Oregon State Bar

Paraprofessional Licensing Implementation Committee

LICENSING RECOMMENDATIONS

Report to the Board of Governors

November 20, 2021

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STAFF SUMMARY

The OSB Board of Governors created the Paraprofessional Licensing Implementation Committee in 2019. The purpose of the committee was to fulfill the OSB Futures Task Force recommendation of creating a proposal to the Oregon Supreme Court for the establishment of a limited-scope license program for paralegals. The Committee, chaired by Senior Judge Kristen Thompson, has met regularly since the fall of 2020.

This report includes committee recommendations related to scope of licensure, educational and experiential requirements for licensure, continuing legal education, the regulatory framework under which a licensure program would operate, and many other topics.

The committee recommends that a licensed paralegal program be established to permit limited scope representation in family law and landlord tenant cases only. In general, LPs would be permitted to assist clients, and offer guidance on court procedures, but would not affirmatively represent clients in court. Details are laid out in the full report.

That recommendation includes a general requirement that licensed paralegals be required to have a degree in paralegal studies and have a minimum of 1500 hours of experience working under attorney supervision prior to licensure. Licensure would also be subject to an evaluation of applicant competence and applicants would be subject to a character and fitness evaluation. Additional pathways to licensure are also discussed in the full report.

Further, the committee recommends that licensed paralegals be subject to many of the same regulatory requirements as attorneys, including mandatory PLF coverage, the use of IOLTA accounts, contributions to the Client Security Fund, and that they be subject to the Oregon Rules of Professional Conduct. The committee specifically recommends that licensed paralegals be subject to the same restrictions on fee sharing and firm ownership as currently apply to attorneys.

The Oregon State Bar would like to offer its thanks to the members of the committee and to the dozens of other advisory members and interested parties who have contributed their time and effort throughout this process, and without whose contributions this report would not be possible.

BACKGROUND

At its September 27, 2019 meeting, the Oregon State Bar (OSB) Board of Governors (BOG) unanimously voted to convene an implementation committee for the establishment of a limited-scope license program for paralegals. This recommendation had been made to the BOG in the 2017 Futures Task Force

Report[1]. The limited-scope license would allow individuals who might not have a law degree, but who meet other rigorous qualifications, to provide defined legal services specifically in family law and landlord-tenant matters – two areas where a large segment of the public struggles to afford legal help.

Before making its decision to proceed, the BOG sought member input and engaged in multiple discussions with lawyers and judges, community members, and leaders throughout Oregon. After discussion and review, the BOG was persuaded to move forward by its public service mission to advance a fair, inclusive, and accessible justice system.

Despite the best efforts and generosity of Oregon lawyers over decades, the access-to-justice gap remains vast and largely unmoved. Data shows that among legal aid eligible Oregonians, 84 percent of those with a civil legal problem are unable to access legal help[2], and persons of color throughout the state have a disproportionally large number of legal problems[3].

Additionally, since 2016 over 70% of dissolution cases involved at least one self-represented litigant. Further, only about 17 percent of all parties in residential eviction proceedings are represented by lawyers[4]. This puts substantial strain on the courts, contributes to inequality, and erodes the public's trust in the legal system.

The goal of licensing paralegals to provide limited legal services is to provide consumers with an additional option in many of these cases where we know most parties are unrepresented. Thus, with its public service mission in mind, the BOG approved the creation of an implementation committee to develop a licensed paraprofessional program as recommended by the 2017 Futures Task Force Report.

In 2020, the BOG appointed Senior Judge Kirsten Thompson to chair the Paraprofessional Licensing Implementation Committee (the Committee) and established the following charge for the Committee:

> *Engage stakeholders to develop a regulatory framework for licensing paralegals consistent with the recommendations of the OSB Futures Task*

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1 The Futures Task Force Executive Summary and the full report of the Futures Task Force can be found on the OSB website.

2 Barriers to Justice, A 2018 Study Measuring The Civil Legal Needs Of Low-Income Oregonians; Published February 2019; page 4; available at https://olf.osbar.org/files/2019/02/Barriers-to-Justice-2018-OR-Civil-Legal-Needs-Study.pdf.

3 Barriers to Justice, pp 9-10. The report describes systemic discrimination facing African American, Native American, Latinx, and Asian American respondents. All groups face a wide range of legal problems at rates higher than white respondents.

4 According to case count data provided by the Oregon Judicial Department, of cases that closed between 2016 and 2021 over 83% of all parties in Landlord/Tenant cases were unrepresented. In dissolution cases 71% were unrepresented. In other Domestic Relations cases 55% were unrepresented. For civil cases generally, 51% of parties were not represented by an attorney.

Force Report in order to increase access to the justice system while ensuring the competence and integrity of the licensed paralegals and improving the quality of their legal services.

Beginning in the fall of 2020, the Committee has met regularly. The agendas, minutes, and other resources informing the work are updated regularly and available on the OSB website. The July OSB Bulletin included an article about the program, and Judge Thompson has given the Oregon Supreme Court updates about the Committee's work at the court's meetings in December 2020, March 2021, and July 2021.

The Committee considered the experiences of other states that have implemented various types of limited scope licenses to provide legal services. Currently, Arizona, Utah and Washington have legal paraprofessional programs of various types. California is moving forward with a proposal that is currently undergoing a public comment period. Minnesota is in the first year of a pilot project, that will run through 2023. In Canada, Ontario has a longstanding paraprofessional program and Saskatchewan is exploring creating one.

The Committee was made up of two judges, two paralegals, two attorneys that practice family law, two attorneys that practice landlord/tenant law, a representative of the New Lawyers Division and a Public Member. An advisory group was created to provide the full committee with additional input. The advisory members includes representatives from the OSB House of Delegates, Oregon's three law schools, legal aid, the Oregon Trial Lawyers Association, the Oregon Association of Defense Counsel, the Oregon Circuit Court Judges Association, Oregon Community Colleges and other interested persons[5].

