Meeting Materials

Working Group on Access to Legal Services

Texas Access to Justice Commission Working Group | April 26, 2023, 10AM-12PM

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January 30, 2023 Working Group Meeting Minutes

Minutes: Working Group on Access to Legal Services

Texas Access to Justice Commission Working Group | January 30, 2023

Working Group Members Present: Justice Michael Massangale (WG Co-Chair), Kennon Wooten (WG Co-Chair), Lisa Hobbs (WG Co-Chair), Linda Acevedo, Johnathan Bates, Rose Benavidez, Hon. Nicholas Chu, Robert Doggett, Katie Fillmore, Prof. Susan Fortney, Paul Furrh, Hon. Eva Guzman, Hon. Sid Harle, Craig Hopper, Richard LaVallo, Hon. Lora Livingston, Ellen Lockwood, Rick Melamed, Karen Miller, Prof. Mary Spector, Hon. Polly Spencer, Maria Thomas Jones, Terry Tottenham

Other Participants: Justice Brett Busby (Texas Supreme Court), Harriet Miers (Chair of the Texas ATJ Commission), Trish McAllister (Executive Director of the Texas ATJ Commission), Katie Hennessey (NCSC), Danielle Hirsch (NCSC), Andy Wirkus (NCSC).

Presenters: Prof. Rebecca Sandefur (Arizona State University), Lucy Ricca (Stanford Law School), Prof. Stacy Butler (University of Arizona Law School), Nikole Nelson (Alaska Legal Services).

Email Comments on Project to: suggestions@TexasATJ.org

Materials provided to work group members is available here.

1. **Introduction**

Justice Busby welcomed the work group. He provided an overview of the civil justice gap facing low-income Texans and the two potential solutions to help close this gap that the Supreme Court set forth in its October 2022 letter: (1) allowing non-attorney paraprofessionals to provide limited legal services to low-income Texans qualifying for legal aid and (2) allowing non-attorneys to have economic interests in entities that provide legal services to low-income Texans.

Ms. Miers provided an overview of the work group's process, emphasizing the project is focused on solutions to help low-income Texans, will be conducted in a transparent fashion, and should focus on solutions that are best for Texas and not just adopt what has been done in a different state.

Mr. Furrh noted that this is the third time Texas has looked into this issue and the work group should review materials from those prior studies.

Work Group members and guests briefly introduced themselves.

Ms. Hennessey outlined the National Center for State Courts' role in the project.

2. **Presentations**

Presentation 1: Professor Rebecca Sandefur and Lucy Ricca presented on the crisis in access to legal services, particularly for low-income Texans. While legal aid, pro bono, and other non-profits provide high-quality legal services, most civil justice issues never become a court case and are never reviewed by an attorney. While there are more lawyers practicing, the civil justice gap has continued to grow, estimating that 92% of legal issues for low-income people receive no legal services.

Professor Sandefur and Ms. Ricca outlined the potential for the two Work Group study topics to help address the civil justice gap, while helping to ensure that consumers are received competent legal services.

The full presentation is available here.

Presentation 2: Prof. Stacy Butler (Innovations for Justice) discussed how regulatory reform opportunities could create service models specifically designed for low-income community, potentially in areas such as domestic violence, medical debt, and housing. Prof. Butler discussed her research in the community and what they value when seeking someone to assist them with a legal problem. Prof. Butler also discussed the barriers and need to engage with community-based organizations when engaging in regulatory reform to serve low-income communities.

The full presentation is available here.

Presentation 3: Nikole Nelson, Executive Director of the Alaska Legal Services Corp., discussed her Community Justice Worker Program, where train, supervised non-lawyer paraprofessionals provide legal services to low-income Alaskans under the supervision of a legal aid attorney. These community justice workers often serve their own communities, many of which are small villages off the Alaskan road system. Ms. Nelson discussed the development of the program and decisions that were made to help reach community members in communities that are difficult for legal aid to serve by providing the community justice worker education online and written at an 8th grade reading level. In addition, to start the program, they started with legal issues that would not violate UPL in Alaska, such as public benefits, will drafting, and unemployment. Now, they have obtained a court rule waiver to allow the community justice workers to practice in other areas without fear of violating UPL.

The full presentation is available here.

Discussion
Working Group member engaged in a discussion of the problem and process of moving the project forward.

1. **Legal Services in Texas and Community Partners.**
    - Texas has three big legal aid organizations, smaller program, and pro bono projects.
    - Texas has partnerships within the community and has provided education to identify legal issues/resources. The partner cannot provide legal advice.
    - Legal aid organizations have added social workers to programming.

2. **Help identifying the problem.**
    - Initial focus groups with be with legal aid organizations and community partners to help inform the subgroups about the problem and potential areas of partnership.
    - Data from Texas Legal Help may also help identify areas of greatest need, such as questions posted and number of forms downloaded.

3. **Barriers to implementation.**

- Cost of implementation. That would be helpful that we pursue private funding. Outside of federal/state, we could get private support.
- Cost of insurance could be limiting for certain organizations to afford.
    - State Bar of Texas provides malpractice for legal aid providers at a low cost. Ms. McAllister can provide this type of information.
- Attracting tech companies that could help develop the types of platforms that could be used to facilitate people trying to get connected with legal resources.
    - How to incentivize big technology entrepreneurs to build products that could help address the civil justice gap? How do we create profit incentives?
    - SMU has program of law-tech competition sponsored by NEOTA logic – assist in providing legal aid to low-income individuals.

