Increasing Access to Justice for Low-Income Texans

Texas Access to Justice Commission In-Person Meeting

Travis County Civil & Family Courts Facility
1700 Guadalupe St, 1st Floor Multipurpose Room
Austin, TX 78701
December 15, 2023, 10:00 AM- 4:00 PM

Commissioners Present: Chair Harriet Miers, Justice Brett Busby, Pablo Almaguer, Judge Nicholas Chu, Alistair Dawson, Judge Roy B. Ferguson, Lisa Hobbs, Roland Johnson, Krisi Kastl, Tom Leatherbury, Justice Michael C. Massengale, David McAtee II, Karen Nicholson, Judge Latosha Lewis Payne, Marshall Sales, Bradley Toben, Terry Tottenham, Alfredo Valenzuela, Kennon Wooten, Senator Zaffirini, and Harry M. Reasoner.

Guests, Staff, and Members of the Public: Trey Apffel, Lowell Brown, Randy Chapman, Amanda Engle, Paul Furrh, Chief Justice Nathan L. Hecht, Paige Hoyt, KaLyn Laney, Judge Lora Livingston, Baillie Milliken, Jorge Ramirez, Jennifer Reames, Chris Ritter, Kimberly Schmitt, Grace Spulak, Lonni Summers, Maria Thomas-Jones, Cindy Tisdale, Betty Balli Torres, and Maddy Wertma; David Bristow, April Faith-Slaker, Latoriyan Freeman, and Dominga Titus; Rob Ammons, Jerry Andrews, Mattias J. Androgue, Amanda Aubrey, Matt Aulsbrook, Jonathan Bates, Sharon Coffee Baxter, Jessica Bednarz, Kristen Bell, Kenneth Berger, Bronwyn Blake, Amy Bresnen, Steve Bresnen, Jennifer A. Broussard, Cade Browning, Jacqueline Calvert, David E. Chamberlain, Gayla Corley, Bill Davis, Cameron Dean, Armi Easterby, Angela Pence England, Casey Goolsby, Jimmy Goff, Tom Gordon, Judge Guy Herman, Juan Carlos Hernandez, Heather Holmes, Daniel D. Horowitz III, Cathryn Ibarra, Don Jackson, Kevin Johnson, Marsha Kelly, Alison Kennamer, John Kitley, Chris Kwon, Lynn LaRowe, Gloria Leal, U. A. Lewis, Nicole Rivera Maesse, Stewart Matthews, Steve McConnico, Tiffany McGee, William Cullen McMahon, Councilman Rudy Metayer, Mitch Mitchell, Alicia Mitchell-Mercer, S. Moran, Jay Murray, Aaron Nash, Nikole Nelson, Tim Newsome, Roy Petty, Lucy Ricca, James M. Richardson, Thomas C. Riney, Rachel Royal, Jennifer Rymell, Katherine Saldana, Armin Salek, Roya Samarghandi, Laura Bellegie Sharp, John W. Shaw, Kayla Smith, Michele Smith, Kanice Spears, Amy Starnes, Ian Steusloff, Laura Tamez, Carol Taylor, Zoe Taylor, John E. Thies, Kristal C. Thompson, Beecher Threatt, Aimee Mobley Turney, Rei Umali, Mark I. Unger, Jimmy Vaught, Jack Walker, Grace Weatherly, Casie Wenmohs, Charles A. Whittier, Alex Winslow, Chris Wrampelmeier, Stephen P. Younger, Gregory Zlotnick, Mitch Zoll, Jen (last name not provided), Narvios (first name not provided), Texas Advocacy Project staff member (name not provided), Texas Watch staff member (name not provided), Steve (last name not provided), and additional members of the public who entered and exited in the course of the meeting but who were not otherwise identified.

1. Welcome Commission Members and Guests
    a. Chair Miers opened the meeting by extending her gratitude to the Commission and to the guests present both in-person and via Zoom.

2. Roll Call
    a. Chair Miers requested, instead of the complete roll call at this time, to have those seated at the meeting table briefly introduce themselves.
3. Approval of the minutes from October 30, 2023

    Alistair Dawson moved approval of the October 20, 2023, minutes. Roland Johnson seconded the motion. The minutes were approved unanimously.

4. New Business/Remarks Unrelated to the Report of the Working Group

    Chair Miers asked if there were any members of the public present, or on Zoom, who would like to make a comment to the Commission that was unrelated to the report of the Working Group on Low-Income Texans, noting that comments regarding that report would come after the report was presented by the three Co-Chairs of the Working Group.

    Noting that no one came forward to comment, Chair Miers emphasized the great burden, privilege, and obligation the Commission has, to consider Access to Justice issues in Texas and to do so in cooperation with entities around the nation. She further noted that she knows of no individual who has had a greater impact on access to justice than Chief Justice Nathan L. Hecht. She noted that Chief Justice Hecht served on two occasions, as Chief of the Conference of Chief Justices. Following her introduction, she ceded the floor to the Chief Justice for remarks.

5. Remarks by Supreme Court of Texas Chief Justice Nathan L. Hecht

    Chief Justice Hecht gave a brief history of the access to justice movement and indicated that the justice gap is wide, deep, and long-standing. He clarified that, in Texas, 2.5 million households qualify for legal aid, and only 120,000 of those households received the legal assistance they needed. He further noted that these statistics are similar across the country, with only 5-10% of the legal aid needs of low-income people being met. He listed a small number of the populations in need of civil legal services, including veterans, domestic violence survivors, and survivors of human trafficking. To illustrate how long-standing an issue this has been, he noted that, while President Nixon signed the bill that founded the Legal Services Corporation (LSC) in the mid-1970s, concern about the justice gap pre-dated the administration of President Lyndon Johnson. He mentioned his dismay that, in the 21st Century, there were still people in the United States and Texas who needed basic civil legal services and did not have access to them.

    Chief Justice Hecht explained how access to justice efforts are funded at the state level and he gave credit to the late Chief Justice Jack Pope for his support in bringing IOLTA to Texas. He noted that access to justice is a priority of every state Supreme Court, and their commitment is evident in the official resolutions of the Council of Chief Justices, which call attention to the need to increase access to justice in our nation. The State Bar of Texas conducts polls of pro bono hours performed by attorneys every other year, and the last he saw was 2.5 million hours. He also pointed out that members of the Bar go beyond that and make financial contributions with their dues statement. He also pointed out how the State Legislature has helped, noting the passage of the Chief Justice Jack

Pope Act, which increased funding for civil legal aid. He noted that funding for the Basic Civil Legal Services program has also been instrumental. That program started when IOLTA funds were diminishing and has received a legislative appropriation since 2009. Legislation which allows the distribution of unclaimed settlement funds to go to programs that provide free legal services to low-income Texans has also been instrumental to the effort to expand access to justice. The Chief Justice related a story in which Lt. Governor Patrick helped set aside special appropriations for the provision of civil legal services to low-income veterans.

The Chief Justice did make note that we have not been able to meet the needs of low-income residents in this state and indicated that we likely never will because the need is too great. He pushed those in attendance to try even harder to try to narrow the gap. He mentioned that in 2020, the Conference of Chief Justices requested regulatory innovations that allowed non-lawyers to provide more assistance in legal matters, and that nine states had so far implemented such measures, and that the number is steadily increasing. He claimed the object is to maintain high legal standards, to ensure that the legal aid being provided is high quality, and to make sure that low-income people can get affordable legal services.

The Chief Justice explained that, in October 2022, at the direction of the Court, Justice Brett Busby wrote a letter to the Commission to consider the accommodations concerning the use of licensed paraprofessionals and non-lawyer ownership of legal entities. He noted that we are blessed to have the wisdom gained from the way other states have implemented these measures while recognizing that Texas is a unique jurisdiction that would need any solutions tailored to meet its distinct needs. He acknowledged that these are big changes with which some attorneys in the state will not be comfortable, but he urged everyone to consider all possibilities. The Chief Justice said he understands there are legitimate issues and the need for a practical discussion of those issues is what prompted the Court to ask the Commission to examine these issues. The Court is relying on the judgment and experience of the Commission in making recommendations that will enable the Court to make progress in closing the justice gap.

The Chief Justice commented that the Court understands that everyone in attendance knows the justice gap is real and not simply an abstraction. This process provides a forum for all ideas to be addressed and considered. He indicated that the work of the Commission should be visionary and courageous and that it should address issues that challenge the very best in us. He noted the past has not provided solutions that have effectively narrowed the justice gap, so we must look ahead or fear the worsening of the justice gap. The Chief Justice said that the need for change is inestimable and illustrated his point with the story of a WWII veteran, Chester Robey, who nearly wound up homeless because a clerk failed to allow him a homestead exemption on his property. Mr. Robey was unable to afford legal help but was successfully assisted by a legal aid program.

The Chief Justice closed his opening remarks by stating that, while he appreciated the Working Group's thorough report, the issues were not finalized, and he indicated that this is an evolving process. The Supreme Court always welcomes comments, even after the

day of the meeting, and those comments can be sent to the Supreme Court's Clerk who will forward them to the Rules Attorney. The Chief Justice also said anyone who wished could call him personally should anyone desire. He noted, of course, that anyone wishing to comment would probably be better served by contacting the Court or the Commission, rather than contacting him directly. He expressed his appreciation to Kennon Wooten, Lisa Hobbs, and Justice Massengale for working on this for more than a year; to everyone who submitted comments that will lead to increasing access to justice for low-income Texans; to Justice Busby for being the liaison to the Commission, and to Harriet Miers for chairing the Commission.

Chair Miers thanked Chief Justice Hecht for his remarks and leadership.

6. Report of the Working Group

Chair Miers asked Commissioners attending remotely to identify themselves. She noted the presence of Pablo Almaguer, General Valenzuela, and Harry Reasoner.

Chair Miers introduced the Working Group's consultants from the National Center for State Courts, Lonni Summers, and Grace Spulak, noting the Commission could not have completed this work without the Center's support. She also indicated the two instrumental Individuals. Ms. Summers and Ms. Spulak are both Senior Court Management Consultants and they helped facilitate the work of the Working Group, aided by their vast experience with these issues. They provided national data and gathered relevant information related to the issues under consideration. They also helped identify and introduce the Commission to experts in the national access to justice community who provided incredible insight into this work. Combined, Ms. Spulak and Ms. Summers brought thirty years of experience to this effort, and the Commission owes them each a debt of gratitude. Chair Miers asked the Commissioners to thank and recognize their contributions.

Chair Miers introduced the Co-chairs of the Working Group, Justice Michael C. Massengale (Ret.), Kennon Wooten, and Lisa Hobbs, and offered a summary of their professional experience and contributions to the legal community. Although well-known to many, Chair Miers mentioned Justice Massengale's current work as a mediator and arbitrator with JAMS, and his prior service as an appellate justice in Houston, as well as his previous work as a trial partner at Baker Botts. Justice Massengale also serves on the Texas Access to Justice Commission. Chair Miers introduced Kennon Wooten and noted that she is a partner at Scott Douglas McConnico in Austin and was recently elected Chair of the Board of the State Bar of Texas. Her bar involvement dates back many years and includes service to the Austin Young Lawyers Association. She also served as the Rules Attorney at the Texas Supreme Court and was a law clerk to former Chief Justice Wallace Jefferson. She also participates on the Supreme Court Advisory Committee, remote proceeding task force, and she also serves on the Texas Access to Justice Commission. Lisa Hobbs was introduced as a founding member of the Austin law firm, Kuhn Hobbs, where she practices appellate law. She also holds the distinction of being the first General Counsel for the Texas Supreme Court. She is also a former Rules Attorney for the Texas Supreme Court.

Chair Miers noted the presence of April Faith-Slaker, the new Executive Director of the Texas Access to Justice Commission, who was attending remotely and welcomed her participation. Chair Miers expressed her excitement in anticipation of Ms. Faith-Slaker's in-person participation in the coming year.

Chair Miers then requested Lisa Hobbs to present the Working Group's report to the Commission, noting that public comment would be invited thereafter.

7. Report of the Working Group | Kennon Wooten, Lisa Hobbs, & Hon. Michael C. Massengale

Lisa Hobbs provided an overview of the Working Group activities:

Lisa Hobbs noted that the Chief Justice is a hard act to follow, and she expressed her gratitude on behalf of the Working Group. Ms. Hobbs noted that they spent over a year working on this and really appreciated the Commission's support for the study. The Working Group could not have gotten to where they are now without the expertise and guidance of the Commission and various people across the state. She also thanked the National Center for State Courts (NCSC) for their expertise, noting specifically the work of NCSC consultants, Lonni Summers and Grace Spulak. She described the history of the Working Group.

The project started with the Supreme Court of Texas ("Court") charge, a referral letter from the Court asking the Commission to examine existing rules and propose modifications related to paraprofessionals and non-attorney ownership of legal services entities. Thereafter, the Commission established a blue-ribbon Working Group. The Working Group received input from the Commissioners and others, including executives, legal aid providers, academics, judges, and paralegals. They also received input from private practitioners within the areas of some of their recommendations, including family lawyers, and consumer lawyers. Ms. Hobbs also thanked the State Bar of Texas for their support of the study, and in particular for its guidance and help in communicating with stakeholders. The Working Group felt very supported along the way.

Once assembled, the Working Group held its inaugural meeting in January 2023. With the help of the NCSC, this meeting was very informative, including the setting out of information on what other states are doing on the relevant topics. The meeting included invited guests from other states, as well as experts from the national access to justice community.

The Working Group created three (3) subcommittees. Ms. Wooten chaired the subcommittee looking at the scope of practice for paraprofessionals. This subcommittee explored options for allowing paraprofessionals to practice with a license limited as to scope of practice, and in a way that advances the ultimate goal of increasing access to justice.

Ms. Hobbs chaired the second subcommittee, looking at licensing. Essentially, this subcommittee assessed what scope of regulation would be needed to make sure the public is protected.

The third subcommittee explored non-lawyer ownership of firms providing legal services or allowing non-lawyers to have an economic interest in such firms. This subcommittee was chaired by Justice Massengale.

Within the subcommittees, additional expertise was brought in, including a broad range of Working Group members and expertise from across the State of Texas. Each subcommittee held a series of meetings and received input and suggestions from a wide range of interested individuals and entities. The Working Group itself held five meetings, including the original kick-off meeting and an additional four meetings throughout the year. At each of the four additional meetings of the Working Group, each of the three subcommittees provided updates on its respective progress as each was developing potential recommendations. Every meeting was open to the public, and the recordings of each meeting and certain materials considered at the meetings are available online.

