

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

December 5, 2023

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EXECUTIVE SUMMARY

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

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

INTRODUCTION

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

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

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

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

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

The United States Census Bureau estimates that more than 4.2 million Texans live in poverty.⁴ LSC funds programs that provide free legal services to individuals who live in households with annual incomes at or below 125% of the federal poverty guidelines.⁵ In 2021, this meant that nationally, individuals who earned \$16,100 or below, or families of four that earned \$33,125 or below, qualified for LSC-funded legal aid.⁶ Under LSC guidelines, about 23% of Texas’ 11 million households qualified for this legal aid in 2022.⁷

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

² *Id.*

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

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

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

⁶ *Id.*

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

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

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

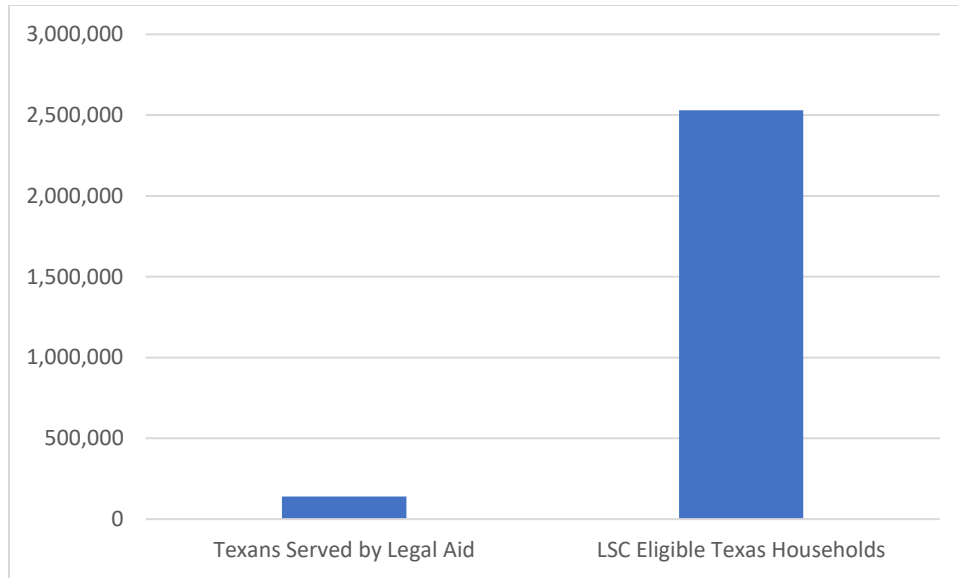


Figure 1. Number of Texans Served by Legal Services Compared to Texans Eligible

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

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

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

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

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

¹¹ *Id.*

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

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

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

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

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

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

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

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

¹⁴ Landscape of Allied Legal Professional Programs, *supra*, note 12.

¹⁵ Supreme Court Letter, October 24, 2022, *available at*

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

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

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

THE ACCESS TO JUSTICE CRISIS IN TEXAS

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

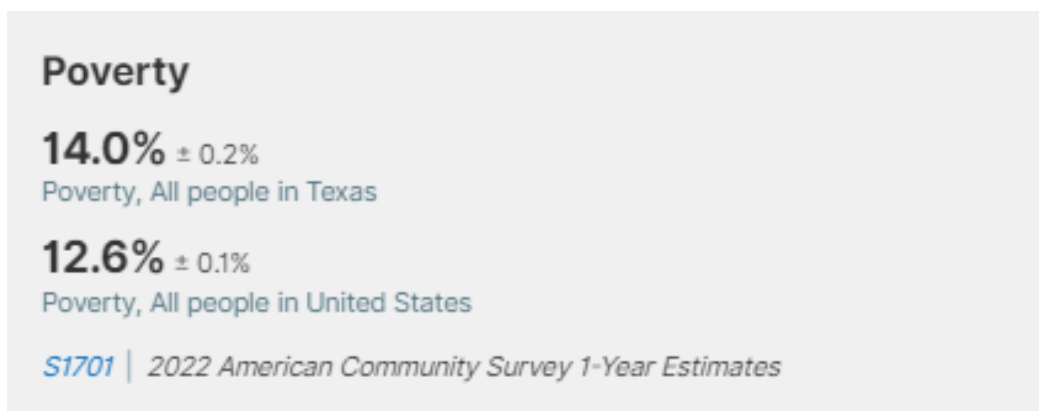


Figure 2. United States Census Bureau - Poverty Data 2022

¹⁶ US Census Bureau Texas Profile, *supra*, note 7.

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

¹⁸ *Id.*

The Bureau breaks down annual household income into the following categories:¹⁹

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

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

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

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

¹⁹ US Census Bureau Texas Profile, *supra*, note 7.