The Committee created three workgroups that focused on different tasks necessary to create the Committee's recommendations: the Regulation Workgroup, the Admissions and Education Workgroup, and the Stakeholders Workgroup. The workgroups met in breakout sessions on most of the same meeting dates as the full Committee, as well as during special separately scheduled sessions. The workgroup also received substantial, invaluable assistance from advisory members, who actively participated in workgroup discussions, and from OSB staff.

The recommendations of the Regulation Workgroup focus primarily on scope of practice, including describing types of cases in both family law and landlord-tenant law that should be inside and outside of the licensed paralegal (LP) scope of licensure. Additionally the Regulation Workgroup makes recommendations for regulation upon licensure and discusses next steps in terms of other statutes and rules that would need updated if LP licensure is implemented.

The recommendations of the Admissions and Education Workgroup focus primarily on the qualifications that licensees would need to meet before

5 Rosters are available on the OSB website.

licensure, as well as on continuing legal education (CLE) requirements. These recommendations include both formal educational requirements and experiential requirements. The recommendations include multiple pathways to licensure, suggestions of core competencies before licensure, and recommendations for CLE requirements, both as prerequisites to licensure and on an ongoing basis.

Multiple pathways to licensure are provided to ensure that licensure is not limited to a narrow segment of Oregonians who have a specific background, but is open to all Oregonians. Many highly qualified paralegals with considerable experience come from diverse backgrounds and many do not have academic degrees in a law related field. The Committee is sensitive to the importance of accommodating this reality, as was recommended by the Futures Task Force.

REGULATION WORKGROUP RECOMMENDATIONS

The Regulation Workgroup was charged with recommending a state-level regulatory framework for implementing paraprofessional licensing. This framework includes defining the scope of practice[6] for LPs in two specific subject-matter areas (family law and landlord-tenant law), recommending appropriate tasks for LPs within that scope of practice, and identifying current or new regulations and rules to be revised or added to address the licensing of LPs.

1. Scope of Practice – Family Law[7]

The Committee recommends that LPs be authorized to practice family law within the parameters listed below. The list includes specific actions within family law matters that LPs should be allowed to engage in, as well as specific subject areas in which LP participation should be allowed. Finally, specific types of family law cases that the workgroup recommends should be outside the scope of an LP's practice (that LPs should not be allowed to engage in) are also provided. These recommendations were based on the experience of the workgroup members; input from the Committee as a whole, advisory members, and interested outside parties; and a review of the work of other states addressing similar issues. In particular, the workgroup considered whether a subject area or procedure is typically considered especially difficult or complex, and what might benefit the greatest number of family law or landlord-tenant litigants who might otherwise be self-represented and could benefit from the assistance of an LP.

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6 Scope of practice limitations included in this report focus on LPs who are not working under the direct supervision of an attorney. As with paralegals, LPs who are working under the direct supervision of an attorney would not be restricted in the types of cases with which they could assist.

7 For purposes of this report, "family law" is considered to generally encompass the following areas: dissolution of marriage, separation, annulment, custody, parenting time, child support, spousal support, modifications, and remedial contempt.

a. Family Law Tasks within the Scope of LP Practice

The Committee recommends that LPs be allowed to engage in the following tasks in the course of a family law case (within the subject-matter limitations listed below):

- *Meet with potential clients to evaluate and determine needs and goals, and advise.* As part of such a meeting, the LP would make an initial determination whether the potential client's concerns are within the scope of the LP's practice or whether a referral to an attorney would be appropriate.

- *Enter a contractual relationship to represent a natural person (not including a business entity).* Most family law litigants are "natural persons." Very few family law litigants are business entities, and those that are business entities usually come into family law cases through more complex procedural mechanisms such as intervention or interpleading. Allowing LPs to represent only natural persons in family law cases would not unduly limit the kinds of cases they could engage in and is consistent with the workgroup's recommendation that LPs not engage in cases involving interpleading or intervenors.

- *Assist by completing pattern forms and drafting and serving pleadings and documents, including orders and judgments.* In many basic cases, standard documents and pleadings are already available through the Oregon Judicial Department (OJD) or local courts. In such situations, LPs would be able to assist litigants in form selection and completion, much as family law courthouse facilitators do currently. Unfortunately, not all counties have courthouse facilitators, and even those that do may not be able to assist all self-represented litigants, particularly those who are not fluent in English. LPs would be able to explain the purpose of documents to litigants, help determine the appropriate document to use, help customize the information provided in the documents or pleadings to the litigants' benefit, and provide clarity and accuracy in filling out the documents consistent with the requirements of case law, Oregon Revised Statutes, Oregon Rules of Civil Procedure, Uniform Trial Court Rules, and Supplementary Local Rules. LP assistance with pleadings would also presumably help to clarify the nature of a litigant's position for the opposing party and the court and enable the court to proceed more efficiently.

- *File documents and pleadings with the court.* Many documents are now required to be filed with the court electronically. While some courts provide access to self-represented litigants for electronic filing, it may be difficult or confusing, especially for those not used to doing so, who are not fluent in English, or who need to file after physical access to the court is closed. LPs could assist such litigants, presumably at a lower cost than most attorneys.

