurred.

Several Working Group members recommended eliminating the practice area specific recommendations proffered by the Subcommittee, and instead permitting paraprofessional practice in all Justice Court matters. The Working Group discussed.

Hon. Sylvia Holmes noted that the current rules encourage assistance by non-lawyers. Professor Mary Spector noted that there are some inequities that permit corporations and landlords to use agent representation but require other groups to obtain court approval. It may be more equitable to permit paraprofessional practice in all civil Justice Court matters. Richard LaVallo noted his view that when the Subcommittee says "assistance" what they really mean is "representation." He suggested replacing "assistance" with "representation" in the recommendations. He also expressed concern that the good cause language in Rule 500.4 gives too much discretion to a judge to prohibit paraprofessional practice on an individual basis. Perhaps the "shall allow" and "good cause" language in 500.4 could be eliminated. Judge Holmes concurred. Chair Wooten noted that this rule contemplates a family member or friend but does not apply specifically to a paraprofessional. Should the rule be modified to allow family members or friends to assist in all matters, or should it be limited only to licensed paraprofessionals? At what point does "assistance" risk becoming the unauthorized practice of law? Judge Holmes noted that if the Subcommittee is concerned about access to justice, it's more helpful to allow as much assistance as possible. Any potential harm to the public in Justice Court is mitigated by de novo appeal. Chair Lisa Bowlin Hobbs concurred.

Chair Wooten noted that there is need across the board in all areas of law, but that the Subcommittee has been focused on the greatest areas of need, at least for now. While there is clear need in other areas, should the Subcommittee work to fill additional needs now or continue to focus on the greatest need areas? Professor Susan Fortney noted that expanding practice to non-lawyers in all case types would require additional training. Katie Fillmore reported that pro se litigants in Justice Court do not always bring the correct cause of action. One example she recalled is the filing of a negligence case when the real issue was breach of contract. Co-Chair Hobbs suggested the Subcommittee draft a "can't-do" list for paraprofessional practice in Justice Court, rather than a "can do" list. Mr. LaVallo expressed his belief that representation by a paraprofessional in Justice Court is analogous to lay advocate assistance in IEP cases.

Professor Mary Spector provided an overview of the Housing and Landlord-Tenant Subgroup's recommendations. Chair Wooten noted that footnotes 1 and 2 in the Subcommittee's report were accepted by the full Subcommittee; however, footnote 3 did not garner the support of the full Subcommittee.

Chair Wooten noted that, given the Working Group's overall feedback and the discussion regarding potentially broadening representation in Justice Courts, the Subcommittee will wait

to ask the Working Group to vote and, instead, will redraft their recommendations that pertain to Consumer-Debt and Housing/Landlord-Tenant.

Kim Wilson moved the Working Group to authorize the Scope of Practice Subcommittee to craft rules based on the family law recommendations put forth to the Working Group at the July 27, 2023 meeting. Karen Miller seconded the motion. Co-chair Hobbs commented that the intention of the recommendations is not to limit current paralegal practice in this area. With that, Ms. Wilson's motion passed unanimously.

Ms. Wilson moved the Working Group to authorize the Scope of Practice Subcommittee to craft rules based on the probate recommendations put forth to the Working Group at their July 27, 2023 meeting. Ms. Miller seconded the motion. The motion passed unanimously.

The Working Group briefly discussed eligibility criteria for paraprofessional services. The federal definition of poverty is narrow. Professor Spector noted that the biggest portion of the justice gap may be for people who earn too much to qualify for legal aid but too little to afford an attorney. She cautioned against using a strict definition and recommended a more expansive definition. Members of the Working Group concurred.

- b. **Non-Attorney Ownership Subcommittee. Hon. Michael Massengale.** Justice Massengale detailed recommendations by the Non-Attorney Ownership Subcommittee, which are also included in the meeting materials.

The Subcommittee recommends creating an exception to most of the substance of Texas Disciplinary Rule of Professional Conduct 5.04 for the purpose of enabling new and innovative ways of delivering legal services and expanding civil access to justice in areas that are needed by low-income Texans. The Subcommittee anticipates that there will be an application and approval process, plus reporting and continuing oversight, possibly through the Judicial Branch Certification Commission (JBCC) to ensure the entity is complying with the purpose to "ensure expanded access to justice for low-income Texans." Entities would have to describe a specific scope of legal services. They will not be approved if they cannot articulate that they fill a gap for low-income Texans. This requirement will likely exclude most of the problematic types of practice that causes concern.

Mr. LaVallo wondered if the rules limiting paraprofessional practice to individuals who are not compensated by a low-income Texan would impact the work of the authorized entity. Judge Massengale noted that approved entities would have to work within the constraints of the rules.

Ms. Wilson asked if the Subcommittee is contemplating requiring a Texas licensed attorney to have a certain ownership percentage in a firm. Justice Massengale noted that the Subcommittee contemplates that a licensed Texas attorney must certify that the organization is following the rules but does not necessarily have to be an owner.

Ms. Wilson inquired who will determine what legal services will be eligible—the JBCC or the Subcommittee? Justice Massengale noted that the idea is for the entity seeking approval to specify particular services that they plan to provide, and the JBCC could approve as written, or prune it down as part of the approval process.

Craig Hopper inquired about the JBCC as a regulatory entity. Justice Massengale noted that a JBCC representative attended the last Non-Attorney Ownership Subcommittee meeting and provided significant information. If approved, Justice Massengale anticipates that a new advisory board would be created to manage paraprofessionals and non-attorney ownership of certain entities. The current law requires the JBCC to be self-funded through fees. The fees for other regulated entities, like guardians and court reporters, are nominal. They would not likely impede someone who has a proposal for innovation. There may be a need to employ additional staff at the JBCC to handle the advisory board's administrative functions. Mr. Hopper inquired whether there would need to be statutory authority granted. Justice Massengale noted that the Supreme Court of Texas has clear authority to regulate in this area. Co-chair Hobbs noted that the JBCC currently regulates both individuals and entities.

There was some discussion about how to ensure low-income Texans are being served by non-attorney owned entities. Professor Spector wondered about the impact on businesses that currently offer non-attorney services. There is a firm that provides representation to landlords only under Justice Court rules. She is not sure if the company is licensed or not.

Justice Massengale thanked the Working Group for their comments and welcomed additional feedback.

- c. **Paraprofessional Licensing Subcommittee** – Chair Lisa Bowlin Hobbs updated the Working Group on the Paraprofessional Licensing Subcommittee's work.
 - i. **Qualifications** - The Subcommittee modeled qualification recommendations on those of the Paralegal Division of the State Bar of Texas. The Subcommittee envisions multiple pathways to enter the profession. A license will focus on one specific area of law, such as family law or housing. The Subcommittee contemplates requiring paraprofessional candidates to demonstrate that at least 50% of their practice is in the practice area for which they are seeking a license initially. After they obtain their first license, the requirement may be reduced to permit practice in more areas.

The Working Group suggested collapsing landlord tenant and consumer into one "Justice Court" practice area due to the earlier discussion regarding allowing paraprofessional practice in all Justice Court matters. An applicant could report on a certain percentage of housing or consumer or a combination of both to qualify.

Co-Chair Wooten noted a few inconsistencies in the Subcommittee's draft. For example, the proposed lookback period is 3-to-5 years, while the qualifications are mostly 1 year. Under subject matter specific qualifications, (a)(1) and (a)(10) are inconsistent. One references "an ABA accredited law school" and the other references "an ABA accredited Texas law school." The inconsistencies will be resolved before the final recommendations are presented to the Working Group for a final vote at their meeting on November 2.

Co-Chair Wooten recommended adding language to ensure candidates have "successfully completed" training rather than "participated" in training.

Mr. LaVallo inquired why anyone would become a paraprofessional if they cannot be paid for their services. Chair Hobbs noted, as an example, that a group of paraprofessionals may band together to form a non-profit that will serve low-income Texans. The non-profit could be grant or foundation funded. Co-chair Wooten noted that this brings the conversation full circle regarding income eligibility. Someone at 125% of the federal poverty lines could likely not pay anything. Someone at 400% might be able to pay a little. Mr. LaVallo noted that in education law, parents frequently hire non-attorney advocates to help them navigate the process. If the parents win, the advocate's fee is paid by the school district.

Co-chair Wooten wondered if the qualifications under (a)(4) are enough. Ms. Lockwood noted that the State Bar of Texas adopted a [definition of a paralegal](#), which may be helpful. Co-chair Wooten agreed that it is helpful.

- ii. **Examination** - The Working Group indicated consensus about the proposed examination requirements, though some expressed concern that one hour may not be enough time to test substantive knowledge and ethics. Ms. Lockwood clarified that if candidates are required to have experience to qualify to take the examination, they will not likely need a substantive examination. This could be accomplished by permitting some applicants to obtain a substantive examination waiver and requiring all to take an ethics examination.
- iii. **Character and fitness** – Chair Hobbs noted that proposed character and fitness requirements will mirror the requirements for lawyers, and that the Subcommittee is conscious of overregulation, which can create barriers to entering the field.

There was some discussion about whether or not to require candidates to report disciplinary history, particularly in the context of military service, as well as financial information such as judgments, and past due debts. Co-chair Wooten recommended editing the item that pertains to “notorios,” as this is a legitimate profession in other countries and should not bar licensure as a paraprofessional, as long as applicants comply with Texas law.

- iv. **Discipline** – This is modeled off the JBCC's disciplinary process, primarily from the guardianship section. Chair Hobbs noted that the intent of the disciplinary process is to permit the public to make a complaint but emphasized that discipline as a paraprofessional would not inhibit the ability of a person to practice as a paralegal.
- v. **Continuing Legal Education (CLE)** – Chair Hobbs noted that the Subcommittee's intent is to make CLE manageable. They recommend no more than one day of CLE per year. The Subcommittee did not recommend permitting self-study but may permit up to three hours for paraprofessionals who do training and presentations. Ms. Lockwood noted that certified paralegals must take 10 hours of CLE per year, so no more than one day is on par with the current requirements. Co-chair Wooten inquired if the Subcommittee will require subject matter specific training.
- vi. **Dues and Reporting** – The Subcommittee anticipates recommending that the governing body adopt dues, fees, and reporting requirements.

- vii. **Malpractice Insurance and Disclosures** – Chair Hobbs asked the Working Group for feedback about malpractice insurance and disclosures. In other states, paraprofessional requirements track what is required for lawyers. In Texas, lawyers are not required to have malpractice insurance and are not required to disclose their status to clients. Chair Hobbs reiterated that the Subcommittee seeks to reduce as many barriers as possible for entry to the field. The Working Group’s consensus was that paraprofessionals should not be required to carry malpractice insurance or disclose their status to clients.

The Working Group made general comments regarding notice in the disciplinary process. Certified mail may not be the best way. Email and written notice are equally important. Chair Hobbs reported that the JBCC currently uses email, certified mail and first-class mail to provide notice.

Mr. Hopper inquired about paraprofessional advertising. Will this be addressed somewhere? Chair Hobbs suggested her Subcommittee add this to the paraprofessional code of ethics, which will be modeled after the paralegal code of conduct. Ms. Lockwood noted that the paralegal code of ethics requires paralegals to ensure that they do not represent themselves as an attorney.

Judge Holmes wondered if paraprofessionals would be officers of the court. Can they go before a judge if their client isn’t present? Would written notice be required to let the judge know that a paraprofessional will represent a client? The Working Group discussed.

Chair Hobbs will incorporate the feedback provided by the Working Group into her Subcommittee’s final draft recommendations.

4. **Next Steps and Final Working Group Meeting** – The final meeting of the Working Group is on November 2, 2023. Each of the Subcommittees will meet before then.
5. **Adjourn** – The meeting was adjourned at 3:01 p.m.

MEMORANDUM

TO: Access to Legal Services Working Group
FROM: Non-Attorney Ownership Subcommittee
RE: Final Report to Working Group
DATE: October 29, 2023

Executive summary

The Non-Attorney Ownership Subcommittee provides the following for consideration by the full Working Group in its preparation of a report to the Access to Justice Commission, concerning proposed reform to allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving attorney independence:

- A pilot program could 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.
- An exception could be established 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.
- 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.
 - The application should be required to describe proposed legal services in detail, including how they will expand civil access to justice for low-income Texans.
 - Detailed disclosures and undertakings should be required to ensure the provision of services to low-income Texans, compliance with ethical rules (particularly protection of attorney independence and client confidentiality), and protection of clients from exploitation or low-quality 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.

- Data collection and reporting should be required to facilitate evaluation of renewal requests and overall effectiveness of pilot program.
- Special consideration should be given for (including potential exclusion of) certain types of legal services or forms of delivery of legal services that present unique concerns.
- 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.
- An annual process of re-application and re-certification should be required for approved entities to continue providing legal services.
- The Working Group, and ultimately the Access to Justice Commission, should adopt a standard for defining the “low-income Texans” to be served by this proposal, as well as a framework for evaluating whether approved entities adequately increase that client population’s access to free or affordable legal services.

Introduction

The Access to Justice Crisis in Texas

According to the Legal Services Corporation, low-income Americans do not get any or enough legal help for 92% of their civil legal problems.¹ In Texas, 90% of the civil legal needs of low-income individuals are unmet.² According to the Texas Access to Justice Foundation, approximately 5.2 million Texans qualify for legal aid.³ This means that approximately 4.7 million people do not get help. According to the Justice Index, Texas is ranked 47th in the nation for ensuring access to justice.⁴

While legal-aid organizations help more than 140,000 Texas families with their civil legal needs annually, there is only one legal-aid lawyer for every 7,000 Texans who qualify.⁵ This significant

¹ Legal Services Corporation, *The Justice Gap: The Unmet Need for Legal Aid, 2022*, available at <https://justicegap.lsc.gov/resource/executive-summary/> (last accessed Oct. 25, 2023).

² Texas Access to Justice Foundation, *Access to Justice Facts*, available at <https://www.teajf.org/news/statistics.aspx> (last accessed Oct. 25, 2023).

³ Legal aid organizations primarily assist individuals and families living at or below 125% of the federal poverty guidelines. 125% of the 2023 federal poverty guidelines for a family of four is \$37,500 a year and for an individual it is \$18,225. U.S. Federal Poverty Guidelines for 2023, available at <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last accessed Oct. 28, 2023). 200% of the 2023 federal poverty guidelines for a family of four is \$60,000 a year and for an individual it is \$29,160. U.S. Federal Poverty Guidelines for 2023. *Id.*; see also Memorandum from Kennon L. Wooten to Scope of Practice Subcommittee regarding “Eligibility for Contemplated Services” (Sept. 21, 2023)

⁴ National Center for Access to Justice, 2022 Justice Index, available at <https://ncaj.org/state-rankings/justice-index> (last accessed Oct. 25, 2023) (noting that in a ranking that included the District of Columbia and Puerto Rico, 46 jurisdictions scored higher than Texas).

⁵ See Texas Access to Justice Foundation, *Access to Justice Facts*, *supra* note 2.

gap in resources means that people are forced to either represent themselves or forego justice. Inability to access the legal system undermines confidence and trust in the courts.

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. We must re-examine all barriers that prevent the low-income population from obtaining help that otherwise could be available to them through innovation.

Areas of Need

On a national level, 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.⁶

Although more work should be done to gather information about areas of need specific to Texas, the Texas Access to Justice Commission's Access to Legal Services Working Group has identified the following high-priority focus areas: family law, probate, housing, and consumer debt.⁷ Findings from a stakeholder survey and focus groups were shared at the Working Group's July 2023 meeting. A web-based survey of 132 stakeholders was conducted from May 23, 2023 to July 17, 2023. Ten focus groups were convened from March to June 2023. Feedback concerning barriers faced by low-income Texans included: lack of access to attorneys ("long wait times and unrealistic financial thresholds"); eligibility barriers based on income and citizenship; perception that current legal-aid income thresholds are very low, with Texans who are slightly above the limits still being unable to afford private counsel; and challenges in specific areas, such as VA benefits cases.

Supreme Court Charge

To address an expressly stated desire to remedy the civil-justice gap and expand access to justice for low-income Texans, by letter dated October 24, 2022 the Supreme Court of Texas requested that the Commission examine existing court rules and propose modifications that would:

1. allow qualified paraprofessionals to provide limited legal services directly to low-income Texans; and

⁶ Legal Services Corporation, *The Justice Gap: The Unmet Need for Legal Aid, 2022*, available at <https://justicegap.lsc.gov/resource/section-3-the-prevalence-of-civil-legal-problems> (last accessed Oct. 28, 2023).

⁷ Sources for this determination include data provided by the Office of Court Administration and information obtained from focus groups and from the Texas Legal Services Center (particularly its Texas Law Help website).

2. allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving attorney independence.

In studying proposed modifications that would allow non-attorney economic interests, the Supreme Court also asked the Commission to consider whether rule changes should have limitations such as a pilot period or regulatory sandbox structure, and whether modifications should focus on certain services for which there is a particular need.

The Commission created the Working Group to respond to the Texas Supreme Court's request. The Working Group is composed of 27 members, who will make recommendations to the Commission about rule modifications that may help address the justice gap in Texas. The Working Group has created three subcommittees, including one to study and propose modifications to advance access to justice by allowing non-attorneys to hold equity interests in entities that provide legal services to low-income Texans.

Subcommittee Process

The Subcommittee met a total of eight times:

March 31, 2023 (organizational meeting)

May 3, 2023: (overview of Arizona and Utah reforms; brainstorming)

June 22, 2023 (guest speaker Noella Sudbury and initial discussion of draft working proposal document)

July 12, 2023 (protections for attorney independence)

August 21, 2023 (regulating entity and additional desirable criteria, restrictions, or prohibitions)

September 19, 2023: (regulating entity and additional desirable criteria, restrictions, or prohibitions)

October 13, 2023: (standards to evaluate provision of legal services to low-income Texans)

October 18, 2023: (review of Subcommittee's work)

The process used by the Subcommittee was collaborative and iterative, with discussion framed and documented by a "working document" that evolved in form and substance from its initial draft, through the subcommittee's previous reports to the Working Group, and ultimately to this memorandum.

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 5.4,⁸ and with limited exceptions that are not directly relevant to this study,⁹ 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 nonlawyer¹⁰; 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.¹¹

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 “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

⁸ 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).

⁹ 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.

¹⁰ 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).

¹¹ 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).

nonlawyer ownership of firms providing legal services applies “in certain specific situations where erosion of the lawyer’s professional independence may be threatened.”¹²

Unauthorized practice of law

The Texas Supreme Court has, and frequently has exercised, inherent power to regulate the practice of law.¹³ 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.¹⁴ The Court also has express statutory authority to adopt rules on eligibility for examination for the practice of law.¹⁵

Chapter 81 of the Government Code is known as the State Bar Act.¹⁶ The State Bar Act prohibits practice of law in Texas “unless the person is a member of the state bar.”¹⁷ 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.”¹⁸

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

¹² 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)).

¹³ *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.”).

¹⁴ 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.”).

¹⁵ Tex. Gov’t Code § 82.022(a).

¹⁶ *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).

¹⁷ 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.”

¹⁸ Rule 5.05(b).

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.¹⁹

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.”²⁰ 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.”²¹

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.”²²

¹⁹ Tex. Gov’t Code § 81.101(a).

²⁰ *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.

²¹ *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.”).

²² *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.²³

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.²⁴

Reform movement

In 2020, the Conference of Chief Justices encouraged states to experiment with regulatory innovations to spur new legal service delivery models that provide greater access while

²³ Tex. Penal Code § 38.123.

²⁴ 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.

maintaining quality, achieving affordability, and protecting the public interests.²⁵ The American Bar Association 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.”²⁶

Motivated at least in part to help address the justice gap, states such as Arizona, Colorado, Oregon, and Utah have modified their ethical rules to allow trained non-lawyers to provide legal advice in limited areas of the law. Some states, such as Arizona and Utah, also have modified their rules prohibiting non-lawyer ownership of entities providing legal advice, which enables legal organizations to partner with companies to help drive technological solutions to deliver legal services more efficiently to low-income individuals.²⁷

Arguments for and Against Reforms Allowing Non-Attorney Ownership of Law Firms²⁸

One way that states and national organizations are approaching regulatory reform is to permit innovative business models for law firms, such as firms that are owned or managed, in whole or in part, by non-attorneys.

²⁵ 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 (last accessed June 13, 2023).

²⁶ American Bar Association, Resolution 115: Encouraging Regulatory Innovation (2020), *available at* <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/r115resandreport.pdf>. 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 June 15, 2023).

²⁷ Other states have declined to follow the path of reform. In 2022, the Florida Supreme Court declined to move forward with a proposal to allow non-attorney ownership after concerns about attorney independence were raised by the Florida Bar. *See* Letter from Michael G. Tanner, President, The Florida Bar, to Hon. Charles T. Canady, Chief Justice, Supreme Court of Florida, Dec. 29, 2021, *available at*, <https://www.floridabar.org/news/publications/publications002/special-committee-to-improve-the-delivery-of-legal-services/#reports> (last accessed June 15, 2023); *In re: Amendments to Rule Regulating the Florida Bar 4-5.4* (Fla. June 2, 2022), *available at* <https://supremecourt.flcourts.gov/content/download/839346/opinion/sc22-607.pdf> (last accessed June 15, 2023). Also in 2022, California enacted legislation that prohibits consideration of permitting corporate ownership of law firms and fee sharing, due to concerns about conflicts of interest. Cal. A.B. 2958 § 3 (2022), *available at* https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=202120220AB2958&showamends=false (last accessed June 15, 2023). This statutory section is only effective, however, until January 1, 2025.

²⁸ For a general summary of arguments for and against alternative business structures, *see* Natalie Anne Knowlton, *A Debate on Nonlawyer Participation, Part I: Stephen Younger Warns that Nonlawyer Ownership Is Not the Solution to the Justice Gap*, Institute for the Advancement of the American Legal System, December 14, 2022, *available at* <https://iaals.du.edu/blog/debate-nonlawyer-participation-part-i-stephen-younger-warns-nonlawyer-ownership->

Entities permitted under these reforms often are called alternative business structures (ABSs). Examples include organizations such as Rocket Lawyer and LegalZoom. These entities provide web-based assistance with form completion, information and guidance about court processes, and traditional legal advocacy.

Potential Benefits

- **Expanded access to justice through innovation:** Proponents contend that allowing alternative business structures 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 forego civil legal remedies. Risks to consumers can be minimized through safeguards, such as ensuring protection for lawyers' 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.²⁹

Potential Risks³⁰

- **Compromising attorney competence and independence:** One purpose of Model Rule 5.4 is "to prevent nonlawyers from interfering with the lawyer's independent judgment,"³¹ and eliminating or limiting the rule may create conflicts between a lawyer's ethical obligations to clients and financial obligations to firm owners. There is a concern that non-attorney ownership of law firms could lead to diminished representation and harm to clients. States that permit non-attorney ownership ameliorate this risk in

[not-solution](#) (last accessed June 13, 2023), and Natalie Anne Knowlton, *A Debate on Nonlawyer Participation Part II: Ralph Baxter Explores the State Bar Obligation to Improve Access to Justice*, December 19, 2022, available at <https://iaals.du.edu/blog/debate-nonlawyer-participation-part-ii-ralph-baxter-explores-state-bar-obligation-improve> (last accessed June 13, 2023); see also ABA/BNA Lawyers' Manual on Professional Conduct § 91:405.

²⁹ 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).

³⁰ For general discussion of counterarguments against the risks, see Jessica Bednarz, *A Closer Look: Three Common Arguments Against Regulatory Reform*, IAALS, June 13, 2023, available at <https://iaals.du.edu/blog/closer-look-three-common-arguments-against-regulatory-reform> (last accessed June 15, 2023).