Project Outline

- Supreme Court Deadline: Early Fall
- Hold at least 1 subgroup meeting before the April Commission Meeting.
- Subgroups meet mid-April.
- Subgroup chairs are pulling materials for members to review.

Subgroups

- Work group members are encouraged to volunteer on a subgroup.
- Work group members are also encouraged to identify any stakeholders that NCSC should reach out to as part of their stakeholder feedback.
    - Suggestions provided during the meeting include:
        - Faith-based organizations, particularly those focused on access to justice, social services, and disaster relief.
        - Local area agency on aging.
        - Volunteer ombudsman for nursing home residents

Next Steps

Working Group Next Steps

1. Volunteer for subgroup
2. Co-Chairs will form subgroups
3. Subgroups will meet
4. NCSC will begin focus groups with initial outreach to legal aid organizations to under the need for low-income Texans.

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Subcommittee Meeting Minutes

Minutes: Scope of Practice Subcommittee

March 20, 2023 | Access to Legal Services Work Group | Texas Access to Justice Commission

Subcommittee Members: Kennon Wooten (Chair), Justice Deborah Hankinson, Jonathan Bates, Judge Polly Spencer, Prof. Mary Spector, Richard LaVallo, Craig Hopper, John Jones, Judge Phyllis Gonzalez, Karen Miller, Katie Fillmore, Kimberly Wilson, Misti Janes, Robert Henneke, Sandy Hoy, Prof. Shawn Slack, Terry Tottenham, Judge Lora Livingston

Other Guests: Lisa Hobbs (Chair of Licensing Subcommittee), Harriet Miers (Chair, TX ATJ Commission), Katie Hennessey (NCSC), Jessica Hanzlik (State Bar Bankruptcy Section)

1. **Introduction:** Ms. Wooten briefly introduced the project and scope of subcommittee work.
2. **Subcommittee and Guest Introductions:** The subcommittee members and guests briefly introduced themselves and their relevant work and ATJ experience.
3. **Brief Overview of the Civil Justice Gap.** Ms. Wooten provided a brief overview of the civil justice for low-income Texans, noting that only about 10% of low-income Texans' civil legal needs are being met, even with all the federal and state funding, non-profit contributions, and pro bono legal services from lawyers across the state. Ms. Wooten noted that legal aid organizations help 140,000 Texas families with civil legal needs, but there is only 1 legal aid lawyer for about every 7,000 qualifying Texans.
4. **Brief Overview of the National Landscape on Regulatory Reform.** Ms. Hennessey provided a brief overview of regulatory reform efforts across the country, focusing on initiatives to allow trained legal paraprofessionals to provide limited legal services and non-lawyer ownership of entities that provide legal services in the context of providing services to low-income individuals.
5. **Brief Report on Preliminary Feedback from Legal Aid Focus Groups:** Ms. Wooten reported that the highest areas of need for legal representation are landlord-tenant, family law, probate, and public benefits. Legal aid regularly turns away people in need of legal assistance for family law, probate, and landlord-tenant issues and often refers these individuals to https://texaslawhelp.org/ (maintained by the Texas Legal Services Center).
6. **Subcommittee Discussion**
    a. Members discussed how best to increase access to justice through trained individuals who are not attorneys.
        i. Some people need basic court information to effectively participate in their cases, such as what to bring to court, how to get to court, etc. A court navigator could be help in providing this level of help because it does not involve giving legal advice. Many clerks are serving the function of court navigators, and they could be provided more intentional training to more effectively do so. But court navigators cannot advocate for people and must be neutral. Many people need legal representation and legal services. For these people, court navigators will not solve this problem.
        ii. Other people struggle with identifying the appropriate form and properly filling it out, and there are not enough attorneys at legal aid to provide the needed amount of help to everyone who qualifies for and needs the help.
        iii. We need to think outside the box and explore new, different things here.

iv. It would be helpful to have an organized triage. When people go to the first responder, we need a system to help the person triage the problem and avoid a runaround or dead ends. Paraprofessionals could help with triaging.

b. There are many legally significant areas outside of courts where non-attorneys can represent people. For disability rights, working in the education and institutional setting, there are often non-lawyers working under the supervision of lawyers, giving advice and advocating for clients. This can also occur in administrative hearing. The problem is that paralegals are afraid to represent clients, and the message needs to be clear that they are allowed to do this, and they should be trained appropriately.
    i. Qualified paralegals supervised by an attorney may be a good thing.
        1. Highly successful veteran's program involved two knowledgeable paralegals working under the supervision of a JAG attorney. They were providing probate help to veterans who would have otherwise tried to complete the task on their own without any help.
        2. Legal aid has a partnership with HHS in which legal aid trains benefits counselors at the area agencies on aging to advocate for people at Medicaid hearings and appeals. This has been a successful program.
        3. Law school clinical programs are able to have a legal clinic in which eight students are supervised by one attorney and collectively they are able to provide help to 50 clients in one morning.
        4. There is an imbalance in landlord/tenant proceedings in which landlords are allowed to be represented by a non-attorney agent, but the tenant is not allowed non-attorney representation.
    ii. Paraprofessionals could also be trained to appropriately triage cases, so when people seek legal help, they are sent to the right place.
    iii. If we are thinking about allowing paraprofessionals to represent clients, then we need to think about what type of training will be needed. Someone who is certified as a family law paralegal would be able to competently handle more tasks than someone who has only dabbled in family law or took a class.