- *Assist by drafting, serving, and completing discovery and issuing subpoenas.* Family law discovery practice often includes such procedures and pleadings as requests for production of documents, responses to requests for production

of documents, protective orders, drafting and advising on motions to compel, conferring with the opposing party or their representative, subpoenas, uniform support declarations, requests for admissions, and motions for and responses to motions for the following: custody and parenting time evaluations, drug and alcohol assessments, psychological evaluations, inspection of property, real and personal property appraisals, and vocational assessments. Requesting or responding to such requests are often crucial for the just determination of family law matters. Competent and comprehensive discovery practice can be time-consuming and require substantial follow-up. The rules and requirements related to discovery practice may also be complex and confusing for those not familiar with them. LPs would be familiar with discovery requirements and procedures and be able to assist litigants in this crucial aspect of the process.

- *Attend depositions, but not take or defend them.* The Committee recommends that LPs be permitted to assist with scheduling and compelling deposition appearances and preparing clients for being deposed and for taking a deposition, but that they not be allowed to take depositions or defend them. This restriction is based on depositions being a form of testimony under oath that requires knowledge and application of the rules of evidence to preserve objections or other evidentiary issues for possible later use in court. Knowledge and application of the Evidence Code is a basic skill required for taking and defending a deposition that is beyond the scope of LP practice (and likely training).

- *Prepare for, participate in, and represent a party in settlement discussions, including mediation and settlement meetings.* LPs would help enforce the requirement that litigants attend alternative dispute resolution, advise clients in advance on what to expect, and help them prepare so that such sessions might be more efficient and effective.

- *Prepare parties for judicial settlement conferences.*

- *Participate and assist with hearing, trial, and arbitration preparation.* LPs would prepare clients for court appearances (e.g., prepare clients for direct-examination, cross-examination, and oral argument; issue subpoenas; prepare witnesses; prepare and submit exhibits; draft asset and liability statements; and write memoranda to provide to the court).

- *Attend court appearances to provide support and assistance in procedural and ex parte matters.* LPs would be allowed to sit at counsel table during court appearances and respond to questions by the court in standard procedural family law appearances, ex parte matters, evidentiary proceedings, and informal domestic relations trials. LPs would not affirmatively represent a client directly during evidentiary hearings or other similar court appearances. For example, an LP would not be allowed to make evidentiary objections, offer exhibits, or question witnesses.

- *Review opinion letters, court orders, and notices with a client and explain how they affect the client, including the right to appeal.* Informing litigants about the significance of a court's determination and the right to appeal and the related timing would be an important service, even if LPs are restricted from assisting in the appeals process. LPs could also provide referrals if a client is considering an appeal.

- *Refer clients to attorneys for tasks or subject matter outside the scope of LP representation.* This ongoing obligation would be a requirement throughout an LP's representation, especially if the case came to include something beyond the LP's original expectation during the initial assessment.

b. Family Law Practice outside the Scope of LP Representation

The Committee recommends that the following types of cases, sometimes broadly considered part of or related to family law, be outside an LP's scope of practice:

- *Appeals (administrative, trial court, and court of appeals), except de novo appeals to the circuit court of administrative determinations to establish or modify child support.* Appeals have their own procedural rules and deadlines and can be quite complicated. This is especially true of appeals from trial court determinations and decisions of the Oregon Court of Appeals. While some self-represented family law litigants manage to navigate the process on their own, the small volume of such parties makes this complicated area less compelling for inclusion as a part of LP practice at this time, especially when balancing the potential benefit compared to the additional training LP candidates would require to be proficient. In the future, if there is substantial demand from self-represented litigants for LP assistance with appeals, expansion into this substantive area (with the requirement of additional education) could be considered.

  There is, however, a situation in which LP assistance in an "appeal" should be permitted. In certain circumstances, appeals of administrative child support judgments may be taken to the circuit court for a hearing de novo. ORS 25.513(6). When such appeals concern the establishment or modification of child support, they involve a circumscribed and limited subject matter area that primarily covers information an LP would be expected to know already as part of a circuit court trial-level practice. If LPs are permitted to assist in the preparation of cases before a trial court to establish or modify child support, they should be permitted to assist in the preparation of de novo appeals from administrative child support determinations in these specific instances as well.

- *Stalking protective orders.* This area of the law often involves unrelated parties, falls under a separate chapter of the Oregon Revised Statutes, and is not customarily seen as falling within the area of family law (or landlord-tenant law).

- *Juvenile court cases (dependency or delinquency).* Both dependency and delinquency law are complex, fall under an entirely different statutory framework than family law cases, and involve multiple parties. Delinquency cases are similar to adult criminal cases and require an understanding of criminal law. Dependency cases almost always involve Child Protective Services and can lead to a termination of parental rights. Financially qualified trial-level litigants are generally entitled to court-appointed counsel in both types of juvenile court proceedings. These factors mitigate against allowing LPs to represent litigants if juvenile court cases are involved.

  However, there are some juvenile dependency situations where limited LP assistance might be appropriate. In family law cases with consolidated or related associated juvenile court proceedings where juvenile court involvement may not be initiated or may be dismissed if a divorce, separation, custody case, or modification is initiated (and child custody therefore secured for a protective parent), limited LP assistance in the family law case may be appropriate. This is especially true since court-appointed counsel in juvenile dependency cases often refuse to assist clients in their family law action because it would be outside the terms of their appointment contract. Allowing an LP to assist in a divorce related to a juvenile court proceeding would, of course, apply only if the associated divorce proceedings were also otherwise within the LP's scope of practice.

- *Modifications of custody, parenting time, or child support when the initial court order originates outside Oregon.* When the initial court order originated outside Oregon, modifications of custody and parenting time may require application of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Modifying a child-support order when the initial court order originated outside Oregon may require application of the Uniform Interstate Family Support Act (UIFSA). Both statutes are complex and may require contact and working with officials from other jurisdictions. It is not likely that restricting LP practice in this more complicated area would dramatically limit the number of possible cases available for LPs.