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

²¹ See Access to Justice Facts, *supra*, note 8.

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

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

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

SUPREME COURT CHARGE

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

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

²² The Justice Gap, *supra*, note 1, at 8, 75.

²³ *Id.* at 8.

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

²⁵ Tex. Gov’t Code § 74.021.

²⁶ *Id.* § 82.021.

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

meet the need, Justice Busby—the Court’s liaison for access to justice—sent a letter²⁸ to the Commission on October 24, 2022. In the letter, the Supreme Court asked the Commission to examine existing court rules and propose modifications that would:

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

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

²⁸ Supreme Court Letter, *supra*, note 15.

Working Group Membership

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

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

Figure 4. Working Group Membership

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

REGULATORY REFORM IN THE U.S. AND BEYOND

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

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

LEGAL PARAPROFESSIONALS NATIONALLY

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

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

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

²⁹ Landscape of Allied Legal Professional Programs, *supra*, note 12.

³⁰ Alaska, Arizona, Colorado, Hawaii, Minnesota, New Hampshire, Oregon, Utah, and Washington.

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

ATTORNEY-SUPERVISED PARAPROFESSIONALS

Alaska,³² Delaware,³³ Hawai'i,³⁴ New Hampshire,³⁵ and Minnesota³⁶ all license paraprofessionals to perform specific tasks with attorney supervision. Key elements of these programs are summarized below.

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

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

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

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

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

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

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

Figure 5. States that Permit Paraprofessional Practice with Attorney Supervision

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

³⁷ See Community Justice Worker Program, *supra*, note 13.

³⁸ *Id.*

INDEPENDENT PARAPROFESSIONALS

Arizona,³⁹ Colorado,⁴⁰ Oregon,⁴¹ and Utah⁴² license paraprofessionals who are permitted to act independently and provide legal services without attorney supervision. Key components of these programs are highlighted here.

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

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

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

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

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

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

Figure 6. States that Permit Paraprofessional Practice Without Supervision

NON-ATTORNEY OWNERSHIP AND FEE SHARING

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

ARIZONA

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

D.C.

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

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

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

UTAH

Utah modified its Rule of Professional Practice 5.4 in 2020 to allow profit-sharing and allow attorneys to practice in partnerships owned by non-attorneys if authorized by the provisions of Standing Order 15.⁴⁶ The Utah Supreme Court created the Office of Legal Services Innovation, a division of the Utah Supreme Court, via Standing Order 15. The Office of Legal Services Innovation regulates and monitors alternative business structures (ABS) and alternative legal providers (i.e., Licensed Paralegal Practitioners), sometimes called ALPs. The Office of Legal Services Innovation also investigates complaints about these entities.⁴⁷ There is a reporting process for all entities authorized by the Office of Legal Services Innovation.⁴⁸ 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.⁴⁹

UNITED KINGDOM

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

⁴⁵ 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 Dec. 5, 2023).

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

⁴⁷ Utah Standing Order No. 15 *supra*, note 46.

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

⁴⁹ Utah Standing Order No. 15 *supra*, note 46.

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

NEW SOUTH WALES, AUSTRALIA

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

NATIONAL GUIDANCE ABOUT REGULATORY REFORM

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

CONFERENCE OF CHIEF JUSTICES RESOLUTION

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

AMERICAN BAR ASSOCIATION (ABA)

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

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

⁵² Conference of Chief Justices, Resolution 2, *supra*, note 10.

⁵³ *Id.*

⁵⁴ *Id.*

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

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

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

STAKEHOLDER FEEDBACK

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

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

SURVEY AND FOCUS GROUP METHODOLOGY

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

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

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

⁵⁷ Allied Legal Professionals: A National Framework, *supra*, note 56.

⁵⁸ *Id.*

The survey and focus group questions were designed to:

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

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

FOCUS GROUPS

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

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

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

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

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

ONLINE SURVEY

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

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

FEEDBACK FROM SURVEYS AND FOCUS GROUPS

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

CURRENT INITIATIVES TO PROVIDE LEGAL SERVICES TO LOW-INCOME TEXANS

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

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

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

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

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

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

BARRIERS TO CIVIL LEGAL SYSTEM ACCESS FOR LOW-INCOME INDIVIDUALS

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

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

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

⁶¹ 20 C.F.R. § 404.1740.

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

Stakeholders also identified legal aid eligibility as another barrier. Legal aid programs have strict rules regarding client eligibility, which include income and citizenship, among others.

Stakeholders noted that many Texans apply for legal aid but are screened out as ineligible. One survey respondent noted that partners and clients “...become frustrated and cynical about our ability to help...because of the income and scope of service restrictions imposed by grants....”