c. If the reform is focused only on low-income Texans, there is concern that this could be perceived as providing watered-down legal services to the poor.

d. The focus on the scope of practice may not be a particular practice area necessarily, but instead particular types of cases within a practice area.
    i. For family law, paraprofessionals could provide assistance in uncontested cases within the parameters set by the Supreme Court of Texas for cases to qualify for using family law forms (*e.g.*, no QDRO).
    ii. Non-payment of rent cases are very different from family law cases. Often in non-payment of rent cases, the family mostly needs rental assistance or to find new housing. There are opportunities to coordinate with local programs and legal aid to provide resources to tenants before a case has even been filed against him. The best thing for the tenant is to address the problem before the eviction proceeding has been filed.

e. The subcommittee may want to ask the State Bar Lawyer Referral what type of help people are seeking and where there have been problems making referrals.

f. How to address this problem?

i. It may make sense to take a multi-tiered approach and work on the low-hanging fruit first – such as the landlord tenant imbalance – and use the low-hanging fruit as a model that could be extended to other areas.
ii. We should consider where can be have the most impact as possible. For example, after Uvalde, a large number of people needed assistance filling out crime victim forms. A similar need for assistance occurs when communities face disasters and need to fill out FEMA forms. Having paraprofessionals simply help people fill out forms could be hugely impactful.
iii. We may want to focus on what paralegal are currently doing at legal aid and to help low-income Texans. If we go where paralegals are already imbedded in the process and know the answers to questions, then we are going to get more bang for the buck. You wouldn't need to train these paralegals in the same way other paralegals would need to be trained. It appears that in some jurisdictions that have allowed unsupervised paraprofessionals, they have faced hurdles in getting people to sign up for these programs.

7. **Next Steps**. Ms. Wooten will strive to schedule another subcommittee meeting in approximately 3 weeks. In the interim, subcommittee members will meet in smaller groups to consider questions, such as what tasks are appropriate for non-lawyers, whether they should be supervised, are whether there forms in place that could be used in this work.

Scope of Practice Subcommittee

Draft Minutes - Pending Subcommittee Review and Approval

Access to Legal Services Working Group

Chair: Kennon L. Wooten, Esq.

Vice-Chair: Paul Furrh, Esq.

Meeting 2 - April 14, 2023, at 11:00 a.m. CT – Zoom

Participants:
Subcommittee Members: Kennon Wooten (Chair), Paul Furrh (Vice-Chair), Jonathan Bates, Hon. Nicholas Chu, Hon. Phyllis Martinez Gonzales, Robert Henneke, Craig Hopper, Sandy Hoy, John Jones, Richard LaVallo, Hon. Lora Livingston, Richard Melamed, Karen Miller, Prof. Mary Spector, Prof. Shawn Slack, Terry Tottenham, Kimberly Wilson
Guests: Lisa Hobbs (Chair of Licensing Subcommittee), Hon. Michael Massengale (Chair of Non-Lawyer Ownership Subcommittee), Harriet Miers (Chair, TX ATJ Commission)
Staff: Lonni Summers (NCSC)

1. **Welcome**. Chair Kennon Wooten greeted the Subcommittee and began the meeting.

2. **Practice Areas & Tasks**
   a. **Family Subgroup (Subgroup 1) Report**. **Subgroup participants**: Jonathan Bates, Hon. Phyllis Martinez Gonzales, Rob Henneke, Misty Janes, Hon. Livingston, Kimberly Wilson. Jonathan Bates reported on behalf of the Subgroup.

      Mr. Bates began by identifying the target audience, which is low-income Texans who cannot afford counsel. The group discussed tasks that can be handled without a lawyer as described below.

      Paraprofessionals may help people complete certain court forms without a lawyer's supervision. The Texas Supreme Court has approved family law court forms, though some believe that they can be difficult to find and confusing to complete. It was noted that if lawyers have a hard time completing forms, people without a legal background probably also would struggle. Hon. Lora Livingston noted that many counties offer forms that help litigants address retirement and children's issues in divorce matters. It was suggested that the group may wish to hear from people who are doing this work.

      Mr. Bates indicated that Subgroup 1 members who participated in the discussion leading up to this report believed that paraprofessionals should be limited to providing legal services in certain uncontested matters and generally should not appear for people in courtroom proceedings.