- *Premarital or postnuptial agreements (drafting, reviewing, or litigating).* Premarital and postnuptial agreements often involve substantial or complicated assets and may have significant consequences if not properly drafted or implemented. If significant assets are in play and something is found to have "gone wrong" with the drafting, there may be substantial malpractice liability. Such agreements may also be considered contracts, with contract law applied to their interpretation and enforcement. As such, including these agreements in LP practice would require extensive additional education in contract law, outside the normal scope of family law. Additionally, in the experience of the family law practitioners on the workgroup, premarital and postnuptial agreements do not comprise a large portion of family law practice, and restricting LPs from this type of work would not substantially impact the number of litigants likely to seek LP assistance.

- *Cohabitation agreements (drafting, reviewing, or litigating).* As with premarital and postnuptial agreements, cohabitation agreements involve primarily contract law and are not within traditional family law practice. Including these agreements in LP practice would require extensive additional education in contract law, outside the normal scope of family law.

- *Qualified domestic relations orders (QDROs) and domestic relations orders (DROs) (drafting, reviewing, or litigating).* Drafting DROs can be complex with substantial monetary consequences if mistakes are made. As a result, many attorneys who practice primarily or even exclusively in family law often get assistance from specialized attorneys for QDROs and DROs. While prohibited from drafting such provisions themselves, LPs should be allowed to use language for QDROs and DROs provided by these specialized attorneys.

- *Third-party custody and visitation cases (ORS 109.119).* The statute involved in third-party custody and visitation cases is quite complex. Multiple parties may be involved. Specific detailed and necessary facts must be alleged. Other forms of relief, such as those involving guardianship of a minor, may also be implicated. The subject area is best left to attorneys.

- *Unregistered domestic partnerships ("*Beal v. Beal *cases").* Litigation involving unregistered domestic partnerships (as opposed to registered domestic partnerships) can be contract cases or de facto spouse cases involving complicated issues, case law, and the application of facts to the law, including contract law. Including this area of law in LP practice would require extensive additional education in contract law, outside the normal scope of family law.

- *Cases with third-party intervenors.* Specific facts must be alleged to intervene, resulting often in more complicated procedural requirements.

- *Military divorces unless stipulated.* These cases often involve the Servicemembers Civil Relief Act (SCRA) and military retirement benefits and requirements that can be extremely complex. Even with this complexity, when both parties agree on the dissolution terms, it seems reasonable to allow LPs to assist in finalizing the divorce. A note of caution is warranted: while an LP should be allowed to work on military divorces when the parties agree to all dissolution terms, it would be wise in such situations for a litigant to consult with an attorney well versed in military divorces to understand the impact of what they are agreeing to and for the LP to insist that such a consultation occur before helping to memorialize the divorce terms.

- *Remedial contempt when confinement is requested.* Contempt can be punitive or remedial. Punitive contempt can be initiated only by a district attorney, may result in confinement, and is therefore more like a criminal proceeding, which is outside the scope of family law practice. Remedial contempt, when there is a request for confinement, is similar in that regard and therefore should be outside the scope of LP practice as well. LPs should

be able to assist with remedial contempt only when confinement is not before the court.

- *Stand-alone Family Abuse Prevention Act (FAPA) cases (ORS 107.700–107.735).* Petitioners in FAPA cases can often access no-cost assistance from outside advocates available in many courthouses. Respondents seldom have that option. For many respondents, FAPA cases can raise the prospect of additional significant related legal actions being filed against them, including criminal complaints or juvenile court petitions. The decisions made in responding to a FAPA order may also implicate such things as access to the party's child or the ability to possess a firearm. While the consequences of the FAPA case alone may have a huge impact on the litigants, adding the possible additional major legal repercussions make the situation even more complex. Competent advice to a respondent in a FAPA case should always include consideration of other possible legal implications. Therefore, LPs should not, in general, represent litigants in FAPA cases.

  However, concern has also been expressed that if LPs are prohibited from representing litigants if a FAPA claim is raised, then an opposing party may raise a baseless FAPA claim in order to disqualify an otherwise competent LP from a divorce case. Therefore, the Committee recommends that if an LP represents a party in an already-existing family law matter, that LP should not be disqualified from continuing such representation if the opposing party files a FAPA petition. In that scenario, the LP should be allowed to continue representing the FAPA respondent or petitioner, with the strong recommendation to have their client consult with an appropriate attorney regarding possible related legal consequences.

- *Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) cases, Sexual Abuse Protection Order (SAPO) cases, guardianships, and adoptions.* All of these listed areas of law are outside the standard area of family law practice. Guardianships and adoptions in particular are complex and have their own specific procedural requirements. EPPDAPA and SAPO cases have concerns similar to those for FAPA cases, as cited above. Therefore, cases that involve EPPDAPA, SAPO, guardianships, or adoptions should be excluded from LP practice.

2. Scope of Practice – Landlord-Tenant Law

The Committee recommends that LPs be authorized to offer guidance, document preparation services, and courtroom representation on landlord-tenant matters as outlined below. It is anticipated that granting LPs authority to serve in this capacity will increase the availability of legal services to both landlords and tenants and help close the access-to-justice gap. The consequences of not having access to legal assistance in landlord-tenant matters can be severe. Tenants may be evicted despite having meritorious defenses, and they may be unable to obtain basic housing rights guaranteed by the Oregon Residential Landlord and Tenant Act (ORLTA, ORS chapter 90),

including freedom from illegal treatment and access to decent, safe, and sanitary housing. Landlords can need guidance in following the law and may not understand their rights or responsibilities, which may have substantial financial consequences. For example, errors in a required written notice may cause the notice to be defective, delay a meritorious eviction, or cause the loss of an eviction lawsuit resulting in the potential for attorney fees against the landlord even when their claim is well founded.