Throughout the project, NCSC assisted by gathering stakeholder feedback. That feedback is available in the report, and it came in several ways, including online surveys, focus groups, and direct outreach to sections within the State Bar, as well as individuals, practitioners, and providers. An email address was created to facilitate public comment and, thanks again to the State Bar, this feedback was provided to the subcommittee co-chairs and Commission leadership as it was received. Except for maybe the comments received within the last 24 hours before this December 15th Commission meeting, every comment that was submitted was read. Sometimes the subcommittee members would follow up with individuals who had submitted public comments if it appeared that a conversation would be useful.

On November 2nd the final Working Group meeting took place, at which the final recommendations of the subcommittees were discussed. After that meeting, a survey of the Working Group members was conducted to obtain additional input in an effort to help ensure that the final report and recommendations accurately reflected the Working Group's opinions and views. The final report was circulated about 10 days before the December 15th meeting.

Kennon Wooten discussed Subcommittee #1

Ms. Wooten thanked public participants for being at the meeting and proceeded with an overview of the Scope of Practice subcommittee's work. She mentioned that her goal in speaking was to report accurately and thoroughly about the process and recommendations. And she expressed gratitude to all members of the State Bar who took the time to comment already. She also thanked all the people present, as well as Justice Busby. She thanked Justice Busby not only for his guidance in the project with the original letter he sent but also for generously dedicating many hours of his time to meetings. She also expressed appreciation for his being a leader in access to justice. She also thanked Chief Justice Hecht for his leadership in access to justice. She thanked Harriet Miers for her work generally and on this project, for all of the hours and meetings she attended, but also for being incredibly thoughtful in terms of how the project was carried out. She thanked Judge Livingston, who has been very involved at every step of the way, serving as a Working Group member and serving on subcommittees as well. And she thanked Chris Ritter for his efforts, including in monitoring the email inbox and reporting back about the public feedback received.

She then provided an overview of the process. First, she went over the referral letter from the Court, as it shaped the course of the project. In the letter, the Court directed the Commission to examine existing rules and to make proposed modifications.

The first type of modification recommended was to allow qualified non-attorney paraprofessionals to provide limited legal services directly to low-income Texans. There are several concepts to unpack here. First, the concept that limited legal services are to be provided. In the Texas Disciplinary Rules of Professional Conduct, there is express authorization for lawyers to provide limited-scope representation, so this concept has been in Texas lawyers' ethics curriculum for some time. There is not a comparable provision for paraprofessionals. Ms. Hobbs addressed this issue in her report. The second concept to unpack is "low-income" and what that means in this context. Criteria for this concept can vary significantly, which was discussed in greater detail later.

Before describing the subcommittee's work, Ms. Wooten provided a brief introduction of subcommittee members, noting their diversity of backgrounds and expertise, as well as the extensive effort they dedicated to the tasks at hand. She mentioned that, when they engaged in their analysis, they were not always on the same page about how to proceed. There were disagreements that were discussed and worked through in a professional manner.

The subcommittee met a total of 8 times. (Recordings, agendas, minutes, and materials are available through links. Early on, the group had to determine their process for identifying practice areas for which services are truly needed for low-income people. That is harder than it sounds, but the group used several indicators, including data from various sources, both national and Texas-specific. Stakeholder feedback was gathered through surveys and outreach. After considering all that information, the subcommittee identified four main areas and created a subgroup to focus on each. The subgroups met and worked on proposals between subcommittee meetings.

She then turned to the substance of the subcommittee's recommendations on pages 1-4 of Appendix A to the Working Group's report. The subcommittee recommended a proposed new rule on paraprofessional scope of practice, as well as proposed amendments to existing rules for justice-court cases. The proposed new rule addresses limited-scope practice by paraprofessionals licensed in family law, estate planning and probate law, and consumer-debt law. The proposed amendments address paraprofessional practice in all types of cases in justice courts, including eviction cases.

Income criteria had to be addressed, as the goal is for the services to be provided to low-income Texans. The subcommittee settled on a self-certification of having an income at or below 200% of the federal poverty guidelines. There is a lot of debate on how low income should be defined in this context. 200% might seem like a high amount if you think about the percentage alone. But it is only an annual income of about $29,160 for a single-member household, as can be seen on page 33 in the Working Group report. Also, 200% aligns with many legal aid and non-profit criteria. While the LSC cut-off is 125%, 200% applies to most entities and seems most appropriate because paraprofessionals could refer to legal aid if the matter goes beyond the scope of what they can provide. Some group members thought this number should be higher, and two individuals thought there should not be an income cut-off at all.

Because of the limited scope of practice recommended in the rule proposals, the terms "contested" and "uncontested" had to be defined. Within the family law arena, for example, the recommendation is clear that only uncontested cases can be handled by paraprofessionals without supervision. Another thing to be seen in the proposals is that there are some tasks that paraprofessionals can do with attorney supervision and some tasks they can do without attorney supervision. What is meant by "attorney supervision" is also spelled out in the rule proposals. Finally, there is a requirement that paraprofessionals have a written engagement agreement with their clients. Clients must understand the limited scope of the services to be provided.

The subcommittee discussed what will happen if a case requires work beyond the scope of the paraprofessional's license. The proposed new rule sets forth a procedure. For example, if a family law case is uncontested and becomes contested, the paraprofessional must step out, so there is a provision addressing what to do to withdraw while protecting the client's interest.

Existing justice court rules already allow for representation by an authorized agent in eviction cases and, under certain circumstances, assistance by a family member or other individual in all types of cases in justice courts (Texas Rule of Civil Procedure (TRCP) 500.4). The recommendations expand this non-attorney representation to include two new categories: licensed paraprofessionals, as described in the proposed new scope of practice rule, and community justice workers, who would be specifically trained to handle particular tasks under the supervision of an attorney working for legal aid or another non-profit, providing services in areas that have a great need but do not require expertise at a high level. There is also a recommendation to amend TCRP 500.4 to permit assistance by non-attorneys in justice court cases unless the court finds good cause not to allow the assistance. And finally, there is a proposed amendment to the rule about citations in eviction cases. The amendment requires these citations to reference TRCP 500.4 and TexasLawHelp.org to give people information about assistance and representation options available.

The Working Group analyzed the subcommittee's rule proposals on November 2, and, with some slight edits incorporated, approved the rule proposals unanimously.

The subcommittee narrowly favored not limiting compensation for paraprofessional providers to certain specific sources, such as government or non-profit funds. However, the Working Group did not take an official position on the issue of compensation sources for providers.

Lisa Hobbs discussed Subcommittee #2 on paraprofessional licensing:

Ms. Hobbs directed everyone's attention to page 35 of the report on licensing, describing it as the nuts and bolts of licensing. The Working Group considered the current rules regarding the regulation of lawyers as a starting point, and then heard from experts and others on this issue. These experts included individuals who are heavily involved in the state of our disciplinary process, including individuals from the State Bar, the Board of Law Examiners, and the legal certification board of the Texas Board of Legal Specialization (TBLS). Regulators within the judicial branch were also consulted,

including judges, such as the chair of the Judicial Branch Certification Commission (JBCC). Representatives from academia were included as well. This small committee had a lot of experience in this area and ultimately met more than 7 times to discuss these issues.

The group began with lessons learned from other states on the topic of licensing paraprofessionals. It was observed that overbroad regulation in other states may have defeated the programs (i.e. Washington), so the group aimed for more limited regulation. With the limited legal services that the license would allow paraprofessionals to conduct, this would help ensure public protection.

Regarding the issues of paraprofessional qualifications, the recommendations were informed by the criteria for the State Bar's Paralegal Division and the Texas Board of Legal Specialization (TBLS) criteria for paralegals. The intent was to include both education and experience. It was important that the recommendations include a degree, but also acknowledge the experience of a paralegal who has been doing this work for 30 years, for example.

Beyond the qualifications, specific criteria within the subject matter were also considered. The licenses are based on the type of law and these license areas track with the substantive areas considered by the Scope of Practice Subcommittee. Paraprofessionals would have to have a license for each specific area of law. For each subject matter in which a candidate is requesting licensure, they would need to be certified in the practice area by the TBLS or have been employed as a paralegal in Texas with at least 50% of their practice for 3 of the past 5 years in that subject matter or have completed training approved by the JBCC in that subject matter area of practice.

After much debate, the group determined that an exam would be required before a paraprofessional could obtain a license. There was a lot of conversation about the efficacy of exams in assessing core competencies, but ultimately it was determined that a 1-hour exam on the substance of the license and an ethics exam would be recommended. The competency exam can be waived if the candidate has received a score of at least 260 on the Texas Bar Exam, if the candidate has taken another exam that tests competency in the subject matter (including an exam by the TBLS or the National Association of Legal Assistants), or if the candidate otherwise meets a waiver standard set by the JBCC.

The recommendation includes a character and fitness portion of the application process. This process will look at past employment, past education, other licenses and certifications, and whether the candidate has been disciplined in another arena. This process would not necessarily be as extensive as the process employed for attorneys.

A code of ethics is also recommended. Ellen Lockwood, who wrote the paralegal ethics handbook, was a great resource for the group. The recommendation drew from existing sources with some modifications made that were related to issues specific to unsupervised nonlawyer services. It is recommended that an annual licensing fee and dues be paid, however, at a lower rate than attorney dues and fees, since the paraprofessionals will be serving a low-income population. Much like lawyers, the recommendation also includes continuing legal education requirements.

And with respect to discipline, the recommendation includes adopting JBCC disciplinary rules, but annual registration would also require the self-reporting of any sanctions or other judicial actions that might call into question their ability to serve as a paraprofessional in this state. The annual reporting would also include data to help determine the effectiveness of these programs.

Justice Michael Massengale discussed Subcommittee #3 on non-attorney ownership entities offering legal services:

Justice Massengale began by commending the Court's courage and leadership in initiating the study of these topics and by echoing the thanks for all of the support and feedback provided to the Working Group.

Subcommittee #3 recommended rule modifications to create a pilot program as an exception to TDRPC 5.04 to permit non-lawyer ownership of entities offering legal services. It is hoped that this would lead to innovation in the market, supplementing options available through legal aid and pro bono, to deliver services to those who are unable to afford a lawyer.

Justice Massengale briefly touched on the October 24, 2022 referral letter from the Court. The letter had specific elements to which the proposal should be responsive to. The proposal was to enable non-attorneys to have an economic interest in entities providing legal services to low-income Texans, which preserve professional independence and address the civil justice gap. The proposal should also incorporate recommendations about whether the modifications should be a pilot program or regulatory sandbox and whether the modifications should focus on services for which there is a particular need.

Justice Massengale introduced the members of the subcommittee, expressing appreciation for their extensive input. Each member is identified in the report. The group met 8 times and the links to recordings, minutes, agendas, and all other materials circulated in connection with these meetings are included. The group started with organizational ideas and brainstorming about the project and how to proceed. They had NCSC's assistance to develop a working document that assembled a lot of background information about the rules they were studying, what was happening in other states, and the things they were being asked to study. Beginning with the first discussion of a working document at the third meeting, the document evolved with each meeting and included the feedback received from outside the subcommittee.

The Working Group proposed an exception to the application of Rule 5.04 of the Texas Disciplinary Rules of Professional Conduct (TDRPC). Appendix G of the report contains the group's research on the topic. The final report summarizes the experiences of several jurisdictions that have altered similar rules. The most advanced ones are Arizona and Utah. Notably, no other jurisdiction has made access to justice the leading or exclusive purpose. The final report contains citations to the empirical research that has been done on this topic. But, because other jurisdictions are not exclusively focused on expanding access to justice, many of the firms started in those states do not have any obvious objective of providing legal services that might be needed by low-income clients. However, some of them do provide services in areas like immigration law, family law, and estate planning.

A good example is Rasa Legal; the subcommittee was privileged to have Rasa's founder, Noella Sudbury, share her experiences with the subcommittee. For $12 Rasa will determine whether a client has records of a Utah criminal conviction that is eligible for expungement and if so, for $500 will secure up to 3 expungements. That service is available to anyone, and Rasa also works with partners to provide services for low cost or no cost to eligible clients. Rasa recently announced an expansion of its services into Arizona, where regulatory reforms in that state allow an entity like Rasa to function.

The subcommittee's proposal includes two tiers of rules. The first tier consists of a proposal that would create a pilot program under the offices of the JBCC. The second tier consists of the guidance to be provided by the JBCC for these entities to obtain and maintain licensure. The group settled on the JBCC because it is administratively attached to the Office of Court Administration and has a pre-existing framework that can be used to administer the approval and oversight of such entities. Also, the Texas Supreme Court has statutory authority to assign regulatory programs to the JBCC, so JBCC is the natural place to place this program.

The purpose of the proposal is to expand civil access to justice for low-income Texans. The subcommittee made a concerted effort to keep this essential motivation and purpose at the center of every aspect of the proposal. The proposal delegates authority to the JBCC to oversee these entities. The point is that the approved firms cannot provide any services they want. They can only provide services that are specifically approved to provide.

The proposal would provide that entities certified by the JBCC could then be issued a law license and become members of the State Bar. The entity's approved services would then become authorized practice of law. The proposal was thus designed to bring the pilot program within the scope of rules that govern the unauthorized practice of law. Certified and licensed entities must provide legal services to low-income individuals. This ensures that the only kinds of legal services that will be approved by the pilot program will be those that low-income Texans actually need and use. And finally, the proposal requires annual renewals of licenses. Presumably, at some point, the pilot program will be assessed to determine whether to end the program or adopt a permanent change.

The proposed rules are meant to be refined and implemented by the JBCC. A list of recommendations was developed for further study and consideration by the JBCC and any advisory board created to implement and oversee them. The best summary of the proposals is on page 51 of the report.

It is proposed that there be an application process for these entities. The process will involve a robust disclosure about any applicant firms, including what their proposed services will be and how they will satisfy the requirement of serving low-income clients. They will be required to disclose their proposed funding model, including their fee structure for clients. It is suggested that entities be required to provide a form client engagement agreement as part of their application. The proposed engagement agreement will include information on how they plan to notify clients of the conclusion of their engagement. The applicants will also be required to disclose potential conflicts of interest between owners and the proposed services offered. The application will also

include the firm's proposal for discontinuation of the entity, should this project end or should the firm lose its certification.