      Texas Law Help: Subcommittee members discussed Texas Law Help (https://texaslawhelp.org). It is a great resource but can be a little difficult to navigate. Karen Miller noted that the goal of Texas Law Help is to provide legal information, though some forms are available. Texas Law Help uses document assembly to guide users as they fill out certain forms. Legal advice may also be given via a chat feature on the site. New

forms could be developed to address non-contested matters that are not covered by current forms, and Texas Law Help's document assembly feature could be enhanced. Professor Shawn Slack noted that the ACC trains students (future paralegals) on this resource and could provide additional training. Paraprofessionals would also need training.
The group discussed whether paraprofessionals could handle protective orders, given the high stakes. Mr. Bates reported that the Subgroup thought protective orders would be difficult for paraprofessionals to handle effectively, but that he thought it possible with appropriate training. Lisa Hobbs agreed that this is a high stakes area, but it may be better for people to have help from a paraprofessional rather than none at all.
The Subcommittee discussed programs that currently assist low-income Texans with family law matters. The Office of the Attorney General handles some child support and paternity matters. Kimberly Wilson reported that the county attorney handles protective order petitions in her area. Some programs use legal advocates who do not give legal advice, but use protective order form kits to assist litigants. Rob Henneke reported that county attorneys handle protective order matters in the hill country. Ms. Wilson would like data about people who are being left out and not getting protective orders. Mr. Henneke noted that the Texas District and County Attorneys Association (TDCCA) may have data. Judge Livingston supports gathering data about the need for unmet needs and for additional assistance. Members of the advocacy community could also speak to the Subcommittee about need.

Ms. Miller reported that the Texas Legal Services Center has been helping when existing programs have been unable to help people. This may happen if a victim has been prosecuted, which would result in a conflict of interest. Ms. Miller noted that non-lawyer legal advocates worked on creating the statute, and she is sure that they could do this work. Ms. Wilson would like to examine the scope of practice. Completing a form is different from appearing in court. Judge Livingston noted in the chat that paraprofessionals represent clients in social security and other types of cases. Hon. Phyllis Gonzales noted that there are differing levels of need. Some people need help filling out forms to even get before a judge. Commission Chair Harriet Miers asked for clarity if the Subgroup would oppose paraprofessionals assisting with courtroom proceedings in uncontested matters. There was no indication that there would be opposition to assistance in that context. Chair Wooten followed up on references to the need for additional information to guide future analysis. She confirmed TDCCA as a potential source of information. Judge Livingston suggested a survey to assess what is happening across the state. The survey should solicit input from the advocacy community. It could be helpful to find out what kinds of cases are already handled by paraprofessionals. Chair Wooten asked Lonni Summers to include the advocacy community in the stakeholder list for focus groups.

b. **Probate Subgroup (Subgroup 2) Report**. **Subgroup Participants**: Craig Hopper, Hon. Polly Spencer, Richard LaVallo, and Craig Hopper presented the group's recommendations. Please see a 1-page summary of the recommendations on page 6.

The Subgroup began by looking at areas where paraprofessionals could assist individuals who are not in a fiduciary role. Examples include simple wills and ancillary documents such as powers of attorney and physician directives. Some matters have mandatory statutory forms, and others are available on Texas Law Help. The group also looked at transfer on death deeds and small estate affidavits, which could be handled by paraprofessionals. These matters can be high stakes. In some cases, it could be decades until an error is discovered,

and the creator of the subject document might be deceased. That is true now. The Subgroup thinks it is worth exploring using paraprofessionals in such matters.

The Subgroup discussed legal issues which would definitely require lawyer supervision. These include matters in which an individual has significant fiduciary duties, such as, actual probate, guardianship, and court appearances.

The Subgroup discussed tasks that are suitable for paralegals. They include title applications, small estate affidavits, filling out and completing simple wills, Surrogate Decisionmaker Act matters, and financial power of attorney. Some related documents could be completed by someone who is not a lawyer or paralegal if they were properly trained. Examples include: HIPAA authorization, medical power of attorney, designation of guardian, declaration of mental health, declaration on death deed, and annual reports of the person in a guardianship case. Help is currently available for most of these matters, but people are not getting the basic guidance that they need. It may benefit people to have someone with some skill involved. It will take education, staffing, and funding to provide individuals who will be able to provide some assistance.

Professor Mary Spencer noted that forms are helpful, but there is a lot of variation throughout the state. It could be difficult to mandate statewide training and education for paraprofessionals without statewide forms. She suggested that perhaps the group should consider form standardization.

Judge Gonzalez asked if the group discussed resources for special needs children. Richard LaVallo opposes anything other than lawyer representation in guardianship matters because the stakes are so high. Such matters involve taking away a person's constitutional rights. Special needs trusts should also be handled by lawyers. Mr. Hopper concurred that this is a specialized area and should be handled by a lawyer. He noted that most guardianship matters are off the table since anyone participating in a guardianship proceeding has to be an attorney that has taken a certain level of continuing legal education on the topic.

Vice-Chair Paul Furrh noted that legal aid paralegals handle a tremendous number of uncontested public benefits cases. As soon as a case becomes contested, the case immediately moves to a lawyer. Paralegals do some court work now. Examples include special education, social security disability, food stamp hearings, as well as Medicare and Medicaid where more experienced paralegals are involved. Legal aid has a built-in support system that helps paralegals ensure that matters do not get out of control.

c. **Housing/Landlord & Tenant Subgroup (Subgroup 3) Report – Subgroup Participants**: Hon. Nicholas Chu, Sandy Hoy, Richard Melamed, Karen Miller, Terry Tottenham. Sandy Hoy reported that the subgroup was unable to meet.