Landlords already enjoy the option of representation in circuit court forcible eviction and detainer actions (FEDs) by a nonlawyer agent (ORS 105.130(4)). Such nonlawyer agents, however, are likely to represent those landlords that have a large number of residential tenants and are in court often. Landlords with a small number of residential rental units and who are not in court often are less likely to have access to the services of nonlawyer agents already allowed in FED actions. Tenants do not enjoy a reciprocal right to nonlawyer assistance. Authorizing LPs in landlord-tenant cases would help balance this disparity by providing both tenants and "small number" landlords the option of working with a knowledgeable LP. Landlords who currently rely on nonlawyer agents would also have the additional choice of representation by an LP who is trained, licensed, and covered by the Professional Liability Fund (PLF).

The Committee recommends that LPs' scope of practice on landlord-tenant issues be limited to those concerning residential rental agreements under ORLTA and the FED provisions found at ORS 105.126–105.168. The scope of practice would be limited to only residential tenancies. The specific types of cases that the Committee recommends should be outside the scope of an LP's practice in landlord-tenant cases (that LPs should not be allowed to engage in) are clarified below. These recommendations were based on the experience of Committee advisory members experienced in landlord-tenant law, (including both private practitioners and those who provide representation through legal aid), input from the Committee as a whole, and input from interested outside parties. In particular, in deciding whether a specific case should be outside the scope of LP representation, the Committee considered whether a subject area or procedure is typically especially difficult or complex, and what might benefit the greatest number of landlord-tenant litigants who might otherwise be self-represented and could benefit from the assistance of an LP.

a. Landlord-Tenant Law Tasks within the Scope of LP Practice

The Committee recommends that LPs be allowed to engage in the following tasks in the course of a landlord-tenant case within the subject-matter limitations listed below:

- *Enter into a contractual relationship to represent a natural person or a business entity.* LPs should be available to assist tenants or landlords, especially those who might not otherwise have access to legal advice. While tenants are likely to be natural persons, landlords in need of such assistance may also be proceeding as a business entity. LPs, therefore, should be able

to contract with both natural persons and business entities on landlord-tenant matters.

- *Meet with potential clients to evaluate and determine needs, goals, and advise on claims or defenses (e.g., notices of intent to terminate tenancy, inspection of premises, rent increase).* Prospective clients should be able to meet with LPs regarding landlord-tenant matters whenever needed to determine the best way to proceed and to start whatever process might be necessary. LPs may be an especially important source of legal information for litigants with limited financial resources (e.g., those who are not able to obtain representation from legal aid) or from geographic areas of the state where there are few attorneys who practice landlord-tenant law. In addition, LPs who are fluent in languages other than English may provide essential services especially to non-English speaking tenants.

- *Review, prepare, and provide advice regarding a variety of documents, including pleadings, notices, orders, and judgments.* The types of documents LPs would be authorized to review would include but not be limited to residential leases and rental agreements, amendments to rental agreements, eviction notices, notices of intent to enter rental property, rent increase notices, demand letters, notices of violation, and security deposit accountings.

- *File documents and pleadings with the court.* Litigation regarding residential tenancies can occur through small claims court actions as well as FED litigation. Examples of the types of documents LPs would be authorized to help prepare and file in small claims actions include but are not limited to small claims and notices of small claims, responses, trial exhibits, and memoranda. Examples of the types of documents LPs would be authorized to help prepare and file in FED litigation include but are not limited to complaints, answers (including tenant counterclaims), replies to counterclaims and affirmative defenses, subpoenas, trial exhibits, FED stipulated agreements (ORS 105.145(2)), declarations of noncompliance (ORS 105.146(4)), requests for hearing on declarations of noncompliance (ORS 105.148), notices of restitution, and writs of execution.

- *Assist in obtaining continuance requests to allow parties to make discovery requests or obtain other discovery.* Expedited FED timelines make most discovery impractical. However, landlords may request continuances, and tenants may request continuances if they pay rent into court (ORS 105.140(2)). LPs could provide this information to litigants and assist in the discovery process if the continuance was allowed.

- *Attend depositions, but not take or defend them.* While discovery timelines for FED cases can make depositions impractical, they require only "reasonable notice," which case law has found to be satisfied with two days' notice. LPs would be able to work with tenants to assist with this expedited timeframe,

including scheduling and compelling deposition appearances and preparing clients for being deposed and for taking a deposition.

The Committee recommends that LPs be permitted to assist with depositions, but that they not be allowed to take depositions or defend them. This restriction is based on depositions being a form of testimony under oath that requires knowledge and application of the rules of evidence to preserve objections or other evidentiary issues for possible later use in court. Knowledge and application of the Evidence Code is a basic skill required for taking and defending a deposition that is beyond the scope of LP practice (and likely training).

- *Participate, prepare for, and represent a party in settlement discussions, including mediation and settlement meetings.* Negotiations in landlord-tenant cases often occur the day of the initial court appearance. Being able to consult with an LP in advance of the initial court appearance would allow a litigant to become informed about what to expect and what the negotiation process would likely entail. It could also help those new to the process understand the strength or weakness of their position ahead of time from an informed perspective, resulting in more reasonable, just, and efficient outcomes.

- *Prepare parties for judicial settlement conferences.*

- *Participate and assist with hearing and trial preparation.* LPs should be allowed to prepare clients for court appearances (e.g., direct examination and cross-examination, oral argument, exhibit preparation and submission, and memoranda to the court).

- *Attend court appearances to provide permitted support and assistance in procedural matters.* LPs would be allowed to sit at counsel table during court appearances and respond to questions by the court. LPs would not affirmatively represent a client directly during evidentiary hearings or other similar court appearances. For example, an LP would not be permitted to make evidentiary objections, offer exhibits, or question witnesses, but would be able to assist their client in doing so.