In addition to the disclosures, there are also robust and mandatory obligations that these entities would take on. The first is adherence to the ethical rules that govern the legal profession. The Working Group did not suggest that these entities have any lower standard of obligations than those that apply to lawyers. The second is a requirement that there be regular reporting to the JBCC and consent to monitoring of these entities to ensure that quality legal services are being provided, that they are being provided at low or no cost, and that they are being provided in line with the ethics rules. This process will ensure that clients are not being exploited and that inferior services are not being delivered. There will be a requirement for disclosure of the fact of non-attorney ownership or management, both to clients and to the public. These entities will also be required to identify their internal compliance officers. An idea that came from the Working Group was that these entities should commit that legal advice is not going to be rendered by generative AI – that it will be rendered only by licensed entities. The entities will be required to affirmatively seek feedback on their services.

As some other states have done, there will be data collection and reporting about client demographics. For evaluation purposes, they will also collect data about client income, legal services provided, and fees collected. They will also be required to not seek or accept funding for legal service/legal aid organizations from state or federal governmental entities or from the Texas Access to Justice Foundation, as that would take away from the work of our legal aid organizations. And finally, the entities will be required to disclose the status of their malpractice insurance.

Concerning practice areas, reports and feedback were received from representatives of family law, immigration law, and tax law practitioners. That input is summarized at a very high level in the report and the full written feedback is included in the Working Group materials. Ultimately the group did not propose any practice area exclusions. It is anticipated that the JBCC would consider limitations to any specific arrangements, as appropriate (for example, it may be appropriate to exclude contingent-fee arrangements).

The Court requested that the Commission consider protections for internal independence. Fortunately, there has been a lot of research on this subject in the context of studying multi-disciplinary practice. The research is discussed in the report on pages 61 and 62, with some citations to helpful resources. It is not suggested that each and every idea compiled in the Working Group's final report be implemented, but rather it is more like a menu of options. One recommendation is that written assurances be required to ensure the protection of professional independence. There would be an annual review of those procedures and annual certification of compliance. The proposal also recommends consideration of a Proactive Management-Based Regulation (PMBR) approach, which entails entity self-assessment and reporting rather than approaching rule compliance solely from the standpoint of prosecuting for non-compliance. This way, regulators can constructively work with these entities, and this approach encourages self-assessment to improve their operations.

One important question addressed by the group, which did not reach consensus, related to how to evaluate the entities' performance with respect to prioritizing services to low-income Texans. The subcommittee members were generally in agreement that the entities must satisfy some minimum percentage of work conducted on behalf of low-income Texans. The subcommittee discussed a range of possibilities, from 20-80% of the clients being required to qualify as low-income. There were concerns expressed that having too high of a requirement would reduce the possibility of private innovators.

Justice Massengale concluded by looking back at the elements of the charge and summarizing how the proposal is responsive to each element in the charge letter. He mentioned that public comments would be heard in just a moment and any modifications that the Commission may see fit could be made after discussion. He anticipated the adoption of the Working Group's recommendations happening in three parts: first, a motion to approve the rule modification to establish a pilot project; second, a motion to adopt the group's recommendation that the pilot program be administered at the direction of the Court and overseen by the JBCC; and third, a motion that the Commission recommend that the JBCC and its advisory board be entrusted with the responsibility and discretion to evaluate applications on a case by case basis.

8. Public Comment Related to the Working Group Report

Attached to these minutes as Exhibit A is an effort to summarize the public comments received by the Commission. The actual public comments as recorded can be found as Exhibits A-Z.
Lora Livingston noted that several people signed up to speak and that each would be given three minutes to comment. She served as the timekeeper. She invited those listed as "tentative" commenters participating remotely to please indicate in the meeting chat if they wished to speak and be recognized. Given the number of speakers, she indicated the need to be efficient so that everyone who desired to speak could be accommodated.

The following represents an effort to summarize the public comments. An ellipse (…) was used where the recording was inaudible. Please also note that each speaker was limited to three minutes to offer comments.

Jonathan Bates: Thank you for allowing me to speak today. My name is Jonathan Bates and I'm a family lawyer. Texas Family Lawyers support helping low-income Texans.

For many years, Texas family lawyers have led all practice areas in pro bono services to low-income Texans. It was my honor to serve on the working group, scope of practice subcommittee, and family law. The paraprofessional recommendations before you were approved in multiple meetings of the working group. Those recommendations have the support of family law leaders. They were crafted working closely with Justice Busby and having a laser focus on helping low-income Texans and avoiding harm. I urge you to approve them.

I disagree with the characterization of the working group on non-attorney ownership as being the recommendation. In fact, the one vote that we had on the recommendations, the

recommendations failed by a vote of 6 to 3. Family lawyers overwhelmingly oppose non lawyer ownership and frankly every lawyer I've talked to opposes non-lawyer ownership. When we've talked about what the potential terms for implementation might be, family lawyers have responded that the proposal should be exclusively focused on low-income Texans.

We were told that the changes cannot focus solely or even primarily on low-income Texans because then the non-lawyer ownership would surely fail. I ask you if non-attorney ownership proposals are not focused on low-income Texans, then why are they even a discussion for the Access to Justice Commission? If the proposals are not focused on low-income Texans and it is not reasonably foreseeable that the proposals will actually help bridge the justice gap, then why are we discussing making fundamental changes to our legal system in the name of access to justice?

The only present examples that we have heard are that the potential that name changes will be cheaper for adults. I would suggest to you that reduced cost criminal expungements and adult name changes do not sound like a sound reason to fundamentally change our legal system.….. actually point to money that is sitting on the sideline where a benevolent business entity is somehow being prohibited from helping low-income Texans under our current system.

The ones kept on the sideline are entities with a profit agenda and they should remain on the sidelines and seek their profit elsewhere.

Alright, thank you for letting me speak.

David Chamberlain: Thank you, Chair. And I want to thank all members of the commission for all the hard work that you've done. I'm here speaking on my individual behalf and the Texas Association, excuse me, the Texas Chapters of the American Board of Trial Advocates. I've served as the President of the Austin Bar Association …and the Texas Bar Foundation. We do support the paralegal aspect of this and I want to limit my further comments here to the non-lawyer ownership of law firms.

Let me point out that our profession has done a lot. It's doing more every day to support legal services. Just this morning I received an email seeking applications for grants because the Texas Bar Foundation plans to give out over a million dollars for the delivery of legal services. It's either in terms of projects or, other organizations that are focused on things that we're talking about.

Every major metropolitan area in this state and some others has voluntary legal services to the poor. Volunteer Legal Services at Central Texas. Dallas, Houston, Amarillo, San Antonio, all have these organizations that are working very, very well. You come out of them say if there's money out there sitting on the side in these organizations that exist … and leave these resources.

Instead of what we're talking about today. You know, it's not the answer to this question. You heard mention of …Those things have not been successful. They have been populated by

litigation funding companies. Private equity firms. Hedge funds and others. And they have not ended up moving the needle whatsoever as far as delivering the legal services.

Okay, it's not limited to low-income. It is not limited to the kind of legal services that can be delivered. So in other words, the door is open. And quite frankly, this is a blanket attempt to get litigation factoring companies involved in this either directly, or indirectly or through referral search.

Laura Bellegie Sharp: Thank you. My name is Laura Bellegie Sharp, and I come here as an individual. I am also currently the president of Austin, ABOTA. I have served on the Austin Bar Association board for nearly 3 decades. I also spent 10 years in the House of Delegates for the American Bar Association representing Austin and 3 years on the board of the Board of Governors for the American Bar Association representing all Texans … and in that spot of the ABA and … I am opposed to any changes.

Separately, I sue professionals for a living. That is my job. I've also represented professionals for a living in my former job. And as part of that, I am well aware what has to be a sword and shield on these issues. When you consider bringing non-lawyer professionals that are regulated separately and differently from lawyers in and say that they can disclose…not a member yet… I'm a lawyer suing these places if you get a suit against somebody that does not have malpractice insurance…

So somebody goes through a paraprofessional and spends 500 to $1,000 that they may or may not know. And then to find out that the fix is gonna cost them something increasingly more than that. So there is no protection for consumers in this plan, if you allow non-attorney ownership of law firms.

In addition to that, I think you'll hear about the independence of the practice.

I would strongly oppose this.

Then, the issue of the paraprofessional program, pilot program seems right. I think that if our goal is for low-income …to get here, we need to do it for volunteer organizations to get here. We need to do it through our volunteer organizations through our increased ability to fund these things.

Tim Newsom: Okay, Thank you. My name is Tim Newsom. I'm president of TEX-ABOTA. I am a past president of the Amarillo Area Bar Association. I'm also a member of the Texas bar…I've also contributed routinely to Amarillo Area bar.

I'm here today on behalf of TEX-abota. These are also my personal beliefs as well. Thank you. briefly even in the time I have… we have 1,400 members they're all members of … of proud advocates. That is an association of lawyers from both sides of the bar and we stand united. We favor affordable legal services to the core. I'll say that without any fear of contradiction.

With hopes, we should not open the gates of the bar to all of us. We have duties to our clients. Business is another matter. Their duty is to make a profit to the shareholders, bring a profit to

the owners of the company.… allowing non-lawyers to come into the bar. This would result in a divided world.

We have heard quite a bit today about the work that has been done by the working groups. The committees, it is a tremendous amount of work and our commitment to that. But it's only been work. It's been done over a period of 10 months. We would be the first state in the United States of America that would allow non-lawyers to come into the bar. And the only states that have done it have been Arizona and Utah.Texas has got a population of 29.5 million people. Arizona has got 7.276 million, about the size of Dallas Fort Worth. Utah has 3.3 million.

Jack Walker: Thank you, my name is Jack Walker. I'm the past president of the American Board of Trial Advocates and the president of TTLA. I am opposed to both of the recommendations of the working group, and I want to talk about both of them today and tell you why.

I first want to thank the commission for all the hard work that you've done. Sitting here today through the presentation is truly appreciated. All the work that went into the report recommendations.

I'm gonna first talk about … I've got a son who is gonna get out and then take the bar in July. And I think about the future that he has as a lawyer. And in a profession… of the law. Opening the bar to NLOs … - opening the bar will, well, diminish what we all hold sacred and that is our Legal services. Legal services are not commodities. You can't prioritize legal services. Legal services is a profession.

And when you go look at the 4 areas that have been identified by this group. There are … whether we ought to be looking at doing all of the areas that they need. These are all representations in the court that need to be handled. And they need to be handled individually.

Legal services as a commodity. Does it marry with the goal of this group? And that is to provide legal services to the low-income. Let's look very carefully before we do this. It's gonna be paradigm changing. For our for our profession. And if you look at Arizona, so there's that. There's an exhibit to the report and it's the Arizona. The folks that did Arizona - It's scary because it's not low income.

So it's big corporate stuff. It's private equity. It's definitely financial funds that are gonna prey. This is a danger and I just want this group to understand that. Don't change the paradigm. Don't hand the keys to our profession.

Number 2, I'll talk, just briefly about the paraprofessionals and what I was concerned about.

Gloria Leal: I appreciate the opportunity to talk to you. Thank you very much. Good afternoon. My name is Gloria Leal. I'm a lawyer here in Austin, Texas. I also do administrative law and government relations. Like speakers before me, I do have a couple of credentials, but I'm gonna focus on the credentials dealing with my service to the Hispanic community….

First of all…non-ownership in law firms, which would set up a separate regulatory system for members to practice law and provide legal services in areas currently represented…

Okay, Secondly, providing legal services by non-lawyers to the low income is discriminatory. Who are entitled to be represented by legal counsel. And if you open it up to low income as previous speakers have spoken of, that creates a problem. It's problematic.

No one has actually stated how this proposal, which creates a dual regulatory system for non-lawyers, is going to be funded. No one is talking about the cost. The fact of the matter is appropriations to the Supreme Court. The office of court administration that will be funded by the legislature. And therefore, you will have to make a presentation to the legislature at some point about the system and justify the cost of doing this when there's so many other needs.

Thank you for all your work but we have some concerns. One of them is there is nothing in any of your presentations or the report that talks about the impact on the non-English-speaking Texans. Who is that going to include? Non-documented Texans? There is no mention about language services. I went through the list of who y'all included. And I don't see any indication that any groups or any Hispanics or Hispanic groups were contacted.

Steve Bresnen: My name is Steve Bresnen. I'm here to deliver some expertise not on behalf of any particular group today. Although many of you in the room may know that I represent various folks who are involved in various aspects of the legal profession, including Texas Family Law Foundation. I've written a statement on… of the foundation.

On page 50, footnote 83. There's a reference that said they will support organizations which currently exist in Texas. But act as a potential model for what non-attorney investment might look like. I think it's very important to straighten that out because full wars have been fought for a decade.…what DSO is and its relationship to dental practices. A DSO cannot own or have a financial interest in a dental practice. It must be owned. Those services or many of them are visited in the statutory, this, the statute decided here. In fact, if a DSO were to, through its contract or any other relationship, influence the independent professional judgment of a dentist, it would be committing a felony.

And so it's clear that that be understood.

These services are sold too. The PC typically owned by the dentist is purchasing services. From the DSO and it's not the PC, is not providing services as an employee of the DSO. That's against the law. This is consistent with the separation that's described in Title 7 of the business organization code chapters 300, and one that deals with professional entities who may own those entities and even liability issues related to those issues. The entire structure related to the dental practice and the relationship between the for-profit DSO service provider is built around, preserving the independent professional judgment.

I think you can, first of all, that's entirely legal under current law. DSOs are not regulated except to the extent that they can practice dentistry. I think I know no reason why those same laundry list of services would not be provided to a law firm. Now or an individual lawyer now. And, my whole purpose here is not to fight the war again because we've already fought that war.

Thank you very much.