She noted that Texas Rule of Civil Procedure 500.4 permits nonlawyer representation for individuals in eviction matters in justice courts. The Subgroup plans to study this further. Judge Chu noted that the rules between justice courts and county courts are different. Perhaps they could be standardized. Chair Wooten asked if Judge Chu has seen non-lawyers representing landlords or tenants in court. Judge Chu has, although it is usually the landlord, not the tenant, who is represented by a non-lawyer. There are companies that employ non-

lawyers to represent landlords in court. He is not sure what kind of training they have. Prof. Spector echoed that nearly all non-lawyer representatives in eviction cases are landlord representatives. Ms. Hoy, however, reported that non-lawyers working for legal aid organizations have appeared in eviction cases in-person and remotely during the pandemic. Prof. Spector noted that there is a lot of data in this area, and she would be interested in working with Ms. Hoy to learn more.

Mr. LaVallo wondered if the group thought that a paraprofessional could make fair housing complaints or requests for accommodations that are frequent defenses in housing matters. This would remove the case to county court. Vice-Chair Furrh reported that legal aid has mixed results using paralegals to represent clients in justice court because judges sometimes push back.

3. **Community Justice Workers (CJWs)** – Professor Slack reported. A CJW is someone who has requisite education and experience and is licensed in a limited scope to provide legal services to clients. CJWs all work for, and are supervised by, a legal aid organization. Some are employees of the legal aid organization, and some work for a different organization and volunteer at the legal aid organization. They receive training specific to their practice area.

   Alaska's CJW program initially stopped services short of practicing law. Once the program was in place, they requested a waiver to allow CJWs to provide "enhanced services." This request was recently granted, but there is not much to report since the program is so new.

   The CJW application has 3 parts. The legal aid organization: (1) determines if the CJW is competent to provide limited services; (2) applies to the Alaska Board of Governors on behalf of the CJW, demonstrating eligibility requirements; and (3) recommends the CJW's practice area based on their skill level and supervision.

   Alaska requires training in conduct, substantive topics, and procedural matters. Training is usually CLE based. The Executive Director of Alaska Legal Services Corporation noted that CJWs are drafting wills, helping people avoid default judgments, and handling administrative hearings. They assist with Indian Child Welfare Act matters, and domestic violence, and public benefits. They hope to expand case types now that the waiver has been approved. Landlord-tenant is a possible area for expansion.

   The program is successful in Alaska because they partnered with different organizations, such as tribal health organizations. People who worked in these organizations also volunteer for legal aid as CJWs. Prof. Slack noted that the Alaska program reminds him of countries like the UK, which allow people to handle matters if they possess the knowledge to do so. It is not regulated in the same way there as it is here.

   Vice-Chair Furrh noted that the Alaska model is new and it's small. It's promising, but Alaska is very different than the lower 48 states. Most legal aid programs currently use paralegals extensively and are accountable for supervision, including if they mess up. Vice-Chair Furrh supports permitting paralegals to represent clients in eviction cases. There is a safety net through the process of removing the case to county court. He suspects that the bench would oppose more paralegal representation in eviction matters. Mr. LaVallo concurred, noting that Disability Rights uses paralegals that work under lawyers for administrative work, meetings, and

conferences. He is excited about the prospect of using community volunteers. Ms. Miller noted that the Texas Legal Services Center uses volunteers to multiply client services. Ms. Wilson conveyed that she likes the idea of a CJW model, in part because of a concern about a lack of monetary incentive for paraprofessionals to get licensed to help people who may not be able to pay for their services. There was discussion about a pilot being a good idea, but legal aid organizations may need funding for supervising attorneys to oversee the pilot program.

Judge Gonzalez suggested a pilot program using legal aid paralegals. Judge Livingston suggested reaching out to Nikole Nelson at the upcoming Equal Justice Conference to learn more.

4. **Potential Rule Amendments** – Chair Wooten provided a very high-level overview of rules that may need revision to authorize paraprofessionals to provide direct legal services. They include:
    - State Bar Rules
    - Rules Governing Admission to the Bar of Texas
    - Texas Disciplinary Rules of Professional Conduct, including Rules 5.03 and 5.05 and possibly Rule 1.02
    - Texas Rules of Disciplinary Procedure
    - Texas Rules of Civil Procedure

    The Subcommittee on Regulation, chaired by Ms. Hobbs, will examine some of these rules.

5. **Next steps and future meeting dates** – The next Working Group meeting is April 26. Each Subcommittee chair will make a report and the Working Group will guide next steps. Judge Livingston asked Working Group members to RSVP for the meeting and indicate whether they are attending in-person or online for planning purposes.

    Chair Wooten asked the Subgroups to continue their work as needed.

Probate Subgroup
April 14, 2023 Assignment

I. Resources

(a) Forms approved by SCOT (almost): simple wills-single testator; single with children; married; married with children
(b) Forms pending review by SCOT: Muniment of Title application and instructions; Small Estate Affidavit and Instructions
(c) Forms being developed for consideration by SCOT: Transfer on Death Deed (TODD)
(d) Texas Law Help forms: Versions of everything listed in II. below other than the Muniment of Title application.