- *Review opinion letters, court orders, and notices with a client and explain how they affect the client, including the right to appeal.* Informing litigants about the significance of a court's determination and the right to appeal and the related timing would be an important service, even if LPs are restricted from assisting in the appeals process. *LPs could also provide referrals if a client is considering an appeal.*

- *Refer clients to attorneys for tasks or subject matter outside the scope of LP representation.* This ongoing obligation would be a requirement throughout an LP's representation, especially if the case came to include something beyond the LP's original expectation during the initial assessment.

b. Landlord-Tenant Practice outside the Scope of LP Representation

The Committee recommends that the following types of landlord-tenant cases be outside an LP's scope of practice:

- *Affirmative plaintiff cases in circuit court.* Affirmative plaintiff cases often include matters beyond the scope of landlord-tenant practice in general and beyond the scope of what LPs are expected to master. Parties can file in small claims court for up to $10,000, which may be an alternative forum for such cases. Excluding these types of cases would not unduly limit cases available for LP practice. These types of cases are not as frequent and urgent as most FED cases and often include counterclaims, depositions, and substantial discovery.

- *Agricultural tenancies and leasing.* These cases are outside of ORLTA and more similar to tort claims, often requiring specialized knowledge. These cases are not common and often involve significant dollar amounts. Farm worker tenancies often do not fall under ORLTA and often implicate federal laws, which would be beyond expected LP proficiency. There are other specialized resources available for advocacy in these types of cases.

- *Affirmative discrimination claims (except if asserted as a counterclaim or defense).* This is a complex area of law requiring significant specialized legal knowledge, often implicating other areas of state and federal law. While discrimination cases are important and need to be pursued, this area largely arises outside of ORLTA and requires significant specialized legal knowledge and extensive factual development and discovery. Claims may be raised in state or federal court and if raised in an FED may create preclusion issues. If a tenant wishes to counterclaim for personal injury damages, whether arising under a tort or ORLTA theory of liability, the LP would then need to refer the case to an attorney. There was some discussion that in the future a third practice area or special certification for LPs could be created for discrimination cases.

- *Commercial tenancies and leasing.* These cases fall outside of ORLTA and require extensive knowledge of complicated business law and contract law.

- *Landlord-tenant claims for personal injury.* Personal injury and other tort claims may arise during the landlord-tenant relationship and may give rise to liability under ORLTA or the rental agreement. Examples of this include premises liability injuries and mold-related illnesses. This area of law requires significant specialized legal knowledge and can be very complex, requiring extensive factual development and discovery. It may also implicate other areas of law. Such claims may be brought in the circuit court as well, and if raised previously in an FED, may create preclusion issues. These claims may also involve insurance issues. With all of these potential concerns, these personal injury claims are beyond the scope of what LPs can reasonably be expected to become proficient about and advise upon. If a tenant wishes to

counterclaim for personal injury damages, whether arising under a tort or ORLTA theory of liability, the LP must refer to an attorney.

- *Injunctive relief in affirmative cases.*
- *Housing provided in relation to employment.* This area is generally excluded from ORLTA and implicates significant state and federal law claims. Additionally, these claims can be brought in both state and federal court.
- *Affirmative subsidized housing claims.* These claims are complex and involve significant overlap with federal laws and regulations. A number of lawyers have expertise with subsidized housing claims and could assist both tenants and landlords with these issues. However, an LP who is familiar with subsidized housing–related issues should not be precluded from advising on defenses to eviction related to the subsidized status of a unit.

3. Additional Regulatory Requirements

In addition to knowing and following the substantive and procedural aspects of family law and landlord/tenant law, LPs should be required to comply with the same requirements in dealing with clients and the public as apply to attorneys. This would include, but not be limited to those aspects of the Rules of Professional Conduct that apply to transactions with clients, transactions with persons other than clients, and legal firms and associations.

Specific rules that will need to be revised for LP practice may include but would not be limited to provisions that also apply to the current practice of law by attorneys such as requiring the use of Interest on Lawyer Trust Accounts (IOLTA), IOLTA-related certification requirements, and a prohibition on sharing fees with non-attorneys or other paraprofessionals or from sharing ownership in a firm with individuals not licensed by the Oregon State Bar, as is the case with lawyers now. LPs should also be required to contribute to the Client Security Fund and to complete continuing legal education.

The Committee also recommends that LPs be required to carry malpractice insurance, preferably through the Professional Liability Fund (PLF). The PLF provides valuable assistance to attorneys in best practices, ongoing practice management, liability reduction and other crucial services and the general public would benefit substantially if the same were made available to LPs.

Existing rules related to the regulation of attorneys will need to be modified to reflect the manner in which they are intended to apply to licensed paralegals, or separate parallel rule structures will need to be created to address licensed paralegals. These may include:

- Client Security Fund Rules,
- Minimum Continuing Education Rules,

- The Oregon Rules of Professional Conduct,
- The OSB Rules of Procedure and
- The OSB Bylaws.

The Committee made no specific recommendation between these two approaches, but agreed that it was important that these rule sets were clear on how they applied to licensed paralegals.

4. Statutes, Rules, and Regulations to Review or Revise

A large number of current statutes, rules, and regulations will need to be reviewed and revised before LPs are licensed and begin practice. The Committee has discussed at least two possible scenarios to accomplish these revisions. The first is to add a simple overarching statement to each of the major statute or rule categories (e.g., an addition to the Oregon Rules of Civil Procedure (ORCPs) that "all rules in the ORCPs applicable to attorneys shall also apply to LPs"). Another option would be to change the text of specific rules in each major statute or rule category (e.g., a change to ORCP 17 A to add "licensed paraprofessional" or "licensed paralegal" to the list of who must sign a pleading, motion, or other document).