Roy Petty: Thank you very much. I'm Roy Petty. I'm the chair of the, I'm sorry, I'm the former chair of the Immigration Section, at the state bar.
That the subcommittees and working groups invited us and allowed us to speak, and they allowed us to submit written materials.
Our members submitted written materials. And we feel that our points were for the work of the committee.
What I would like to mention is that I do want to point out what the working group support recognizes.
We may give immigration advice. And file immigration applications. And that's because those areas are heavily regulated by federal rules to protect the integrity of the federal immigration system.
What the chairs are somewhat concerned about is the JBCC being left to itself to determine what practice areas it could include in the future.
Certainly, our points were considered because we were brought into the loop. We certainly would be concerned with the JBCC allowing for the practice of immigration law in violation of the spirit doctrine and violation of federal rules.
I would like to address something very specific. And that is the third sentence, the proposed rule 5.04.
And I would like to address that through an example. My law firm, we, provide only immigration services. We do low-income testing. That generally means the 200% of the poverty level guidelines and we know that because the immigration services - sometimes we have the capture that information.
So we know that our clients generally earn less than 200% of the poverty line; our clients generally are Spanish speakers as well and do not speak English.
Reading very carefully the first-tier rules. Really legal services provided by the licensing shall be limited to those proposed by the entity.
It would appear to me that my law firm could apply to become a certified organization with the JBCC.
And there may be a good fit there because I have clients who need low-cost cheap divorces.
If I were to get that certification, then automatically under the third sentence, my law firm would no longer be subject to the prohibitions.
And I can share the profits from my immigration business.

Caroline Badinelli
Thank you, ladies and gentlemen. I am Caroline, Badinelli, I've been a lawyer for over 20 years. I practice in Austin, Texas in the central Texas region. I'm a member of TTLA and CATLA. I am also a member of … I also do pro bono cases and I'm here to express my concerns …
I would much prefer that we direct our resources and efforts towards the organizations and many others that I just mentioned and I work with because I think they do an excellent job of providing legal services and assistance to Texans.
... My concern, to give you some examples, in the field. Uncontested does not …
The problem is, and I've seen, legal zoom forms and decrees drafted by paraprofessionals. I had one where there was a summary possession schedule and that was interesting. I had numerous cases I had to come down because property division enforcement is simply not

possible. They didn't make any provisions for… - it's simply not possible - they didn't make any provisions for the whole family.
Finally, family violence. I have extreme concern about non-lawyers or non-legal entities helping family violence victims who are saying something is uncontested, when it is not…But I have severe concerns about what will happen to our family violence victims in this state.

Stewart Mathews
I will say that this program is being touted as one to help low-income Texas. But what I see missing and everything that's been presented today is a look at those states and even the UK that indicates how this has helped the low-income in those states. And the reason it's missing is because it hasn't.
I would direct you to a Yale Law Journal article by Stephen Young out of October of 2022 where he looked at this extensively.
And it indicates those programs have not helped low income, have not addressed the issues that this panel is raising to any means.
Okay, it simply is not true that it helped low-income and I'm talking about the non-attorney owned law firms.
Instead, this program only permits a way for big companies to get inside of the justice system. And what we will see then is attorneys who will be beholden to the big companies instead of being beholden to their clients.
And before you say that simply isn't true, they still have an ethical duty to their clients. We can see this already happening whenever you have insurance companies that have in-house counsel, they have a real difficulty even meeting all the demands because they have to meet a bottom line.
You're gonna see the same thing happen. And then you can also see where law can be decided because an attorney cares about what is happening to the client.
They will pursue a case to even change law. Instead, when big business is in it, they're not going to do that.
They're gonna have a bottom line that they have to answer to. Our concern here is not just simply because it might affect our income.
That is not my concern at all. My concern is that this will affect justice to all Texans.
My concern is that this is being built as a way to help low-income when the other states that have done this have categorically shown that simply is not true.
If this program comes into play, towns, smaller towns that have attorneys that are working that are well invested in the community suddenly are going to be inundated by big box attorneys.
Okay, we see that whenever you see the Walmart that has taken away the small home, companies in those towns, small businesses.
You're going to see the same thing happen and the care is not going to be for the clients.
The care is going to be for the bottom line. Okay, how will this help? How will this help Texans?
It won't. This is going to hurt jurisprudence across the state.
Okay, right now, attorneys can make money with what they're doing. Yes, but they also owe a duty to the client. If this comes into effect, the lawyer … a duty to Walmart or an offshoot of all state or an offshoot…

Stephen Younger
Good morning. I'm Stephen Younger. I'm a past president of New York State Bar and chaired their non-attorney ownership task force.

I'm also the author of a law journal article on the perils of non-attorney ownership that has been cited in your report.
I want to thank the commission for allowing me to speak today. I am a huge supporter of tackling the access to justice crisis in America.
But non-lawyer ownership simply does not do that. Lawyers, as you've heard this morning and as you saw in the appendix to your report, overwhelmingly opposed, non-lawyer ownership. They've opposed it not only in my own state but in Florida, California, Illinois.
Why is that? It's because we have legitimate fears that our independent professional judgments will be compromised by non-lawyers.
Non-lawyer owners are not trained in the legal structure, particularly not in ethics, and they can't even be disbarred.
We have seen a concern with non-lawyer drafted wills as you've heard earlier and divorce settlements that just don't stand up and we can't afford to have a 2 tier justice system where our indigent folks are treated to consumer abuse.
Now I've studied carefully Australia, UK, Utah and Arizona. There is not a single piece of evidence that there's been any movement and the access to justice crisis there.
And Utah and Arizona, the overwhelming groups are wealth. Services providers not helping … litigation finance groups in the personal injury sector not a single entity in Utah or Arizona provides services in court for the poor, particularly in areas like family law, housing, etc.
In fact, many of them provide chat bots to service and give advice, not the kind of quality that we want.
I would encourage you to consider some other alternatives for an example in New York. We have our non-lawyer navigator program that helps people navigate the courts. We also have a problem called Lift that provides forms and numerous different markets, but I would encourage you not to turn the Texas justice system over to corporate America.
That's exactly what non-lawyer ownership does and it's something that would not be good for your state or elsewhere.
Thank you very much.

Grace Weatherly
Yes, thank you. I apologize. I'm on the road for .. today.
I am the 2021 National President of ABOTA. And I only mentioned these things because I don't want to echo what everybody else has said today. But I do want to emphasize that I've spent decades, working for legal aid of Northwest Texas, formerly legal aid of North Texas, and also for the state bar lawyer referral information service committee, where we at one time did a lot of research on a modest means panel. That would be a lower fee referral service.
I say all that so that you know I have a true heart for the provision of legal services for the for the low-income Texan.
This and I commend the commission as others have with all the hard work you've done.
But the idea of even experimenting with non-lawyer ownership of a for-profit entity to provide legal services could cause tremendous damage before you even determine the problem and shut it down. And what I'm talking about is access to client information that right now is protected by the rules of professional responsibility, but also by chapter 501 of the Texas Civil Practice and Remedies code.
And you would have people who do not have a fiduciary duty to the client that would have access to all of their digital information, their names, dates of birth, addresses, driver's license, social security number, all of that information.

That information could just be mined and sold, and all kinds of destruction could occur. That's just one little tip of the iceberg I wanted to add to what everybody else has said, but there's no way to protect client confidentiality.
When non-lawyers own law firms and this is not a baby step a for profit entity delivering legal services with non-lawyers owning it is not a baby step and I urge you to put the brakes on it.
Thank you for letting me speak today.

John Thies
Okay, first of all, my name is John Theis and I'm past president of the Illinois State Bar Association. Also the national caucus of state bar associations. And land of Lincoln legal aid, a large geographic legal aid organization in the southern 2/3rds of Illinois. I have been a general practitioner for 35 years.
I currently serve on the executive committee of the ABA solo small firm and general practice division. And vice chair of the ABA Center for Innovation. And I serve on the ABA House of Delegates. In fact, I served for a period of time overlapping with Chair Miers and Judge Livingston.
I'm here to make 2 points and I'm trying to not duplicate what others have said.
First, I want to discuss the recent history of these issues at the American Bar Association.
Second, I want to express the concern that the substantial efforts that you would undertake in implementing these proposals would not lead to significant improvement in access to justice and it may actually make it worse.
I'll start by addressing footnote 55 in your report which discusses ABA resolutions. I was the floor leader of ABA resolution 402 and there is no conflict between that resolution and resolution 115.
115 encouraged jurisdictions to consider regulatory innovations that have the potential to improve the accessibility, affordability, and quality of civil legal services.
Importantly, it also said that nothing in this resolution should be construed as altering any of the ABA rules of professional conduct including 5.4.
402 which was passed in August of 2022, passed overwhelmingly. And it reaffirmed longstanding ABA policy. And that policy is clear. Sharing of legal fees with non-lawyers and the ownership or control of the practice law by non-lawyers are inconsistent with the core values of the legal profession.
Law governing lawyers that prohibits lawyers from sharing legal fees with non-lawyers and from directly or indirectly transferring to non-lawyers ownership or control over entities practicing law should not be reversed, should not be revised, I should say. Resolution 402 also made it clear that any reforms should not involve changes in model rules, professional responsibility 5.4.
5.4, as you all know, is about client protection. And ensuring the independence of our profession.
Tinkering with it as has been said threatens these key aspects of our justice system. And that leads to my second point.
Wouldn't it be ironic if in an effort to address a serious problem we have with access to justice, we actually make the situation worse?
And this is precisely what would happen if the rationale behind 5.4 or your 5.04 is not appreciated.
5.4 is about the core of our profession.

Judge Jennifer Rymell

Good afternoon members of the commission, members of the Texas Supreme Court and guests, my name is Jennifer Rymell and I've had the privilege of serving as a civil county court law judge in Fort Worth, Texas for the last 20 years and I'm speaking on my own behalf.
I'm a former chair of the Judicial Section of the State Bar of Texas and I am one of the small firm and general practice division delegates to the American Bar Association.
And that capacity, I am part of a coalition of bar leaders and a couple that you just heard from a moment ago, John Thies and Steve Younger, and we have been advocating on a national level against some of these similar proposals that the working group has been discussing today.
Most recently, our coalition was the driving force in the American Bar Association for adopting resolution 402 that did a reaffirm the association's stance against non-lawyer ownership.
As I look at this room, I see so many colleagues and friends that I have so much respect for and especially Justice Busby, I have a tremendous amount of respect for him because we've worked together in our association and committees for the last 20 years.
But I do have some concerns about a vote on these issues today.
While I understand that all of you in that room have been living with these issues for at least the last 10 months, the rest of us in the Texas Bar Association have only been living with these issues since we received the final report about 9 days ago.
Also, I have some problems about inclusion as I'm looking on my other computer here on the appendices about who all has been included other than working group members.
It looks like there is only a combined total of 49 people that participated then in either a focus group or answered surveys and another 51 individuals that gave individual internet comments.
When you're thinking about the monumental changes that would happen if we were to enact either of these proposals and the 108,000 lawyers, it is a very, very minuscule amount of people that have had an opportunity to be included.
I would urge you not to vote today to at least put this report forth in the Texas Bar Journal and let other local bars also put this forth so we could have more inclusion and more time in this process.
I would also respectfully in my short time ask for you to look at an Arizona website. It's called https://www.denovolawaz.com/. This is a paraprofessional law firm website based on the Arizona Supreme Court's action of similar proposals. I don't have time to really discuss this website very much, but this goes to the heart I think of the concerns on these paraprofessional issues.
Their tagline in the first line, it says your affordable alternative to offering the same quality service and experience as a family law attorney.
I invite everyone because I saw a lot of computers there and phones to peruse this website and if what you see, especially when I heard about less regulations in paraprofessionals practicing law, then more regulations as we had in Washington.
This website will scare you and I think that you need to look at this website and after you do that think: is this what we want in Texas?
I oppose both of these proposals. I think there was a lot of talk about non-lawyer ownership, so I am not going to be discussing that.

Thomas C. Riney
Thank you. I'm Tom Riney. I'm an attorney in Amarillo. I practiced in Amarillo for 47 years.
I am a fellow of the American College of Trial Lawyers and contributor to their foundation which supports legal services to the poor. I'm also a former member of the board of directors of both the Texas Lawyers Association and the State Bar Board of Directors. I'm also a former member

of the Board of Trustees of the Texas Bar Foundation and have been the sustaining fellow of that foundation for decades. I'm a former president of Amarillo Area Bar Association. A member of ABOTA and a member of the International Association of Defense Council.
But I do not come to speak on behalf of any of those organizations today.
Rather, I mention them solely to show that over my career, the profession has meant an awful lot to me and also, I have a commitment to legal services to the court.
But I'm here to ask you not to recommend and not to approve the proposed recommendations for changes to rule 5.04.
The working group has done an excellent job of coming up with attempts to try to regulate non lawyers. But you cannot regulate yourself into being a profession.
That is what makes us different from businessman. And we've been told that since the time we're in law school.
Regulations of NLO's will not develop that long pattern of professionalization that causes us to be professional.
It is simply something that can, that must be taught. We learned it from our mentors.
We study it when we go to seminars, and we can't simply pass rules and expect non-lawyer business people to accept and follow and understand the principles of professionalism.
As a lawyer, I have reviewed the working group report, all of the exhibits and I've listened carefully to the comments today.
As a lawyer weighing the evidence, I find the evidence and support of the proposition that this would actually improve legal services to the poor. Yet on the other hand, the negative aspects of it seem to be overwhelming.
Particularly some of the comments in the report from the immigration lawyers, the family lawyers, and even the tax lawyers.
I urge you not to make this change, to consider all of the comments that have been considered here today, and help preserve our profession, and by preserving our profession we are protecting the public.
And we are also protecting the quality of legal services to the poor.

Alison Kennamer
Good afternoon, everyone. I'm Alison Kennamer and I'm coming to you from my office in Brownsville, Texas.
I'm an officer and executive committee member of both the Rio Grande Valley chapter and the Texas chapter of ABOTA and I'm a proud member of the Cameron County Bar Association.
I'm a supporter of the ABOTA Foundation, the Texas Bar Foundation and Texas Rio Grande Valley Legal Aid.
I'm here speaking on my own behalf, but I do want the Commission to know that every time I've spoken with my fellow Cameron County Bar Association members, they have shared my view against non-lawyer ownership of law firms.
The task force report noted real valid concerns that you have heard echoed over and over again today at pages 24 and 25 and pages 39 and 40 of its report but does not seem to give them the consideration that we respectfully believe they need to have.
This would have, as you have heard, no real expansion of the access to justice for the poor.
In Arizona, Utah, the United Kingdom, etc. And it's not surprising because when you have a for-profit motive not subject to the same disciplinary standards why would you expect to get a good result?