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

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

FEEDBACK ON PARAPROFESSIONAL LEGAL SERVICES

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

OVERVIEW OF STAKEHOLDER OPINIONS ON PARAPROFESSIONAL LEGAL SERVICES

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

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

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

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

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

BARRIERS TO IMPLEMENTATION

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

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

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

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

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

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

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

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

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

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

OPPORTUNITIES FOR IMPLEMENTATION

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

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

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

FEEDBACK ON NON-ATTORNEY OWNERSHIP

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

OVERVIEW OF STAKEHOLDER OPINIONS ON NON-ATTORNEY OWNERSHIP

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

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

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

BARRIERS TO IMPLEMENTATION

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

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

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

OPPORTUNITIES FOR IMPLEMENTATION

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

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

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

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

FUTURE COLLABORATION BETWEEN THE COMMISSION AND JUSTICE SYSTEM STAKEHOLDERS

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

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

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

WORK OF THE ACCESS TO LEGAL SERVICES WORKING GROUP

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

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

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

ACCESS TO LEGAL SERVICES WORKING GROUP SUBCOMMITTEES

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

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

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

SCOPE OF PRACTICE SUBCOMMITTEE

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

SCOPE OF PRACTICE SUBCOMMITTEE MEMBERSHIP AND MEETINGS

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

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

Figure 7. Scope of Practice Subcommittee Membership

The Subcommittee met eight times on the following dates:

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

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

SCOPE OF PRACTICE SUBCOMMITTEE WORK

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

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

⁶³ Roger Enriquez et al., Texas Unmet Legal Needs Survey, at 2 (July 22, 2015), available at https://www.teajf.org/news/docs/Final_TAJF_Report_summer_2015.pdf (last accessed Dec. 5, 2023) (hereinafter Texas Unmet Legal Needs Survey).

⁶⁴ The Justice Gap, *supra*, note 1, at 33.

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

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

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

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

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

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

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

1. **Texas Access to Justice Foundation (TAJF):** TAJF “is the leading funding source for legal aid in Texas.”⁶⁵ 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.”⁶⁶
2. **Texas Legal Services Center (TLSC):** TLSC serves clients within 200% of the federal poverty guidelines, and also has grants with specific funding criteria. Most of TLSC’s funding restricts services to clients within 125% of federal poverty guidelines. This is lower than the LSC standard of 187% of the federal poverty guidelines and has been described as extremely low income. For people meeting these criteria, paying for legal services usually means going without some other basic necessity, such as utilities, food, or medicine. This chart breaks down what it means to be within 125% of the federal poverty guidelines.

125% of Federal Poverty Guidelines			
Number of People in the household	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	\$3,125.00	\$721.15

Figure 8. Income Eligibility Guidelines

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

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

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

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

5. **San Antonio Legal Services Association (SALSA):** Generally, SALSA applies a standard of 300% of the federal poverty limit. Some programs have lower limitations. But SALSA strives to marry funding to get everything as close to 300% as possible to maximize clients served.

6. **Unfunded Pro Bono Providers:** Texas has several pro bono providers that do not receive funding and thus have no funding criteria to guide their client base. For example, the State Bar of Texas Appellate Section has an active program that provides representation to low-income Texans in the appellate courts on a purely volunteer basis. The program does not use precise income testing but considers income as one factor for admission into the program. The program often considers a Rule 145 affidavit in its analysis and widely considers clients at 400% of federal poverty guidelines as qualifying under the right circumstances. This chart demonstrates what these figures mean in 2023:

48 Contiguous States

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

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

Figure 9. 2023 Federal Poverty Level and Annual Income

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

Federal funding streams may be categorized as:

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

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

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

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

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

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

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

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

PARAPROFESSIONAL LICENSING SUBCOMMITTEE

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

PARAPROFESSIONAL LICENSING SUBCOMMITTEE MEMBERSHIP AND MEETINGS

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

Figure 10. Paraprofessional Licensing Subcommittee

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

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

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

PARAPROFESSIONAL LICENSING SUBCOMMITTEE WORK

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

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

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

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

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

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

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

NON-ATTORNEY OWNERSHIP SUBCOMMITTEE

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

NON-ATTORNEY OWNERSHIP SUBCOMMITTEE MEMBERSHIP AND MEETINGS

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

Figure 11. Non-Attorney Ownership Subcommittee

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

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

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

NON-ATTORNEY OWNERSHIP SUBCOMMITTEE WORK

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

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

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

Potential Benefits

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

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

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

Potential Risks⁶⁸

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

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

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

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

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

⁷¹ Younger, *supra*, note 69, at 267-68.

⁷² *Id.*

⁷³ *Id.* at 277.