³¹ See 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#_ftnref18 (last accessed June 13, 2023).

different ways, including reporting based on the risk of consumer harm, designating compliance lawyers, and providing a forum for consumer complaints.³²

- **Potential for limited effectiveness:** Opponents contend that permitting non-attorney ownership may not increase access for low-income populations since it does not lead to more lawyers or entities that provide free or low-cost legal services. Steven Younger notes that in Australia, England, Wales, where non-attorney ownership is permitted, the justice gap has not closed.³³ However, here, the alternative business structures are primarily profit-based.³⁴ Younger makes a similar argument about the alternative business structures operating in Arizona and Utah, noting that many are private equity firms, litigation-finance companies, hedge funds, and alternative legal service providers.³⁵
- **Potential for exploitation:** Some have expressed concern that permitting non-attorneys to take an economic interest in entities providing services to low-income taxpayers “for a profit and a financial return for investors increases the chances of predatory or exploitative practices.”³⁶ They stated: “The concern is that a profit motive may compromise the quality of the tax advice provided.”³⁷
- **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.³⁸

Reforms in other jurisdictions (UK, Australia, DC, Arizona, Utah, others)

A number of jurisdictions have eliminated or modified prohibitions on non-attorney ownership and fee-sharing both domestically and abroad. In other jurisdictions, the desire to increase access to justice has not necessarily been a primary justification for, or a limitation on, changes to traditional rules prohibiting non-lawyer ownership of law firms.

³² See Utah’s Office of Legal Services Innovation, available at <https://utahinnovationoffice.org/> (last accessed June 14, 2023), and Arizona 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 June 14, 2023).

³³ Steven Younger, The Pitfalls and False Promises of Nonlawyer Ownership of Law Firms, *The Yale Law Journal Forum*, at 276 (Oct. 19, 2022), available at https://www.yalelawjournal.org/forum/the-pitfalls-and-false-promises-of-nonlawyer-ownership-of-law-firms#_ftnref18 (last accessed June 13, 2023).

³⁴ *Id.*

³⁵ *Id.* at 277.

³⁶ *E.g.*, Tax Section, State Bar of Texas, *Comments on Access to Justice*, at 2 (May 25, 2023). The Tax Section also commented that “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.” *Id.*

³⁷ *Id.* at 5.

³⁸ *E.g.*, Immigration Section, State Bar of Texas, *NLOs & Paraprofessionals*, at 6-7 (Aug. 25, 2023) (presentation to scope of practice subcommittee).

New South Wales, Australia

In 2001, New South Wales, Australia passed legislation allowing lawyers to share fees and provide legal services with nonlawyers, with provisions to ensure attorney independence, including a requirement that at least one direct be an attorney and a management structure to ensure that attorneys act within their ethical obligations to clients.³⁹

United Kingdom

In the United Kingdom, the 2007 Legal Services Act permitted ABSs in England and Wales. The Act includes protections to ensure that attorneys do not compromise their professional independence, including 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.⁴⁰

Arizona

Arizona eliminated its version of Rule 5.4 in 2020 and enacted Arizona Supreme Court Rule 31.1. This rule permits nonlawyers 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 1-year renewable license.⁴¹

D.C.

D.C.'s Rule 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. Everyone with a financial or managerial interest in the firm must abide by the rules of professional

³⁹ See Younger, *The Pitfalls and False Promises of Nonlawyer Ownership of Law Firms*, *supra*, at 263.

⁴⁰ Legal Services Act 2007, c. 29 (UK), available at <https://www.legislation.gov.uk/ukpga/2007/29> (last accessed June 13, 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 June 20, 2023) (assessing existing evidence on the impact of regulatory reform in England and Wales).

⁴¹ Arizona Code of Judicial Administration § 7-209, available at <https://www.azcourts.gov/Portals/0/admcode/pdfcurrentcode/7-209 Amended 7 13 22.pdf?ver=U0e16ry0d6dSkHPeGBdgng%3d%3d> (last accessed June 13, 2023).

conduct, and attorneys with financial interest or managerial authority must take responsibility for the conduct of non-attorneys.⁴²

Utah

Utah modified its version of Rule 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 15.⁴³ Utah Supreme Court Standing Order 15 created the Office of Legal Services Innovation, a division of the Utah Supreme Court, which regulates and monitors alternative business structures and alternative legal providers (i.e., Licensed Paralegal Practitioners). The Office of Legal Services Innovation also investigates complaints about these entities.⁴⁴ There is a reporting process for all entities authorized by the Office of Legal Services Innovation.⁴⁵ 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.⁴⁶

Examples of innovation enabled by reform

Some promising programs licensed in Utah and Arizona as alternative business structures include:⁴⁷

GovAssist Legal: Provides immigration legal services including work-related travel visas and family-based immigration matters, permanent residency, and United States citizenship.⁴⁸

Hello Divorce: Provides form completion and filing services, legal advice for lawyers, and financial help for clients in divorce cases.⁴⁹

⁴² 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 (last accessed June 13, 2023).

⁴³ Utah Code of Judicial Administration Rule 13-5.4, available at <https://legacy.utcourts.gov/rules/view.php?type=ucja&rule=13-5.4> (last accessed June 13, 2023).

⁴⁴ Utah Supreme Court Standing Order No. 15 (Amended September 21, 2022) available at <https://utahinnovationoffice.org/wp-content/uploads/2022/10/Standing-Order-No.15-Amended-9.21.22.pdf> (last accessed June 13, 2022).

⁴⁵ The Office of Legal Services Innovation, <https://utahinnovationoffice.org/about/what-we-do/> (last accessed June 13, 2023).

⁴⁶ Utah Supreme Court Standing Order No. 15 (Amended September 21, 2022) available at <https://utahinnovationoffice.org/wp-content/uploads/2022/10/Standing-Order-No.15-Amended-9.21.22.pdf> (last accessed June 13, 2022).

⁴⁷ See also D. Engstrom et al., *Legal Innovation After Reform: Evidence from Regulatory Change*, at 23-35 (2022), available at <https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf> (last accessed June 20, 2023) (describing and categorizing examples of innovation resulting from regulatory reform in Utah, Arizona, and England and Wales).

⁴⁸ GovAssist Legal, <https://govassistlegal.com/> (last accessed Sept. 14, 2023).

⁴⁹ Hello Divorce, <https://hellodivorce.com/> (last accessed June 15, 2023). Note that Hello Divorce does operate in Texas in a limited capacity and might be able to expand services with reforms.

Legal Zoom: Provides form completion services and ability to consult with attorneys in the areas of family law and estate planning.⁵⁰

Rasa Legal: Provides services in expungement cases, including web-based eligibility screening, document preparation and filing, and legal representation.⁵¹

Rocket Lawyer: Provides legal services through lawyers who supplement software-based completion of legal documents.⁵²

Singular Law Group: Provides advice, document preparation, and legal representation in family law and immigration cases by contracting with attorneys.⁵³

ZafLegal: Provides web-based assistance in personal injury cases to help with insurance negotiation and settlement outside of the contingency fee model.⁵⁴

Proposed exception to Rule 5.04

The Supreme Court’s charge 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 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 nonlawyer. 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 Court’s charge—both the concern for expanding access to justice, and the admonition to protect lawyer independence—invites a proposal for a limited exception that is tailored to expand access to justice while preserving protection for lawyers to fulfill their duties to clients without undue

⁵⁰ Legal Zoom, <https://www.legalzoom.com/personal/> (last accessed June 15, 2023).

⁵¹ Rasa Legal, <https://www.rasa-legal.com/> (last accessed June 15, 2023).

⁵² Rocket Lawyer, <https://www.rocketlawyer.com/> (last accessed June 20, 2023).

⁵³ Singular Law Group, PLLC, <https://singular.law/> (last accessed June 15, 2023).

⁵⁴ ZafLegal, <https://www.zaflegal.com/> (last accessed June 15, 2023).

pressure from nonlawyer co-owners or managers.⁵⁵ In this respect, the response to the Court’s invitation to consider whether modifications should focus on certain services for which there is a particular need is *yes*. While we do not propose to define in advance those services that may be provided under the exception to Rule 5.04, we do 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,⁵⁶ the Subcommittee proposes to allow *certified and licensed entities* to provide legal services for a profit,⁵⁷ within criteria specified either by the text of the rule, or by guidance promulgated by the approving agency, 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 Subcommittee’s intention for and expectation of the regulating authority 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 lawyer independence.

This proposal in satisfaction of the Supreme Court’s charge could take the form of a pilot program or “regulatory sandbox” 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 5.04.⁵⁸ The subcommittee 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

⁵⁵ 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 lawyer independence.

⁵⁶ 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*, at 8. 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 of Texas apparently does. *See also id.* at 2 (“For years, the Utah Supreme Court has made combating the access-to-justice crisis confronting Utahns *of all socioeconomic levels* a top priority.” (emphasis supplied)).

⁵⁷ The Utah regulatory scheme expressly regulates entities and not individuals. *See* Utah Standing Order No. 15, *supra*, at 8.

⁵⁸ *See supra* 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).

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.

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 Judicial Branch Certification Commission (or other specified regulating authority) 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 Judicial Branch Certification Commission (or other regulating authority), 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.

Regulatory structure under Judicial Branch Certification Commission

The [Judicial Branch Certification Commission](#) (JBCC),⁵⁹ which is administratively attached to the Office of Court Administration,⁶⁰ as the apparently most suitable pre-existing regulatory entity

⁵⁹ The JBCC is governed generally by chapter 152 of the Government Code. *See also* www.txcourts.gov/jbcc/jbcc-statutes-rules-policies/ (last accessed Sept. 14, 2023) (collecting statutes, rules, and policies applicable or related to the JBCC). It is composed of nine members appointed by the Supreme Court of Texas. Tex. Gov’t Code § 152.052.

⁶⁰ *See* Tex. Gov’t Code § 152.103; *see also* Rules of the Judicial Branch Certification Commission, Rule 2.3, *available at* www.txcourts.gov/media/1456635/jbcc-rules-2021.pdf (last accessed Sept. 20, 2023)

for purposes of administering the process of approving and overseeing non-lawyer-owned firms providing legal services.⁶¹ The Texas Supreme Court is authorized by statute to assign regulatory programs to the JBCC,⁶² and to promulgate rules to be administered by it.⁶³ Accordingly, the JBCC is well situated to be delegated the responsibility (including through the appointment of an advisory board including Texas-licensed attorneys⁶⁴) of overseeing entities offering legal services under a provisional exception to Rule 5.04, whether characterized as a “pilot program” or “regulatory sandbox.”⁶⁵ Under either concept or choice of terminology, the Court could impose a specific sunset deadline, as the Utah Supreme Court has done.⁶⁶ 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

⁶¹ The JBCC qualifies well on all four criteria identified by the Subcommittee as important factors relating to evaluating the options for regulating entities: public perception, available resources, existing legal authority, and capacity to increase scale. 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 included the Access to Justice Commission, the Legal Access Division of the State Bar, or an entirely new office.

⁶² See *id.* § 152.051.

⁶³ The JBCC operates subject to rules promulgated by the Supreme Court. See Misc. Docket No. 21-9098 (Tex. Aug. 27, 2021) (order approving rules), available at www.txcourts.gov/media/1456635/jbcc-rules-2021.pdf (last accessed Sept. 20, 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); and it must develop and recommend a code of ethics for those it regulates, see *id.* § 152.205.

⁶⁴ The JBCC is statutorily authorized to establish advisory boards to advise it on policy and those regulated. See *id.* § 152.152; see also <https://www.txcourts.gov/jbcc/advisory-boards/> (listing current JBCC advisory boards).

⁶⁵ 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 <https://www.texaspolicy.com/wp-content/uploads/2022/11/2022-11-RR-AfO-ReducingRegulatoryUncertainty-RodBordelon.pdf> (last accessed Sept. 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/ (last accessed Sept. 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 Supreme Court Standing Order No. 15, at 3 (as amended Sept. 21, 2022).

⁶⁶ “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 Supreme Court Standing Order No. 15, at 3 (as amended Sept. 21, 2022).

would be provided to low-income Texans, and to monitor the effectiveness of each approved entity in that regard. Elements of the required disclosures should require descriptions of:

- the scope of the proposed legal services;
- the intended client base;
- 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-lawyers;
- specific written protections for lawyer 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.

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,⁶⁷ and management of client funds;
- prominent disclosure of the fact of non-lawyer 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;
- providing information to clients about how to report complaints to the regulating authority,⁶⁸ and regular reporting of complaints received;
- collection and reporting of data about client demographics,⁶⁹ legal services provided, fees collected, and objective outcomes; and

⁶⁷ The requirement for protection of client confidences would preclude the harvesting and profiting off of private client information by licensed entities.

⁶⁸ For example, see the Judicial Branch Certification Commission's complaint form at www.txcourts.gov/media/1454805/jbcc-complaint-form-2022.pdf (last visited Sept. 13, 2023). See generally www.txcourts.gov/jbcc/compliance (last visited Sept. 13, 2023) (describing JBCC's complaint procedure).

⁶⁹ 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), available at <https://mdcourts.gov/sites/default/files/import/accesstojustice/pdfs/srlreportfy22.pdf>.

- disclosure of whether the entity carries malpractice insurance.

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-lawyers.⁷⁰ For example, it generally may not be appropriate to permit non-lawyers 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-lawyer-owned firms seems unlikely to further expand access to justice.⁷¹

Through the Subcommittee's engagement with representatives of various practice areas, helpful input has been received about whether and how the JBCC should consider entity applications to provide legal services in those particular areas of practice.⁷² Reports received reflecting the perspectives of various practice areas discussed below are attached to this memorandum, in the order received. Considering the deadlines for reporting to the Texas Supreme Court and the certainty of continuing discussions on these subjects to the extent the 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 Subcommittee could have hoped to accomplish to propose fully comprehensive and definitive proposals for each affected practice area. That said, our work to date 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.

⁷⁰ 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).

⁷¹ 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 Rule 1.04(f) & (g).

⁷² 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. The Subcommittee acknowledges the substantial effort put into written feedback provided in this process, and greatly appreciates the constructive engagement of many lawyers who were otherwise generally opposed to any proposed reform.

Family law⁷³

There should be no serious question that family law is an area in which there is great need for civil legal assistance among low-income Texans,⁷⁴ but the the adequacy of data to support authorization legal services provided by non-attorney-owned firms in Texas has been questioned, at least so far as it applies to family law.⁷⁵ In addition to other general concerns expressed by family-law practitioners in opposition to non-lawyer ownership of firms by non-lawyers, 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.⁷⁶ Clients with the means to hire lawyers under traditional models already inadvisedly 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,⁷⁷ could be susceptible to cost-saving innovations that should not present concerns. To

⁷³ Written input from the Family Law Council includes the attached memorandum 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”).

⁷⁴ See, e.g., Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans* 35 (2022) (“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 collecting or paying child support (9%), and separation or divorce (9%).”); *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).

⁷⁵ The FOFLC Memo (see *supra* note 74) 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 supporting statistics underlying the access-to-justice crisis in Texas. See *supra* 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*, available at <https://www.teajf.org/news/statistics.aspx>)). The FOFLC Analysis of “Access to Justice Facts” (see *supra* note 74) 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 themselves nevertheless “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 supposed “lack of input from trial judges whose courts have family law jurisdiction,” FOFLC Memo at 2, yet does not suggest that Texas judges with family-law jurisdiction actually disagree about the substantial unmet civil legal needs of low-income Texans in the area of family law. Ultimately, 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).

⁷⁶ See Rule 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 Rule 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.

⁷⁷ In the opinion of the Family Law Council, “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.

the extent Rule 5.04 is reformed over their objection, the Family Law Council proposes certain regulations beyond those contemplated by this Subcommittee,⁷⁸ including “strict criteria for determining the eligibility of low-income 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.⁷⁹

Immigration law⁸⁰

Immigration law is another often-complicated area of practice⁸¹ 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.⁸² 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.

⁷⁸ Subject to its general opposition to the reform, the Family Law Council proposes that non-lawyer 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 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.

⁷⁹ FOFLC Memo at 9. Subject to its general opposition to the reform, the Family Law Council also proposes that 100% of non-lawyer-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.

⁸⁰ Written input from representatives of the Immigration Section of the State Bar includes the attached “Report in Response to the Access to Justice Commission” dated July 25, 2023 (hereinafter, July 2023 Report), PowerPoint slides presented to the scope of practice subcommittee on August 25, 2023, and a follow-up letter dated September 20, 2023 from immediate-past section chair Roy Petty.

⁸¹ See generally July 2023 Report at 5-8.

⁸² 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 short of representation in federal courts that could be of great assistance to low-income Texans.

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.⁸³

The July 2023 Report identifies a consumer-protection concern with respect to “notarios publicos,”⁸⁴ which should be considered by the JBCC with respect to any future entity application implicating that nomenclature.

The Subcommittee has encouraged the Immigration Section of the State Bar to research the types of immigration-law services being offered by alternative business structures 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.

Tax law⁸⁵

Tax is an area where non-lawyers already have a wide scope of permitted practice. Thus with respect to tax law, 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 we would encourage the JBCC to consider, that non-lawyer-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 that “[t]hese individuals

⁸³ 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).

⁸⁴ *See* July 2023 Report at 32-34.

⁸⁵ Written input from representatives of the Tax Section of the State Bar includes the attached memorandum dated May 23, 2023 (hereinafter, May 2023 Comments).

are subject to specialized training, education, and certification and therefore do not pose the same risk” as unregulated tax return preparers discussed above.⁸⁶

The tax practitioners also note the complexity of tax practice, and the heightened risks to clients of incompetent representation.⁸⁷

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.⁸⁸ The Subcommittee 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 a lawyer’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 lawyer 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 lawyers’ 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 lawyer 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.

⁸⁶ May 2023 Comments at 4.

⁸⁷ *Id.* at 4-5.

⁸⁸ 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 the terms of attorney employment agreements (or otherwise be provided to the attorneys),⁸⁹ in company policies,⁹⁰ and in applications for certification to offer legal services with non-attorney ownership or management.⁹¹ 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-lawyer ownership or management can be found in the developing field of Proactive Management-Based Regulation or “PMBR.”⁹² 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 Colorado⁹³ and Illinois.⁹⁴ Any implementation of PMBR should include consideration of evidentiary privileges which may be desirable to promote an effective self-assessment process.

Safeguards to ensure prioritization of service to low-income Texans

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 and to prevent abuse.

⁸⁹ See, e.g., ABA Special Committee on Prepaid Legal Services Feb. 1983 proposed amendment to draft Rule 5.4 (available in Garwin, *supra*, at 611).

⁹⁰ See, e.g., ABA Commission on Multidisciplinary Practice Aug. 1999 recommendation (available in Garwin, *supra*, 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).

⁹¹ See, e.g., Arizona ABS Code E.2.

⁹² 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/ (last visited July 21, 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 (last visited July 21, 2023).

⁹³ See Lawyer Self-Assessment Program, available at <https://coloradosupremecourt.com/AboutUs/LawyerSelfAssessmentProgram.asp> (last visited July 21, 2023).

⁹⁴ Ill. S. Ct. R. 756(e)(2) (requiring self-assessment for attorneys who disclose failure to obtain malpractice insurance).

For purposes of this reform, “low-income Texans” should be defined by the Working Group to include individuals who affirm that their income or available assets does not exceed an eligibility threshold determined by reference to federal poverty guidelines.⁹⁵ Individuals previously approved for legal aid utilizing the same or more restrictive eligibility requirements—and those who receive government benefits—should be presumed to be eligible.⁹⁶

In its discretion, the JBCC should 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.

Approved entities should be encouraged to prioritize and maximize the provision of services to low-income Texans. But at a minimum for approval, the JBCC should consider establishing a minimum percentage threshold of the services provided or clients served by the entity and identifiable as services to be provided for free or at rates reasonably affordable to low-income Texans. 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.

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 the Texas Access to Justice Foundation.

As an element of the process of initially approving and then reapproving entities to provide legal services, the JBCC 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.

⁹⁵ See generally Memorandum from Kennon L. Wooten to Scope of Practice Subcommittee regarding “Eligibility for Contemplated Services” (Sept. 21, 2023).

⁹⁶ Cf. Tex. R. Civ. P. 145(e) (evidence required to demonstrate inability to pay costs in Texas courts).

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May 25, 2023

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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

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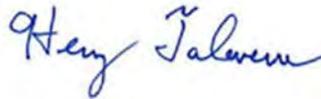
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DIRECTORS, THE EXECUTIVE COMMITTEE OR THE GENERAL MEMBERSHIP OF THE STATE BAR OF TEXAS. THE TAX SECTION, WHICH HAS SUBMITTED THESE COMMENTS, IS A VOLUNTARY SECTION OF MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

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 "Henry".

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.¹ Specifically, “[t]axpayers are harmed by the absence of minimum competency standards for return preparers.”² 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.³ 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.”⁴ Competence is defined as the “possession or the ability to timely acquire legal knowledge, skill, and training

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

² *Id.*

³ 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>.

⁴ Tex. Rules Disciplinary P. R. 1.01(a).

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

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 practitioner⁷” a lawyer should “engage in continuing study and education.⁸” 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.

⁵ *Id.* at Terminology.

⁶ *Id.* at P. R. 1.01 Comment 2.

⁷ *Id.* at P. R. 1.01 Comment 8.

⁸ *Id.*

REPORT IN RESPONSE
TO THE
TEXAS ACCESS TO JUSTICE COMMISSION

TO THE HONORABLE JUSTICES OF THE TEXAS SUPREME COURT,
THE COMMISSIONERS OF THE TEXAS ACCESS TO JUSTICE COMMISSION, &
THE MEMBERS OF THE BOARD OF DIRECTORS OF THE STATE BAR OF TEXAS

BY MEMBERS OF
THE IMMIGRATION & NATIONALITY LAW SECTION OF THE STATE BAR OF TEXAS
AND THE
AMERICAN IMMIGRATION LAWYERS ASSOCIATION TEXAS CHAPTER

JULY 2023

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1. Introduction

The Texas Access to Justice Commission (“TAJC”) has invited feedback on two proposals. The first would allow certain non-attorney paraprofessionals to provide limited legal services directly to low-income Texans. The second would allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving professional independence. As we understand the second proposal, the economic interests could be held not just by paraprofessionals but by entities such as venture capitalists, multinational conglomerates like Alphabet Inc. (the owner of Google), or even foreign corporations like Alibaba.

The comments of the Hon. Brett Busby and the Hon. Michael Massengele at the TAJC meeting in January 2023, note that “Big Tech” would have the resources to connect people with legal resources, including determining for people whether they need to hire a paraprofessional or a lawyer.¹ Online services mentioned by Justice Busby are Rocket Lawyer and LegalZoom.²

We thank the Commissioners of the TAJC for seeking feedback on the two proposals. We members of the Immigration & Nationality Law Section of the State Bar of Texas (the “Section”) and the Texas Chapter of the American Immigration Lawyers Association (“AILA TX”) applaud the efforts to ensure that all Texans have access to critical legal services regardless of income or ability to pay. After discussing the issue at length and reaching out to community stakeholders for feedback, we offer our comments in response to the current proposals.

Federal Preemption of the Regulation of Immigration Practitioners

Representation of noncitizens³ 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.

Primarily, this group includes certain U.S. attorneys and nonprofit organizations accredited by the U.S. Department of Justice (“DOJ”), referred to as “Recognized Organizations”⁴ In less common circumstances, other individuals (e.g., consular officials and law students) may be authorized to

¹ Texas ATJ, *Work Group on Access to Legal Services for Low-Income Texans*, YouTube (Jan. 31, 2023), <https://www.youtube.com/watch?v=dw17eDbz87A> at 3:30-3:37.

² *Id.* at 3:34:40.