To say that a regulatory body is going to create regulations that will avoid all these evils without having any detail is not going to happen.
There is a grave danger of substandard and even predatory or otherwise unethical practices with no real available deterrent mechanism.
When you have a proposal and one of the proposals in the report was less than something like 20% of the services to be provided to the poor, I don't see how anyone could reasonably think that that for-profit motive wouldn't result in deciding to dedicate the best of your legal services to that 20%.
The report also discusses better alternatives utilizing existing infrastructure at pages 25 and 26 and I want to talk about 2 of those very quickly in my last minute.
The first is law schools. The law school cohort, students and schools have come so far in the 35 years since I graduated.
They do amazing work in their clinical practice. They're uniquely suited to some of these issues, particularly the ones that are very low dollar amounts to us but very high dollar amounts to the poor. It's like landlord tenant law. Because law students don't have the need to have to make a profit in any sense.
They need the experience. Secondly, the legal aid societies. If you look at the Texas Rio Grande legal aid report for 2022, you will see that they served almost 25,000 clients.
They had 32,238 new cases. They closed 21,000 of them and they worked 2,700 with existing attorneys.
That is where I respectfully suggest our resources should go. Thank you very much for your time.

Don Jackson
Yes, thank you. good afternoon. Thank you for giving me a few minutes to comment.
I served as TEX-ABOTA president in 2014 and I have been very active in the National ABOTA Organization for many years.
I am aware of and support the 2000 resolution against the non-lawyer ownership of law firms.
I'm speaking today on my own behalf not on behalf of the American Board of Trial advocates.
But I do support the comments that have been made by my friends David Chamberlain, Tim Newsom, Grace Weatherly and Allison Kennamer, all very active in ABOTA.
I do not pretend to have the knowledge or that I have done the work that's been done by the working group or this Commission.
I acknowledge that the severe justice gap that the Commission is trying to address is real and is important. And I acknowledge that answering this challenge may require a profession to try innovative solutions that may make us uncomfortable.
But I think, all also acknowledge that we must do this carefully and approach this with caution.
I want to focus my comments on one specific point in the working group report. And that is on page 39 where the report states in Australia and in England and Wales where non-attorney ownership is permitted the justice gap has not closed.
However, in those jurisdictions, the ABS [alternative business structures] are primarily profit based. This also may be true of the ABS operating in Arizona and Utah, as many are owned by private equity firms, litigation finance companies, hedge funds, and alternative legal service providers.
And this comment appears to be well footnoted and in fact is footnoted to the article of Steve Young who we just heard from.

Judge Massengale mentioned this and clearly the working group has made many suggestions to encourage the focus on the access of justice by non-lawyer owned law firms.
But we don't have an example or track record as far as I can tell that tells us that this will work. They tend to continue in one direction, and I would suggest that in this case that is probably the direction of increased corporate practice of law.
As a profession, I suggest that we must be vigilant in preserving the high ideals and legal ethics of legal ethics and independence.
I am concerned that there is a real danger that these ideals we care so much about will be overrun by larger and richer interests.
I suggest let's keep an eye on Arizona and the other places where these programs are being tried and let's not rush into it.

Jessica Bednarz, IAALS
Yes, thank you. Good afternoon and thank you for the opportunity to speak today. My name is Jessica Bednarz and I am the director of legal services in the profession at Isles, which is the Institute for the Advancement of the American Legal System, which is a national independent research center at the University of Denver dedicated to continuous improvement of the civil justice system.
Since 2019, IAALS has had an unlocking legal regulation initiative through which we have worked with leaders from states across the country to rethink how we are regulating and delivering legal services.
So that everyone can access the legal help they need. I'll be keeping my comments very high level and brief and I would direct folks to our written comments for further detail on each point.
I have 3 main points I'd like to share on behalf of IAALS today. The first one is with respect to closing the justice gap and how it will require an ecosystem of providers.
The access to justice gap is massive. We've actually heard quite a few definitions of access to justice today, and I'm not sure we're all having the exact same conversation.
It is well documented that the access to justice gap extends well beyond the income eligibility line for free legal aid and into the middle class.
This means that serving people in the middle class is increasing access to justice and closing the justice gap. To say otherwise is to ignore the data.
Because of the size of the access to justice gap, the reality is that we need an ecosystem of providers, models, and solutions in order to fully close it, including all of the recommendations that are in the report.
The second point I'd like to make is just that launching a new program requires a substantial amount of resources.
So, we recommend that Texas prioritizes obtaining enough funding to launch the program, evaluate the program and sustain each program individually and collectively.
And then the third point I want to make is that we support all 3 models that are proposed in the working groups report.
But in order for each of them to be successful they need to be matched with a certain framework.
And so just a few comments on each proposal very quickly. The community justice worker proposal we believe this program is a great fit for low-income Texans and there are many models already in place in Alaska, Utah, Arizona, Delaware, and Hawaii that Texas can turn to for additional guidance and we're going to hear more probably about one here in just a second.

The second one is with respect to the licensed paraprofessional program. This is an area in which IAALS has devoted considerable time and energy to the advancement of these types of programs across the country.
And we fully support them, but it will work for them to be successful. The scope of work really needs to be broader than what is contemplated in the report, and they need to be able to serve people who are above 200% of the federal poverty guidelines in addition to people under that threshold in order to build sustainable practices.
And then finally just 2 quick notes regarding the non-lawyer ownership proposal or what we call alternative business structures.
Again, we fully support alternative business structures, but…

Mark I. Unger
Thank you and thank you to the members of the commission and the Supreme Court. My name is Mark Unger.
I'm from San Antonio, Texas, a particular thanks to Justice Hecht too. I'm coming from a position of sort of a legal technology background and Justice Hecht kind of gave me I think probably my first start back in '98 when he authorized me to file the first electronic brief in the state of Texas in 2003.

I was privileged and blessed to file the first electronic filing in the prior iteration of the filing. I think this is important because I think there's a technology aspect to it.
I've been involved with the computer technology section for about 21 years, the JCIT [Judicial Committee on Information Technology] for about - a long time- since I think 2015 and I speak only for myself however.
I do think that there's some examples that we're given that when combined, create some problems that need to be addressed at some point.
And thus, the combination. Both NLOs and paraprofessionals would be very dangerous to have because I think the example given by the proponent of NLO was Rasa a company that in the article cited in a prior email show that this is an AI enabled software when we have proposed rules that say AI should not be used. …paraprofessionals and, what was not said, however, but what was in the proposed rules that the AI, unless it's checked by a lawyer, unless it's reviewed by a lawyer or the paraprofessional.
So, we've created almost an absurd result where the paraprofessional unsupervised without checks and balances could be using and likely would be using some sort of technology assisted, including AI and then certified that they checked it themselves. And they do not have the same standards. And so, I think there's problems when you combine all 3 of those.
I don't have the solution in my head quite yet, but I do appreciate the opportunity to be heard and thank you to everyone for your hard work on this Commission.

Nikole Nelson
Good afternoon and greetings from Alaska. I am Nicole Nelson and I'm the Chief Executive Officer of Frontline Justice, which is a newly bounded organization that is committed to advancing non lawyer justice workers as a critical evidence-based scalable solution to addressing this nation's justice gap.
Prior to coming to this position, I spent 25 years in the field at Alaska Legal Services, a legal aid organization that serves all of Alaska.

And I'm very pleased to see the recommendations of this working group with respect to advancing community justice workers.
And I want to say my comments are specifically related to the community justice worker proposal and I we have submitted written proposals, written comments that will are available to be more specific, but really we would like to say that the model that is proposed here, that is put forward is you know, we're strongly supportive of that model as a first step solution and really a proposal to move forward in a thoughtful and smart way, by limiting those cases to the justice court areas.
The evidence is clear that non lawyer justice workers can provide effective and safe services to folks who need them and the scale of the access to justice crisis in our country and in Texas really is enormous and you know taking some first initial steps to move beyond lawyer solutions to a scale to be able to address the unmet needs of people who need them is really essential and the working group is to be commended for making this recommendation.
I will also say that from my perspective as a twenty- five year practitioner in a legal aid office in a remote area that I believe this to be the gold standard, for providing services to those who need it. Over the 25 years I spent working in the field in Alaska, I struggled to find ways to serve clients who came through our door, and we were unable to do that.
That was the first community justice worker model. It was the first thing that I have seen over that 25-year history that has the potential to address unmet needs.
And so, Alaska's program has grown to 325 community justice workers. They have a hundred percent success rate in the areas that they are taking on and they are in places where our attorney Alaska Legal Services attorneys are not. They've expanded from the 12 offices where a Alaska Legal Services has physical offices into 38 different communities.
Additionally, the justice workers are closer to the communities in which they serve. So about 44% of our community.
The community justice workers in Alaska are indigenous as opposed to only 12% of the legal aid staff.
So I'm a strong supporter of this model. Thank you.

John W. Shaw
Good afternoon, everyone. My name is John Shaw and I am a former legal aid lawyer.
I practiced with Legal Aid of Northwest Texas for the first 5 years of my practice. I have for the last 12 years been on the board of directors for Texas Legal Services Center and the last 5 of those years I have been chairman of that board.
I'm here today to speak on behalf of myself. I want to make sure that it is abundantly clear.
I am not speaking on behalf of TLSC or its board of directors. Nor am I speaking on behalf of my law firm, but I did want to take this opportunity to tell you that I am against both of these recommendations, and I had a very detailed report I was going to make but I will tell you with regard to the non-lawyer owned entities.
I think that Mr. Younger is an expert in this area. His report is something that I used.
I think we need to listen to his recommendations because my big problem with both of these is that neither one of these proposals will actually close the justice gap.
But I think that's what the Commission has been asked to do is come up with proposals to do that.
My biggest concern with the licensed paraprofessionals is kind of 2-fold. The first is the unsupervised work.

The big problem that I have with that is what's gonna happen when it becomes a contested case?

The reality is that people who are at or below the poverty level, whether it's the 200% or 125% - they have the same legal problems that you and I have.
Their issues are not any less complicated and I would submit to you that their legal issues because of their poverty are significantly more complicated than what we experience generally in these areas of law.
Once it becomes a contested case, according to the recommendation, the paraprofessional has to back out of the case.
So what happens then? Who's gonna take the ball across the goal line? There's not gonna be a lawyer who can do it because we've already shown that they can't afford legal counsel.
At this point though, when the paraprofessional has to give it back now the person who is at or below the poverty level has paid money out of their pocket which to them is going to be a significant sum of their net worth and now, they're left with a case sitting there that has never been finished.
What's gonna happen with it? And in my opinion, that doesn't bridge the justice gap.
If anything, it's left it them worse off. Another big concern that I have with condoning this licensed paraprofessional phrase is that unfortunately impoverished Texans are often the victims of scams and schemes.
We haven't heard much talked about it today, but notario, I'm sorry, I'm not very good at pronouncing that.
Are not notorios telling people in the impoverished community that they can do things for them for a minimal amount of money that they literally do not have the ability to do?
Consumers of these services are not going to be able to tell who is an actual license paraprofessional and who is someone simply claiming to be a licensed paraprofessional to perform these legal services for low income…

Kristen Bell
Thank you for the opportunity to speak today. My comments are in response to the recommendations, especially as they relate to Title 5 of the Texas Family Code.
Our position is that any proceeding brought by DFS must explicitly be excluded from the rule changes. It is not enough to say just an uncontested case.
We must, they, the rules changes must explicitly, exempt any proceeding brought by DFS.
That's for several reasons. First, these cases are extremely important and complicated matters as they affect the parent child relationship.
They also involved the child client for whom this decision about their lives may actually be contested even if the state and parent agree.
Child clients in these cases actually have a statutory right to counsel often as well as constitutional rights while in the state's care, rights of protection and freedom from physical and emotional harm.
Attorneys under the Texas Family Code have been given rights, duties, and training requirements to protect children.
And it is unclear how non-attorneys will be held to the same legal and standards of professional responsibility. In addition, a child client may lack the capacity to consent.
And both ethical, legal and professional obligations come into play when substituting judgments.
I would like to point out that it's incredibly important that any rules changes have strong

safeguards in place any time there's a question of diminished capacity in cases where consent can be used to diminish a person's right to legal counsel.
There are also many tangential legal issues that may arise in these cases for which illegal council and representation becomes necessary.
For example, education issues in these cases, if a child is being forced to move because of a placement change, federal and state law protects that child from leaving his or her school of origin.
And an attorney may need to step in and protect those rights. If a parent changes their mind at the last minute, the error must be preserved.
And, and Child Welfare cases, jurisdiction or dismissal date may pass. Even for parents, a parent should have legal accounts of her decision as important as a relinquishment.
And it is understandable how there may be differing opinions as to when a case is or becomes contested in situations as personal and emotionally involved as these cases are.
There could also be instances where an imbalance of a power deprives a parent, a legal counsel, would need it because it looks like their case is actually uncontested.
But really for the parents they would prefer to be heard. Based on all of these reasons we asked the working group and Commission to refrain from allowing non attorneys to fulfill the highly specialized role of an attorney in cases affecting the parent child relationship.
If at least one state has already changed its mind and allowed non-attorneys to fill attorney roles, according to the report, that's Washington.
We ask that we do not test the waters on cases that may involve issues as important as the dissolution of a family or the protection of a child.
Thank you so much for your time.

Gayla Corley
Good afternoon. I'd like to also echo the sentiments of my colleagues who've spoken previously to commend the Commission and the working groups on their efforts to put the proposals together.