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

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

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

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

WORKING GROUP RECOMMENDATIONS

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

THE ROLE OF THE JUDICIAL BRANCH CERTIFICATION COMMISSION

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

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

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

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

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

DEFINITION OF LOW-INCOME

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

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

LICENSED PARAPROFESSIONALS

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

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

⁷⁸ *See id.* § 152.051.

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

⁸⁰ Supreme Court Letter, *supra*, note 15.

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

PARAPROFESSIONAL SCOPE OF PRACTICE

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

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

GENERAL DEFINITIONS AND PROVISIONS RELATED TO SCOPE OF PRACTICE

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

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

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

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

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

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

FAMILY LAW

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

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

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

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

PROBATE AND ESTATE LAW

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

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

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

CONSUMER-DEBT LAW

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

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

JUSTICE COURT REPRESENTATION AND RULE AMENDMENTS

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

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

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

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

COMMUNITY JUSTICE WORKER PROGRAM

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

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

LICENSING AND REGULATION OF PARAPROFESSIONALS

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

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

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

QUALIFICATIONS

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

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

General Qualifications

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

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

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

Subject Matter Specific Qualifications

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

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

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

EXAMINATION

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

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

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

this prohibition.

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

CHARACTER AND FITNESS ASSESSMENT

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

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

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

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

CODE OF ETHICS

The Working Group recommends that legal paraprofessionals be required to follow a code of ethics. The draft code of ethics in the proposed rules (Appendix A) is modeled on the Paralegal Division’s Canon of Paralegal Ethics⁸² and the confidentiality, conflict of interest, and advertising provisions for attorneys in the Texas Disciplinary Rules of Professional Conduct.

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

DISCIPLINE

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

CONTINUING LEGAL EDUCATION

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

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

LIABILITY INSURANCE CONSIDERATIONS

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

ENTITIES WITH NON-ATTORNEY OWNERSHIP

PROPOSAL OVERVIEW

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

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

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

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

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

PROPOSED EXEMPTION TO RULE 5.04

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

Rule 5.04(d) currently prohibits a lawyer⁸⁴ from practicing “in the form of a professional corporation or association authorized to practice law for a profit” when ownership interests are held by a non-lawyer. Rule 5.04(a) generally prohibits lawyers from sharing legal fees with non-lawyers, and Rule 5.04(b) prohibits lawyer partnerships with non-lawyers to engage in the practice of law. The recommendation therefore must propose a method to establish an appropriately limited exception to Rule 5.04(a), (b), (d)(1), and (d)(2). The context of the Supreme Court’s charge—both the concern for expanding access to justice, and the admonition to protect attorney independence—invites a proposal for a limited exception that is tailored to expand access to justice while preserving protection for attorneys to fulfill their duties to clients without undue pressure from non-attorneys co-owners or managers.⁸⁵ In this respect, the

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

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

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

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

This proposal in satisfaction of the Supreme Court’s charge could take the form of a pilot program designed to study the effect of such changes on the availability of civil legal services needed by low-income Texans pending a future decision whether to formally amend Rule 5.04.⁸⁸ The Working Group proposes an order by the Supreme Court containing the following language (or language to the same effect):

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

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

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

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

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

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

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

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

REGULATORY STRUCTURE UNDER JBCC

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

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

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

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

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

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

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

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

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

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

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

⁹³ 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).

CONSIDERATION OF PARTICULAR PRACTICE AREAS

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

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

FAMILY LAW

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

⁹⁴ 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).

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

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

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

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

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

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

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

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

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

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

IMMIGRATION LAW¹⁰³

Immigration law is another often-complicated area of practice¹⁰⁴ 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.¹⁰⁵ 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.

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.

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

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

¹⁰⁴ See *generally* July 2023 Report at 5-8.

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

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

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

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

TAX LAW

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

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

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

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

¹⁰⁶ 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).

¹⁰⁷ *See* July 2023 Report at 32-34.

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

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

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.¹⁰⁸ The Working Group proposes that the JBCC implement some or all of these protections utilized in other jurisdictions.

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

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

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

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

Another complementary method of ensuring attorney independence in the context of non-attorney ownership or management can be found in the developing field of Proactive Management-Based Regulation or “PMBR.”¹¹² 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 Colorado¹¹³ and Illinois.¹¹⁴ 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 SERVICES TO LOW-INCOME CLIENTS

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

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

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

¹¹¹ See, e.g., Arizona ABS Code E.2.

¹¹² 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 accessed Dec. 5, 2023); Susan Saab Fortney, *Promoting Public Protection through an “Attorney Integrity” System: Lessons from the Australian Experience with Proactive Regulation of Lawyers*, 23 *The Prof’l Lawyer* 16 (2015), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906525 (last accessed Dec. 5, 2023).

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

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

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

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

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

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

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

OTHER POTENTIAL RULE REVISIONS

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