II. Tasks, simplest to most complex, that properly trained paraprofessionals might be able to handle without a lawyer's supervision:

(1) HIPAA Release
(2) Annual Reports of Person in Guardianship
(3) Medical Power of Attorney (MPOA)
(4) Declaration of Guardian
(5) Directive to Physicians (DTP)
(6) Declaration for Mental Health Treatment
(7) Supported Decision Making Agreements (SDMA)
(8) Statutory Durable Power of Attorney (SDPOA)
(9) Transfer on Death Deed (TODD)
(10) Small Estate Affidavit (SEA)
(11) Simple Wills (SCOT forms)
(12) Muniment of Title Application

III. Legal issues that might arise that require lawyer supervision:

(1) Fiduciary duty explanations-SDPOA, SDMA
(2) Tax issues-Wills
(3) Community Property Issues-Wills, SEA
(4) Liability issues-SEA, SDPOA

IV. Tasks perceived as simple that need lawyer representation:

(1) Probate administrations (including simple estates)
(2) Guardianship Applications
(3) Guardianship Accountings
(4) Court appearances

V. Tasks for paralegals/others (court personnel or law student)

(1) Paralegals: muniment of title, SEA, Simple Wills, SDMA, SDPOA
(2) Other paraprofessionals: HIPAA, Annual Reports of Person in Guardianship; MPOA, Declaration of Guardian, Declaration for Mental Health Treatment, TODD

Texas Access to Justice Commission
Texas Access to Legal Services Working Group
Scope of Practice Subcommittee Roster
Last updated: April 21, 2023

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*These individuals are also serving on the Working Group.

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Non-Attorney Ownership Subcommittee

Access to Legal Services Working Group
March 31, 2023 - Zoom

Meeting Minutes

Subcommittee Members Present: Hon. Michael Massengale (Chair); Professor Susan Fortney; Hon. Sid Harle; Monica Karuturi; Maria Thomas-Jones
Other Guests Present: Lisa Hobbs; Grace Spulak (NCSC); Lonni Summers (NCSC)
Subcommittee Members Not Present: Rose Benavidez; Chris Nickelson

1. **Introductions:** Subcommittee members and guests briefly introduced themselves.

2. **Overview of Project**: Justice Massengale provided an overview of the Access to Legal Service Working Group and Subcommittee charge and work. Only 8% of the people who are eligible to receive legal aid in Texas receive any type of legal aid service (eligible means 125 % of the federal poverty guidelines which is about $35,000 per year for family of four). Currently, there is one legal aid attorney for every 20,000 Texans who qualify for legal aid. Many who have an income above the legal aid eligibility threshold also struggle to afford an attorney when faced with a civil legal problem. This means that people are forced to either represent themselves or forego justice from the legal system. This leads to a lack of confidence and trust in the courts. In light of this civil justice gap, Texas Supreme Court Justice Busby, in his October 24, 2022 letter, directed the Texas Access to Justice Commission to consider rule modifications "that would allow qualified non-attorney paraprofessionals to provide limited legal services directly to low-income Texans," and "[m]odifications that would allow non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving professional independence." The Access to Services Working Group was formed because of this letter. This Subcommittee will address recommendations about allowing non-attorneys to have economic interests in entities that provide legal services to low-income Texans while preserving professional independence. This Subcommittee will make recommendations to the Working Group, which will in turn make recommendations to the Access to Justice Commission on this issue.

3. **Rule 5.04**. The Subcommittee briefly discussed Texas Rule 5.04 which prohibits profit sharing with non-attorneys and non-attorney ownership of law firms. Key points from this discussion include:
    a. The purpose of this Subcommittee's work is to address opportunities to expand access to justice for low-income communities. Modifications to the rule would not be proposed for other purposes.
    b. To understand whether the Texas rule should be modified, there are three questions this group will need to examine:
        i. What is the purpose of Rule 5.04?
        ii. What might be accomplished through a change in the rule?

iii. What guardrails, trial phases, or other restrictions must be put in place to protect the public if there is a modification?

c. There have been mixed opinions about the risks and benefits of modifying rules that prohibit profit sharing and non-attorney ownership. Many state Access to Justice Commissions are looking at similar initiatives to help address civil legal needs. Arizona and Utah have eliminated or loosened rules on profit-sharing and non-attorney ownership. (Professor Fortney noted that D.C. also has modified limitations on profit sharing or non-attorney ownership.) Arizona has eliminated its version of Rule 5.04 and has created a regulatory structure for legal entities (called "alternative business structures") that profit-share with or are owned by non-attorneys. Utah has created a regulatory sandbox to license similar entities. However, in 2022, the ABA re-affirmed its support for Model Rule 5.4. Some of the differing opinions about risks and benefits are reflected in the materials circulated in advance of this meeting.

4. **Opportunities:** Justice Massengale highlighted other states that have modified or eliminated prohibitions on profit sharing and the opportunity that this Subcommittee has to learn from these states while maintaining a focus on the particular needs of Texas. This Subcommittee can look to Arizona and Utah for information about how their safeguards operate and the types of entities permitted under these states' new regulatory structures, particularly as they relate to assistance with access for low-income populations. Justice Massengale gave examples of some of the entities that currently operate under the Utah and Arizona regulatory structures. LegalZoom and Rocket Lawyer are examples of entities that provide legal help at a discount from traditional attorney services. Many of the alternative business structures permitted under Arizona's Rule and entities participating in Utah's regulatory sandbox address probate and immigration, which are areas of need for low and middle-income Texans. Upsolve is a non-profit entity that provides bankruptcy help for low-income individuals. Another non-profit participating in Utah's regulatory sandbox handles expunction cases. Justice Massengale encouraged Subcommittee members to review the entities regulated under Utah's and Arizona's structures to identify organizations that might provide services to low-income populations. At future meetings, it may be helpful to hear from representatives from Arizona and Utah regulatory bodies as well as from some of the organizations that provide legal assistance under the new regulatory frameworks in these states.