I speak today as TADC president. I'm also a private practitioner with the law firm of Mehaffy Weber. I'm in San Antonio where I have practiced for about 30 years.
I also back the sentiments of others who have spoken today that certainly the gap to justice and the limitations on access are certainly worthy of consideration by all of us and again applaud the Commission's efforts in this regard.
However, non-lower lawyer ownership is simply not the way to bridge access. It's just too slippery a slope.
The concerns as I see them fall into basically 8 categories.
First, the preservation of professional independence. We as lawyers are bound by ethical codes, which require us to prioritize client interests, whereas non lawyer owners who might find their way into the judicial arena might have different interests. Those to their stockholders and also to the bottom line rather than those of the client.
Second, conflicts of interest, non-lawyers' business interests may well conflict with what are the clients best interest again, putting profit over professional work product. That could lead the way to biased legal advice or flat-out negligence in the handling of disputes. In whatever arena within the civil justice system.
Dilution of legal expertise is the third category. Non-lawyer-owners simply don't have the necessary legal knowledge or ethical training. We as lawyers spend 3 years in law school, I

think the average debt for students now is around $200,000 and there's a lot of time and effort that goes into obtaining that degree which those who have not been through that process simply can't understand. The result of this could be poor management decisions regarding what might be appropriately legal practices standards or the proper pathway for handling a case.
Number 4, quality of legal services. Again, that kind of rolls into number 3.
The fifth is regulatory compliance issues. We as lawyers are heavily regulated, non-lawyers may not have the same type of commitment or even awareness of what those requirements are that could easily pay the way into breaching whatever duties for your fiduciary or otherwise might be owed.
Number 6, client confidentiality and privilege. We all know that attorney client is sacrificed. And there certainly are issues as we faced with the in-house council arrangement back in the nineties on what the limits on those confidentiality and privileges might.
Number 7: the erosion of the public trust legal profession and we as lawyers have traditionally been seen as protectors of the rule of law if we allow non-lawyer owners into that arena it could well erode the public trust which from time to time as we all know fluctuates based on what's going on in the media and various legal disputes around the country.
Eighth and final is the impact on small law firms. I know some of the folks talking about the community officer or the community judicial officers rather touched on this.

Lucy Ricca
Hi everyone, my name is Lucy Ricca and the executive director of the Deborah L. Rhode Center on the Legal Profession at Stanford Law School.
I'm also a member of the Legal Services Innovation Committee of the Utah Supreme Court, which is the committee that oversees the Utah Legal Regulatory Sandbox.
You've heard today from many lawyers arguing in various ways that the recommendations of the working group portend disaster for the profession and the public.
I submit just a few short observations in response. Our profession, as hard as we work, is simply not serving the vast majority of people with legal needs.
The number of lawyers has increased fourfold since the 1970s and the justice gap and the number of those appearing in state courts without any representation at all has increased dramatically over that time.
In spite of this, lawyer after lawyer has come here today and argued to you that change is not needed and that lawyers are the only possible providers that can offer quality legal services.
And that non-lawyers seemingly by definition are mal-intentioned and seeking to harm consumers. I want to be quite clear, the considerable academic research on the quality of services provided by non-lawyers and the impact of non-lawyer ownership in Australia, England, and Wales, Utah and Arizona does not support these arguments.
Non-lawyer providers already offer many services in federal and state agencies and now as licensed paraprofessionals and justice workers in multiple countries and states.
The research shows that the quality of services provided, and the satisfaction of consumers is high.
Non-lawyer ownership has enabled law firms and legal service entities to partner with other professionals to serve consumers in one-stop shops with their end-of-life planning needs, with their financial needs, with marriage dissolution and other family needs so that they control their family legal issues themselves, with the help of lawyers as needed, with low cost expungement services as has been noted and with bringing their own small dollar personal injury claims.

As a report of the Rhode Center, noted in 2022, entities emerging in Utah and Arizona are creating a variety of business models and services, some of which are more innovative than others.
But key to note, there is no evidence that consumers are being harmed by these offerings or by the non-lawyers participating in them.
There is no evidence that lawyers working with and for these entities are unable to fill their professional obligations, which they are required to uphold in all of these reformed regulatory frameworks.
Lawyers oppose opening up the monopoly the profession holds on the provision of legal help. This is not surprising. But I submit that in the face of the truly shocking numbers of the justice gap and the lack of evidence showing that reducing the UPL ban and 5.4 ban, this position is without support and does not reflect the best interest of the public.
I also submit that if the members of the profession commit to categorically oppose reforms that we as a profession will lose the ability to regulate the profession of the provision of legal services either through first amendment and antitrust challenges or through consumers choosing unregulated providers.
We need bold and courageous solutions. This I believe is what the Texas Supreme Court sought from the Commission and what the working group has proposed.
I commend the working group and fully support the breadth of the proposals offered.

Tom Gordon
Thank you. My name is Tom Gordon. I'm the executive director of Responsive Law.
We're a national nonprofit organization working to help consumers of legal services by making the legal industry more accessible and affordable.
We appreciate the committee's efforts to reform regulations that prevent people from getting affordable legal help.
We urge the commission to in fact expand the allowable range of services that they're considering not just to the poorest Texans but to all Texans.
The reason for this is the size of the justice gap. The true size of the justice cap in Texas and in fact nationwide.
Looking at the data from the committee's report from the working group's report if you're an individual the ninetieth percentile of income, you have to work a whole day to pay for 1 h of a lawyer's time.
This is simply not access to justice in any meaningful way when only those in the top 10% of income can afford more than an hour's worth of a lawyer's time without working a whole day to pay for it.
Basically, when it comes to supporting legal services, we are all low income. I've also heard a lot of misconceptions about the effect that non lawyer ownership would have on attorney services.
And I find it puzzling because we as a profession do in fact as we can see by the passionate commitment from people in this room hold our clients' interests in the highest regard.
So, it's puzzling to me that we are so dedicated to our clients, regard our clients interest that only lawyer ownership of a firm is sufficient to protect it, and yet at the same time they apparently are so weak, that we'd fall in an instant at outside corporate pressure if told to do something against the client's interest.
Finally, I know the time goes very quickly here. I do want to point out that when looking at new regulations, we should compare what's being proposed to the current regulation system.

Right now, our current model is a Texas legal industry of 30 billion dollars in annual revenue. And what I've not heard anybody suggest while telling what we can't do is how to reform that system to get more aid to those who need it the most.
Right now, Texas lawyers averaging 25 hours per year of pro bono. And they're required to pay $65 a year towards a combination of civil and criminal legal aid. That's simply insufficient and frankly ridiculous. People really want to help.
They should either let others do it and step away and let them do it or perhaps the legal industry should be required as well as they're proposing the nonlawyers industry.
… should be required to provide more pro bono work or be mandated to provide a significant proportion of their revenue towards legal aid, which greatly needs it.
In conclusion, we hope that the commission will consider expanding the available legal services from innovative models and not letting this experiment fail before it starts by restricting the scope to a small number.
That will not bring in a sufficient number of clients to make it profitable. Thank you.

Cullen McMahon
My name's Cullen McMahon. I really appreciate the commission taking the time to hear my thoughts.
I'm the current president of the Dallas Trial Lawyers Association, but really I'm not here in that capacity today.
I'm specifically here in opposition to the non-lawyer ownership of firms.
And I won't repeat a lot of what my other colleagues will say. I've already said, but I'll kind of sum up my whole position with one story that actually happened earlier this week. And I turned 45 at this month so that means I had to finish up my CLE. And like, 45 min of ethics, so I just did what a lot of us do and went on the state bar of Texas website and clicked on the first one I saw. The first one I saw was an interview where our state bar of Texas Executive Director Trey Apffel had the opportunity to sit down with Texas Lawyer, James Baker. And in the interview, Mr. Apffel asked, what is it about the legal profession that you have seen change over the years that is let's say most significant to you good or bad?
And I'm paraphrasing Mr. Baker's words a little bit, but his response was: I've seen the good that has come from lawyers doing financially better.
I know what is a truism on the other side of the coin: we become a business. I think that's regrettable because I remember back in the days when we were a profession. People respected us more than they do today.
That's coming from a man… His partner in Baker Botts, one of the oldest and largest law firms in Texas. And I couldn't agree with him more. Licensed lawyers are required to follow a code of conduct that differentiates us from non-lawyers.
Oftentimes I'll compare that to the code of ethics that medical doctors follow the Hippocratic, these ethical guidelines are what keep us professional.
And instead of loosening our rules, professional conduct, we should be cranking that wrench tighter.
I agree that all Texans should have equal access to justice but operate in a world where I see the mini pitfalls of hedge funds or non-lawyers.
Well, non-lawyer investors trying to turn a practice into a business. We've got to do the best we can to protect our profession.
And again, I think the commission for allowing me time to share my thoughts.

Public comments concluded, and the meeting recessed for a thirty-minute lunch break.

9. Commission Discussion of the Working Group Report
   Attached to these minutes as Exhibit B-1 is an effort to summarize the discussion of the Commissioners concerning the efforts of the Working Group. The actual recording of the discussion can be found as Exhibit B-2.

   The meeting resumed and Judge Livingston requested the Commission recognize the hard work of the Commission's staff in facilitating the meeting today. She also asked the Commission to recognize and thank the staff of the Travis County Civil and Family Courts for allowing it to hold the meeting in its new building.

   Chair Miers invited a discussion of the Working Group Report, beginning with a discussion of the Scope of Practice Subcommittee.

   Judge Chu made an inquiry regarding the procedure for the rest of the meeting. He sought clarification of his understanding that the Commission would vote on its recommendations and then send them to the Texas Supreme Court. He inquired about any other anticipated action.

   Justice Busby responded by noting that the Texas Supreme Court asked for a report, and that report will serve as a starting point. He noted the report from the Working Group would be considered by the Commission, and, in turn, any recommendations from the Commission would be made to the Court. He made it clear that the Court would decide any next steps, which could include additional study, referral to additional committees, or some other action, as the Court deems appropriate. He went on to point out that Chief Justice Hecht made clear there will be additional opportunities to comment on any proposals. Justice Busby noted other ways to submit comments, such as through the email established by the State Bar (suggestions@texasbar.com) and that the Court always takes comments through its Rules Attorney through the Court website. He continued to note that whatever was approved by the Commission at this meeting was not the final step in the process but would be considered by the Court.

   Chair Miers thanked him for his helpful comment. She noted that the report contained specific recommendations and that those would be discussed so the Commission could later vote on them. Having now received the report from the Working Group, it was time for the Commission to discuss and consider each recommendation as well as the public comments. Chair Miers requested to start with a discussion of the Scope of Practice Subcommittee recommendations.

   Kennon Wooten noted a question from the remote audience that needed answering. "What happens if, in the midst of a hearing, the case becomes contested? Is there an automatic stay of the hearing?" Ms. Wooten pointed out that this issue is addressed in the report, and she mentioned paragraph H of the report contains a provision specifically stating that withdrawal is good cause for a continuance, whether that realization occurs during or even shortly before the proceedings begin. Chair Miers pointed out that not every scenario could be anticipated, and further study would be required as issues arise.

Krisi Kastl asked if the proposal is confined to services provided through legal aid or if the paraprofessional could provide services to anyone? She inquired about constraints that might be put in place to ensure services are being rendered to those who need it and not to the public at large. She brought up an example of a single attorney hiring 20, 40, or even 100 paraprofessionals to reap the financial benefits of this change. In short, she noted that altruism is not as widespread as we would like, and some people will try to take advantage of this change to the detriment of the population it is supposed to help.

Ms. Wooten responded that the proposals are not limited to legal aid organizations; however, the proposal does include provisions for community justice workers who can provide services under the supervision of a legal aid attorney, or an attorney employed by a non-profit legal organization. The proposal does not include a restriction that paraprofessionals must work for legal aid or under the supervision of a lawyer in every circumstance. She further noted that these providers can only provide those services, unsupervised, to someone making up to 200% of the poverty guidelines, and any lack of compliance with these guidelines would subject the provider to discipline for violation of the licensing and regulatory requirements.

Chair Miers wondered at the plausibility of someone starting an organization such as the one described by Ms. Kastl. She agreed it was theoretically possible but not practical, lacking a profit motive because of the income of the target population.

Ms. Hobbs agreed that it was theoretically possible but argued it was not realistic because the paraprofessional rules were designed such that they would be serving the poorest of the poor. That client base aside, this does not fit within the general business model of law firms.

Justice Busby pointed out that the model Ms. Kastl suggested is currently possible by attorney employers, but not currently available to paraprofessionals. The proposal would allow legal aid organizations to spread their money further by employing more paraprofessionals to handle cases and would free up attorneys to handle more serious cases.

Ms. Kastl asked if paraprofessionals would be able to go into court in a divorce.
Ms. Wooten responded that the proposal would allow representation of a client in an uncontested courtroom proceeding, including a divorce, but not in divorce cases involving the parent-child relationship. Ms. Kastl recounted that a lady stopped her in the courthouse lobby on her way to the Commission meeting who asked if she was a lawyer. This lady did not know what was going on and did not know where to go. Ms. Kastl commented that even having simple guidance about where to go is an invaluable asset to a client. As a personal injury attorney who sees a lot of ethical and unethical behavior, she expressed concern about opening the door to abuse.

It was noted that no system is immune from misconduct; however, adding regulation may help reduce the risk to the public and add more protection of client interests.

Justice Busby noted that Arizona has had less than 5 complaints about the paraprofessionals that have been licensed in that state, and people reporting on the quality of service they received mentioned that their experience was better than with some lawyers.

Ms. Wooten noted these proposals were prepared by family law practitioners, which is to say individuals who practice in that substantive area of the law drafted the proposals.

Senator Zaffirini, regarding both scope of practice and licensing of practice, wondered how the Commission would answer the Chair of Jurisprudence, the Chair of Finance, or the Chair of State Affairs in the Texas Senate when they asserted that these are issues that are not the subject of rulemaking but should be the subject of legislation based on the separation of powers. She wondered about the response to those chairs who think this is the purview of the legislature and not the Court.

Chair Miers noted that she had encountered such inquiries. Ms. Wooten reported that her response to that is mentioned briefly in the report on page 7, where there is a reference to the statutory authority of the Supreme Court of Texas specifically having exclusive authority to issue licenses, specifically to members of the bar. Ms. Hobbs pointed out that the Legislature has also granted the Court authority to refer matters to the JBCC (as mentioned on page 35 of the report), to regulate additional individuals under the umbrella created by the legislature. Also, the report elaborates on the authority granted to the Texas Supreme Court.

Senator Zaffirini thanked Ms. Hobbs and Ms. Wooten for their response. She noted with interest on pg. 26 the prospect of recruiting people who did not pass the bar to become paraprofessionals and wondered how that would work. Ms. Hobbs noted that this issue was discussed and considered by the subcommittee, which included representatives from the Board of Law Examiners. These are often individuals who do paralegal work while waiting to pass the bar exam. She noted that being a paraprofessional is one more way for them to bridge the time until they are officially licensed lawyers. She felt strongly they should be included as they have already completed three years of law school and are educated in the law. The fact that they haven't passed the bar exam does not necessarily mean they are not competent to work as a paraprofessional. They should be able to provide the kinds of services contemplated by the proposals. Justice Busby noted that individuals waiting to pass the bar do qualify for supervised practice already under rules that have been in place for many years.