³ For purposes of this Report, a noncitizen is someone other than a U.S. citizen. A noncitizen includes those who are not authorized to be in the United States as well as those who are authorized to be in the United States, e.g., a lawful permanent resident, DACA recipient, Temporary Protected Status registrant, or a nonimmigrant. Some of those who are not authorized to be in the United States may be eligible to become authorized to remain in the United States.

⁴ See <https://www.justice.gov/eoir/reference-materials/ic/chapter-2/4>

offer such services. Neither statute nor regulation authorizes a state to add any class of individuals or entities to the federal list of who may provide immigration services.

Any Texas law or rule regulating who may prepare or file immigration cases or give legal advice would be preempted under the Supremacy Clause.⁵ Texas could not lawfully permit anyone, regardless whether a paraprofessional or a computer algorithm, to advise whether a person is eligible for an immigration benefit, or whether any immigration form should be filed on a person's behalf. Texas could not even permit a paraprofessional to file an immigration application or help a pro se applicant to file an immigration application through an online service.

Complexity of Immigration Law

Even in the absence of federal preemption, the complexity of immigration law should preclude paraprofessionals from handling immigration matters. The practice of immigration law does not lend itself to limited legal services of the type that the TAJC envisions for three reasons.

First, effective assistance in an immigration matter requires a sophisticated understanding of the written law as well as agency guidance, executive orders, proposed new rules, and the interaction between various federal agencies, including their differing interpretations and application of the law.

Second, given the overlap between immigration law and other areas such as criminal law, family law, and employment law, the analysis required for any immigration case also involves consideration of the impact of adjacent legal matters. The particulars of a divorce or charges in a criminal matter can significantly impact immigration cases.

Third, immigration law is not transactional like the sale of real property. A competent immigration practitioner must evaluate the immigration and criminal history of the individual, assess whether the noncitizen properly was eligible for prior grants of legal status, and determine whether a new immigration status would impede the noncitizen's immigration objectives.

Consequences of Ineffective Assistance by Paraprofessionals

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. 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.

⁵ U.S. Const. art. IV, cl. 2.

Permitting Paraprofessionals to Practice Immigration Law will Increase Arrivals of the Undocumented at the Southern Border

Licensing paraprofessionals to dabble in immigration law or allowing online services to process immigration applications—actions prohibited by federal preemption—likely would cause an increased influx of undocumented individuals at the Southern border. The Houston Asylum Office, grappling with a high volume of asylum applications, already takes several years to adjudicate those applications. Opportunistic paraprofessionals and online services could exploit this delay and their customers by filing low-cost, hastily prepared asylum applications online. Once filed, applicants become eligible for a work permit and a Social Security card after 150 days. With those two documents, the applicant may legally work and obtain a Texas driver’s license. Of course, the unwitting recent arrival who is unfamiliar with the immigration system would not realize the victimization until years later when the application is denied.⁶

No other state permits paraprofessionals to dabble in immigration law. Texas would become a magnet for recent undocumented arrivals who would believe that only in Texas could they get low-cost help to remain in Texas.

Proposed Requirement for Paraprofessionals to Refer Noncitizens for Written Opinions

Actions taken for a noncitizen in legal areas outside of immigration law could adversely affect immigration status. We provide examples of how divorce, annulment, spousal and child support, disability and veterans benefits, and involuntary commitment could adversely affect immigration status. We, therefore, ask that any rules regulating paraprofessionals require the paraprofessional to refer a noncitizen to either an immigration attorney or a Recognized Organization to assist in immigration matters. A written opinion of an authorized immigration practitioner would help the noncitizen understand the potential immigration impact of the legal service offered by the paraprofessional. This Report explains that such opinion letters are common to advise noncitizens of the immigration consequences of plea agreements as contemplated by the Supreme Court of the United States in *Padilla v. Kentucky*, 559 U.S. 356 (2010).

Proposed Requirement for Paraprofessionals to have Noncitizens Acknowledge in Writing that Communications Between Paraprofessionals and Noncitizens are not Privileged

As explained below, the Federal Rules of Evidence do not apply in immigration proceedings. Under Fifth Circuit precedent, communications with paraprofessionals would not be privileged in immigration proceedings. Paraprofessionals representing noncitizens in all types of matters

⁶ The Texas Attorney General is statutorily empowered to sue and fine unscrupulous individuals and online entities that victimize Texas’ noncitizens, actions which, in turn, abuse our immigration system. *See, e.g.*, Texas Bus. & Com. Code Ch. 17.

(whether family, immigration, etc.) should be required to have the noncitizen acknowledge in writing, in the noncitizen's native language, that all communications with the paraprofessional are not privileged before DHS or the immigration courts. Doing so will be a step toward making sure that the noncitizen is aware of the risks involved in receiving services from a paraprofessional.

Alternatives for Expanding Access to Legal Services

The Section and AILA TX recognize that many Texans face economic hardship and struggle to afford legal services, particularly in civil law matters including immigration matters. We are fortunate that DOJ has responded to the immigration needs of Texans by accrediting 103 Texas nonprofits that are available to assistant low-income noncitizens.⁷ Many of our members are employed with those organizations.

However, we are confident that there are steps we can take in the field of immigration law to expand access without risking unlicensed practice in a complex field, and we offer several proposals herein.

We are pleased to submit our response for the TAJC's consideration. Although federal law would not permit Texas to allow paraprofessionals to provide immigration legal services, we look forward to partnering with the TAJC, the Texas State Bar, and other stakeholders to identify and implement programs that will achieve the same goals without compromising the quality of immigration services available to those in need.

⁷ See *infra* p. 32 and note 69.

2. Concerns about immigration law services provided by paraprofessionals

2.1 Complexity of immigration law

Immigration law is a highly complex and constantly changing area of law. The Section and AILA TX are highly skeptical that paraprofessionals can be adequately trained to identify and analyze the full range of issues that arise in immigration practice.

Commenting on the complexity of immigration law, the Hon. Dana Leigh Marks, President of the National Association of Immigration Judges, stated that “[t]he proceedings of which we preside rival the complexity of tax law proceedings, with the consequences which can implicate all that makes life worth living, or even threaten life itself.”⁸ Judge Marks went on to state that immigration matters can be so “complex and high-stakes” as to be tantamount to death penalty cases.⁹ The Ninth Circuit has stated that “[w]ith only a small degree of hyperbole, the immigration laws have been termed second only to the Internal Revenue Code in complexity. A lawyer is often the only person who [can] thread the labyrinth.”¹⁰ Likewise, the Eleventh Circuit cautions that, “[i]t would seem [determining when removal proceedings commence] should be a simple issue with a clear answer, but this is immigration law where the issues are seldom simple, and the answers are far from clear.”¹¹

Many view the practice of immigration law to consist of nothing more than filling out forms and preparing simple paperwork, but nothing could be further from the truth. Typically an immigration attorney focuses on one or two sub-specialty areas within immigration law, such as family-based petitions, citizenship and naturalization, employment-based petitions, workplace compliance, education-based matters, affirmative asylum before U.S. Citizenship & Immigration Services (“USCIS”), defensive asylum before the Executive Office for Immigration Review (“EOIR”), criminal immigration, removal relief before EOIR, litigation in federal courts, visa services before the Department of State (“DOS”), and/or border issues before U.S. Customs and Border Protection (“CBP”).

An immigration client’s primary need is to receive competent legal advice regarding the ability to enter or remain lawfully in the United States. To effectively practice immigration law, a practitioner must understand the following:

⁸ Written Statement of the Hon. Dana Leigh Marks, President, National Association of Immigration Judges, to Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law of the House Committee on the Judiciary on Oversight Hearing on the Executive Office for Immigration Review (June 17, 2010); *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) (deportation may result in “loss of both property and life, or of all that makes life worth living.”)

⁹ Written Statement of the Hon. Dana Leigh Marks at 5.

¹⁰ *Castro-O’Ryan v. U.S. Dept. of Immigration and Naturalization*, 821 F.2d 1415, 1419 (9th Cir. 1987).

¹¹ *Alanis-Bustamante v. Reno*, 201 F.3d 1303, 1308 (11th Cir. 2000).

- The Immigration and Nationality Act (“INA”);
- Federal regulations;
- Ongoing policy changes (both internal and procedural) from multiple federal agencies;
- Presidential administration agendas;
- Unpublished federal agency procedures;
- The current political climate toward immigrants;
- Federal agency decisions; and
- Federal case law.

Federal courts regularly interpret immigration law in an incongruous and anomalous manner.¹² Because “nothing is ever simple in immigration law”¹³ and because of the high stakes involved in obtaining immigration benefits, it is not surprising that the Supreme Court of the United States has admonished that “[m]eticulous care” must be taken to assure that a noncitizen is not unfairly deprived of an immigration benefit.¹⁴

All these legal and factual sources, along with the issues they raise, contribute to a complex landscape for practitioners. Navigating a client’s immigration eligibility becomes even more challenging as laws, policies, and procedures frequently change. Moreover, a significant advantage of being an attorney is the opportunity to engage with government officials through bar association liaison activities. These interactions offer our members an insightful understanding of the inner workings of these agencies, including their internal processes, staffing, and other nuances that are not easily available to the public.

Immigration attorneys also navigate a multitude of ancillary matters pertaining to immigration and citizenship. These encompass diverse domains, including criminal law, foreign law, adoption matters, tax law, employment law, national security law, and workplace compliance issues. U.S. immigration law recognizes the birth and marriage laws of the countries where these events occur. Consequently, an analysis of foreign law may be necessary in connection with an immigration matter. This process often requires distinguishing between religious, legal, and customary

¹² *Scialabba v. Cuellar de Osorio*, 573 U.S. 41,56 (2014) (underscoring the complex statutory scheme inherent in immigration law); *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (observing that “Immigration law can be complex, and it is a legal specialty of its own” which does not generally fall “within the range of competence demanded of attorneys” who practice other areas of law); *Baltazar-Alcazar v. INS*, 386 F.3d 940, 947-48 (9th Cir. 2004)(remarking that “the immigration laws have been termed second only to the Internal Revenue Code in complexity. A lawyer is often the only person who could thread the labyrinth[.]”); *Cervantes v. Perryman*, 954 F. Supp. 1257, 1260 (N.D.Ill. 1997) (observing that the patchwork of Immigration law “presents an example of legislative draftsmanship that would cross the eyes of a Talmudic scholar”).

¹³ *Padilla*, 559 U.S. at 381 (Alito, J., concurring).

¹⁴ *Bridges v. Wixon*, 326 U.S. 135, 154 (1945).

relationships, as well as resolving conflicts between international laws. Similarly, immigration issues in adoption may require analysis of the Hague Convention and regional traditions.

Regarding workplace compliance, frequent issues include raids and fraud investigations by Immigration and Customs Enforcement (“ICE”), audits by the Department of Labor (“DOL”), and potential criminal liability. Business immigration issues also frequently cross over with federal and state wage and hour law, as well as international tax, business, customs, and export controls law.

To competently complete even the simplest immigration application or petition, a practitioner must be able to analyze properly how a client’s criminal history, immigration history, familial relationships, income level, and various other issues could impact the client’s eligibility for immigration benefits. Many of the words and terms on forms have legal meanings or may be the subject of much litigation in the area. Committing one mistake regarding a client’s eligibility for benefits can lead to severe consequences, including removal and a permanent bar from future immigration benefits.¹⁵

Immigration practitioners therefore must be well-versed in the complexities of immigration law and have a competent foundational understanding of the many integrated areas of law. For example, a dismissal of a Texas criminal offense still may be a conviction under immigration law.¹⁶ Even a Texas pretrial intervention agreement may or may not be a conviction depending on the language of the agreement.¹⁷

A person with an expunged criminal conviction may believe that the criminal conviction no longer exists, and, therefore, not list the conviction on an immigration application. However, certain criminal expungements are not recognized for immigration purposes.¹⁸ Even expunged convictions can have dire immigration consequences.

¹⁵ There are several barriers to obtaining a green card or visa to enter the U.S., known as grounds of "inadmissibility." These can result from a period of unlawful presence in the country, prior illegal entry, or fraudulent marriages intended to circumvent immigration laws. The bars differ in duration (e.g., 3 or 10 years) to permanent bars in more severe cases. These bars can profoundly impact an individual's life, potentially preventing them from witnessing their children's growth or forcing separation from their families. Depending on the specific circumstances, these bars also dictate whether a person, if eligible, can apply for a green card within the U.S. or must do so from abroad. This decision can result in either temporary or permanent separation from family during a lengthy application process.

¹⁶ The INA defines the term “conviction” for purposes of immigration law. 8 U.S.C. § 1101(a)(48). That definition is not the definition followed by states. A dismissal after a Texas deferred adjudication is not a conviction under Texas law but is a conviction under the INA’s definition. *Moosa v. I.N.S.*, 171 F.3d 994, 1006 (5th Cir. 1999).

¹⁷ *Matter of Mohamed*, 27 I. & N. Dec. 92, 98 (BIA 2017).

¹⁸ *Matter of Marroquin*, 23 I. & N. Dec. 705 (Atty. Gen. 2005); *but see Gaona-Romero v. Gonzales*, 497 F.3d 694 (5th Cir. 2007) (even though Fifth Circuit precedent treats all convictions as valid

Another example is a common question on immigration forms: “Have you ever made a false statement of a material fact for an immigration benefit?” “False statement” has a legal meaning, as does “material fact” and “immigration benefit.” Since immigration forms are signed under penalty of perjury, a mistake may lead to consequences of criminal perjury, civil fraud, and a bar to future immigration benefits.

2.2 Overlap between immigration law and other practice areas

Given the interactions between immigration law and other areas of law, paraprofessionals practicing in other fields should be required to refer all noncitizens to Recognized Organizations or immigration attorneys for a written opinion so that noncitizens may be advised of potential adverse immigration consequences. Actions taken in practice areas outside of immigration law may jeopardize a noncitizen's immigration status or hinder the noncitizen's ability to secure a new status. A risk assessment prepared by a licensed attorney or Recognized Organization is critical.

This proposed referral system has its roots in *Padilla v. Kentucky*.¹⁹ The Supreme Court found that a noncitizen has a right under the Sixth Amendment to be fully advised of the immigration consequences of a plea agreement prior to accepting the plea. *Padilla* has led to a common practice among criminal defense attorneys to refer clients to immigration lawyers to craft “*Padilla* letters.” Prudent attorneys representing noncitizens in practice areas other than immigration law refer their clients to immigration attorneys for such opinions.

Applicable practice areas that may affect a noncitizen's immigration status or that of sponsors include, but certainly are not limited to, family, Social Security, health, and poverty law. The following are examples of how decisions taken in those practice areas may affect immigration status.

for immigration purposes, the panel vacated its decision affirming a removal order based on a vacated criminal conviction on the Attorney General's request to ensure nationwide uniformity concerning the definition of conviction).

¹⁹ “The severity of deportation—‘the equivalent of banishment or exile,’—only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation.” *Padilla v. Kentucky*, 559 U.S. 356, 373–74, 130 S. Ct. 1473, 1486, 176 L. Ed. 2d 284 (2010) (citations omitted).

Annulment & Divorce

Many noncitizens attain Lawful Permanent Resident (“LPR”) status through a family-member-initiated immigrant petition. The government’s waitlist to obtain the status through an immigrant petition may be years or decades.²⁰ Hundreds of thousands, if not millions, of noncitizens are on that waitlist. For immigrant petitions, the government classifies applicants into categories that have substantial backlogs, with certain categories requiring that the beneficiary remain unmarried until LPR status is acquired. Marriage of the beneficiary, in the best-case scenario, could delay a noncitizen's eligibility by several decades or, in the worst case, cause the automatic and permanent revocation of a noncitizen's eligibility for legal status.

A paraprofessional, for example, may try to prove an informal marriage within a divorce filing. If the noncitizen is in an immigrant petition category reserved for unmarried beneficiaries, the mere filing of a divorce petition likely will be construed by USCIS as an admission of marriage. USCIS will revoke the petition. If the applicant is at the immigration stage in which an application for LPR status was filed based on the petition (USCIS Form I-485), the applicant may be placed in removal proceedings upon the revocation of the petition and removed from the United States.

Similarly, a noncitizen separated shortly after marrying a U.S. citizen may be advised to seek an annulment rather than a divorce if she meets the criteria of Tex. Fam. Code § 6.102-6.110. But if the noncitizen experienced domestic abuse or cruelty during the marriage, an annulment could make the victim ineligible for legal status under the Violence Against Women Act of 1994 (VAWA), Pub. L. 103-322, 108 Stat. 1796 (1994).

In contrast, seeking a divorce on grounds of cruelty, instead of insupportability, regardless of the length of marriage, would strengthen a claim under VAWA.²¹

If a noncitizen had obtained conditional LPR status (a temporary status based upon less than two years of marriage), an annulment would be an admission that the couple did not have a bona fide marriage to support the legal status. The annulment likely would result in the termination of the noncitizen’s status and could result in the noncitizen’s removal from the United States.

Spousal & Child Support

If the spouse or child is an LPR sponsored by the spouse or parent/stepparent, and a USCIS Form I-864 (Affidavit of Support Under Section 213A of the INA) was signed, the sponsor’s obligation to support the beneficiary continues regardless of any divorce or child support guidelines.

²⁰ See, e.g., <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-august-2023.html>

²¹ Similarly, if the abused noncitizen has conditional LPR status, and is a party to a divorce, petitioning for divorce because of cruelty would strengthen her ability to obtain a waiver so that she could obtain LPR status.

The I-864 is a contract which may be enforced by the beneficiary and the U.S. government. The child or guardian may seek financial support from the sponsor independently of, or instead of, child support. Often, the required financial support will exceed the child support guideline calculations. In such cases, limiting financial support to child support would be malpractice for any attorney.

On the other hand, the sponsor's obligations under the I-864 terminate when the beneficiary becomes a U.S. citizen or the beneficiary has worked for 40 quarters. The child may have derived U.S. citizenship through residing with and being in the legal custody of a biological parent who is a U.S. citizen. The Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, 114 Stat. 1631 (2000), automatically grants citizenship to a child who satisfies several requirements even though the child may not have a U.S. passport or certificate of citizenship. Evaluating whether the child is a U.S. citizen is a complicated process that sometimes results in U.S. district court litigation.

Social Security & Disability Benefits

If an LPR seeks Supplemental Security Income ("SSI") benefits, the LPR must report the resources and income of the sponsor and joint sponsors because they are contractually obligated to provide economic support to the beneficiary. If the paraprofessional does not report those resources on the beneficiary's behalf, the beneficiary could be charged with fraud and be required to pay back benefits that were received. A conviction for fraud could lead to the initiation of removal proceedings and the removal of the disabled LPR.

Whether the beneficiary still is covered by the I-864 can be a complicated determination (only authorized employment counts towards the necessary quarters for Social Security credit to relieve the sponsor of the duty to support the beneficiary) and may depend on whether the beneficiary automatically acquired U.S. citizenship. That calculation is further complicated because authorized employment for Social Security credit does not require an employment authorization document or a passport endorsement that authorizes employment. Those who are authorized to seek employment without employment authorization documents include, but are not limited to asylees, refugees, and spouses of L-1 visa holders.

Health and Medical Care

An involuntary commitment process can affect the noncitizen's immigration status or the ability to acquire legal status. A noncitizen who is determined to have a physical or mental disorder accompanied by certain behavior associated with the disorder is inadmissible, meaning that the noncitizen cannot easily obtain LPR status. A noncitizen determined to be inadmissible because of that disorder could lose legal status. A noncitizen's legal incompetence during the five-year period

prior to the application for naturalization could adversely affect the noncitizen's ability to naturalize.²²

Poverty Law: Public Benefits & Veterans Assistance

A noncitizen may become deportable from the United States upon becoming a public charge during the first five years after entry into the United States. 8 U.S.C. § 1227(a)(5). Seeking SSI or means-tested public benefits during that time could result in the LPR being removed from the United States.

As of 2022, approximately 45,000 LPRs serve in the U.S. military.²³ Homeless veterans generally are entitled to receive housing vouchers through the HUD-VASH (Veterans Affairs Supportive Housing) Program. Receipt of such vouchers likely would be considered public assistance by USCIS for purposes of § 1227(a)(5), leading to the potential removal from the United States of the LPR veteran. In such a case, the veteran should naturalize (become a U.S. citizen), if eligible, prior to seeking the vouchers. Of course, if the veteran is not eligible for naturalization at that moment, the veteran may want to consider not seeking the vouchers to avoid a risk of removal.

These scenarios underscore the complexities and pitfalls that can arise when paraprofessionals (and even attorneys) without comprehensive knowledge of immigration law advise noncitizens. These unintended consequences can be far-reaching, including removal and loss of the opportunity to live and work legally in the United States. To protect the public, paraprofessionals practicing in all legal areas must be required to refer all noncitizens to a Recognized Organization or immigration attorney for the equivalent of a *Padilla* letter to avoid these negative consequences.

Paraprofessionals should be required to have all noncitizens sign acknowledgements that their communications are not protected by attorney/client privilege

The Federal Rules of Evidence (“FRE”) do not apply to proceedings before DHS or the immigration courts.²⁴ Therefore, the more expansive privilege rules of FRE 503 do not apply. Instead, Fifth Circuit precedent would apply. The Fifth Circuit has recognized the general principal that privilege applies between the client and the representative before a federal agency only if agency regulations permit the representative to appear and the representative is covered by the disciplinary rules of the agency.²⁵ Paraprofessionals are not authorized to appear before either agency. Paraprofessionals also are not subject to discipline by either agency.

²² See 8 C.F.R. § 316.12.

²³ Veteran Service Recognition Act of 2022, H.R. Rep. No. 117-558, at 7 (2022).

²⁴ *Matter of J-G-T*, 28 I. & N. Dec. 97, 102 fn. 7 (BIA 2020).

²⁵ *Falsone v. United States*, 205 F.2d 734, 740 (5th Cir. 1953), citing 8 Wigmore on Evidence (3rd. ed.), 2300(a), pp. 583, 584.

Noncitizens should be advised that their communications with a paraprofessional are not privileged in immigration proceedings. Either DHS or the immigration court could require the paraprofessional to testify to all communications with the noncitizen and to produce all paraprofessional work product. For example, DHS could require a paraprofessional representing a noncitizen in a divorce to testify as to the validity of the marriage or admissions of the noncitizen that could lead to adverse immigration consequences, including removal.²⁶ Similarly, if the U.S. citizen is represented by a paraprofessional, that paraprofessional could be required to testify about admissions by the U.S. citizen about the noncitizen.

Such important information must be understood by noncitizens when using a paraprofessional. Providing that information to the noncitizen in that person's native language is a step toward making the noncitizen understand the risks of working with a paraprofessional.

2.3 Mistakes have severe consequences

The consequences of ineffective assistance in immigration practice can be life-changing to those impacted. Immigration and naturalization matters often intersect with family law, tax law, and criminal law. Additionally, they encompass some of the most critical considerations in any society, such as liberty, physical safety, child protection, family unity, and the ability to maintain employment and earn a living, among other significant issues. Perhaps no other field of law touches on so many deeply meaningful topics simultaneously, making immigration law highly complex and challenging for even the most seasoned practitioners. The weight of one misstep may mean the difference between a secure life and being forced to leave the United States, separated from one's family, or even removal to a country in which one's life is at serious risk.

As a result of these serious consequences, courts have emphasized the right, based on substantive due process, for noncitizens to receive competent immigration representation.²⁷ Federal regulation also establishes the right to counsel in the submission and adjudication of benefit requests before the Department of Homeland Security ("DHS").²⁸ Given the profound consequences on a noncitizen's life, the involvement of experienced counsel is essential.

²⁶ "[H]earsay evidence is admissible in deportation proceedings. *Matter of Stapleton*, 15 I. & N. Dec. 469, 469 (BIA 1975).