The Committee recommends changing the text of specific rules or statutes to add LPs to promote clarity with regard to which rules or statutes apply to LPs and which do not. There was some concern over what impact this method might have on statutory interpretation and precedent. There was also concern about the amount of time such detailed revisions might take, as well as what might happen if a revision was missed. Overall, however, the general sense of the Committee was that changes should be made to specific applicable statutes, rules, and regulations.

a. Revisions Applicable to LP Practice in General

The statutes, rules, and regulations identified as pertinent to LP practice in general (rather than to either family law or landlord-tenant law) that would need review or modification include but are not limited to:

- Oregon Rules of Civil Procedure (ORCPs)
- Uniform Trial Court Rules (UTCRs)
- Oregon Code of Judicial Conduct
- Various Supplementary Local Rules for each circuit court
- ORS 9.005 *et seq. (Oregon State Bar Act)*
- ORS 124.060 *(elder abuse reporting)*
- ORS 419B.005 *et seq.* (child abuse reporting).

b. Additional Family Law–Related Revisions

Additional specific rules and statutes identified as pertinent to the domestic relations prong of LP practice that would need review or modification include but are not limited to:

- ORS 107.005 *et seq.* (dissolution, annulment, and separation)
- ORS chapter109 (parent and child rights and relationships)
- Rules related to informal domestic relations trials (IDRTs, UTCR 8.120)
- ORS 20.075 (factors to be considered by a court in awarding attorney fees)
- ORS 40.090 *et seq.* (Oregon Evidence Code, including rules 202, 503, 503-1, 504-5, 509-2, 511, and 513)
- Supplementary Local Rules (SLRs), including specifically those reserved in chapter 8 for domestic relations proceedings.

c. Additional Landlord-Tenant–Related Revisions

Additional specific rules and statutes identified as pertinent to the landlord-tenant prong of LP practice that would need review or modification include but are not limited to:

- ORS chapter 90 (Oregon Residential Landlord and Tenant Act)
- ORS chapter 91 (tenancy)
- ORS chapter 105 (property rights)
- ORS 20.075 (factors to be considered by a court in awarding attorney fees)
- ORS 40.090 *et seq.* (Oregon Evidence Code, including rules 202, 503, 503-1, 504-5, 509-2, 511, and 513)
- Supplementary Local Rules (SLRs), including specifically those reserved in Chapter 18 for landlord-tenant proceedings.

d. Potential New Provisions Needed

New statutes, rules, and regulations will also be needed for LP practice in at least the following additional areas:

- LP admission criteria
- LP scope-of-practice definitions and limitations.

ADMISSIONS AND EDUCATION WORKGROUP RECOMMENDATIONS

The Admissions and Education Workgroup was charged with recommending specific requirements for licensure. These include experiential and education requirements, creation of multiple pathways to licensure, evaluation of applicant competency, and continuing legal education requirements.

Recommendation 1.2 of the OSB Futures Task Force provided that:

> *An applicant should have an associate's degree or higher and should graduate from an ABA-approved or institutionally accredited paralegal studies program, including approved coursework in the subject matter of the license. Highly experienced paralegals and applicants with a J.D. degree should be exempt from the requirement to graduate from a paralegal studies program.*

The Committee agrees with this recommendation, including the exception for highly experienced paralegals, and the exception for applicants with a J.D.

The Admissions Workgroup reviewed existing paraprofessional licensing programs within the US and Canada, program proposals, and newly enacted programs from across the United States. The Workgroup has made a number of discrete recommendations that are included in this report in Appendix A. These recommendations are cited by number throughout this section.

Throughout their deliberations, the Admissions Workgroup focused on what education and training was necessary to demonstrate that an LP was competent to represent a client. The workgroup took special care that the various pathways to licensure recommended by the Committee were crafted with consideration of expanding the pool of competent LP's, and with special attention to diversity and equity, and to those working in law or law-adjacent jobs in rural communities all over Oregon.

The recommendations of the Admissions Workgroup and of the full Committee reflect these duel goals of ensuring public protection and ensuring that licensure is open to Oregonians of all backgrounds.

General Standards for Licensure

The Committee recommends that a board of volunteer lawyers, members of the public, and ultimately licensed paralegals, be charged with reviewing competency and evaluating character and fitness. (Admissions Recommendation #2) The Committee also recommends a number of general requirements for licensure that would apply to all applicants. Many of these General Standards were discussed by both the Regulatory Workgroup and Admissions and Education Workgroup and all members agree with their inclusion in this report.

An LP should have a record of conduct that demonstrates a level of judgment and diligence resulting in competent representation in the best interests of their clients and that justifies the trust of those clients, adversaries, courts, and the public concerning the professional duties and obligations owed to each group. (Recommendation #1)

The Committee recommends that LPs meet the same character and fitness requirements that currently apply to lawyers. (Recommendation #3(2))

Pathways to Licensure

The Committee's recommendations in Appendix A include Minimum Education Requirements (Recommendation #5) that recommend an associate's degree or higher in paralegal studies, from an accredited institution that provides for appropriate coursework sufficient to ensure competency as approved by the Oregon Supreme Court.

As was recommended by the Futures Task Force, the Committee recommends a minimum of 1,500 hours of "substantive paralegal experience" under the supervision of an attorney. (Recommendation #6) This would include a minimum of 500 hours in family law and 250 hours in landlord-tenant law for applicants seeking licensure in those areas. Completion of the required minimum experience must be certified by the supervising attorney. Attorney certification of the required experience is a key component of ensuring that LPs have the minimum core competencies to practice independently in the future.