Senator Zaffirini expressed concern about the potential for the creation of bad relationships that might result from paraprofessionals encroaching on territory and creating exaggerated competition in those areas where there are too many lawyers. She wondered about unintended consequences for those lawyers, especially new lawyers who are laboring to build a practice, and how that would be resolved. Justice Busby commented that he would love to have the problem of that many people competing to help those making 200% or less of the poverty level. That limitation was put in place because no one who charges high fees is competing for clients at that level, despite the availability of clients in that income bracket.

Senator Zaffirini noted that on page 34, one of the witnesses articulated her assumption about state appropriations, but she also saw a reference in the report to federal funding. She asked for clarification on what funding sources were anticipated by the Working Group. Justice Massengale responded that the programs regulated by the JBCC are required to be self-funding and the Working Group had a discussion with representatives at the Office of Court Administration about this issue. The way it is currently structured, fees charged for licensure have been required to cover the cost of the JBCC. Ms. Wooten noted that page 33 might

provide helpful context regarding federal funding. Legal aid and other non-profits frequently get funding from federal sources, and it is anticipated that legal aid and other non-profits will be the primary employers of paraprofessionals, so it is likely that federal funds will be used to compensate the paraprofessionals.

Ms. Torres added that it would be inaccurate to assume that federal funds would pay for such proposals. She indicated that she is unaware of organizations being funded solely by the federal government as most use a mix of funding streams to operate.

Senator Zaffirini expressed her shock at the hostility in so much of the feedback. She expected more positive feedback and felt the feedback that was expressed was overwhelmingly negative. She commended the Working Group on their efforts to get people involved. She noted a chart in the appendix for one survey where 107 people were invited and only 23 responded, as well as a second instance where 132 people were invited to respond and only 26 of those did. She asked if part of the problem was that people did not try to participate, especially those who already held negative views of the concepts being studied. Lisa Hobbs confirmed that the Working Group was disappointed by participation rates. She noted that the Working Group did receive feedback in many other forms other than written feedback. She mentioned conducting CLEs and a presentation she gave at the Bar Leader's Conference. She presented for 30 minutes describing the work and then left 30 minutes for Q&A. Her impression from these interactions was that the reception for the idea was very warm.

Senator Zaffirini pointed out that people still have a chance to participate. Ms. Wooten noted that the Working Group received feedback throughout the lifecycle of the project. In the beginning, there was just discussion and no specific written recommendation, so people were responding to conjecture. She indicated this was good because it allowed the Working Group to address those fears. At each step of the way, the commentary became more concrete as they were responding to actual proposals instead of conjecture.

Justice Busby commented that the percentage of attorneys doing pro bono work or contributing through their bar dues is relatively low. He went on to say that the Working Group and the State Bar had reached out to several groups for their input early in the process and did not hear back from them. He assured everyone that feedback is still welcomed and still valuable but noted that it is the nature of topics like this to bring to the forefront people who are not happy with what is proposed.

Senator Zaffirini also noted the presence of a slide in the handout that reads, "Welcome to Texas! Cheap, Low Quality [sic] Representation," and that the same slide goes on to claim that this, "Will attract more aliens to enter through Texas, will increase the number of frivolous asylum applications, will drain our state resources, and will run counter to our State's [sic] public policies," and she questioned what the purpose was for including this slide in the Working Group's materials. Justice Massengale informed her it was part of a presentation made to the Working Group by an immigration attorney and certainly not the work product of the subcommittee or the Working Group. Justice Massengale clarified that everything in Appendix B is material the Working Group received.

Senator Zaffirini thanked Justice Massengale and commented on how impressed she was with

the public outreach effort.

Mr. Dawson asked the Chair if she would entertain a motion to approve.
Chair Miers asked that he wait until the discussion was concluded. She then asked Ms. Summers and Ms. Spulak if they were surprised by the results of the surveys. Ms. Summers commented that she was not surprised and would characterize it as about average. She felt between the result of those surveys and the other outreach done, like the CLEs, that the Working Group was getting good feedback. She felt there was feedback provided at an average response rate to other, similar projects, but the goal was to be as thorough as possible. Ms. Spulak concurred and noted that the outreach effort was more extensive than in some other states.

Ms. Wooten spoke briefly about the opportunity for further comments. Having served in positions at the Court, she can assure everyone that every single comment that came to the Rules Attorney was reviewed. Furthermore, it is also that attorney's job to present comments to the justices, both in summary and as physical copies. The ability to comment does not exist solely to give comfort to those commenting—those comments get passed on and considered by the Court. She can attest to the many hours she personally spent going through comments, summarizing them, and making sure they were heard and considered thoroughly. She noted she wanted to share that experience with anyone curious about the handling of comments to the Court.

Justice Busby affirmed that process still happens and that the Court often gets comments before referral of an issue to the advisory committee or other bodies, such as the Working Group. After a rule is issued, there is a public comment period, and changes are made in response to those public comments. He further emphasized that, no matter the outcome of the Commission's vote, there would still be ample time to comment and have an impact on the recommendations. Senator Zaffirini commended the transparency of the process.

Chair Miers noted, in the interest of order, Co-Chairs who brought these proposals forward should feel free to make a motion when they feel ready. She addressed Mr. Dawson about his previous request to make a motion and asked if he wanted to proceed. Mr. Dawson demurred and asked the Chair if she preferred the Working Group Co-Chairs to make the motion.

Judge Chu requested a note be made on page 95 that the PowerPoint included came from the Immigration Section.

Judge Payne had two questions:

1. What poverty parameters is the report recommending we use, 200% or 125%?

   Chair Miers indicated 200% was the proposed poverty parameter.

2. Judge Payne noted the difference between $35,000 for a family of four (125%) and $60,000 (200%) for a family of four was substantial and wondered about the rationale.

Chair Miers replied that 200% was chosen because that seems to expand the number of people paraprofessionals can reach. She also noted that limiting this percentage was also a means the Commission could take in limiting the scope of work because it would effectively limit the number of people seeking these services.

Ms. Torres informed Judge Payne that 200% is the standard for legal aid—LSC allows 125%, and the state allows 200%, so she expects the Working Group was trying to find a reasonable standard. Legal aid, she noted, will find it much easier if a paraprofessional is available to deal with everyone instead of having to determine on a case-by-case basis whether the paraprofessional can be utilized in that office.

Ms. Hobbs noted that a number of people involved thought 200% was too low and pointed to volunteer legal services programs that frequently serve up to 400%. She indicated she believed there were members who wanted to see a higher number because of the size of the need.

Ms. Wooten noted that there were some members of the Working Group who advocated for no limit. She said they referenced the referral letter and determined the specific request contained therein was to expand access to the legal system for low-income Texans, which guided them away from a model without a limit. She also confirmed Ms. Torres's rationale about the 200% limit.

Mr. Furrh noted that, currently, LSC regulations would not permit funding of a standalone paralegal program. A legal aid program could have a paralegal project similar to these proposals, provided it is confined.

Judge Feguson commented that he tries to make sure plans do not have unintended consequences that exacerbate the problems they are attempting to solve. He noted that there was a lot of discussion about this issue surrounding remote proceedings, because it can be manipulated. He pointed to his status as a rural judge, that one of his counties had two attorneys and a median household income of $26,000, which means almost everyone in the county could be covered by the legal paraprofessionals. He commended those two attorneys, commenting that he knows they are helping people by charging them very low rates because he sees them all the time as the only judge in that county. His concern is that this program might make it impossible for rural lawyers to maintain a practice. He further commented that his role as a commissioner is to try to develop programs that expand access to justice. He asserted that this program, properly implemented, would enhance access to justice.

Ms. Wooten noted there was one subcommittee member, Rob Henneke, who opposed guidelines but suggested that, if income criteria were necessary, they should be the same as the existing requirements for the appointment of counsel for indigents in criminal matters instead of a percentage of the poverty guidelines.

A comment was made about various models, including CPS appointments and court appointments in other types of cases.

Judge Ferguson noted that most courts consider percentages in the range of 125-150, so the

proposal would encompass a much wider swath of individuals within his jurisdiction.

Chair Miers suggested that, in respect and recognition of the work put forth by the Working Group, a motion for approval of the recommendation of the Scope of Practice Subcommittee would be in order.

Mr. Dawson moved to approve the recommendations submitted by Ms. Wooten's subcommittee of the Working Group. Ms. Nicholson asked for clarification of the motion to approve. Ms. Wooten clarified that the specific proposals from the subcommittee were listed in Appendix A, pages 1-4 of the report.

Senator Zaffirini noted the listing of the specific recommendations in the Appendix, as indicated.

Mr. Johnson seconded the motion to approve.

Chair Miers recognized the motion and asked for questions, comments, or objections. Hearing none, she called for a vote. Ms. Kastl, Senator Zaffirini, Ms. Wooten, and Judge Payne abstained. There were no votes in opposition.

Chair Miers declared that the motion to approve passed.

Chair Miers moved to the discussion of the licensing recommendations and asked for discussion before entertaining a motion.

Ms. Kastl inquired how the program would be funded, who would be doing it, and how they would be compensated. Ms. Hobbs asked Ms. Kastl if she thought this would create a large influx of providers. Ms. Kastl noted that we are creating an avenue for people to become paraprofessionals and inquired how they would be regulated, noting that they would need to be regulated. Ms. Hobbs responded that, in their discussions with JBCC, JBCC assured the Working Group they believe they can be that regulatory entity. JBCC has been doing so for other professionals for roughly seven years. She noted JBCC has a lot of experience in the regulatory area and has indicated their willingness to do that for this if the court requests they do so.

Ms. Kastl inquired if there was an expectation on the number of licensed paraprofessionals in the next three years. Ms. Hobbs said the group did not have anticipated numbers. Ms. Kastl again asked how this would be funded, especially if large numbers of people across the state decided to become licensed paraprofessionals. Ms. Hobbs responded that she would be excited to have the problem of an outsized response to the program and that were that the case, the Court could figure out a way to regulate them through the existing structure. She continued to say this would excite her because that would mean legal aid could afford to hire the paraprofessionals, indicating better funding for those programs.

Judge Payne asked how the licensing fees would be set, inquiring if the fees would be required to support the employees overseeing that process and how that was determined. Ms. Hobbs informed her that the JBCC is a combination of paid employees and volunteers and they set the licensing fees to sustain the operations of the employees there. Judge Payne noted that all the

talk she has heard has revolved around paraprofessionals working within legal aid organizations or for non-profit organizations. She inquired whether or not they could practice outside of those structures once they are licensed. If so, she inquired further, as to whether or not their fee structures would be regulated or if they determined their own fees. Ms. Hobbs noted that paraprofessionals can only serve clients at 200% of the poverty guidelines or less. Judge Payne inquired if there were plans to regulate. Ms. Hobbs responded that there were not.

Sen. Zaffirini asked who currently maintains oversight. Ms. Hobbs responded that Texas does not currently have paraprofessionals, only paralegals and that paralegals are currently unregulated. They are supervised by attorneys but unregulated by any kind of agency. She continued to say that regulation of paraprofessionals is probably best done by JBCC because they currently regulate other agents of the court, such as guardians, process servers, and interpreters.

Ms. Wooten noted that current paralegals can become board-certified and that the certification process provides a degree of regulation as well. She further noted that there are varying degrees of ability, indicating a big difference between a paralegal who is recently certified and one who has been certified and practicing for decades. She also noted they are currently supervised by attorneys, and it is the attorneys who are disciplined if they do not supervise or understand the importance of their ethical obligations.

Ms. Hobbs responded that theoretically, they could open their own practice, but the fact they are required to serve a population that is generally considered impoverished will naturally drive them toward legal aid and non-profit employment.

Justice Busby noted that paraprofessionals will get hired by some solo practitioners and small firms because doing so allows them to serve more people at a lower price point.

Ms. Wooten added that this is meant to help legal aid organizations who must currently turn away so many people in need. This trend might be reversed if those entities could hire licensed paraprofessionals. She further noted, as a counterpoint to the suggestions people would take advantage of the system, that some people were concerned no one would get licensed to do this because there is no possibility of profit based on the population that can be served.

Chair Miers noted that there are philanthropists who might want to help fund organizations like this if the impact is tangible.

Justice Busby noted the efficacy of lawyers at a Dallas entity who handle evictions. If such organizations can hire two paraprofessionals for every attorney, they can serve more clients with the funds available. Judge Chu noted the similarity between the medical field and the doctor and nurse practitioner model. Ms. Wooten noted the different levels of certification with nurses and speculated that the legal system could potentially develop similarly.

Chair Miers asked if anyone had a motion on the recommendations or if anyone had more topics for discussion about these recommendations.

Ms. Hobbs moved approval of the recommendations contained on pages 5-8 of Appendix A to

the report. Mr. Dawson seconded the motion. A vote was taken with Ms. Kastl, Ms. Wooten, Senator Zaffirini, and Judge Payne abstaining.

Chair Miers noted passage of the motion.

Chair Miers turned the discussion to non-lawyer ownership of legal entities.

Mr. Tottenham asked Justice Massengale for clarification on something one public commenter claimed: that the subcommittee voted 6-3 against the recommendations. Justice Massengale responded that the claim was not an accurate representation of the overall process and noted his disagreement with that characterization. Justice Massengale then reviewed the activity at the meeting and the subsequent votes. He also noted that a detailed report of the action taken had been provided in writing. He noted that there were a few votes at the very end of the meeting, interspersed with a discussion of several ideas, including the involvement of the JBCC. He continued to note that no vote at the end of the meeting passed and asserted that watching the last 30 minutes of the recorded meeting would alleviate any concerns over the process used by the subcommittee, its fairness, and its transparency. It will also show it concluded with a consensus that the subcommittee would elicit the opinions of the Working Group in a survey, 75% of which approved the proposals. Mr. Tottenham asked if that meant 25% were opposed. Justice Massengale said he believed that was the case.

Mr. Tottenham recalled the statements made by Mr. Younger in the public comments and asked if there was any data from places where non-lawyer ownership had been permitted showing any narrowing of the justice gap. Justice Massengale responded that none of those programs are directed toward narrowing the justice gap. He articulated that most of the firms that have come into existence as non-lawyer-owned are not specifically addressing legal issues that apply to low-income legal needs and pointed out that empirical evidence, as circulated in the report, that there are firms that are taking advantage of this opportunity to provide services to low-income clients. While unaware of any studies quantifying the number of services that might be narrowing the justice gap, he noted that, if they are serving people who could not get service before, then it is by default a narrowing of the justice gap.