5. **Potential Restrictions or Limitations and Areas of Concern**: Justice Massengale identified some potential limitations and areas of concern to consider as this Subcommittee moves forward, including:
    a. Making time limited changes and/or implementing a pilot program or a regulatory sandbox. This would allow the opportunity to get data from these trial programs before making large scale changes.
    b. Addressing concerns that services available to low-income people also could be used by individuals in complex circumstances who need and can afford the assistance of a lawyer, particularly in family law. This could create challenges.

6. **Subcommittee Membership:** Justice Massengale noted that it may be helpful to add subcommittee members who work in landlord-tenant, bankruptcy, and consumer debt, which are a need area for low-income communities. Subcommittee members should think about other practice areas as well.

7. **Feedback**: There was a question about how this Subcommittee will collect stakeholder feedback. Justice Massengale stressed transparency. Subcommittee meetings will be recorded and will be available for interested parties. The Subcommittee will seek informational presentations, and input from innovators who have taken advantage of regulatory changes in other states. The goal is to explain to the public and bar what the Subcommittee hopes to achieve and to make a make a proposal that captures opportunity but also articulates legitimate concerns. It may also be helpful to revisit the Subcommittee name to clarify what the Subcommittee will study.

8. **Next Meeting:** Justice Massengale will circulate a poll to set the next meeting date.

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Overview of Reform Landscape

Overview of Reform Landscape

Program Type	State	Program Name if Any	Date Implemented or Effective Dates	Rule or Authorizing Authority	Scope of Practice: Substantive Legal Areas	Scope of Practice: Permitted Tasks
Supervised Legal Paraprofessional	Alaska	Community Justice Worker	11/29/2022	Alaska Bar Rule 43.5	SNAP applications and appeals, wills, ICWA enforcement, debt collection defense, and domestic violence protective orders.	Legal assistance including advocating for individuals in administrative proceedings, drafting letters and other documents, and providing legal information to clients in court proceedings.
Supervised Legal Paraprofessional	Delaware	Qualified Tenant Advocate	1/28/2022	Rule 57.1	Representation for tenants of a residential property.	Legal representation.
Supervised Legal Paraprofessional	Minnesota	Legal Paraprofessional Pilot Project	3/1/2022 through 3/31/2024	Supreme Court Order ADM19-8002/Supervised Practice Rule 12	Landlord-tenant cases; family law cases where the issues are not significantly complex; and domestic violence order of protection cases.	Provide advice, represent clients in court, and represent clients in mediation.
Supervised Legal Paraprofessional	New Hampshire	Paraprofessional Pilot Program	1/1/2023 (Phase 1); 1/1/2025 (Phase 2)	New Hampshire Supreme Court Rule 35	Phase 1 (effective January 1, 2023) assistance in family and landlord/tenant matters with case preparation tasks (such as drafting pleadings, parenting plans, protection orders, and financial affidavits). Phase 2 (effective January 1, 2025) “paraprofessional representation” in family and district courts in Manchester, Berlin, and Franklin.	Phase 1: Case preparation tasks (such as drafting pleadings, parenting plans, protection orders, and financial affidavits) in family and landlord tenant cases. Phase 2: "paraprofessional representation" in family and district courts in Manchester, Berlin, and Franklin.
Independent Legal Paraprofessional	Arizona	Legal Paraprofessional Program	1/1/2021	Arizona Code of Judicial Administration Section 7-210	Family law; limited jurisdiction civil cases; limited jurisdiction criminal cases where no jail time is involved; and state administrative law (where allowed by the administrative agency).	Drafting, signing, and filing legal documents; providing advice, opinions, or recommendations about possible legal rights, remedies, defenses, options or strategies; appearing before a court or tribunal; and negotiating on behalf of a client in the areas or practices that are authorized by the law.

Program Type	State	Program Name if Any	Date Implemented or Effective Dates	Rule or Authorizing Authority	Scope of Practice: Substantive Legal Areas	Scope of Practice: Permitted Tasks
Independent Legal Paraprofessional	Colorado	Licensed Legal Paraprofessionals	7/1/2023	Rule 207.1	Family law matters; name changes (although the rule carves out a number of exceptions)	Providing advice; preparing and reviewing documents and pleadings; advocating for clients in mediation; standing or sitting at counsel table with the client during a court proceeding to provide emotional support, communicating with the client during the proceeding, answering questions posed by the court, addressing the court upon the court's request, taking notes, and assisting the client in understanding the proceeding and relevant orders
Independent Legal Paraprofessional	Oregon	Licensed Paralegal Program	7/19/2022	Rules for Admission for Licensed Paralegals, Rules of Professional Conduct for Licensed Paralegals, Oregon State Bar Minimum Continuing Legal Education Rules and OSB Rules of Procedure	Family law and landlord-tenant cases.	Provide advice and assistance (but not in-court representation).
Independent Legal Paraprofessional	Utah	Licensed Paralegal Practitioner Program	2019	UCJA Rule 14-802	Family law, debt collection, and landlord-tenant cases.	Identify legal issues; assist with completing approved forms and review documents given by opposing party; complete a settlement agreement, communicate with another party or the party's representative regarding the relevant forms and matters in the approved legal areas.