²⁷ See e.g., *Paul v. I.N.S.*, 521 F.2d 194 (5th Cir. 1975) (stating that a noncitizen's right to effective assistance of counsel is grounded in the Fifth Amendment); *Contreras v. Attorney Gen. of the United States*, 665 F.3d 578, 584–88 (3d Cir. 2011) (noting that the majority of the Courts of Appeals have found that the Fifth Amendment Due Process Clause can recognize a claim of ineffective assistance of counsel in removal proceedings); *Hernandez-Mendoza v. Gonzales*, 537 F.3d 976, 978 (9th Cir. 2008) ("We have repeatedly held that the Fifth Amendment guarantee of procedural due process, including the right to competent assistance, extends to individuals seeking discretionary relief from removal).

²⁸ 8 C.F.R. § 103.2(a)(3).

Consequences of Ineffective Assistance in Immigration Court

Arguably the most serious consequences of ineffective assistance arise in immigration court proceedings. By the time a noncitizen is in removal proceedings, he or she may be at risk of being returned to a country that may not be safe to return to. The Hon. Dana Leigh Marks, former President of the National Association of Immigration Judges, has famously referred to immigration court proceedings as “death penalty cases heard in traffic court settings.”²⁹ Regardless of the noncitizen’s safety in the country of birth, the noncitizen typically is at risk of separation from family and loved ones in the United States.

Yet, alongside these extremely high stakes, there are a myriad of pitfalls for ineffective assistance in the immigration court. Immigration law, policy, and procedures continually change because of executive branch policymaking, requiring the practitioner to remain constantly educated on changes. Further, despite the gravity of the consequences, noncitizens, including children, are not provided publicly subsidized counsel. Many noncitizens in immigration proceedings may not even understand the nature of the proceedings without the assistance of counsel. Noncitizen children certainly will not understand the process.

Paraprofessionals, of course, would not be permitted to represent individuals in the immigration court, as they could not satisfy the requirements of 8 C.F.R. § 1292.1. However, if paraprofessionals assist individuals with form preparation or other aspects of an immigration practice, they necessarily will have customers in proceedings, or with removal orders, or who will otherwise find themselves encountering immigration court in one way or another. Given the gravity of potential mistakes in the immigration court—again, potentially leading to the noncitizen being returned to a country in which physical harm or death would be imminent—great pains should be taken to make sure that paraprofessionals have limited or no contact with noncitizens.

Consequences of Ineffective Assistance to Applicants for Humanitarian Relief

Even for those who are not in immigration proceedings, the consequences of ineffective assistance in DHS filings—such as applications for asylum, temporary protected status (“TPS”), Deferred Action for Childhood Arrivals (“DACA”), or U Visa designation for victims of crime who have assisted law enforcement in the investigation of a crime—are serious and can change the trajectory of the noncitizen’s life in the United States, let alone their immigration case. Failing to adhere to DHS procedure, omitting necessary information, or entering inaccurate information on immigration forms can not only lead to denial of the benefit requested, but also trigger removal proceedings or serve as the basis for fraud findings against the applicant. Even for experienced attorneys and accredited representatives, work in this area is highly complex and ever-changing, subject to federal policy changes, state government actions regarding the Texas-Mexico border,

²⁹ Dana Leigh Marks, CNN, *Immigration judge: Death penalty cases in a traffic court setting* (June 26, 2014), available at <https://www.cnn.com/2014/06/26/opinion/immigration-judge-broken-system/index.html> (last visited June 3, 2023).

constantly evolving case law, and evolving conditions in the countries from which applicants for humanitarian relief come to the United States.

For example, with some limited exceptions, noncitizens making an affirmative application for asylum must file their application within one year of arriving in the United States.³⁰ If the applicant fails to meet this deadline and does not meet one of the limited exceptions to this rule, the asylum application will be denied, and the applicant will be placed in removal proceedings. In this brief example, a paraprofessional is not under any affirmative obligation to advise the noncitizen of the one-year deadline, or of the consequences for failing to meet it. By contrast, an attorney is bound by rules of professional responsibility to act competently and diligently on behalf of a client.

In this context, noncitizens are more likely to encounter paraprofessionals claiming to be able to aid the noncitizens in form preparation for applications for asylum or other humanitarian relief, whether they qualify or not. Given the desperate circumstances often involved in applications for humanitarian relief, it is easy to see the circumstances in which noncitizens would seek out paraprofessionals, who advertise in their communities and in their native languages. But just as in the removal context, the risk of mistakes is extremely high, with misstatements by paraprofessionals potentially foreclosing opportunities for urgent and meaningful humanitarian relief for those that need it the most.

Consequences of Ineffective Assistance to Applicants for Family-Based and Employment-Based Immigration Benefits

The unauthorized practice of law is more prevalent in family-based immigration law than in any other legal field in Texas. Providers of these unauthorized services openly operate across the state, advertising via Spanish-language media, newspapers, promotional materials, storefront signs, and online platforms. Despite widespread abuse, Texas makes little effort to shield its residents from such exploitative practices, which only exacerbates consumer abuse.

First, the addition of paraprofessionals and authorized online providers to the mix of service providers risks obfuscating the line between authorized and unauthorized immigration service providers. This unintentionally would lend credibility to unauthorized providers, thus worsening consumer abuse. Second, authorizing paraprofessionals to engage in a limited practice of immigration law creates the potential for victimization of noncitizens by paraprofessionals. Texas does not adequately enforce decades-old laws against unauthorized document preparers.

Typically, the unauthorized document preparer is a notary public who refers to himself in Spanish as a “notario.” In Latin American countries, a “notario” or “notario publico” is a term commonly used to refer to a highly trained attorney who has been appointed by the government to provide certain governmental and legal services that other attorneys may not perform. This difference in

³⁰ 8 U.S.C. § 1158(a)(2)(B).

roles between countries has unfortunately created an opportunity for deceptive practices in the U.S., especially in immigration law.³¹

Often, notarios, who already mislead their victims as to their legal authority to practice law, encourage noncitizens to give incorrect information on immigration forms. Or, they simply put incorrect information on the forms without telling the victim who often is unable to read the English-language forms. In many instances, notarios do not understand what is asked or simply do not care.

A Texas Public Information Act request submitted to the Office of the Attorney General for records of consumer complaints against notarios yielded over 200 records of complaints.³² The complaints include scores of pages of testimonials of consumers harmed by Texas notarios, including failure to deliver the services promised, making false or misleading statements, using counterfeit transactions, failure to return documents, and billing for services not requested, among others. Testimonials provided by these harmed consumers and captured in the requested documents include examples like the following:

I hired a notary named Cecilia McDaniel to assist me with my immigration case after I got married to my former wife, who is a U.S. Citizen. We hired Ms. McDaniel to file a petition for me on behalf of my wife before April 30, 2001, which would have allowed me to obtain certain immigration benefits. However, apparently Ms. McDaniel did not file this petition until later around May 21, 2001, and that caused me not to qualify for certain immigration benefits. Eventually, I was even ordered to be deported/removed because of the errors that Ms. McDaniel made in my case. Also, I did not realize until much later, after speaking with an immigration attorney, that as a notary, Ms. McDaniel was not allowed to practice law, including immigration cases. Because of everything I have gone through, I feel like Ms. McDaniel cheated and defrauded me, and if she had not been involved in the case, I might not have been ordered deported/removed.

Business been helping me with immigration services. I've been [paying] all my lawyer and immigration fees and they've been helping me with my case until I went to their office on 03/06/2017 and learned that the office was closed. None of my paperwork or money [have] been returned to me, and now I have to start from scratch.

It's an immigration lawyer. They took my case. I paid them \$1200. And they told me they my case back in September. Yet in January I realize they lied. So I went in person again and talk to president. And they send paperwork then. I was trying to reach them and [no]

³¹ Texas criminalizes the act of notaries public referring to themselves as Notarios or Notarios Publico. Tex. Gov't Code § 406.017. Despite widespread consumer abuse, members are unaware of Texas enforcing the statute.

³² <https://texasimmigrationandnationalitylaw.com/reports>

answer. Now I find out they have closed. It's even in the news. They need to be hold accountable. They did submitted my paperwork yet they are asking for more information. So now I need a lawyer to continue. And have no more money[.]

[The consultant] helped people to become citizen, I got her number and I called her, she said "if you get 7 people I will come and get the document to be fixed and do all the document for them" there for she asked to pay her amount of \$1200+680 for the application. Furthermore she came in and helped my family members to become citizen, with help of doctor. Furthermore two years later other people asked me to call her and say if she can help them to. There for I called her in July 2016, and she came on the August 5 from Jacksonville FL to Houston TX. And did same [process] and took all documents and left. From then on I was calling to check if she submitted the documents to [USCIS] office, but she was always giving me excuses like" I did not have time, I will do it to nigh, and further more. After all of that I decided to call [USCIS] office to see when they have received any documents, and they told me that they don't have any document under that name and so the other people I made them to call and see if they have any, and they got the same answered that they don't have any document under that name. There for I decided to file out this form to make shore that she doesn't do all these what she did to us for other people.

This small sample of testimonials is a tiny fraction of the complaints submitted. Moreover, those who have come forward to document their stories as part of a governmental record constitute merely a fraction of the actual number of individuals who have experienced harm.

Complainants also provided testimonials directly to the Section. Maria Trinidad Gallegos provided her story, showing an example of how seriously noncitizens can be impacted by immigration consultants over many years of their lives. Mrs. Gallegos and her U.S. citizen sister enlisted the help of an immigration consultant, Yolanda Perez, to prepare an I-130 immigrant petition on Mrs. Gallegos's behalf. The consultant claimed to work for "the immigration office." The petition was completed incorrectly, leading to its denial and the loss of Mrs. Gallegos's ability to obtain 245(i) immigration relief that she no longer qualified for. The consultant also incorrectly filed an application for adjustment of status that was denied, resulting in Mrs. Gallegos and her two daughters being placed in removal proceedings. Luckily (and in an extremely rare example) the Office of the Attorney General intervened in the case, and proceedings were terminated. Mrs. Gallegos finally obtained lawful permanent residency in 2022, 21 years after filing her first application, and after spending approximately \$20,000 in immigration legal fees.

In another example, complainant Paola recounted that she hired a notario in 2019 named R. Hernandez to file her DACA renewal application, which was to expire on March 25, 2020. She paid him to file the DACA renewal application plus the filing fee. However, she never received any USCIS notice about the filing. She called him in March 2020 to inquire about the status of her application. He told her that he did not know why she had not received any notice because he sent

it. After no updates, she talked to a lawyer who told her that the notario had not likely filed if she never received receipt notices. Paola then decided to go back to the notario. The notario then told her it was not a problem, and he would file again and cover the costs. Her application (which is now considered to be an initial application) has been pending since July 15, 2021, with no date for adjudication because of the injunction in place against the adjudication of initial DACA applications.³³ Because the notary did not originally file and let more than one year lapse since her status expired, Paola lost her ability to renew DACA and now has no work authorization, after having had DACA for more than six years.

Other examples are widely available in the news. Isabel Pairazaman, a notario in Oklahoma, represented herself as having 14 years of immigration law experience. She told Gladis and Sergio Rios that despite the opinion of an attorney whom they had consulted, Mr. Rios could receive LPR status because he had married a U.S. citizen. The couple paid Pairazaman \$3,500, but when he appeared for what he thought would be an immigration interview, he was detained and removed to Mexico.³⁴ The same notario filed immigration documents for another couple, and the submission of these documents resulted in a removal order, which the notario never told her victim about.³⁵

More recently, in May 2023, a judge in El Paso, Texas issued a temporary injunction ordering Guadalupe Montes, a notario from providing legal services as an “immigration consultant,” “attorney,” “immigration expert,” or “notario,” and required that she return client files and notify them that she is not authorized to provide legal services or immigration representation in with federal agencies.³⁶

The Texas Attorney General sued the notario alleging that she had targeted Spanish-speaking consumers with two Facebook profiles advertising “citizenship classes,” “help in immigration processes,” “immigration forms,” “citizenship procedure,” and other immigration legal services that she is not authorized to provide.³⁷ She is alleged to have advertised in her business materials that she has the skill as well as the authorization to perform these services, in that she is a “Notary Public” with the ability to counsel consumers on “Immigration Forms,” “Residence,” “Citizenship,” “Deportation,” “Humanitarian,” “Deferred Action,” and “Family Package Petitions.”³⁸

³³ See Order of Permanent Injunction, 1:18-cv-00068, Doc. 576 (S.D. Texas 2021).

³⁴ Judy Gibbs Robinson, ‘Trying to do it right’ results in deportation, OKLAHOMAN (Aug. 15, 2006), <https://oklahoman.com/story/news/crime/2006/08/15/trying-tJudy%20Gibbs%20Robinsono-do-it-right-results-in-deportation/61865600007>

³⁵ Judy Gibbs Robinson, *They sought help, but got deported*, OKLAHOMAN (Aug. 15, 2006), <https://www.oklahoman.com/story/news/2006/08/15/they-sought-help-but-got-deported/61865732007>

³⁶ Temporary Injunction Order, *Tex. v. Guadalupe Montes*, No. 2023DCV1086 (El Paso May 10, 2023).

³⁷ First Amended Petition, *Tex. v. Guadalupe Montes*, No. 2023DCV1086 (El Paso May 1, 2023).

³⁸ *Id.*

After advertising these services, she was alleged to have failed to perform, or perform ineffectively, the immigration services for which she was hired. Affidavits from her alleged customers state that she took fees, did not deliver the services requested, and did not return the fees.³⁹ The district court enjoined her from any further practice, and to return all client files.⁴⁰

These examples demonstrate the serious outcomes that can result from granting certain paraprofessionals a limited license to practice immigration law. These cases involve paraprofessionals without a law license or DOJ accreditation, who lack the experience or authority to advise noncitizens about immigration filings. As a result, the consumers who hire them, who may not understand the difference between “notario publico” and “notary public,” or between “immigration consultant” and “attorney,” stand to lose the fees they have paid, while not receiving the services they expected, and/or in so doing placing themselves in legal jeopardy.

Should the proposed expansion go forward, there is no mechanism in place to guard appropriately against this kind of conduct happening at a much larger scale, blurring the line between authorized and unauthorized practitioners, while resulting in communities being represented by many more inexperienced—or fraudulent—service providers.

2.4 Permitting paraprofessionals to practice immigration law will increase arrivals of the undocumented at the southern border

Federal law preempts Texas’ ability to regulate who may prepare and file immigration applications and who may provide immigration advice. Should Texas choose to regulate in this field, Texas would directly challenge the comprehensive immigration practice scheme created by the DOJ under authority delegated by Congress. Texas’ regulation would have significant negative impact on federal immigration agencies.

Federal regulations, for sound reasons, restrict who can practice immigration law. DOJ may disqualify any representative from practicing immigration law for cause. Should Texas opt to license paraprofessionals or online services to prepare and file applications, as well as offer immigration advice, Texas would sidestep DOJ’s oversight of who is qualified to practice immigration law. This removal of oversight could inadvertently enable the participation of those who choose to exploit the immigration system as well as noncitizens.

DHS allows for the online filing of asylum applications and other forms. Through monitoring who can complete and submit these forms, DHS establishes a safeguard against system abuse for itself and noncitizens. Hypothetically, a software program could generate and submit baseless asylum applications within minutes on behalf of unsuspecting recent arrivals at the Texas border.

³⁹ *Id.* (Exhs. 1-2).

⁴⁰ Temporary Injunction Order, *Tex. v. Guadalupe Montes*, No. 2023DCV1086 (El Paso May 10, 2023).

DHS and immigration courts are already overburdened. Every submitted application, regardless of merit, is processed and the applicant interviewed. At present, the Houston Asylum Office, along with other asylum offices, is grappling with a significant backlog of applications. This backlog has resulted in an extensive waiting period for interviews that can stretch over several years.

An asylum applicant can request a work permit and a Social Security card if the application has been pending for 150 days.⁴¹ Therefore, these paraprofessionals or licensed online services will file for these two documents for the applicants because the asylum application never can be adjudicated in less than 150 days.

The applicant, unknowingly a victim of fraud, will believe the asylum application was properly filed upon receiving these governmental documents. However, the reality of the situation would only become apparent years later during the interview process, when the applicant would discover the victimization.

Moreover, the influx of these baseless applications will further slowdown an already overwhelmed immigration system. Consequently, this situation would exacerbate the challenges facing legitimate applicants while straining DHS resources.

Finally, no state permits anyone to practice immigration law without DOJ authorization. Texas would be the lone exception should it permit paraprofessionals and online services to practice immigration law. Texas would become the magnet for cheap and fast-filed asylum applications. Any person arriving at the United States border with the intention to cross illegally would choose to enter at Texas where the state-sanctioned filing of asylum applications will result in swift access to work permits, Social Security cards, and consequently, Texas driver licenses.

2.5 The nature of the unmet need

There is a lack of clarity on the type of immigration law services for which there is an unmet need. Without data concerning the scope and nature of unmet legal needs, the solution of “throwing more warm bodies” at the problem is careless and unlikely to address the justice gap in Texas, that is the delivery of legal services to low-income communities. Immigration law covers a broad spectrum of services: consular processing, adjustment of status, naturalization, adoption, immigration benefits for vulnerable communities (such as victims of crime, domestic violence, trafficking), removal defense, employment-based immigration, and others. Neither the 2015 TAJF Texas Unmet Legal Needs Survey (the “Survey”) nor the 2016 Report of the Texas Commission to Expand Civil Legal Services address the specific unmet immigration legal needs or where in Texas this legal need is most acute.

⁴¹ 8 C.F.R. § 208.7(a)(1).

Here is what we do know. There remains a justice gap in the U.S. As the number of cases in immigration court has increased, the amount of free representation for noncitizens has not. The need for free representation far outstrips the combined capacity of non-profit organizations and the available pool of volunteer attorneys. A report released by Syracuse University’s TRAC project shows that the rate of pro bono representation in the immigration courts has fallen by more than half—from a peak of 5% to 2% in just under two years.⁴² Strikingly, the actual number of cases with pro bono representation has *not* fallen—pro bono representation rates actually grew the most between 2020 and 2022. Rather, the total number of cases before our immigration courts has increased significantly. This means that despite the increased efforts of dedicated pro bono attorneys, they are being asked to meet an ever-growing gap.

Texas has a long history of immigration. Noncitizens now account for one-sixth of the state’s total population. Approximately 4.7 million noncitizens in Texas, or 17 percent of the total population, and 3 million noncitizens residing in Texas are potentially at risk of deportation.⁴³ The diversity in the noncitizen population in the state is immense. One in six Texas residents is a noncitizen, while another one in six is a native-born U.S. citizen with at least one noncitizen parent. While illustrative on its own, this data, does not consider the increase in the number of recent and new arrivals to the U.S. through Texas’ southern border – noncitizens seeking asylum and protection from persecution.

Low-income noncitizens in Texas seeking to normalize their status have diverse and complicated legal needs. The Survey serves as a baseline for the justice gap for low-income individuals in various civil legal areas, but it does not accurately reflect or describe the specific immigration legal needs of low-income noncitizen Texans.

The Survey does show that there is a justice gap for low-income Texans, but it is not an accurate reflection of the need for especially vulnerable and marginalized communities, such as low-income noncitizens, who have very specialized immigration needs. The current Texas Supreme Court proposal to allow paraprofessionals the ability to provide limited legal representation will not solve this justice gap in Texas for noncitizens and has the potential to cause further harm to communities that are already marginalized.

As noted by the Migration Policy Institute, citizenship status can impact access to housing, well-paying jobs, and vital social services. The Bureau of Labor Statistics states that the poverty rate of recent noncitizens is more than twice that of U.S. natives. Navigating the U.S. immigration system is daunting, and legal representation is critical. In fact, data shows that a noncitizen who is in

⁴² *Despite Efforts to Provide Pro Bono Representation, Growth Is Failing to Meet Exploding Demands*, Syracuse TRAC: TRAC Immigration (May 12, 2023), <https://trac.syr.edu/reports/716/>

⁴³ *Profile of foreign-born population in Dallas, Texas*, Vera Institute of Justice, <https://www.vera.org/downloads/publications/publicationsprofile-foreign-born-population-dallas.pdf>

detention is 10 times more likely to win their case if they are represented.⁴⁴ However, legal representation can be costly and difficult to secure for very low-income noncitizens. This is especially true in Texas. As of 2018 federal immigration courts have more deportation proceedings than any other state.⁴⁵ Noncitizens in Texas are the among least likely to have a lawyer for their immigration cases, behind only Arizona and Louisiana.⁴⁶ These statistics show the vital need for no and low-cost legal services for noncitizens.

The need for affordable and trustworthy immigration legal services has skyrocketed in the past few years with harsh immigration policies, constantly changing immigration rules, and barriers being erected against noncitizens, including asylum-seekers. Litigation against DACA protection for DREAMers, sweeping changes in asylum eligibility, the “invisible wall” of prolonged wait times and stricter guidelines in filings are all obstacles for noncitizens trying to work within the system and constantly facing new rules. However, having the wrong kind of representation and legal advice can have devastating consequences for noncitizens and their families.

Access to justice means more than the availability of legal services. It relates to the availability and affordability of accurate and competent legal information, advice, and representation. While increasing the pool of those who can provide immigration legal services would technically increase the supply of providers, this will not provide true and meaningful access to justice. Immigration practice requires an understanding of various complicated and always changing policies and rules in a multitude of different practice areas. The current proposed rule does not ensure that low-income noncitizens will receive accurate and competent representation for their specific legal needs.

The survey responses in the TAJF’s 2016 report do not accurately characterize the complexity and breadth of immigration cases and the actual needs of the Texas noncitizen community. Out of the 135 total respondents, only 4 indicated that they had encountered an “immigration problem.” Texas currently has a foreign-born population of nearly 5 million of whom approximately 1.7 million do not have lawful immigration status.⁴⁷ Given the size of the population, a sample of 135 individuals is inadequate to comprehend the scope of the need for immigration legal services throughout Texas. Moreover, the responses do not specify the specific nature of the immigration problems encountered by the four survey respondents, which would likely illustrate that the problem is not

⁴⁴Karen Berberich, Annie Chen, Emily Tucker, *The Case for Universal Representation*, Vera Institute of Justice (Dec. 2018), <https://www.vera.org/advancing-universal-representation-toolkit/the-case-for-universal-representation-1>

⁴⁵ Julian Aguilar and Darla Cameron, *Immigrants in Texas are among the least likely to have a lawyer, most likely to get deported*, The Texas Tribune, (April 12, 2018) <https://www.texastribune.org/2018/04/12/trump-charges-forward-immigration-enforcement-texas-detainees-are-leas>

⁴⁶ *Id.*

⁴⁷ *Immigrants in Texas*, American Immigration Council, <https://map.americanimmigrationcouncil.org/locations/texas>

as clear cut as the report presents. Simplifying the scope and shape of the need leads to the false assumption that the justice gap within the immigrant community can be resolved by increasing the overall volume of providers rather than bolstering the private immigration bar and nonprofit providers who have the expertise and structural advantages best suited to respond.

The legal needs of the Texas noncitizen community are complex. More than one third of the entire foreign-born population in Texas lives below 200 percent of the federal poverty level.⁴⁸ This rate doubles to 62 percent for the state’s undocumented noncitizen population—roughly a third of the total—for whom legal representation tends to have the greatest impact.⁴⁹ High rates of poverty among the state’s noncitizen population mean that accessing legal representation from private practitioners can be nearly impossible, particularly when clients live in rural areas, are detained, have complicated immigration histories, or speak languages other than English or Spanish. Even if the clients can access representation, these factors can dramatically increase the costs of representation. For instance, in the context of removal proceedings, where immigration cases tend to be the most complex, only about one third of individuals ultimately ordered removed by an immigration judge had legal representation in FY 2022.⁵⁰ So far in 2023, this rate has dropped to about 25 percent.⁵¹

The lack of access to private counsel for many in the Texas noncitizen community translates to higher demand for immigration legal services from the non-profit sector. Because most non-profits operate on a pro bono or low bono' model and rely on external funding to cover their operating costs, they are often better positioned to accept cases based on community need. For instance, nonprofits may have better access to immigration detention centers or dedicated funding to support cases involving removal defense or crime victims, which can often be too burdensome for private practitioners. Additionally, several immigration nonprofits in Texas benefit from language access funding from the State Bar, which further facilitates representation of underserved populations.