Mr. Tottenham pointed out that Mr. Younger seemed to have said that he had found no evidence that non-lawyer ownership reduces the justice gap or anything along those lines. He asked again if the subcommittee had found any evidence in their work that refutes Mr. Younger's claims. Justice Massengale responded that he thinks Mr. Younger is consistent in his opposition of non-lawyer ownership as a policy matter, but Justice Massengale does not believe you can categorically deny there is evidence it is benefiting people. He pointed to Rasa in Utah as an example of an organization owned by a lawyer and a non-lawyer, which helps people attain expunctions. He pointed out that, if even one person who could not have afforded that previously was helped, it is evidence that non-lawyer ownership can impact the justice gap. He continued to say that Mr. Younger can say it is not measurable, but there is no evidence that this model is not helping low-income people.

Justice Massengale took a moment to remind everyone what the subcommittee and the Working Group studied and what they recommended was a response to the Court's request that we study this and propose rule changes that would help close the justice gap. He noted that the

task was to demonstrate how changes could be implemented, not whether to implement such changes, as that decision would be up to the Court. He posited that a lot of the feedback offered has come from people who do not want to see such a change, a stance they should make known, but that is not responsive to what the Working Group studied. To consider whether or not to do it, the Court would need to know how it could be done, Justice Massengale continued, and that is what the subcommittee and the Working Group studied. He hoped that distinction would be helpful to the Commission in considering its decision.

Mr. Tottenham praised the co-chairs of the Working Group for the amount and quality of the work they conducted leading the project and for the transparency of the project itself.

Ms. Kastl asked the Commissioners to review the email comments and consider the public comments. She mentioned she was indifferent to the proposals surrounding the licensed paraprofessionals, but she was opposed to non-attorney ownership. She asserted that turning the practice of the law into a business is a mistake that will change the face of the profession forever. She related an anecdote from a visit to her cardiologist, who once lamented to her that, while he used to feel like he was helping people with their problems, he now feels like his position exists to make money for someone else. She stated that the other two proposals are bounded enough that they can be controlled, but she does not believe that the non-lawyer ownership one can be controlled once it starts. She stated that not only is she 100% opposed to this, but everyone she knows is opposed to this. She further commented that we must gain an understanding of what the long-term effects would be, and that she believes it will cheapen the legal profession. She went on to claim that she sees businesses value profit over people all the time because businesses exist to make a profit. As such, she opposes allowing legal practices to be run as a business—the ideology that values profit over people runs contrary to why everyone goes to law school.

Mr. Dawson responded to Justice Massengale's point that the charge to his group was to figure out how to implement is a cromulent reading of Justice Busby's letter, but that the Commission's vote, and what was required was to decide if this proposal was a good idea or not. He mentioned that he does not understand how opening the legal profession to non-lawyer ownership improves access to justice. He asserted that he had looked for empirical evidence that the idea increases access to justice in places where it has been tried but has not found any such evidence. He conceded that it is probably true there will be some incremental improvement, but the potential harm that would result greatly outweighs the potential gain. Mr. Dawson pointed out that undoing non-lawyer ownership would be difficult, if not impossible. As such, Mr. Dawson stated his opposition to the proposal because the limited and coincidental effect it will have on access to justice is far outweighed by the potential negative impact it will have on the legal profession.

Ms. Hobbs countered that we cannot know until we try and pointed out that was the reason the recommendation from the Working Group is to create a pilot project. She asserted that, while Mr. Dawson can say he does not see how it is going to help, she is incapable of countering that argument because it has not been done. She said she thinks the Court wants to know how it will work best if we try it, not whether or not we should try. She further noted the Court asked the Commission to determine how it would work, and the Working Group has provided a very narrow scope for how it could work so we can test it.

Senator Zaffirini asked if the Commission was voting on the recommendations listed on page 9. Chair Miers asked for clarity regarding any motion.

Justice Massengale informed the Commission he tried to break this down in the report to avoid some of the problems they had at their Nov. 2 meeting, which he thought was too confusing of a vote. He mentioned that these recommendations were all framed with respect to the Court's request for proposed changes. He indicated the rule changes were in Appendix A on pg. 11 [Ed. Note: pg. 11 is the PDF pagination, while the document pagination number is pg. 9] is what the Working Group proposes as language. For substance of what would be recommended to JBCC, he directed the Commission to pg. 51 [pg. 54 of the PDF] of the Working Group's final proposal.

Chair Miers recognized Judge Ferguson.

Judge Ferguson noted that there have been hundreds of hours dedicated by the smartest minds in access to justice to trying to understand the Court's mandate. He suggested the letter mandate is not the only thing that constrains the Commission's activities. He continued to point out that this is the Access to Justice Commission created by the Supreme Court in 2001, with an enabling order that order tells it what it can and cannot do. He noted it constrains the Commission to develop and implement policy initiatives designed to expand access to and enhance the quality of justice. He asserted that, based on what is in the report and the public comment we have heard, he agrees with Mr. Dawson. He considers non-attorney ownership would be revolutionary and he indicated the Commission does not have evidence to show that the plan is designed to expand access to justice. His perspective on the mandate issue is that the mandate outlined in the order creating the Commission compels him to vote no. Addressing the issue of whether or not to recommend it as a pilot program, he argued this represented a foot in the door for a very powerful entity that will be difficult to dislodge if the program is deemed unsuccessful. He noted that Texas is a leader in access to justice and so has a higher obligation to move cautiously because other states look to us for guidance. He lauded the Commission for the myriad of ways it consistently addresses and expands access to justice, but indicated he did not think this would do that and would not be voting in favor of the proposal.

Chair Miers noted that she keeps hearing vague articles used to identify the proposal, leading her to believe that the proposal has not been adequately defined for the Commission's vote. She noted that the Court asked the Commission to consider various processes which could benefit low-income Texans, and which no state is doing across the nation. She noted that Texas is a leader and has always been one in the access to justice arena. She suggested the Commission take the time to clearly identify the matter being voted on because the talk she has heard on the issue, which seems to center on the idea that this will be turning law firms over to businesses, does not align with what is being proposed. She also noted there has been a lot of conclusory thinking that the Court is going to do something it is not guaranteed the Court will do. She noted that what the Commission was discussing at the Court's behest was an innovative solution to the problems at hand and indicated that innovation was part of the Commission's goal. She further indicated that, while she had been opposed to non-lawyer ownership in the past, she feels an obligation to look at it again because it is being suggested in the framework of access to justice and, as such, is accompanied by various protective parameters and guardrails. She further indicated the Commission should not abandon investigation of the matter out of fear

of potential outcomes that may never be realized. She further mentioned that she was concerned that the Commission's refusal to pass their recommendations for non-lawyer ownership amounted to the Commission telling the Court it did not think their idea worth considering, especially with the Court's history in advocating for access to justice.

Justice Massengale noted that the recommendation is being made in three parts.
Justice Busby said the bullet points on pg. 51 [PDF pg. 54] were helpful to him, and noted he thought it would be helpful to the court to know if those address the concerns with non-lawyer ownership voices here today and, if not, how they do not. Sen. Zaffirini mentioned that, while those were helpful points that were certainly clarifying, those points were not the motion. She requested to see the motion the Commission was voting on. Justice Massengale responded that he was currently circulating an email to all commissioners with the text to be voted on. Chair Miers asked if anyone had any further thoughts while they were waiting for that to be circulated. Justice Massengale indicated he did.

Justice Massengale said he had just sent the email and had a couple of points to make. First, he noted that the Working Group deliberately focused on the procedural aspects of this, which was its own year-long, time-consuming, and work-intensive project, the culmination of which is the report and the recommendations to the Commission. He further commented that most of the comments received today were not responsive to that work. Justice Massengale indicated agreement with some of Judge Ferguson's arguments previously about how he might advance proposals that attempt to expand access, which is the Commission's charge. Justice Massengale noted that the Court has asked the Commission to recommend rule changes. He indicated he thought it was possible to do this despite having a separate opinion on the merit of the changes being proposed. He further asserted that he thought it inadvisable to respond to the Court about the merits of their idea. He reminded everyone that the Commission existed to promote access to justice, that these proposals are being put forward in that spirit, and the Commission should not respond to the request from the court that these are bad ideas that should not have been sent to us for consideration.

Ms. Kastl asked if it was possible to table the discussion on non-lawyer ownership until the impact of the other two proposals were available to evaluate.

Chair Miers noted that anyone can make a motion, but that considering the court's request and making recommendations is what was on the agenda for this meeting. She noted that there were strong views on the issue of non-lawyer ownership but asserted that the Commission needed to focus on the work before it that day.

Justice Massengale moved to adopt the Working Group's three recommendations regarding now-lawyer ownership as outlined in the email he sent.

1. First, adoption of the Working Group's recommended rule modification to establish a pilot project to provisionally establish an exception to Rule 5.04 for entities that are certified and licensed to perform a defined scope of legal services. The pilot program would include an application procedure and rule guidance to ensure that the approved entities actually provide needed services to low-income Texans, including the features described in the summary on page 51 of the Working Group's final report,

as those may be modified by the Commission.

2. Second, adoption of the Working Group's recommendation that the pilot program be administered at the direction of the Texas Supreme Court and overseen by the JBCC, which would establish an advisory board comprised of at least a majority of Texas-licensed attorneys. The advisory board would establish policies, and procedures, oversee the application process, and review demographic data about the clients who are receiving the approved legal services.
3. Third, that the Commission recommend that the JBCC and its advisory board be entrusted with the responsibility and discretion to evaluate applications on a case-by-case basis to determine whether the proposed legal services, in light of all information provided in the application and review process, presents a sufficient likelihood of expanding access to justice for low-income Texans to justify allowing that entity's participation in the pilot program.

Chair Miers clarified that this motion was to adopt the Working Group's recommended rule changes to establish a pilot project to see what the potential impact on legal services to low-income Texans might be. Justice Massengale confirmed this. Mr. Johnson seconded the motion. He noted that this was not a vote deciding whether or not to do it but to accept the Working Group's recommendations and send them to the Supreme Court of Texas, with the understanding that the Court would decide on whether or not to proceed. Justice Massengale responded in the affirmative and added that he was proposing responding to the Court's request. Mr. Johnson noted that he thought that made the motion and the job before the Commission much clearer.

Judge Chu asserted that he did not believe that was what the motion was—he felt the recommendation was to make the rule change enabling the creation of the pilot program. Justice Massengale responded that the Working Group's recommends to the Commission a rule modification program that could be sent to the court as the Commission's response to the request made it its letter last year. The motion is for this commission to accept Working Group's proposal for rule modification and send it to the Court.

Sen. Zaffirini inquired if the pilot program was part of the proposal.
Justice Massengale confirmed the pilot program was part of the proposal.

Judge Ferguson noted he thought they were asking us to make recommendations to the court and asserted the Commission would be adopting it as its recommendation.

Ms. Nicholson noted that she is not an attorney. She suggested that the general public may not be able to discern the difference between a law firm and non-lawyer-owned company and be able to determine which would be the best option for them.

Mr. Tottenham said he had looked on the website to define the purpose of the Texas Access to Justice Commission. His reading of it was that the Commission exists to examine methods to create more equitable access to justice for Texas's citizens. He continued that hearing from Mr. Younger, who he admitted may have an agenda of his own, made him realize he had not heard

any evidence this would increase access to justice. He further noted that the Commission had heard a lot of diverse opposition to the program during the public comments and that the Commission needs to recognize that. He also noted that this was challenging for the Commission because the Court has been a stalwart supporter of access to justice, and rejecting this proposal could be seen as the Commission being unappreciative of those efforts and that support. He finished by stating that the lack of data, along with the testimony offered during the day, finds him agreeing with Judge Ferguson and being against passage of the motion.

Chair Miers thanked him for his comments and asked if anyone else would like to speak.

Ms. Kastl moved to amend the proposal, given all the opposition from the public, and in this Commission, to table the proposal until the impact of the paraprofessional program was known. Mr. Johnson noted that amendments should be addressed to Justice Massengale, which would then allow the proposal to be made to the room. Justice Massengale declined the amendment, noting that the Court had established a deadline and the subcommittee had worked hard to make that deadline.

Mr. Dawson suggested a hand count to ensure accuracy.

Chair Miers pointed out that the proposal is designed to help low-income Texans, whereas all the other programs mentioned were not limited in such a way.

Mr. Dawson countered that the proposal does not limit these entities to only providing services to low-income Texans.

Justice Busby pointed out that pg. 51 of the proposal [pg. 54 of the pdf] requires the entities to get recertified every year and that they demonstrate they have been providing legal services to low-income Texans.

Mr. Dawson responded that he understood there are protections, but the proposal does not limit non-lawyer ownership solely to companies providing services to low-income Texans. He claimed it opened non-lawyer ownership broadly and relied on the aspiration such organizations would only provide services to low-income Texans. He also reminded the Commission the question had been called.

Judge Livingston explained the term “call the question.”

Chair Miers asked for a vote in favor of ending debate, which passed.

Chair Miers called for a vote on Justice Massengale’s motion. The motion failed by a vote of 8 to 6, with Senator Zaffirini and Ms. Wooten abstaining.

Chair Miers stated that she thought that concluded the Commission’s agenda for the day, and indicated there were matters not related to the proposals the Commission needed to discuss.

Judge Livingston requested clarification of a potential statement by the Commission to the Court about the sub-committee’s three recommendations. Judge Chu noted that, if there was no

recommendation, the Commission would notify the court that they had no recommendation on that issue. Chair Miers asked if there were any other matters on the recommendations to the Supreme Court. Ms. Wooten indicated there was a request to state the outcome of the motion for attendees who did not hear it.

Chair Miers stated that Justice Massengale's motion failed on a vote of 8-6.

Report and Comments from the Chair | Harriet Miers

10. Chair Miers noted that the next agenda item was her report and comments. She informed the Commission about a Legal Services Corporation program that will be presented in January 2024 and expressed her hope that the Commissioners would attend. The program is in conjunction with LSC's 50th anniversary and she noted they are very excited to celebrate that milestone. She promised to circulate additional materials about that program in the near future.

Executive Session | Harriet Miers

11. Chair Miers called the Commissioner into executive session. The executive session concluded, and the meeting was adjourned.