Program Type	State	Program Name if Any	Date Implemented or Effective Dates	Rule or Authorizing Authority	Scope of Practice: Substantive Legal Areas	Scope of Practice: Permitted Tasks
Independent Legal Paraprofessional	Washington	Limited Licensed Legal Technitions	sunsets 7/31/2023	Admission to Practice Rule (APR) 28	Family law (but rule carves out a number of exceptions).	Consulting with and advising clients, completing and filing necessary court documents, and assisting pro se clients at certain types of hearings and settlement conferences.
Non-Attorney Ownership Permitted	Arizona	Alternative Business Structures	1/1/2021	Arizona Code of Judicial Administration Section 7-209	n/a	n/a
Non-Attorney Ownership Permitted	Utah	Legal Sandbox	2019	Utah Supreme Court Standing Order No. 15	n/a	n/a

Other Scope Limitations	Regulatory Body	Supervisory Requirement (if any)	Training Requirements	Program Size
	Alaska Bar Association Board of Governors	Legal Aid Attorney	Training through Alaska Pacific University and Alaska Native Tribal Health Consortium.	unknown
	Supreme Court	Legal Aid Agency	Course of training provided by the supervisory legal aid agency.	unknown
	Legal Paraprofessional Pilot Project Standing Committee	Licensed Attorney	Must meet certain paralegal education or experience requirements and meet certain ethics and continuing legal education requirements.	22 paraprofessionals
Only available to people who have incomes at or less than 300 percent of the federal poverty level.	New Hampshire Supreme Court	Licensed Attorney	Paralegal certification, two-years of experience in a law related setting.	unknown
	Board of Nonlawyer Legal Service Providers	none	Paralegal degree or Bachelor's degree and subject-area specific training; licening exam.	38 paraprofessionals

Other Scope Limitations	Regulatory Body	Supervisory Requirement (if any)	Training Requirements	Program Size
	Colorado Supreme Court	none	Colorado LLP exam; law degree, degree in paralegal studies or four-year degree with paralegal certification of 15 hours of paralegal studies; or a law degree from another country and LL.M.	unknown
	Oregon Supreme Court; Committee of Paralegal Assessors	none	Paralegal licensure and practice hours of substantive paralegal work, at least some of which must be in landlord-tenant cases or family law cases, depending on the proposed area of practice.	unknown
	Utah State Bar	none	Law degree or paralegal studies degree; licensure exam; hours of experience.	26 paraprofessionals

Other Scope Limitations	Regulatory Body	Supervisory Requirement (if any)	Training Requirements	Program Size
	Washington Supreme Court	none	45 hours of paralegal legal studies credit hours; substantive course hours in family law; licensure exam.	91 LLLTs
	Arizona Supreme Court Committee on Alternative Business Structures	Must be licened through the Committee on Alternative Business Structures	n/a	45 Licensed Entities
	Utah Supreme Court Office of Legal Service Innovation	Must apply to the regulartory Sandbox through the Office of Legal Service Innovation.	n/a	48 Entities

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Draft Fact Sheet

Access to Legal Services Working Group

Fact Sheet

Mission

To analyze possible ways to increase access to justice for low-income Texans, including through qualified paraprofessionals and through non-attorney ownership of legal entities.

The Working Group

will analyze and advise on potential rule modifications to allow (1) qualified paraprofessionals to provide limited legal services directly to low-income Texans and (2) non-attorneys to have economic interests in entities that provide legal services to low-income Texans.

Ideas for consideration:

Permitting trained paraprofessionals, such as paralegals or community justice workers, to provide limited legal services to low-income clients in defined practice areas.

Allowing community partners and legal aid organizations to form nonprofit organizations to provide a continuum of legal and non-legal services to qualifying low-income Texans.

Allowing a legal services non-profit to partner with a technology or software company to allow them to provide services more efficiently to qualifying low-income Texans.

TEXAS ACCESS TO JUSTICE COMMISSION

Thoughts or suggestions?

suggestions@texasatj.org

The Civil Justice Gap

Nationally, 86% of civil legal problems receive inadequate or no legal help.

90% of the civil legal needs of low-income Texans are unmet.

5.2 Million Texans qualify for civil legal aid

1 legal aid lawyer for every **7,000** who qualify

46th Overall Texas ranking for ensuring access to justice for all people.

Regulatory innovations may help address the justice gap.

In 2020, the Conference of Chief Justices **encouraged states to experiment with regulatory innovations** to spur new legal service delivery models that provide greater access while maintaining quality, achieving affordability, and protecting the public interests. The American Bar Association also encourages regulatory innovation.

The Process

The Working Group will:

Study similar efforts in other states, including Utah, Arizona, Colorado, and others.

Invite broad stakeholder input from the bench, the bar, community partners, and the public.

Make recommendations to the Texas Access to Justice Commission for consideration.