Texas nonprofits cannot keep pace with demand for their services. American Gateways, an Austin-based non-profit that serves 21 Texas counties, maintains a caseload of approximately 1,200 open or pending cases and closes out an average of 750 matters annually. Nevertheless, demand for representation consistently outstrips their capacity to provide it. In 2022, they received more than 1,200 applications for services. However, due to limited capacity they were only able to accept approximately 20 percent of those cases for consultations and possible representation. This trend has continued into 2023, with the organization only able to accept between 15 and 20 percent of new applications each month.

⁴⁸ *State Immigration Data Profile-Texas*, Migration Policy Institute, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/TX>

⁴⁹ *Unauthorized Immigrant Population- Texas*, Migration Policy Institute, <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/TX>; See Note 17

⁵⁰ *Despite Efforts to Provide Pro Bono Representation, Growth Is Failing to Meet Exploding Demands*, Syracuse TRAC: TRAC Immigration (May 12, 2023), <https://trac.syr.edu/reports/716/>

⁵¹ *Id.*

The clients that American Gateways could not help mainly needed assistance with complex, long-term issues, not just simpler tasks like renewing a work permit. The case of an asylum applicant in removal proceedings, for example, may take years to complete. During that time, the applicant will need to apply for and renew employment authorization, regularly update mailing addresses with the court and DHS, possibly necessitating a motion for change of venue, as well as the submission of corroborating evidence, perhaps more than once to both the court and DHS.

An asylum application before an immigration judge is an adversarial matter that may begin with a twelve-page application form detailing the claim. The applicant is sworn to the contents and must fully establish both credibility and legal eligibility for relief. A separate statement delineating a cognizable social group is sometimes required.

Misrepresentations, inconsistencies, or omissions—intentional or otherwise—can have profound consequences on the applicant’s chance of being granted asylum, or any other immigration benefits. Similarly, applications for humanitarian relief for crime victims typically involve numerous application forms as well as close coordination between the applicant, their families, and law enforcement agencies, and routinely stretch out over the course of years, or even a decade or more. Factoring in the additional challenges stemming from vulnerabilities such as unstable housing, mental illness, trauma, and language barriers, it becomes clear that these are not cases that ought to be handled by inexperienced practitioners.

Consider a hypothetical where an undocumented female survivor of domestic violence seeks assistance in applying for U nonimmigrant status as a survivor of crime who has collaborated with law enforcement. Following the abuse she married a new partner, who is also undocumented, and who she wants to include as a derivative beneficiary on her application. First, she will need a representative who can assist her in contacting the appropriate law enforcement agencies to obtain police records and a law enforcement certification correctly characterizing the crime and affirming that she was helpful in any investigation or prosecution. Second, her representative will need to assist her in developing an evidentiary record establishing that she has suffered substantial harm because of the abuse. Third, her representative will need to develop a comprehensive understanding of her and her partner’s immigration history to ensure that all potential grounds of inadmissibility are disclosed to USCIS and waived. Fourth they will need to ensure that all USCIS application forms (as many as nine in this example) are current and have been correctly filed and receipted. Lastly, the representative will need to fully advise their clients on their obligations to USCIS during the multi-year pendency of their application, including when to complete biometrics, when to update their address, how to respond to requests for additional evidence, and when to apply for and renew work authorization, as well as the potential risks to their eligibility if either client triggers a new ground of inadmissibility or they decide to separate. A mistake at any point in this process can have life-altering consequences and should not be handled by someone who is not licensed or accredited and thus accountable to the high professional standards of an attorney.

Texas Recognized Organizations believe that there are better alternatives for improving access to legal services for the noncitizen community. For one, increased funding to nonprofit organizations like American Gateways, Catholic Charities, RAICES, and others would lead to better legal outcomes. Recognized Organizations have several structural advantages that allow them to produce better legal outcomes for their clients, including significant expertise in complex immigration matters, the infrastructure to respond quickly to changing needs, and institutional mandates to serve clients that the private sector cannot absorb due to cost or other logistical hurdles. Rather than creating a new, untested, and unregulated class of immigration services providers, we encourage the Commissioners to support further investments into credible, experienced nonprofits who will have the greatest impact.

Additionally, continuing to develop and expand incentives for private attorneys and law firms to do pro bono work can have an immediate and profound impact in terms of supporting access to justice. For instance, this year American Gateways held two one-day clinics to help individuals apply for U.S. citizenship. Despite having a relatively small legal staff, American Gateways was able to use its expertise to quickly train and mentor 42 pro bono attorney volunteers who assisted in completing more than 50 applications for citizenship.

2.6 It is unclear whether allowing paraprofessionals to practice immigration law will reduce legal costs

While there may be several barriers to access to legal services for Texans, the most visible and tangible obstacle is cost. Retaining the services of an attorney can be expensive for noncitizens, and the Section strongly supports initiatives to expand access to legal services without regard for the ability to pay. However, it is not clear that permitting paraprofessionals to provide immigration legal services will reduce the financial costs incurred by the client.

First, it is speculative that paraprofessionals will always charge fees that are substantially less than the average fee for a licensed attorney. In fact, unlicensed notarios often charge substantially more than a licensed attorney.⁵² Furthermore, there are existing resources for Texans in need of immigration legal help at little or no cost to them. These programs should be expanded. Simply allowing paraprofessionals to practice in this area will not necessarily reduce the cost of legal services.

Furthermore, allowing paraprofessionals to manage immigration matters will likely cost clients *more*. An individual may not realize they qualify for help from a licensed practitioner at no cost and hire the paraprofessional if they are unaware of the *pro bono* options potentially available or if the paraprofessional manages to convince the client that they are better off paying them than relying on free services. Again, some paraprofessionals may charge approximately as much (or potentially more) than some licensed attorneys.

⁵² See USCIS, Avoid Scams, <https://www.uscis.gov/scams-fraud-and-misconduct/avoid-scams> (last visited June 22, 2023)

Finally, the cost associated with correcting an error made by a paraprofessional can be extreme, meaning the ultimate price paid by the client will be high. Every one of our members has met with a potential client and realized that an error in a previous filing or action has serious consequences and advanced, complex legal work is required to correct it. Hiring an unlicensed individual dramatically increases the risk of an error, which may land the client in the office of a licensed attorney facing a very expensive problem like removal proceedings.

2.7 Comparisons with other states

At the time of submission, no states have expanded the practice of law by paraprofessionals to the field of immigration.

In November of 2022, the Institute for the Advancement of the American Legal System (“IAALS”) at the University of Denver released a paper examining the experience of different states that have actively explored increasing access to legal services to include paraprofessionals. The paper itself is “designed to be used as a resource for states interested in creating their own [legal paraprofessional] program.”⁵³

According to the IAALS report, four states currently have paraprofessional legal services programs (Washington, Utah, Arizona, and Minnesota), and 16 others have proposals under consideration or have begun the implementation process for such a program. California, Florida, and Illinois considered implementing such a program, but have chosen not to move forward at this time.

When it comes to practice areas covered by existing or proposed paraprofessional programs, the IAALS reports that all states consider “the technicality or need for expertise in a practice area and the potential for significant legal consequences if litigants receive inadequate help.”⁵⁴ As discussed in detail above, the potential for drastic legal consequences resulting from inadequate assistance is significant. The particular area of law is also extremely complex and technical.

Furthermore, other states have declined to extend any paraprofessional program to the field of immigration law. The most common areas of practice where these programs are in place include family law, landlord-tenant law, consumer debt law, and a handful of minor criminal matters where jail time is not a possibility. Some jurisdictions also allow practice in “administrative law,” and these are generally limited to areas like employment law (wage and hour), unemployment benefits, and public benefits such as Social Security or Medicaid. A few areas include estate planning, social work, and only Vermont allows paraprofessionals to practice retail law. Interestingly, Washington originally considered including immigration law, but chose only to implement the program for family law, where they also found the greatest unmet need.

⁵³ *The Landscape of Allied Legal Professional Programs in the United States*, Institute for the Advancement of the American Legal System, University of Denver (November 2022)

⁵⁴ *Id.*

3. Regulatory conflicts

3.1 Federal Preemption

Any proposal to authorize paraprofessionals or online document providers to provide immigration services would conflict with congress' plenary power to regulate immigration and immigration law providers.⁵⁵ Congress has granted authority to DOJ and DHS, federal agencies, to establish regulations necessary to administer and enforce immigration laws.⁵⁶ These agencies have exercised their statutory authority to create specific practice rules for immigration law practitioners. The DOJ and DHS have not permitted paraprofessionals or online document providers to provide immigration services.

Efforts by state authorities to govern such practices are preempted by the Supremacy Clause. This fundamental principle has been clearly established since at least 1963, when the Supreme Court of the United States decided *Sperry v. Florida ex rel. the Fla. Bar*, 373 U.S. 379 (1963).⁵⁷

In April 2001, the State Bar of Texas published a formal report that recognized the *Sperry* doctrine and admitted that Texas cannot regulate who may practice immigration law.⁵⁸ On June 19, 2001, then-Texas Attorney General John Cornyn issued a nine-page opinion making clear that Texas licensing authorities cannot impose their regulations on persons providing services to federal agencies.⁵⁹

Federal regulations broadly define what is representation before DHS

“Representation” is defined to include “practice and preparation.” 8 C.F.R. § 1.2. “Practice” is defined to include the “preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS.” Importantly, practice includes the filing of applications.

Certain applications may be submitted online, and others may be submitted only by mail. An online

⁵⁵ U.S. Const. art. I, § 8, cl. 4. *Cf. Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (“over no conceivable subject is the legislative power of Congress more complete”).

⁵⁶ U.S.C. § 1103. *See* 8 C.F.R. § 1001.1(i) (defining practice); 8 C.F.R. § 1001.1(k) (defining preparation).

⁵⁷ *See also Unauthorized Practice of Law Committee v. Paul Mason & Associates, Inc.*, 46 F.3d 469 (5th Cir. 1995) (Texas unauthorized practice of law standards do not apply to authorization for administrative practice in the bankruptcy courts); *Silverman v. State Bar of Texas*, 405 F.2d 410 (5th Cir. 1968) (Patent attorneys are not subject to advertising regulations of the State Bar of Texas because of federal preemption).

⁵⁸ State Bar of Texas Task Force Recommendation of a New Statutory Definition for the Unauthorized Practice of Law (April 2001).

⁵⁹ AG Op'n JC-0390 (2001).

service that facilitates the electronic filing of applications with DHS, analogous to how TurboTax handles online income tax return filings, would be providing representation before DHS within the scope of 8 C.F.R. § 1.2 unless operated by an authorized immigration practitioner. Therefore, online filing facilitators could offer their filing services to authorized immigration practitioners but could not lawfully offer those services to pro se applicants.

Preparation means “the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed DHS forms, by one whose remuneration, if any, is nominal and who does not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.” *Id.*

The regulation's definition of "preparation" closely mirrors the practice of immigration law as described by the Texas Supreme Court in *Unauthorized Practice Committee, State Bar of Texas v. Cortez*, 692 S.W.2d 47 (Tex. 1985). Generally, reading the question to an applicant and recording the applicant's answers in the blank spaces of the form is permitted, but selecting the form, explaining questions, or advising what documents accompany the form is prohibited unless the preparer is an authorized legal immigration practitioner.

There currently are online document preparers that prepare immigration applications by asking a series of factual questions and applying the law to the applicant's answers. Those preparers, if not operated by authorized immigration practitioners, would be providing unauthorized legal representation in violation of the regulations and *Cortez*. The Federal Trade Commission is authorized to pursue actions against those who provide unauthorized legal representation and has done so in the past.⁶⁰

Federal regulations define who may provide that representation before DHS

Federal regulations specify seven classifications of individuals who may practice immigration law. The regulations unequivocally state that “no other person or persons shall represent others in any case.”⁶¹ The chart below sets forth the seven classifications and summarizes why paraprofessionals do not fit within any of them.

⁶⁰ See, e.g., *F.T.C. v. Loma Int'l Bus. Grp. Inc.*, No. CIV.A. MJG-11-1483, 2013 WL 2455988, at *1 (D. Md. June 5, 2013).

⁶¹ 8 C.F.R. § 292.1(e).

8 C.F.R § 292.1: Representation of others

Classification	Federal Regulation	Why the Paraprofessional does not Qualify
<p>(1) Attorney 8 C.F.R. § 292.1(a)(1)</p>	<p>Must be "... a member in good standing of the bar of the highest court of any State ... not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law."⁶²</p>	<p>The suggested paraprofessional occupation explicitly sets them apart from attorneys, both in privileges and function. Furthermore, as indicated in <i>Chamber of Commerce of U.S. v. Whiting</i>,⁶³ the Court suggests that "the bar of the highest court" would be the bar that commonly licenses attorneys who are not "restricted in the practice of law".</p>
<p>(2) Law Student 8 C.F.R. § 292.1(a)(2)</p>	<p>Must be a "law student who is enrolled in an accredited U.S. law school, or a graduate of an accredited U.S. law school who is not yet admitted to the bar..."</p>	<p>A paraprofessional cannot be a law student if they are not enrolled or are not a graduate of an accredited law school.</p>
<p>(3) Reputable Individual 8 C.F.R. § 292.1(a)(3)</p>	<p>Must appear on an individual case basis, at the request of the person entitled to representation; appear without direct or indirect remuneration and file a written declaration to that effect; have a pre-existing relationship or connection with the person entitled to representation; and be permitted to appear by the DHS official before whom he or she seeks to appear.</p>	<p>A paraprofessional cannot comply with the requirements essential to act as a Reputable Individual. A Reputable Individual cannot be paid (directly or indirectly) and must have a pre-existing relationship or connection with the person on behalf of whom they are appearing.</p>

⁶² 8 C.F.R. § 1.2.

⁶³ *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582 (2011).

<p>(4) Accredited Representative 8 C.F.R. § 292.1(a)(4)</p>	<p>Must be “[a] person representing an organization [described at 8 C.F.R. § 292.2] who has been accredited by the Board [of Immigration Appeals].”</p>	<p>A paraprofessional cannot meet these requirements, unless they serve in a “non-profit religious, charitable, social service, or similar organization” that has been recognized by the Board of Immigration Appeals, which “has...adequate knowledge, information, and experience” and “makes only nominal charges.” By carving out this exception, The Department of Homeland Security indicates its intent to permit individuals acting under the supervision of a qualifying nonprofit organization, not for-profit paraprofessionals.</p>
<p>(5) Accredited Official 8 C.F.R. § 292.1(a)(5)</p>	<p>Must be “An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his official capacity and with the alien's consent.”</p>	<p>The mere fact the official is simultaneously an official and a Paraprofessional obviate the possibility of appearing solely in an official capacity.</p>
<p>(6) Attorney Outside the United States 8 C.F.R. § 292.1(a)(6)</p>	<p>Must be an attorney outside of the United States, in good standing in a court of general jurisdiction in the country in which he or she resides.</p>	<p>Even if paraprofessionals did qualify as “attorneys outside the United States,” they could not perform the desired goal of increasing access to justice in Texas, since they would only represent those parties in matters outside the geographical confines of the United States.</p>
<p>(7) Person Authorized to Practice before the Board and Service prior to December 23, 1952. 8 C.F.R. § 292.1(b)</p>	<p>Must be authorized before December 23, 1952.</p>	<p>Not applicable due to the effective date of the program.</p>

The Federal regulations have real-world implications. For example, DHS requires that a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, be filed whenever an authorized legal practitioner asserts their eligibility to appear on behalf of an applicant, petitioner, or beneficiary. In fact, Page 1 of the Form G-28 Instructions states, “This form is used only by attorneys and accredited representatives as defined in 8 C.F.R. parts 1.2 and 1292.”⁶⁴

As such, non-lawyers seeking to appear as “reputable individuals” may not use Form G-28. Instead, they must obtain permission from DHS to appear on behalf of an applicant, petitioner, requestor, beneficiary or derivative, or respondent. DHS requires the individual to establish that they meet the definition of a “reputable individual” outlined at 8 C.F.R. § 292.1(a)(3). Importantly, reputable individuals may not directly or indirectly receive remuneration for their services. *Id.* Without the ability to file a Form G-28, paraprofessionals cannot represent applicants before DHS, *including assisting with filing immigration applications and petitions.*

For representation in the immigration courts, the EOIR requires the completion of a Form EOIR-28, which does not include an option for a paraprofessional to enter an appearance as a representative. See App. 3.

Under the terms of the proposal, paraprofessionals would assist and charge customers for form preparation services and analysis but would not be permitted to submit a Form G-28 to represent noncitizens in filings with DHS or submit a Form E-28 to represent applicants before the immigration courts. This raises serious consumer protection issues, because when no Form G-28 or E-28 is filed, noncitizens are treated by the respective government agency as being unrepresented; the paraprofessional would not be held responsible by DHS unless a fraud investigation were underway; and, for unrepresented noncitizens in removal proceedings, they have no recourse for receiving ineffective assistance of counsel. Furthermore, noncitizens would not receive the benefit of being represented at any immigration interview or court hearing related to their applications, nor would their paraprofessional “representative” receive critical notices and communications from DHS.

This problem is already illustrated in current unlawful practices. Many members of the Section and AILA TX have witnessed cases in which non-lawyers prepared forms (often having the client sign a blank form not knowing what the final form contained when filed) with the client not understanding that the non-lawyer had neither authority to represent them nor to provide competent advice, selection, or completion of forms. The “client” then appears at a government hearing, only to find out the information submitted on their behalf was incorrect, even though the form is signed

⁶⁴ Form G-28 Instructions, September 17, 2018, *at*:
<https://www.uscis.gov/sites/default/files/document/forms/g-28instr.pdf>

under penalty of perjury by the applicant.⁶⁵ AILA and the American Bar Association established a website to address fraud by these “notarios,” or unlicensed immigration consultants, due to the serious harm caused to unsuspecting noncitizens.⁶⁶

In addition, the proposed paraprofessional scheme would create risks and severe consequences for attorneys who work with them. Under federal standards a “practitioner” is subject to disciplinary sanctions if they assist in the unauthorized practice of law. Actions by an unauthorized practitioner that constitute the unauthorized practice of law within the context of the EOIR and DHS include: “selecting, drafting, or completing legal documents affecting the legal rights of another in an immigration matter,” or holding him or herself out as qualified in legal matters or in immigration or naturalization procedure.⁶⁷

Under the terms of the proposal, the line between the practice of law and the defined scope for paraprofessionals is not well-defined. If a Texas lawyer assisted a paraprofessional with what is ultimately determined to be the practice of law, the lawyer could suddenly be subject to federal disciplinary sanctions. Potential disciplinary sanctions include permanent expulsion from immigration practice, suspension from practice, public or private censure, or any other such disciplinary sanctions, as the adjudicating official deems appropriate. This both introduces a disincentive for attorneys to collaborate with these paraprofessionals and makes it more likely that the paraprofessionals will act without necessary attorney guidance on the real legal issues involved in everyday immigration practice.

Furthermore, the proposed paraprofessional scheme is based on the authority of the Texas Supreme Court to regulate the practice of law *within Texas*. Many immigration filings with DHS are not submitted in the state of Texas, and most are processed outside of the state of Texas in service centers in Nebraska, Vermont, California, and Missouri. Although there are immigration courts in Texas, the federal rules cited above prohibit unlicensed attorneys and non-lawyers not accredited by DOJ from appearing in the immigration courts. Furthermore, the federal prohibition on USCIS appearances in immigration matters by anyone other than a federally qualified practitioner would prevent a paraprofessional from making any filing with USCIS on behalf of a client.

The proposal does not clarify whether out-of-state paraprofessionals would be regulated to perform services for Texas residents. For attorneys, there are state bars to provide this oversight, enabling consumers who have been harmed to submit disciplinary complaints, whereas no such disciplinary model exists for paraprofessionals. Additionally, limited paraprofessional practice differs widely between states, with a patchwork of regulation. How would the DOJ regulate this additional risk to consumers?

⁶⁵ In removal proceedings, the noncitizen’s signature on an application or petition establishes that she knew of and assented to the contents of the application, including the misrepresentations. *A.J. Valez and Z. Valdez*, 27 I&N Dec. 496 (BIA 2018).

⁶⁶ See <https://stopnotariofraud.org>

⁶⁷ See 8 C.F.R. § 1001.1(i) & (k).

The DOJ regulates the provision of no- and low-cost immigration services

For many decades, DOJ has maintained a comprehensive regulatory scheme to foster the provision of competent no- and low-cost immigration law services to low-income noncitizens. The Executive Office for Immigration Review (“EOIR”), a DOJ division, is charged with managing the immigration court system.⁶⁸ EOIR also has the sole authority to authorize certain charitable organizations to provide immigration representation through Accredited Representatives.⁶⁹ Independently of the accreditation process of the organization, is the accreditation process of the Accredited Representative, who must be an employee of the Recognized Organization.⁷⁰

DOJ has established regulations detailing the standards for recognition as a Recognized Organization and as an Accredited Representative.⁷¹ These regulations require a periodic renewal process for both.⁷² Recognized Organizations must comply with specific reporting and record keeping requirements.⁷³ Moreover, the regulations subject Recognized Organizations and Accredited Representatives to the same ethical and disciplinary rules and a comprehensive enforcement system as attorneys, which may involve suspension, disbarment, and sanctions.⁷⁴

3.2 Texas consumer protection

Historical Context

The State of Texas has been at the forefront of immigration-related challenges due to its shared 1,254-mile border with Mexico. The State of Texas understands what can happen when vulnerable populations desiring work are exploited and not protected. For the first five years of the Bracero Program, which commenced in July of 1942, the State of Texas was barred from participating in the program at the request of the government of Mexico because of the state’s long history of discrimination towards Mexicans and Mexican Americans. This blacklisting led to increased use of undocumented workers in Texas. The Bracero Program ended in 1964 based on several problems and is condemned for its worker protection failures.

⁶⁸ 8 CFR § 1003.0.

⁶⁹ See 8 C.F.R. § 1292.11(a). The organization must satisfy several criteria, including being a federally tax-exempt organization established within the United States. *Id.* at § 1291.11(a)(2). There are 103 active Recognized Organizations in Texas, with each organization having at least one Accredited Representative.

<https://www.justice.gov/eoir/page/file/942306/download#TEXAS>

⁷⁰ 8 C.F.R. § 1292.12.

⁷¹ 8 C.F.R. § 1292.13.

⁷² 8 C.F.R. § 1292.16.

⁷³ 8 C.F.R. § 1292.14.

⁷⁴ 8 C.F.R. § 1292.3. The rules of professional conduct are codified at 8 C.F.R. §§ 1003.101-109.

Due to the long shared cultural history between Texas and Mexico, Texans have a heightened sensitivity to and awareness of certain concepts under Mexican law. For example, in many countries in which Spanish is the primary language, the term “notario publico” implies a legal and notarial authority, with notarios publicos having the authorization to serve as legal arbitrators, review and certify that legal documents such as wills and real estate deeds conform with the law, among other significant roles. Out of concern for confusion between the terms “notario publico” and “notary public” (a direct translation, but a very different concept with far more limited powers), the Texas legislature created a law restricting the use of “notario” or “notario publico” without clarification, with criminal penalties.

Section 406.017 of the Texas Government Code as to Notaries Public penalizes as a Class A misdemeanor those who use the phrase “notario” or “notario publico” to advertise services of a notary public without the use of a specific notice. The notice must include the fees that a notary public may charge and the following statement: “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

There is a significant history of abuse stemming from Texas consumers being confused or misled by the perceived equivalency of notarios publicos to licensed attorneys, particularly in the area of immigration law. Years ago, the Office of the Attorney General (“OAG”) had taken aggressive action to shut down various illegal immigration providers who defrauded noncitizens of hundreds of thousands of dollars. For example, in September of 2004, then- Attorney General Greg Abbott won an unprecedented verdict against a Weslaco business that had offered unauthorized legal services to noncitizens. The Hidalgo County jury awarded over \$1 million against Ruth and John Thomas and their business, Trámite Migratorios.⁷⁵ The verdict included over \$900,000 in restitution to consumers under Section 17.46 of the Texas Deceptive Trade Practices Act. *See* Texas Business and Commerce Code, Chapter 17. Note that Section 17.46 (b)(28) of the Texas Deceptive Trade Practices Act specifically prohibits the use of references to “attorney,” “immigration consultant,” “immigration expert,” “lawyer,” “licensed,” “notary,” and “notary public” in a foreign language in any written or electronic material to imply that the person is authorized to practice law in the United States.

In addition, the unauthorized practice of law or implying or misrepresenting that a non-attorney is a lawyer constitutes grounds for revocation of a notary’s commission and a deceptive trade practice action. *See* Texas Government Code, Sections 406.009(d)(2) and 406.017(f); Texas Administrative Code, Section 87.31(3) and (6).

In 1985, the Texas Supreme Court provided critical guidance as to acts constituting the practice of law in immigration law in a case in which the Unauthorized Practice of Law Committee of the

⁷⁵ Joanna Lilly, *Unlawful Practice of Law: The Immigrant’s Nightmare* (2004), https://www.notarypublicstamps.com/files/member/files/Notary_Unlawful_Practice_of_Law.pdf

State Bar of Texas sought to enjoin Eddie and Rita Cortez from engaging in certain acts.⁷⁶ The Committee sued to enjoin the immigration activities of the Cortez Agency, and the trial was before a jury. The Court recognized the dangers of deportation inherent in filing immigration related forms with the federal government, as well as the requirement of the application of legal skill and knowledge in the selection and preparation of various federal government forms required for immigration benefit applications.

3.3 State laws implicated by the Texas Supreme Court proposal

While the Texas Supreme Court's proposal as to the use of paraprofessionals mentions the possibility of modifications to allow non-attorney paraprofessionals to provide limited legal services and own economic interests in legal service entities, any such modifications must be considered and addressed carefully due to potential conflicts with existing laws. Currently, the “practice of law” in Texas is defined by statutes and case law, and certain activities must be performed by licensed attorneys or those authorized by federal law to offer immigration services.

For example, under Section 81.101(a) of the Texas Government Code, the “practice of law” is defined to encompass activities such as preparing legal documents, giving advice, and rendering services requiring legal skill or knowledge. This definition is incorporated into Section 81.102, which explicitly prohibits an individual from providing legal services unless he or she is a member of the state bar. While 81.102(b) provides some limited exceptions to this requirement, those exceptions are strictly limited to attorneys licensed in another jurisdiction, bona fide law students, and unlicensed graduate students from approved law schools. Clearly, the intent reflected behind these provisions is to reserve the “practice of law” to licensed attorneys. Of course, an exception is made for Recognized Organizations which are specifically authorized to practice immigration law under federal regulation.

Additionally, allowing non-attorneys to provide legal services would run afoul of existing criminal laws. For example, section 38.12 of the Texas Penal Code, known as the Barratry law, prohibits attorneys from soliciting employment with the intent to obtain an economic benefit. Engaging in barratry, which includes the unauthorized practice of law, is a violation of the statute. This provision underscores the importance of preventing non-lawyers from engaging in activities that constitute the “practice of law” and the importance of the definition of the term. Various other Texas criminal statutes, such as sections 83.001(a) and 38.122 of the Texas Penal Code, further regulate the practice of law and restrict certain activities related to legal instruments and falsely representing oneself as a lawyer. These statutes show the state's commitment to upholding the integrity of the legal profession, and not only discouraging, but also preventing non-lawyers from practicing law.

The implementation of a paraprofessional program without due diligence and robust compliance funding and staffing plans will have detrimental effects based on the long history of immigration

⁷⁶ See *Unauthorized Practice Committee v. Cortez*, 692 S.W.2d 47 (Tex. 1985).

scams in the state. Other states have considered and rejected such paraprofessional solutions to support increased access to justice. Note that the Washington Supreme Court voted in June of 2020 to sunset their Limited License Legal Technician (LLLT) rules due to “the overall costs of sustaining the program and the small number of interested individuals . . . the LLLT program is not an effective way to meet these needs.” In 2021, the Illinois Supreme Court deferred consideration of creating licensed paralegals (LPs). In March of 2022, the Florida Supreme Court submitted a letter to the executive director of the Florida Bar explaining that it did not intend to adopt the committee’s recommendations on a limited assistance paralegal pilot program. California state lawmakers shut down the consideration of the recommendations of the California Paraprofessional Program Working Group until January 2025.

The detrimental effects of blurring the lines regarding what constitutes the practice of law, and the oversight of paraprofessionals will particularly harm those individuals in vulnerable situations, including those who are impoverished or less educated. Recently, New York took a different approach to providing access to justice in the immigration area, by becoming the first state in the nation to ensure that no immigrant will be detained and permanently separated from their family solely because of the inability to afford a lawyer with the creation of the first public defender program for detained immigrants facing deportation. The American Bar Association has also shown leadership in the funding of pro bono representation to thousands of immigrants and asylum-seekers in remote South Texas each year via its ProBar project, which has also been supported by the Texas Young Lawyers Association and the State Bar of Texas.

Immigration is an area of law consistently recognized as one of the most complex, with potentially severe consequences, including death for those removed to their home countries. While a “form” may be necessary to request a benefit or relief from removal, the determination of eligibility and the review of potential consequences to an applicant is not simple or routine. Immigration issues are as varied as those trying to comply with the applicable laws and policies. In addition, there are constant changes, due to the nature of immigration as a political and humanitarian issue. If any modifications to the existing legal framework for lawful representation are to be considered, the solution is not to treat the practice of the complex federal law area of immigration law as a testing ground for how low the bar can go as to standards and oversight in determining legal solutions.

4. Alternative methods for increasing access to immigration legal services

As noted above, there are serious concerns about allowing paraprofessionals to provide immigration legal services. Furthermore, the consequences of a mistake can be devastating, and given the complexity of the legal field and the overlap between immigration status and other adjacent legal matters, it is crucial that only licensed attorneys and Recognized Organizations manage immigration matters for the public.

However, as also noted above, both the Section and AILA TX recognize the need to expand access to effective and accurate immigration legal advice and services. To that end, we offer the following proposals that will expand access to justice and legal expertise without risking the quality of the representation.

4.1 Expand support for Recognized Organizations

The TAJC should use the money it would otherwise spend on establishing a program to regulate and supervise paraprofessionals to support increased access to counsel by supporting nonprofit organizations that assist low-income individuals with immigration legal needs. These nonprofit organizations are BIA accredited and already have trained immigration lawyers and BIA Accredited Representatives on staff. Diocesan Migrant & Refugee Services, Inc., American Gateways, Refugee and Immigrant Center for Education and Legal Services (RAICES), and Catholic Charities are among the nonprofit organizations in Texas known to the community who have trained advocates with the legal expertise to competently serve individuals with immigration legal issues. These groups could use more funding to hire additional staff and acquire or develop additional resources to serve more people with immigration legal needs.

Contrary to the premise of the proposed rule, however, meeting the increased demand is not simply a question of quickly ramping up capacity by authorizing more actors to provide legal representation. A sample of cases turned away by American Gateways reveals that immigration cases represent uniquely complex, long-term commitments that require significant expertise and institutional support. For instance, in March of 2023, American Gateways turned away 110 of 138 new cases due to lack of resources. Of those 110 cases turned away, 36 involved applications for asylum before the immigration court system, 33 involved survivors of crime, human trafficking, abuse, or neglect, and 10 involved other forms of removal defense before the courts. Many of these cases entailed some combination of representation before the immigration courts, state family courts, and affirmative applications for relief before U.S. Citizenship and Immigration Services (USCIS). Eight cases involved individuals who spoke a language other than English or Spanish for whom an interpreter would be required. Several involved individuals living in homeless shelters, or who were referred to American Gateways by law enforcement agencies, hospitals, or other non-profit service providers.

The immigration nonprofits in Texas are geographically dispersed throughout the state, ensuring

broad coverage in their assistance to Texas' immigrant families. These advocates are well organized as a coalition. Attached is a list of Recognized Organizations and accredited representatives by the BIA in Texas.⁷⁷ These organizations have lawyers on staff or pro bono and Accredited Representatives. They provide thorough legal advice about immigration benefit eligibility and defenses to removal. The Section and AILA TX, and these nonprofit organizations cross-train each other, provide joint pro bono services, and work on immigration-related projects together, including immigration advocacy. These nonprofit groups already have the infrastructure in place, such as client systems, training, and research materials, and are subject to Justice Department disciplinary rules.⁷⁸ Catholic Charities in San Antonio, Texas and American Gateways have provided letters of support for the Section and AILA TX efforts and they are included for review. Apps. 1 & 2. Providing these groups with additional state aid would ensure that the proposal's purpose—assisting indigent individuals with immigration needs—would be served well without re-inventing infrastructure for a new program with unknown efficacy.

4.2 Advocate for the creation of a Public Immigration Defense program

There is little doubt that having legal representation in high stakes legal disputes, such as criminal or removal proceedings, substantially promotes the Constitution's requirement of due process and the guarantee of a fair hearing. When a person is in removal proceedings, his liberty and right to remain with his family in this country are imperiled and the consequences are on par with those of an accused's liberty rights in criminal proceedings. *Padilla v. Kentucky*, 559 U.S. 356 (2010). The Sixth Amendment's right to counsel, however, does not extend to civil removal proceedings and so noncitizens are at a severe disadvantage in immigration court. *Id.* One approach to remedying the lack of legal representation in removal proceedings is to create a Public Immigration Defense program in Texas. There is legal support for such a program. The Texas Constitution guarantees representation in criminal proceedings to persons accused of crimes, Tex. Const. art. I, § 10, and the Texas Legislature has extended the right to representation to indigent persons in certain civil proceedings such as juvenile criminal proceedings and parental-rights termination cases. Tex. Family Code § 51.10(f) and (g) (appointment of counsel in juvenile proceedings); Tex. Fam. Code § 107.013(a)(1) (appointment of counsel in parental-termination proceedings).

Immigrants often need qualified representation to handle matters where profound interests, potentially equivalent to the death penalty, are at stake. The Section and AILA TX strongly recommends the creation of a public defender program for immigration court similar to the one that was created in New York called Bronx Defenders' New York Family Unity Project.⁷⁹ The

⁷⁷ See <https://www.justice.gov/eoir/page/file/942306/download#TEXAS>

⁷⁸ See

<https://www.justice.gov/sites/default/files/eoir/legacy/2013/02/27/EOIRsDisciplinaryProgramFactSheet02272013.pdf>; <https://www.justice.gov/eoir/list-of-currently-disciplined-practitioners>

⁷⁹ See <https://www.bronxdefenders.org/who-we-are/> (“Each year, we defend 27,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and we reach thousands more through our community intake and outreach programs.”) (emphasis added).

Texas Supreme Court, with the support of the State Bar, the Section, and AILA TX, could recommend that the Texas Indigent Defense Commission to extend its funding and services to immigration court cases and thereby ensure a measure of fairness in removal proceedings.

4.3 Empower and fund the Unauthorized Practice of Law Committee of the State of Texas to proactively investigate unauthorized practice of law

UPLC members are appointed by the Supreme Court of Texas and charged with the critical task of preventing the unauthorized practice of law, thereby protecting the public from those who would pose as qualified experts, sometimes with disastrous consequences. To ensure that those offering legal services are truly qualified, Texas limits the practice of law to persons who have demonstrated their knowledge of the law through advanced legal education, a rigorous examination on federal and state law (including the rules of ethics) and been subject to a thorough a character review.

The UPLC notes on its homepage that the practice of law “involves specialized knowledge and skills,” and that practice by those who are not qualified or authorized to provide legal services “frequently results in the loss of money, property or liberty.” The function of the UPLC is limited in scope: they do not issue advisory opinions, and they investigate complaints but do not assist with recovering lost funds paid to those unlawfully providing legal expertise and services. The only way to get a complaint before the UPLC is to file one at the committee’s website.

To expand protections for Texans seeking legal assistance and advice for civil law matters, the UPLC should consider expanding opportunities to submit a complaint through community engagement and/or public service announcements in multiple languages. If necessary, the budget for the UPLC should be increased to allow them to proactively engage with the community and encourage reporting of any incident.

Service on the committee and related sub-committees is purely voluntary and members are not compensated for their time. It is worth considering some remuneration for this important public service, which will allow members to devote more time to their mission. Perhaps one or two full-time positions are appropriate. The most recent numbers on the website for the UPLC are from 2002 – more than 20 years ago – and notes that at the time, the committee was investigating approximately 350 complaints. In 2002, Texas had a population of over 21 million people, which suggests that the UPLC is capturing only a small fraction of cases involving the unauthorized practice of law. At the very least, the UPLC should be given a budget sufficient to obtain current data to share with the public.

This is a sensitive matter when it comes to immigration. Those seeking immigration benefits often speak little English and are wary of becoming involved in any government reporting program because they may be currently undocumented. As a result, the UPLC may need to conduct targeted outreach in these communities. It also stands to reason that those without the means to hire qualified attorneys lack reliable internet access or the ability to self-help and file a complaint. With

appropriate support and a larger budget, the committee could hold meetings in these communities to reassure individuals that there will be no negative consequences for filing a complaint and possibly allow the submission of complaints on paper forms for those without regular access to computers.

The Section and AILA TX stand ready to partner with the UPLC to encourage low-income Texans to file complaints against those posing as qualified legal specialists. Furthermore, we support expansion and support of the UPLC to include more proactive engagement with the community, which will help identify bad actors before they are able to defraud more Texans before they have lost money. More importantly, proactively monitoring for the unauthorized practice of law will reduce irreparable damage caused by legal errors. Filing a complaint is to be encouraged, but we must recognize that remedies for the client are limited at that point.

Furthermore, victims have no practical recourse when their child custody rights are lost, their legal status has been forfeited, or their defective pleadings are dismissed. We recommend that the UPLC partner with law firms and nonprofits for referrals to legal specialists who may be able to recover lost funds and qualified attorneys able to assist with remediation of legal errors in prior cases.

There is little to no funding for the UPLC and very few cases have been brought against unscrupulous non-lawyer practitioners. Many have reported and tried to have action taken against several unscrupulous individuals but are met with “buyer beware” reactions from the Committee. Neither the UPLC nor the Consumer Protection Division of the Office of the Attorney General appears to be taking a strong, proactive role in prosecuting immigration services fraud. Our members have experienced that both the UPLC and the Office of the Attorney General suggest that the other entity should handle UPL cases. Because the Bar is concerned about protecting and serving the public, this is one area that needs improvement because immigrants are frequently subject to such abuse. Noncitizens tend not to understand our legal system; many distrust government; there are language and cultural barriers; and immigration law is particularly complex. All of these things make them susceptible to being taken advantage of by unscrupulous and unqualified individuals who claim to practice immigration law.

4.4 Promote anti-fraud campaigns in Texas communities

The UPLC should work with USCIS, EOIR, the FTC, the ABA, the Section, AILA TX, and the Office of the Attorney General to cross-promote anti-notario fraud campaigns. To date we are not aware of UPLC’s involvement in any of these campaigns. The UPLC should update its public website with warnings about notario fraud and the unauthorized practice of law, information about the availability of appropriate legal services, and a list of nonprofit and other organizations that handle immigration matters for those with few financial resources. When out in the community, the UPLC officials should remember to remind the public how and where to get authorized immigration legal advice.

4.5 Identify the true unmet needs in Texas for immigration services

There is a lack of clarity on the type of immigration law services for which there is an unmet need. Without data concerning the scope and nature of unmet legal needs, the solution of “throwing more warm bodies” at the problem is careless and unlikely to address the justice gap in Texas, that is the delivery of legal services to low-income communities. Immigration law covers a broad spectrum of services: consular processing, adjustment of status, naturalization, adoption, immigration benefits for vulnerable communities (such as victims of crime, domestic violence, trafficking), removal defense, employment-based immigration, and others. Neither the 2015 TAJF Texas Unmet Legal Needs Survey nor the 2016 Report of the Texas Commission to Expand Civil Legal Services address the specific unmet immigration legal needs or where in Texas this legal need is most acute.⁸⁰ Broadly speaking, there is a justice gap in Texas concerning the legal needs of noncitizens. But any solution must target a specific problem and seek to address it where it is most needed. The proposal to allow paraprofessionals to provide immigration legal services does neither.

4.6 Encourage State Bar of Texas members to join active organizations that provide updates and legal practice advisories

Membership in AILA, the Section, National Immigration Project (NIP) and other active organizations that provide updates and legal practice advisories improve the ability of licensed attorneys to provide quality immigration representation, and the ability to communicate with other licensed practitioners locally and across the United States. It does so by increasing the practical knowledge and efficiency of attorneys who practice immigration law in Texas. When immigration lawyers collaborate to share, mentor, discuss ethical considerations, and substantive information and practice management resources, noncitizens are better served. Additionally, collaboration between the private immigration bar and Recognized Organizations increases the ability to better serve noncitizens in the ever-changing immigration processes Education and practical support of attorneys who, as discussed above, are regulated by both Texas and the DOJ will better equip the bar to serve the unmet legal needs of noncitizens.

AILA, the Section, and NIP provide these resources to its members through formal and informal mentoring programs, focused practice area groups, free webinars, CLE programs, virtual and in-person conferences and a variety of substantive and practical programming through its online classes, AILA University. There are various organizations across the country that provide CLE programs, publications, and practice advisories to licensed attorneys and accredited representatives. Frequent updates on caselaw, policy changes and updates, and important developments are rapidly available to members through AILA’s information repository, Infonet at <https://www.aila.org/infonet>. Updates are also available through various other organizations

⁸⁰ Hon. Wallace B. Jefferson (Retired), et al., *Report of the Texas Commission to Expand Civil Legal Services* (2016), <https://www.txcourts.gov/media/1436563/complete-cecls-report.pdf>

dedicated to providing the latest information to licensed immigration attorneys and accredited representatives. AILA's Texas, New Mexico and Oklahoma chapter and the Section foster a community of collaboration with mutual support to encourage an ethical and thorough analysis of cases and client issues as do local AILA groups in collaboration with local bar chapters. The local chapter of AILA also encourages pro-bono efforts and provides support to non-profits who provide direct representation to underserved communities in the membership area.

During the 2021-2022 bar year out of 95,196 attorneys in the State of Texas, 1,282, a little more than 1%, were members of the State Bar of Texas Immigration and Nationality Law Section and only 166 were Board Certified in Immigration and Nationality Law.⁸¹ While the State Bar does not provide statistics related to the self-reported practice areas each attorney provides on their State Bar profile, a search for in-state Texas Bar members who are eligible to practice and list immigration among their practice areas reveals over 3,400 attorneys.⁸² Encouraging more of these practitioners to join the Section and AILA, could have a significant impact on the capacity of many of these members to provide more representation to the underserved, through mentoring, education and coordinated pro-bono projects.

4.7 Advocate for Immigration Reform to Simplify the System

Establishing a less complex, intuitive, and efficient immigration system would reduce the need for complex legal analysis in nearly every immigration matter. The complexity and need for reform contribute to the risk of allowing non-attorney practitioners to provide immigration services discussed throughout this report. Currently, the potential grounds of inadmissibility or deportability under the Immigration and Nationality Act do not always correspond with the greatest concerns for public safety or the national interest in who should be accepted or excluded from legal status and full community participation in the United States. Many individuals who otherwise have committed no crimes and who have significantly contributed to the national economy are permanently barred for simply having left the country to visit a dying parent and then returned to the United States to care for United States citizen children. Others are barred for youthful acts with permanent immigration consequences that they could not have anticipated at the time. Many employers would be willing to sponsor workers—if legal options were available to them to do so.

Immigrants seeking work permits are often shocked to learn that the adjudication of some work permits may take more than one year. Greater efficiency in adjudicating legal work authorization applications, would allow more immigrants to work legally and better afford the representation they need to pursue more permanent relief. The agencies tasked with processing complicated

⁸¹ State Bar of Texas Department of Research and Analysis, State Bar of Texas Membership: Attorney Statistical Profile (2021-22), https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends&Template=/CM/ContentDisplay.cfm&ContentID=56197, (accessed June 2, 2023).

⁸² State Bar of Texas “find a lawyer” search: https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&template=/Customsource/MemberDirectory/Result_form_client.cfm, (accessed June 2, 2023).

immigration applications and preliminary documentation for immigration are often under-resourced and understaffed. Greater resources and more efficient regulations for the Department of Labor and Department of State would reduce the level of complex strategy often needed to process cases for legal immigrants. Many individuals seek protection in the United States through asylum but face legal standards that do not fully consider the nature and causes of the suffering that they have faced, yet our moral and international obligations require us to advocate for their safety and basic human rights. For Congress to address any of these challenging issues would not only improve the options for immigrants but also benefit their families, and employers as well as help ease the challenges in providing effective representation for their legal needs.

Conclusion

We look forward to collaborating with the TAJC and other stakeholders to address economic hardships without compromising adequate and lawful representation to noncitizens. Federal preemption prohibits state regulation of the practice of immigration law, including defining who may practice immigration law.

Should the TAJC propose licensing paraprofessionals in other practice areas, we recommend that paraprofessionals be required to refer noncitizens to either Recognized Organizations or immigration attorneys for *Padilla*-type letters. Otherwise, those whom the TAJC seeks to help will be harmed if they make decisions without knowing how actions taken in other practice areas affect their immigration status.

Immigration law is a complex and nuanced field that requires a deep understanding of the written law, agency guidance, executive orders, and the interplay between various federal agencies. Moreover, immigration cases often involve overlapping legal areas such as criminal law, family law, and employment law, which necessitate comprehensive analysis and consideration of potential impacts. The potential consequences of legal errors in immigration cases can be severe, leading to employment loss, family separation, or even removal from the United States with long-term consequences.

We acknowledge the need to address economic hardships faced by many noncitizens and their limited ability to afford legal services. However, Recognized Organizations serve tens of thousands of low-income noncitizens each year. The Commissioners can help Recognized Organizations by creating additional funding opportunities.

Our members are available to explore alternative avenues for expanding access to legal services to noncitizens. We invite the TAJC to work with us in providing those solutions and we ask that the TAJC allow a representative of our groups to appear before the Commissioners to address the needs of low-income noncitizens who have made Texas their home.

APPENDICES

APPENDIX 1



May 25, 2023

Supreme Court of Texas
Chief Justice Nathan Hecht
201 W. 14th Street
Austin, T 78711

RE: Proposed Modification of Rules to allow non attorney paraprofessionals to provide limited legal service

Dear Chief Justice Hecht:

I write on behalf of American Gateways, a nonprofit legal services organization that provides much needed legal representation for low-income immigrants in Central Texas. In 1987, a concerned group of lawyers founded our agency so that indigent immigrants could access the Immigration Court and Immigration Service in the same manner as individuals who were able to afford private legal representation. Our agency services indigent immigrants who are at or below 200% of the Federal Poverty Guidelines. Over the past 35 years, American Gateways has become an indispensable legal services provider for low-income immigrants in 23 Central Texas counties and is considered one of the most effective and efficient providers of immigration legal services in the nation. We have offices in Austin, San Antonio, and Waco and also serve 3 major detention centers – in Pearsall, Taylor, and Karnes City, Texas. Our work focuses on humanitarian forms of relief, including asylum, removal defense, relief for crime victims and survivors of human trafficking, and work to ensure family unity.

This past year demand for our services remained high, however we have worked to innovate and leverage incredible pro bono support from the private bar. We also maintain a referral list of reliable private bar attorneys who provide pro bono and low bono services and practice various complicated areas of immigration law.

While we agree that there is unmet need for pro bono immigration legal services, we believe that the proposed rule will not truly alleviate this need. Our agency is recognized by the Department of Justice, Board of Immigration Appeals and employs attorneys and accredited representatives who have received their accreditation through the DOJ after an extensive application process. These accredited representatives are directly supervised by our attorneys as required by the DOJ. We support the Immigration and Nationality Section's request to provide an exemption for immigration legal services from this rule and hope that you and your fellow Justices will take into account the high stakes in immigration cases, as well as the wealth of immigration non-profit legal services and private bar pro bono assistance that remains available. Thank you.

Sincerely,

Edna Yang
Co-Executive Director



MAIN OFFICE

202 W. French Place
 San Antonio, TX 78212
 (210) 222-1294

info@ccaosa.org
 www.ccaosa.org

ADDITIONAL LOCATIONS

Guadalupe Community Center
 1801 W. Cesar E. Chavez Blvd.
 San Antonio, TX 78207
 (210) 226-6178

St. Stephens CARE Center
 2127 S. Zarzamora St.
 San Antonio, TX 78207
 (210) 226-6178

Guadalupe Home
 (210) 476-0707

Caritas Legal Services
 110 Bandera Rd.
 San Antonio, TX 78228
 (210) 433-3256

Grace Counseling
 2911 S. New Braunfels Ave.
 San Antonio, TX 78210
 (210) 377-1133

Refugee Resettlement Services
 2018 Avenue B
 San Antonio, TX 78215
 (210) 222-1294

Seton Home
 1115 Mission Road
 San Antonio, TX 78210
 (210) 533-3504

St. PJ's Children's Home
 919 Mission Road
 San Antonio, TX 78210
 (210) 533-1203

San Antonio Birth Doulas
 4522 Fredericksburg Rd.
 #A-47 Balcones Heights,
 TX 78201
 (210) 222-0988

Del Rio Regional Office
 106 Miers St.
 Del Rio, TX 78840
 (210) 242-3100

June 18, 2023

Supreme Court of Texas
 Chief Justice Nathan Hecht
 201 W. 14th Street
 Austin, T 78711

RE: Proposed Modification of Rules to allow non attorney paraprofessionals to provide limited legal service

Dear Chief Justice Hecht:

I write on behalf of Catholic Charities Archdiocese of San Antonio, Inc. Our mission is to provide for the needs of our community through selfless service under the sign of love. At Catholic Charities we understand that disadvantage starts before birth and accumulates throughout life. For more than 80 years, Catholic Charities has provided services to the most vulnerable throughout San Antonio and Bexar County. In an effort to address social disparities and their effects on mental health and overall well-being, we offer over 40 programs that seek to address inequalities in a holistic approach – placing individuals and family units at the center of our interventions. Our programs assist clients with: homelessness prevention; parenting programs; after school education; food assistance; poverty alleviation; refugee resettlement services; senior services; legal assistance; and counseling.

Catholic Charities' Caritas Legal Services has provided immigration services since 1976 when it received Recognition & Accreditation (R&A) by the Department of Justice. Our licensed Staff Attorneys/Board of Accredited (BIA) Representatives have ample experience in immigration proceedings providing both affirmative and defensive representation. Caritas can offer our legal services in various languages, including Spanish, Arabic, Amharic, Oromo, Harari, Somali, Pashto, and Dari. In this time, our program has grown to provide education on immigrant rights, assisting victims of human trafficking, DACA, detained and non-detained individuals, asylum hearings, naturalizations, adjustment of status, and consular proceedings.

While we agree that there is unmet need for pro bono immigration legal services, we believe that the proposed rule will not truly alleviate this need. Our agency is recognized by the Department of Justice, Board of Immigration Appeals and employs attorneys and accredited representatives who have received their accreditation through the DOJ after an extensive application process. We support the Immigration and Nationality Section's request to provide an exemption for immigration legal services from this rule and hope that you and your fellow Justices will take into account the high stakes in immigration cases, as well as the wealth of immigration non-profit legal services and private bar pro bono assistance that remains available.

Sincerely,

J. Antonio Fernandez
 CEO Catholic Charities Archdiocese of San Antonio



**Notice of Entry of Appearance
as Attorney or Accredited Representative**

Department of Homeland Security

DHS
Form G-28
OMB No. 1615-0105
Expires 05/31/2021

Part 1. Information About Attorney or Accredited Representative

1. USCIS Online Account Number (if any)
▶

Name of Attorney or Accredited Representative

2.a. Family Name (Last Name)
2.b. Given Name (First Name)
2.c. Middle Name

Address of Attorney or Accredited Representative

3.a. Street Number and Name
3.b. Apt. Ste. Flr.
3.c. City or Town
3.d. State 3.e. ZIP Code
(USPS ZIP Code Lookup)
3.f. Province
3.g. Postal Code
3.h. Country

Contact Information of Attorney or Accredited Representative

4. Daytime Telephone Number
5. Mobile Telephone Number (if any)
6. Email Address (if any)
7. Fax Number (if any)

Part 2. Eligibility Information for Attorney or Accredited Representative

Select **all applicable** items.

1.a. I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest courts of the following states, possessions, territories, commonwealths, or the District of Columbia. If you need extra space to complete this section, use the space provided in **Part 6. Additional Information**.

Licensing Authority

1.b. Bar Number (if applicable)

1.c. I (select **only one** box) am not am subject to any order suspending, enjoining, restraining, disbaring, or otherwise restricting me in the practice of law. If you are subject to any orders, use the space provided in **Part 6. Additional Information** to provide an explanation.

1.d. Name of Law Firm or Organization (if applicable)

2.a. I am an accredited representative of the following qualified nonprofit religious, charitable, social service, or similar organization established in the United States and recognized by the Department of Justice in accordance with 8 CFR part 1292.

2.b. Name of Recognized Organization

2.c. Date of Accreditation (mm/dd/yyyy)

3. I am associated with , the attorney or accredited representative of record who previously filed Form G-28 in this case, and my appearance as an attorney or accredited representative for a limited purpose is at his or her request.

4.a. I am a law student or law graduate working under the direct supervision of the attorney or accredited representative of record on this form in accordance with the requirements in 8 CFR 292.1(a)(2).

4.b. Name of Law Student or Law Graduate

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. 1st to create a public defender’s office for imm. ct.
- **Washington** – 1st 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.

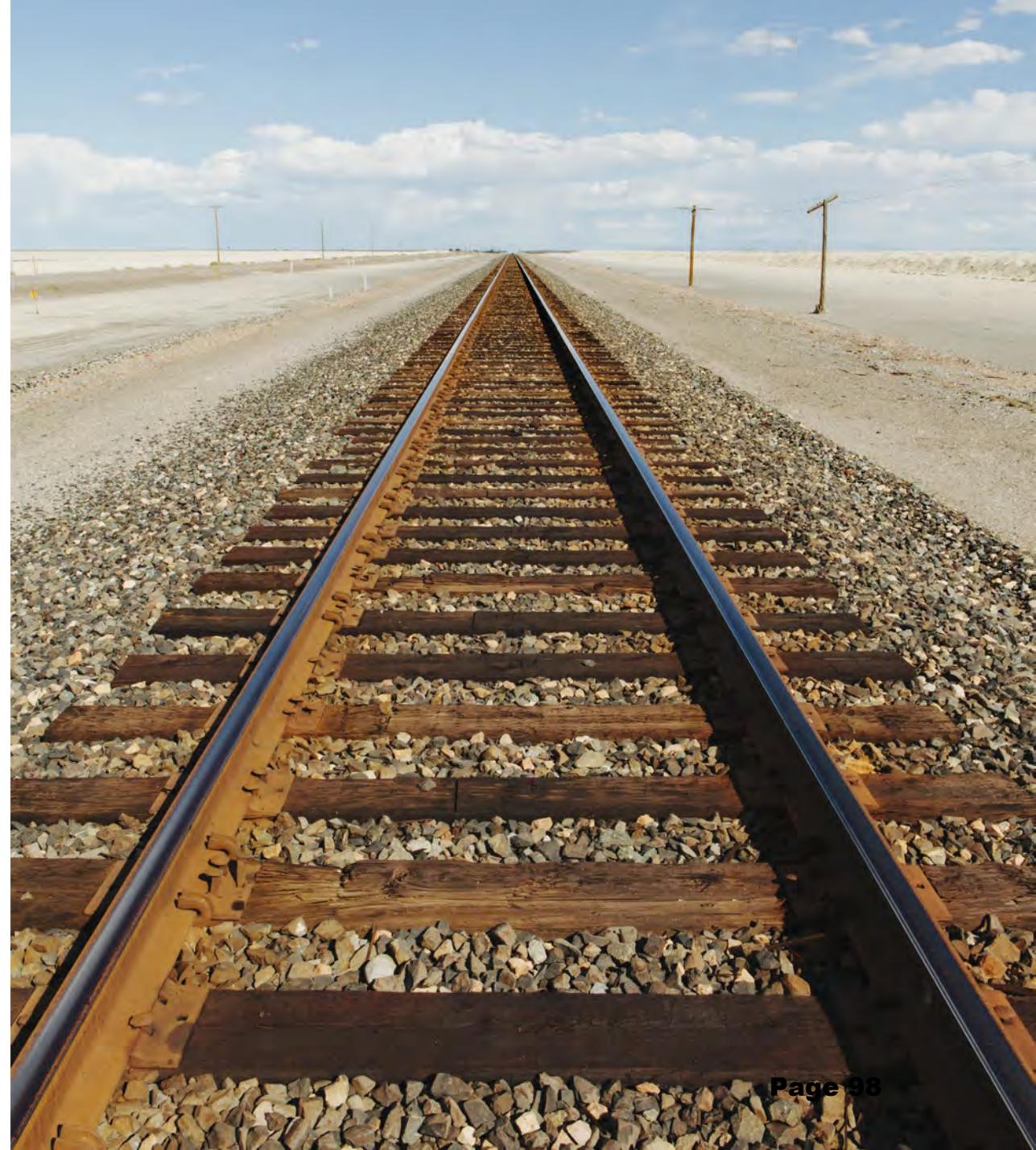
No other state permits paraprofessionals to dabble in immigration law.



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)

IMMIGRATION & NATIONALITY LAW SECTION
of the
STATE BAR of TEXAS

Date:
September 20, 2023

Address Reply to:
Roy Petty & Associates, PLLC
8700 N Stemmons Fwy Ste 101
Dallas TX 75247

The Hon. Brett Busby
Supreme Court of Texas
PO Box 12248
Austin, Texas 78711

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,

A handwritten signature in blue ink, appearing to read "Roy Petty", with a horizontal line extending to the right.

Roy Petty
Immediate Past Chair

RP/amg
SBOT/Section/NLOs

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 Council¹ 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

¹ 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.² 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

² 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.³ 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.

³ 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."⁴
- 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

⁴ 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."⁵

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

⁵ <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 Foundation¹ (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

¹ 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%.² 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.

²<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.

MEMORANDUM

TO: Access to Legal Services Working Group (“Working Group”)
FROM: Kennon L. Wooten, Chair of Scope-of-Practice Subcommittee (“Subcommittee”)
IN RE: Background Information, Subcommittee Proposals, and Associated Feedback
DATE: October 29, 2023

Prior Subcommittee memos to the Working Group (dated July 24 and September 24, 2023) contain information relating to the Subcommittee’s composition, tasks, processes, and work product. This memo supplements the prior memos and includes as appendix items the Subcommittee’s final rule proposals—a new scope-of-practice rule and amendments to existing Texas Rules of Civil Procedure—as well as other pertinent information. This memo, with its appendix items, is intended to aid the Working Group’s discussion during its next and final meeting on November 2, 2023.

A. Background Information

The Subcommittee was tasked with analyzing whether certain 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 that would be 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 for the paraprofessionals. These tasks were derived from the October 24, 2022 referral letter from Justice Brett Busby of the Supreme Court of Texas to Texas Access to Justice Commission Chair, Harriet Miers. That letter, which defined the parameters of the Working Group’s entire project, is attached as **Appendix 1**.¹

The Subcommittee met a total of eight times after its formation in early 2023. Six of those meetings are addressed in the above-referenced prior memos. The final two meetings occurred after the Working Group’s last meeting on September 26. All Subcommittee meeting materials—including agendas, minutes, recordings, and discussion items—are available upon request to the Working Group’s National Center for State Court (NCSC) liaisons, Lonni Summers and Grace Spulak.

As explained in the prior memos, Subcommittee members were placed into four subgroups: (1) the Family Law Subgroup, (2) the Housing Subgroup, (3) the Probate Subgroup, and (4) the Consumer-Debt Subgroup. These subgroups were tasked with making recommendations about the potential scope of practice for licensed paraprofessionals in their respective subject areas. Subgroups worked hard between Subcommittee meetings, and they prepared recommendations that were ultimately approved by the Subcommittee and then presented to the Working Group.

The Working Group discussed subgroup recommendations during its meetings on July 27 and September 26. At the September 26 meeting, the Working Group voted to authorize the

¹ The letter contains additional tasks beyond those assigned to the Subcommittee. The additional tasks were addressed by the other two subcommittees of the Working Group—the Paraprofessional Licensing Subcommittee, chaired by Lisa Bowlin Hobbs, and the Non-Attorney Ownership Subcommittee, chaired by former Justice Michael Massengale.

Subcommittee to prepare rule proposals based on the Family Law Subgroup's and Probate Subgroup's recommendations. Also at that meeting, the Working Group discussed the Housing Subgroup's and Consumer-Debt Subgroup's recommendations, suggested revisions to them, and considered whether licensed paraprofessionals should be able to represent low-income Texans in any type of case in justice court (rather than in particular types of cases). The Working Group's discussions are summarized in meeting minutes and captured fully in recordings of the meetings.

Considering the collective feedback and the Subcommittee's tasks, Subcommittee Chair Wooten drafted an initial version of a proposed new scope-of-practice rule and proposed amendments to two existing justice-court rules: Texas Rules of Civil Procedure 500.4 and 510.4. The Subcommittee discussed the initial version during its meeting on October 10. Additional feedback was invited and received after that meeting. With the meeting feedback and additional feedback in hand, Subcommittee Chair Wooten prepared a revised version of the rule proposals. The Subcommittee discussed the revised version, and voted on some of its provisions, during its meeting on October 23. With the meeting feedback and votes in hand, Subcommittee Chair Wooten prepared a third revised version of the rule proposals, sent that version to the Subcommittee on October 23, and invited final feedback through October 24 at 6:00 p.m. CST. With the final feedback in hand, Subcommittee Chair Wooten prepared a final version of the rule proposals and sent it to the Subcommittee with a request to vote by 6:00 p.m. CST on October 25.

The voting survey sent to the Subcommittee contained the following prompts:

Do you approve the proposed new scope-of-practice rule?

Yes

No

Comments (Optional):

Do you approve the proposed amendments to Texas Rules of Civil Procedure 500.4 and 510.4?

Yes

No

Comments (Optional):

Do you think compensation for the contemplated licensed paraprofessionals should be limited to certain sources, such as government and nonprofit funds? (If you answer no, you support allowing any source of compensation, including direct compensation from clients—e.g., with a sliding-scale fee structure.)

Yes

No

Comments (Optional):

On October 25, the Subcommittee approved the rule proposals with a 16-2 vote.

The third prompt, relating to compensation, stems directly from the referral letter attached as Appendix 1 to this memo. This was a close vote. A slight majority (9-7) voted in favor of not limiting the compensation sources for the clients of the contemplated licensed paraprofessionals.

B. Final Rule Proposals and Associated Feedback

The final rule proposals are attached as **Appendix 2**. The scope-of-practice rule is clean because it is a *new* rule. The proposed amendments to Texas Rules of Civil Procedure 500.4 and 510.4 are redlined to facilitate the Working Group’s analysis of the existing and proposed rule content.

A few points warrant further comment. First, the placement of the new scope-of-practice rule remains to be determined. If the Judicial Branch Certification Commission (JBCC) becomes the regulating entity for licensed paraprofessionals, it may make the most sense to incorporate this rule into the existing JBCC Rules. The Subcommittee did not take a position on this particular matter.

Second, Subcommittee members shared 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.² When discussing potential definitions of “low income,” the Subcommittee considered the memo attached as **Appendix 3**. This is the same memo that the Working Group considered during its September 26 meeting. As the memo states, it by no means exhaustive. In that regard, discussions at the Working Group and Subcommittee level revealed other potential ways of defining “low income,” including definitions that consider geographic differences in terms of cost of living and other factors. One Subcommittee member who preferred that there be no income criteria for clients also conveyed that, if criteria are imposed, they should be the same as the existing standard for indigency in appointment of counsel in criminal matters. With permission, his written feedback is attached as **Appendix 4**. Some other Subcommittee members expressed a preference for defining low income as 300% to 400% of the Federal Poverty Guidelines. Ultimately, the Subcommittee voted (10-2) to propose the following definition of “low income”: 200% of the current Federal Poverty Guidelines.³ The percentage point was chosen with input indicating it aligns with the general criteria legal aid imposes for clients.

Related to income criteria, the Subcommittee favored no means testing and opted instead to allow income level to 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.” The Subcommittee did not discuss the precise content of such a certification.

Third, as the Working Group discussed on September 26, 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 they 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 nonlawyers to include two new categories:

² They understood that the referral letter (Appendix 1) necessitates a focus on low-income Texans but still wanted to convey their opinion that income criteria should not be imposed on clients of the contemplated paraprofessionals.

³ One Subcommittee member has suggested that the proposed definition might be clearer if revised to read as follows: “at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services.” This clarifying edit, which is consistent with language in Section 1155.151(a-3)(2)(c) of the Texas Estates Code, should be discussed by the Working Group during its November 2 meeting.

(1) licensed paraprofessionals, who can provide representation within the scope of their license; 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 a lawyer who is employed by a legal aid entity or other nonprofit entity. The latter category is modeled loosely after Alaska’s Community Justice Worker Program.⁴

Subcommittee member Professor Shawn Slack has studied Alaska’s Community Justice Worker Program and has spoken with Texas nonprofits about potential involvement with a program of this nature. He will attend the November 2 Working Group meeting to provide additional information.

Fourth, the proposed amendments to Texas Rule of Civil Procedure 500.4(c) are intended to continue allowing *assistance* of self-represented litigants in any type of justice-court case, without licensure or training. But the amendments modify the good-cause assessment, such that a justice of the peace would no longer need good cause to allow assistance but could disallow it for good cause. The proposed amendments also clarify that a self-represented litigant receiving assistance must be present for any proceeding in which assistance is provided (to safeguard against the possibility that assistance does not align with the self-represented litigant’s wishes). Additionally, the proposed amendments clarify that the person assisting the self-represented litigant cannot be compensated by the self-represented litigant. In other words, unlike the existing rule, the amended rule expressly authorizes compensation by someone other than the self-represented litigant—e.g., a nonprofit entity employing individuals who assist self-represented litigants in justice-court cases.

Fifth and finally, the rule proposals should not be analyzed in a vacuum. By way of example, they are envisioned as being coupled with proposed licensing and regulation standards, which have been developed by the Paraprofessional Licensing Subcommittee of the Working Group. Also, if the rule 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).

C. Concluding Thoughts

Subcommittee members worked tirelessly to generate the rule proposals in Appendix 2 to this memo. They engaged in robust discussions along the way. While there were differences of opinion, the discussions were consistently thoughtful and professional. It was an honor to serve as the Chair of this Subcommittee and to work with, and learn from, such an esteemed group of volunteers.

⁴ During its first meeting, the Working Group received a presentation about Alaska’s program. For more information about the program, see [Community Justice Worker Program - Alaska Legal Services Corporation \(alasc-law.org\)](http://alasc-law.org).



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October 24, 2022

Ms. Harriet Miers
Chair, Texas Access to Justice Commission
Locke Lord LLP
By email

Dear Chair Miers:

The Texas Commission to Expand Civil Legal Services recommended in its December 2016 report that a primary objective of future rulemaking projects should be to foster access to the civil justice system by Texans who cannot afford traditional legal representation. Many Texans have incomes low enough to qualify for assistance from legal aid and volunteer attorney organizations, but resource and staffing constraints allow these organizations to serve only a small fraction of qualified applicants. Often, the only option for Texans who cannot be served is to attempt to represent themselves.

To help address this civil justice gap and expand access to justice for low-income Texans, the Supreme Court requests that the Commission examine existing rules and propose modifications 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 Commission should 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 certain services for which there is a particular need.

The Court understands that the Commission will seek input from the bar and a range of other relevant constituencies in developing these proposals, which the Court would appreciate receiving by fall 2023. The Commission should work with the State Bar of Texas to provide periodic updates to bar members regarding its work on the proposals.

The Court is grateful for the Commission's service and your leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Brett Busby", written in a cursive style.

J. Brett Busby
Justice

cc: Access to Justice Commission Members and Staff
State Bar of Texas

Scope of Practice Subcommittee Rule Proposals
****Approved by Subcommittee on 10/25/2023****

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 200% of the current Federal Poverty Guidelines and 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 all 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 immediately withdraw from representation of the client. Such a withdrawal will constitute 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

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. 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.

Deleted: ; or(3) be represented by an attorney

(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 allow a self-represented litigant 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.

Deleted: ay, for good cause,

Deleted: an individual representing himself or herself

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 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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MEMORANDUM

TO: Scope of Practice Subcommittee Members
FROM: Kennon L. Wooten
IN RE: Eligibility for Contemplated Services
DATE: September 21, 2023

To facilitate our discussion about eligibility criteria during our meeting on Friday, September 22, 2023, I have obtained information relating to such criteria. Some of this information has come from some of you. Thank you for your invaluable input. Other information has come from entities that provide, or facilitate the provision of, legal services to low-income Texans.

This memorandum is by no means exhaustive. It simply captures, in one place, the information I have obtained to date, with hopes of making the information easier for us to analyze and discuss.

As a reminder, our task—as determined by the Supreme Court of Texas referral letter dated October 24, 2022—is to make recommendations regarding eligibility criteria for low-income Texans who could be clients of qualified paraprofessionals providing limited legal services. In other words, while the justice chasm in Texas affects many people in higher income brackets, our focus tomorrow should be on assessing eligibility criteria for low-income Texans specifically.

Finally, before providing the information below, it is important to recognize that different funding sources have different limits. Thus, to the extent there are funding sources for the paraprofessional services we are contemplating, those sources will impact eligibility-criteria determinations.

1. Texas Access to Justice Foundation (TAJF): TAJF “is the leading funding source for legal aid in Texas.” [Texas Access to Justice Foundation - Home \(teajf.org\)](https://teajf.org). 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.” [Microsoft Word - 2023 TAJF Grant Eligibility Income Guideline \(teajf.org\)](#) (containing additional details).
2. Texas Legal Services Center (TLSC): As a general matter, TLSC prioritizes clients within 200% of the federal poverty guidelines. But it 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 this 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.

Number of people in your household (include yourself)	Poverty Guidelines Yearly Income	Poverty Guidelines Monthly Income	Poverty Guidelines Weekly Income
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	\$721.15

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. Here is a chart demonstrating what this means in terms of dollars and household size.

Reference Chart—200% of Federal Poverty Guidelines *

Size of household	48 Contiguous states and the District of Columbia	Alaska	Hawaii
1	\$29,160	\$36,420	\$33,540
2	39,440	49,280	45,360
3	49,720	62,140	57,180
4	60,000	75,000	69,000
5	70,280	87,860	80,820
6	80,560	100,720	92,640
7	90,840	113,580	104,460
8	101,120	126,440	116,280
For each additional member of the household in excess of 8, add:	10,280	12,860	11,820

* The figures in this table represent 200% of the Federal Poverty Guidelines by household size as determined by HHS.

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 our state, HVL also manages grants with different income and asset tests that have to 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. Simply by way of example, the State Bar of Texas Appellate Section (“the Section”) has an active program to provide representation for low-income Texans in the appellate courts on a purely volunteer basis. The Section does not have precise income testing, but income qualification is one factor for admission into the program. The Section 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. Here is another chart demonstrating 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

From: [Rob Henneke](#)
To: [Kennon Wooten](#)
Subject: Low-income criteria feedback
Date: Tuesday, October 10, 2023 10:34:59 PM

EXTERNAL

Kennon –

I oppose means testing for eligibility to receive paraprofessional legal services for these main reason:

- **Doing so would be perceived as lesser-quality legal services for poor people, which undermines the value of the services provided.**
 - In the context of our subcommittee discussions, are we saying that paraprofessional legal services would provide a lower quality of legal services? I think that everyone supporting the idea would say, “no,” because it would be unethical to create a category of lesser-quality, inferior legal assistance. Yes, we are discussing limiting the scope of what paraprofessionals can do because that scope is arguably in their skill-set that’s within the same level of duty, care, and quality that one would receive from a licensed attorney. So, within the scope of paraprofessional services, it makes no sense to limit by income which Texans can access and pay for those services. If these paraprofessional services are intended to be less expensive, licensed legal services, then there isn’t any reason why there should be an income limit on who can hire a paraprofessional, or that someone who makes \$1 over the threshold cannot. In fact, without means testing, it would likely make the paraprofessional services more successful as they would be able to market to the entire universe of prospective clients needing services within their scope.
 - The integrity of the legal profession in Texas has always held attorneys to the full standard of care. Whether my client pays me \$50 or \$50K, the professional responsibility rules require that I owe each the same duty of care and loyalty. If this is to remain the case, we shouldn’t have *Central Market v. Dollar General* legal professionals.
- **Means testing is anti-competitive.**
 - The only reason I can see for means testing is to not compete with attorneys for clients able to pay/afford attorney rates. If the premise is that we only want paraprofessional services for poor people because lower income Texans can’t afford an attorney, then the reason to limit paraprofessional services to low-income Texans would be to block paraprofessionals from providing legal services to people who can afford more sophisticated legal representation, but don’t want to pay full freight. That’s protectionist and anti-competitive.
- **Insufficient data that low income is the main reason why Texans do not use attorneys.**
 - We have the data in terms of how many evictions, divorces, probate matters, etc., are filed in Texas each year. But, I don’t believe we have any Texas data showing what % of a litigant in each type matter are *pro se*. And, we certainly don’t have current data to unpack these demographics or to explain WHY parties are appearing *pro se* in legal matters. That data isn’t collected in Texas, so it’s all anecdotal stories and assumptions that this is predominantly because hiring an attorney is too expensive.

We don't know why most Texans don't hire an attorney to represent them in court. Maybe in many divorces, it's because the other spouse hired an attorney & there isn't enough to hire counsel to fight over or that the community estate is worth less than the potential legal fees. Maybe in many evictions, it's because the tenant is in the wrong & it doesn't make sense to pay \$750 in legal fees to fight over a \$500 / month apartment. Maybe in many probate matters, it's because the decedent died without any real property or personal property of significant value.

- When I was elected as the Kerr County Attorney, the cost of appointed indigent defense as creating a budgetary challenge because at the time, anyone who asked for an attorney had one appointed. The County created a FTE to accept and review applications for appointment of counsel that contained all the requisite income and related information. Anyone who legally qualified for an attorney had one appointed. But, we had a significant decrease in appointed counsel because many individuals who applied for appointed counsel didn't meet the standard for indigency, meaning that they legally could afford to hire an attorney ... if they wanted. For the misdemeanor-type cases that I prosecuted, most who were determined able to hire an attorney chose not to. Many Texans would choose to spend \$1,000 on anything other than hiring an attorney. Many times the outcome of the case is worth less to them than hire an attorney to litigate. But, we shouldn't equate the election to not hire an attorney with the inability to do so.
- What I'd like to see, that I don't believe has ever been done before, is to expand the civil cover sheet to collect basic demographic information about individual parties in legal proceedings. Age, race, gender, education level, income, citizenship, marital status, children, reason for being *pro se* (if applicable), home ownership, etc. Put this into some-type of online database where this data is collected each time a case is filed and can be compiled statewide (most civil litigation data is only kept at the local level on a county by county basis & isn't computerized) and analyzed. Maybe this tells us that a certain demographic in Dallas needs help on protective orders, while a different demographic in Houston needs help on evictions. Then, we could dig deeper into the data to understand why.

We're not supposed to be creating a legal welfare system. What we don't want to do is to expand government by taxpayer funding of low-income civil legal assistance and, in doing so, creating a subclass of legal representation. My fear is that any taxpayer funding of private legal services leads to the socialization of the practice of law. It's not the role of government to fund, and through funding control, private legal representation in civil matters. And, any limited scope will only grow in scope as the solution to lack of affordability to legal representation will be more taxpayer funding, as opposed to reducing the costs and complexity of basic legal matters. Then, this leads to creating governmental entities to provide legal representation, which then threatens the independence of the legal profession when you have divided loyalty by the legal professional between the entity he/she works for and the client he serves. The government shouldn't be the decider as to whether any individual receives legal services and to what extent.

If means testing is to be used as a criteria for access to paraprofessional legal services, then I would propose adoption of the same standard as used for appointment of counsel to indigent persons in

criminal cases. Looking to nonprofit criteria based on FPL or other factors is arbitrary and then depends on the subjective determinations of these public interest legal aid nonprofits.

MEMORANDUM

To: Working Group
From: Lisa Hobbs, Chair, Licensing Subcommittee (Subcommittee 2)
Date: October 29, 2023
Re: Licensing Subcommittee Final Rule Recommendation

This memo supplements prior reports to the Working Group and is intended to be read in conjunction with those reports. Prior reports contain important background on other paraprofessional programs throughout the country and analogous programs within Texas. Those reports are broken down by each major topic in the proposed rule and provide more detail about the subcommittee's discussion.

The last two meetings were spent incorporating feedback from the Working Group from its September meeting and otherwise refining the proposed rule. Appendix A reflects the Subcommittee's consensus on topics within its purview.

Paraprofessional Licensing Draft Rules
Discussion Draft
November 2, 2023

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Qualifications

General qualifications to apply for paraprofessional license

(a.) To apply for licensure as a legal paraprofessional, an individual must have at least a high school education 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.

Subject matter specific qualifications:

(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,

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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.

Paraprofessional Licensing Draft Rules
Discussion Draft
November 2, 2023

- 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.

See Appendix A for model C&F application.

Code of Ethics

- (a.) A licensed legal paraprofessional shall only engage in the practice of law as permitted by Rule XX 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:

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(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.

- (4.) 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.
- (5.) 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.

Discipline

Complaint Filing and Review; Report and Notice of Violation, Penalty, and Sanction

(a) A complaint alleging a violation of the Licensed Paraprofessional Code of Conduct may be filed by a person with personal knowledge of the alleged violation, by the staff of the Paraprofessional Governing Body, or a court of this State.

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(b) A complainant, other than Governing Body staff or a court, must use the complaint form provided on the Governing Body's website. The complaint must include the name and contact information of the complainant and the respondent, describe the factual basis for any allegations, and include any necessary documentation or other supporting materials or information. The complaint must be signed by the complainant and submitted to the Governing Body according to the instructions on the Governing Body's website.

(c) Upon receipt of a properly executed complaint, Governing Body staff must send a copy of the complaint and any attachments to the respondent and direct the respondent to submit a written answer to the complaint under penalty of perjury, within 20 days after receipt of the notice. The notice will be sent electronically to the respondent's email address of record. The respondent may request an extension of time to file an answer, but the request must be made before the expiration of the 20-day period.

(d) The Governing Body's staff must refer a properly executed complaint and the results of any investigation conducted by the staff to a review committee established by the Governing Body.

- (1) The review committee must hold at least one meeting to review the complaint and answer, make the determination on whether a violation occurred, and impose a penalty, a sanction, or both.
- (2) The review committee may hold additional meetings to consider a complaint or seek additional information, but it has no obligation to do so. The review committee is not an investigatory body and will generally render its determination to the Governing Body based on the submissions of the complainant and the respondent and the information gathered by an Governing Body investigation.
- (3) The complainant and the respondent may attend the review committee's meetings. The chair of the review committee may limit the length of comments made to the Governing Body.
- (4) The review committee must state its determination and the imposed penalty or sanction, if any, in writing as proposed findings of fact and conclusions of law, separately stated.

(e) The review committee must give the respondent written notice by email and certified mail of its determination on whether a violation occurred and of each imposed penalty or sanction, if any. The notice will be sent to the respondent's last known address in the Commission's records.

(f) The notice required under (e) must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of any penalty;
- (3) state any sanction; and
- (4) inform the respondent of the respondent's right to a hearing on the occurrence of the violation, the amount of the penalty, or the imposition of the sanction.

(g) The Director of the Governing Body may dismiss complaints that clearly do not allege misconduct, are not within the Governing Body's jurisdiction, or allege misconduct which took

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place more than five years before the complaint was filed. No later than 30 days after the date of the notice of dismissal, the complainant may request in writing that the Commission reconsider the complaint.

Penalty Paid, Sanction Accepted, or Hearing Requested

(a) Not later than the 20th day after the date the respondent receives the notice sent under Rule XX¹ the respondent in writing may:

- (1) accept the review committee's determination and the penalty or sanction; or
- (2) request a hearing on the occurrence of the violation, the imposition or amount of the penalty, or the imposition of the sanction.

(b) If the respondent accepts the determination and recommended penalty or sanction Governing Body staff will present the review committee's findings of fact, conclusions of law, and imposed administrative penalty or sanction to the Governing Body as an agreed order in accordance with Rule XX.

(c) The Governing Body may accept the agreed order as a final order, revise the order, or remand the matter to the review committee for further deliberation.

(d) The Governing Body shall give the respondent written notice of its decision under subsection XX.

(c). If the Governing Body revised or remanded the agreed order, the respondent may, not later than the 20th day after receipt of the notice, request a hearing on the Governing Body's determination.

(e) If the respondent does not timely respond to the notice, given pursuant to Rule XX, of the review committee's determination and imposed penalty, sanction, or both, the Governing Body may issue a default order to approve the review committee's determination and accept or revise the review committee's administrative penalty, sanction, or both.

Notice; Hearing

(a) If the respondent timely requests a hearing, the Governing Body must give the parties written notice of the hearing that includes the time, place, legal authority, and jurisdiction under which the hearing is held and the laws and rules related to the violation. A party may not make ex parte communications with any member of the Governing Body regarding any matter relating to the hearing. Any written material or other evidence that is provided to the Governing Body regarding a hearing must be provided to the other party.

¹ Rule numbers are designated with the placeholder XX in this draft.

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- (b) A presiding officer appointed by the Governing Body may hold prehearing conferences and may issue scheduling orders, discovery control plans, orders on motions in limine, and other orders to ensure a just and efficient hearing.
- (c) The respondent may appear, testify, present evidence, and respond to questions from the Governing Body at the hearing. The complainant may appear and may testify at the discretion of the prosecutor and the presiding officer.
- (d) A party may appear by telephone or videoconference or present the testimony of a witness by telephone or videoconference according to the procedures below.
- (1) A party may request to appear by telephone or to present the testimony of a witness by telephone, upon timely motion stating the reason for the request, containing the pertinent telephone number, and affirmatively stating that the proposed witness will be the same person who appears telephonically at the hearing. A party may request to appear by videoconference or to present the testimony of a witness by videoconference, upon timely motion stating the reason for the request and the city in which the party or witness will be located at the time of the proceeding. A timely motion for telephone or videoconference appearance will not be deemed granted unless granted by written order of the presiding officer.
 - (2) The motion is timely if it is filed no later than 10 days before the hearing. The presiding officer may grant an exception to this requirement if it clearly appears from specific facts shown in writing that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party.
 - (3) All substantive and procedural rights apply to telephone and videoconference proceedings, subject only to the limitations of the physical arrangement.
 - (4) Documentary evidence to be offered at a telephone or videoconference proceeding must be served on all parties and filed with the Governing Body at least 7 days before the proceeding unless the presiding officer, by written order, amends the filing deadline. If a party intends to utilize documentary evidence with a witness at a telephone or videoconference proceeding, it is the offering party's responsibility to ensure that the witness has the document.
 - (5) For a telephone or videoconference proceeding, the following may be considered a failure to appear and grounds for default:
 - (A) failure to answer the telephone or videoconference line;
 - (B) failure to free the line for the proceeding; and
 - (C) failure to be ready to proceed as scheduled.
- (e) At the request of the Governing Body, at least one member of the complaint review committee may attend the hearing to respond to Commission inquiries on the reasons for the advisory board complaint review committee's determination and imposed disciplinary action under Rule XX.
- (f) At the hearing, the presiding officer must apply the general rules of evidence applicable in a district court, except that the presiding officer may admit and consider any information that the presiding officer determines is relevant, trustworthy, and necessary for a full and fair

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adjudication and determination of fact or law. The Governing Body may establish rules for the conduct of the hearing.

(g) The presiding officer will deliberate and announce its decision at the conclusion of the hearing. The presiding officer must make findings of fact and conclusions of law, which may be based upon the review committee's written determination, and must promptly issue an order on the occurrence of the violation, the amount of any penalty imposed, and the imposition of any sanction. The Governing Body must serve the respondent and the complainant with a copy of the order by certified mail with return receipt requested or by certified mail with electronic return receipt.

(h) The notice of the order under (g) must include a statement of the right of the respondent to appeal the order under Section 153.058 of the Government Code.

(i) The complainant and respondent are each responsible for their own costs of preparing for and attending the hearing.

(j) If the respondent fails to appear at the hearing:

- (1) upon proof that notice of the hearing was given to the respondent, the hearing may proceed in the respondent's absence; and
- (2) the factual allegations in the complaint may be deemed admitted.

(k) Proof that a document was sent to a party's last known address, as shown by the Governing Body's records, creates a rebuttable presumption that the document was received. The addressee's failure to claim a document that was properly addressed and served is insufficient to rebut the presumption.

Options Following Decision: Pay, Accept, or Appeal

Not later than the 30th day after the date that the Governing Body issues an order imposing an administrative penalty or sanction, the respondent must:

- (1) accept the obligation to pay the penalty in accordance with the order or accept the sanction; or
- (2) file an appeal of the Governing Body's order contesting the occurrence of the violation, the imposition or amount of the penalty, or the imposition of the sanction.

Collection of Penalty

(a) If the respondent does not pay the penalty and the enforcement of the penalty is not stayed, the Attorney General may sue to collect the penalty and may recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.

(b) A penalty collected under these rules will be deposited in the state treasury in the general revenue fund.

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Appeal

- (a) A person seeking to appeal an order that imposes a penalty or sanction must submit a written appeal of the order to the General Counsel of the Governing Body within 30 days after the Commission's order is issued. The General Counsel must promptly forward the appeal to a special committee consisting of three Administrative Regional Presiding Judges.
- (b) The committee will be chosen by the Presiding Judges, but the committee must not include the Presiding Judge for the administrative region in which the appellant resided at the time of the decision.
- (c) The General Counsel must notify the Governing Body of the filing of an appeal and, upon request, must make the appeal materials available to the Governing Body or its legal representative.
- (d) The appeal must contain:
- (1) a copy of the notice of the Governing Body's order with which the appellant is dissatisfied; and
 - (2) a statement succinctly explaining why the appellant is dissatisfied with the Governing Body's decision.
- (e) The Governing Body must adopt rules or policies to ensure that any Governing Body employee does not communicate regarding the substance of any appeal under this rule with any other Governing Body employee who facilitates the appeal process under this rule. The rules or policies must also provide that Governing Body employees may communicate regarding nonsubstantive aspects of appeals, such as to ensure the completeness and accuracy of appeal materials to be forwarded to the special committee.
- (f) Upon receiving notice of an appeal of a disciplinary action imposing a penalty or sanction, the Governing Body must provide to the General Counsel, and the General Counsel must submit to the special committee, electronic or paper copies of the complaint and any original attachments, any written answer timely submitted by the appellant, notice of the Governing Body's decision imposing a penalty or sanction, and any other documents or written evidence admitted into the record by the Governing Body pertaining to the decision complained of on appeal. The Governing Body staff must provide a copy of these items to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.
- (g) Absent approval by the special committee, submission of materials other than those described in (f) is prohibited. The special committee may, in its sole discretion, allow an appellant to submit additional written materials relating to the appeal. Otherwise, only the written materials described in (f) will be considered. A request to submit additional materials must clearly identify the additional materials for which inclusion is requested.
- (h) The special committee must consider the appeal under an abuse of discretion standard of review for all issues except issues involving questions of law. The standard of review for issues

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involving questions of law is de novo. Under either standard, the burden is on the appellant to establish that the Governing Body's decision was erroneous.

(i) The special committee may consider the appeal without a hearing and may conduct its deliberations by any appropriate means. The special committee may, in its sole discretion, conduct a hearing and allow testimony from the appellant or any other person with knowledge of the underlying facts relating to the disciplinary action complained of.

(j) The special committee may confer in writing with a certification, registration, or license holder who is in the same profession as the appellant if the special committee provides to the appellant:

- (1) notice of the special committee's request for information; and
- (2) a copy of the certification, registration, or license holder's response.

(k) If the special committee sustains the finding that a violation occurred, the special committee may:

- (1) uphold or reduce the amount of any penalty and order the appellant to pay the full or reduced amount of the penalty; and
- (2) uphold or reduce any sanction and order the imposition of the sanction.

(l) If the special committee does not sustain the finding that a violation occurred, the special committee must order that a penalty is not owed and that a sanction may not be imposed.

(m) If the appellant paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the special committee, the special committee must order that the appropriate amount plus accrued interest be remitted to the appellant not later than the 30th day after the date the judgment of the special committee becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest must be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(n) The special committee must notify the Governing Body and appellant in writing of its decision. No rehearing or further appeal is allowed.

Disposition by Agreement

(a) Any disciplinary matter may be disposed of by agreement, unless precluded by law. The agreement must be in writing and may be in the form of a stipulation, a settlement agreement, or a consent order.

(b) The Governing Body may designate the Director to adopt or reject an agreement.

(c) The agreement must:

- (1) include proposed findings of fact and conclusions of law; and

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- (2) be signed by all parties to the agreement and their representatives.
- (d) Upon receipt of the agreement, the Governing Body or the Director may:
- (1) adopt the agreement and issue a final order;
 - (2) reject the agreement and remand the disciplinary matter for a hearing before the Governing Body;
 - (3) reject the agreement and order further investigation; or
 - (4) take such other action as the Governing Body or the Director find just.

Alternative Dispute Resolution

- (a) In addition to the procedures under Rule XX, the Governing Body encourages the resolution and early settlement of all contested disciplinary matters through voluntary settlement procedures.
- (b) At any time after the filing of a complaint against a respondent and before referral to a review committee under Rule XX, the Director may initiate a settlement conference on the Director's own motion or at the request of any party. Settlement conferences are voluntary.
- (c) The Director, on behalf of Governing Body staff, and the respondent are the parties in a settlement conference. The complainant may also participate as a party in a settlement conference at the sole option of the Director.
- (d) A settlement conference may be used to reach agreement about all or a portion of the ultimate issues in a disciplinary matter or to reach agreement about how to handle disputed matters. The parties may use a mediator for a settlement conference or conduct the settlement conference without a mediator.
- (e) The parties to a settlement conference cannot bind the Governing Body to any resolution of a disciplinary matter pending before the Governing Body. The presiding officer may appoint one or more Governing Body staff to attend the settlement conference. The Governing Body staff representative must participate in the proceedings in an effort to resolve the dispute within the parameters of any instructions received from the Governing Body and must recuse themselves from any subsequent hearings or deliberations regarding the case.
- (f) In the event a settlement of some or all of the disputed issues is reached during the settlement conference, the Governing Body must review the terms of the settlement. The Governing Body may accept the settlement terms, reject the settlement terms and restore all proceedings on the disciplinary matter to the status quo as it existed immediately prior to the settlement conference, or refer the matter for further negotiation.
- (g) The parties may agree to retain a mediator to assist with the settlement conference.
- (h) If the parties do not agree to a mediator, the presiding officer may appoint an individual to serve as mediator in the settlement conference.

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(i) An individual appointed to serve as a mediator under (g) or (h) must meet the qualifications set forth in the Civil Practice and Remedies Code Section 154.052.

(j) The Governing Body will not pay any fees or costs associated with a settlement conference unless good cause is shown and the Governing Body agree to do so prior to the settlement conference.

(k) All communications in the settlement conference between or among the parties, and between each party and mediator, if any, are confidential under the same terms as provided in Section 154.053 of the Civil Practice and Remedies Code. Information shared with the mediator in separate meetings will not be given to any other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator is not required to be provided to the other parties and will not be filed or become a record in the disciplinary proceedings. Notes taken during the settlement conference by the parties and the mediator must be destroyed at the end of the process.

(l) Any agreement reached by the parties will be reduced to writing and signed by the parties before the end of the settlement conference. These writings may be informal in nature. The parties may agree that the written agreement remain confidential if there is no requirement of law to the contrary. Any part of the agreement that may affect the disposition of the disciplinary proceeding (such as agreements concerning relevant facts) must be filed in the record of the disciplinary proceeding.

(m) If the parties use a mediator for the settlement conference, the mediator must maintain confidentiality in accordance with Section 2009.054 of the Government Code. The mediator may not communicate to the Governing Body matters discussed with the parties in the settlement conference. The mediator will report to the Governing Body in writing whether the settlement conference resulted in a settlement of the matter in dispute, or other stipulations or matters that the parties agreed be reported.

(n) Required Filings. The following documents must be filed with the Governing Body: any request for the appointment of a mediator, any objection to the referral of the matter to a settlement conference, any objection to the appointment of a mediator, any notice required to be given, any settlement agreement, any report prepared by the mediator, and any similar documents as may become necessary or appropriate in the course of the settlement conference.

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

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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.

Character and Fitness Application for Texas Limited Legal Practitioners

1. Personal information

1.1 Identifying information

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

1.2 Contact information

Mailing address
Phone number
Email address

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

If yes:

Full name
Dates used
Explanation of change

2. School-related discipline

2.1 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

2.2 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

3. Professional and occupational licenses or certificates

3.1 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

3.2 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

3.3 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

4. Employment

4.1 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

4.2 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.

5. Military Service

5.1 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

6. Criminal History Information

6.1 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

6.2 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.

Commented [NH1]: This tracks the questions we ask of attorneys. Personally, I would limit it to one year, just as a way to capture any current issues that might turn into convictions.

Were there any allegations that you engaged in fraud?

If yes:

Describe the specific allegations

Describe the disposition of the allegations

6.3 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

7. Fitness Information

7.1 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

7.2 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

8. Civil Litigation

8.1 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

8.2 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

8.3 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?

8.4 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).

9. Legal and Financial Responsibility

9.1 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

9.2 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

9.3 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?

9.4 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?

9.5 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?

10. Unauthorized practice of law

10.1 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

10.2 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.

10.3 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

Commented [NH2]: This is not part of the BLE's application. I added it because UPL is a special concern.

Commented [NH3]: This is not part of the BLE's application. I added it because UPL is a special concern, and these 2 areas seem to dominate UPL complaints.

advertising of these services.

11. 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