With these baselines in mind, the Committee recommends the creation of multiple pathways to licensure, as laid out below. Pathway 1 is the default track, and other pathways deviate from the default requirements as provided below and in the detailed recommendations found in Appendix A. Multiple pathways will ensure that applicants with diverse backgrounds and experiences have a realistic opportunity to demonstrate competency and achieve licensure.

Pathway 1 – Standard Education Application Track

The Standard Education Application Track is expected to be the pathway that most applicants would take over the long term. The requirements are the default rules that applicants be required to have an associate's degree or higher in paralegal studies from an institutionally accredited paralegal program that allows demonstration of core competencies. Additionally, licensure would be contingent on certification of the minimum 1,500 hours of substantive experience.

There are two paralegal studies programs in Oregon today—one at Umpqua Community College and one at Portland Community College. It is anticipated that these two institutions will seek to create a new degree program that would meet the requirements for LP licensure that are ultimately set. The committee recommends that work performed through structured practicums or internship programs run through approved paralegal programs be eligible to count toward the required 1,500 hours of substantive experience.

The Committee believes this allowance is important because it will help facilitate access to licensure for individuals who might have traditionally had difficulty finding employment necessary to accumulate the required experience.

Pathway 2 – Highly Experienced Paralegal Application Track

The Futures Task Force Report recommended that "[h]highly experienced paralegals" be exempt from the default requirement that LPs have a degree in paralegal studies.

This second track is primarily focused on existing paralegals working in Oregon, many of whom may have decades of experience but do not necessarily have a college degree. This track would provide an education waiver to individuals who meet the criteria below.

The Committee recommends that applicants seeking licensure under this track would be required to demonstrate either five years or 7,500 hours of substantive experience, with at least 1,500 hours of substantive experience in the last three years. They would still be required to have 500 hours in family law or 250 in landlord-tenant law to qualify for an endorsement in those areas.

Additionally, these applicants would be required to complete 20 hours of predetermined CLEs in advance of licensure. The creation of the CLEs is intended to be a collaborative effort between the Oregon State Bar and Oregon community colleges that are interested in offering them. This effort is ongoing. Required CLE topics would include access to justice, legal ethics, IOLTA requirements, scope of licensure and the ability to identify mandatory referral scenarios, abuse reporting, and other areas.

In addition to the above, the Committee recommends the Highly Experienced Paralegal Application Track be expanded into two additional areas not specifically addressed in the Futures Task Force Report.

The first provides for a waiver of the educational requirements for individuals who have successfully passed one of the listed national paralegal certification exams. Applicants would be required to submit evidence of passing the exam, as well as evidence that the credential remains current and in good standing with that organization on the date of application submission to be granted an education waiver.

Likewise, the committee recommends that an education waiver be granted to any active duty, retired, former, or reserve member of a component of any branch of the US Armed Forces, qualified in a military operation specialty with a minimum rank of E6 or above in a paralegal specialty rate as a Staff Sergeant (Army and Marines), Petty Officer First Class (Navy), Technical Sergeant (Air Force), or higher as a supervisory paralegal within the noted branch of service.

Individuals who receive an education waiver for either a national certification or as a military paralegal would likewise be required to complete the same 20 hours of CLEs in advance of licensure.

Pathway 3 – J.D. Waiver

The Futures Task Force also recommended that individuals with a J.D. be exempt from the default rule that LPs be required to have a degree in paralegal studies.

The Committee agrees with this recommendation and further recommends that such individuals be required to have 750 hours of substantive experience, rather than the 1,500 required of other applicants. Individuals receiving the J.D. Waiver would not be required to have the 500 hours in family law or 250 in landlord-tenant law for certification in those areas.

Individuals receiving the J.D. waiver would be required to complete the same 20 hours of CLEs required in Pathway 2.

Pathway 4 – Other Education Waiver

In addition to the exceptions proposed by the Futures Task Force, the Committee is recommending an additional education waiver for an applicant who has a bachelor's degree or higher in any course of study, or has an associate's degree in any course of study and has also obtained a paralegal certificate from an accredited institution.

As in Pathway 2, an applicant who receives this waiver would be required to complete the same 20 hours of CLEs in advance of licensure and would be required to certify the minimum 1,500 hours of substantive experience. The goal of such a waiver would be to encourage a larger and more diverse cross-section of Oregonians to seek licensure. While Pathway 2 is focused on individuals who may have no formal education but a great deal of experience, this pathway would focus on individuals who have more education but less experience.

Some members of the Committee and advisory group have expressed disagreement with this waiver, arguing that the program should not go beyond the educational waivers explicitly referenced in the Futures Task Force Report. They argue that, with the exception of the highly experienced paralegals who are able to substitute additional experience or certifications for the required education, some amount of legal education should be required of all applicants, and that a bachelor's degree in an unrelated subject should not be treated as equivalent to an associate's degree in paralegal studies.

Pathway	Education, Certification, Licensure, or Military Experience	Substantive Paralegal Experience verified through Attorney Certification. A portion of the hours may also be obtained through a supervised practicum/internship overseen by a qualifying paralegal program	Education Requirements
Document Preparer ***Limited in scope, No legal advice may be provided**	Associates Degree or higher in Paralegal Studies from an institutionally accredited paralegal program	1,500 hours within the last three years	Competencies assessed by a Board or Committee under the Bar
Standard Endorsement in either Family Law or Landlord/ Tenant	Associates Degree or higher in Paralegal Studies from an institutionally accredited paralegal program	1,500 hours within the last three years; 1/3 or 500 hours must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/tenant and evictions to receive that Endorsement	Competencies assessed by a Board or Committee under the Bar
Highly Experienced Paralegal I – Education Waiver	N/A	Five years or 7,500 hours, with a minimum of 1,500 hours within the last three years; 1/3 or 500 hours must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/tenant and evictions to receive that Endorsement	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar
Highly Experienced Paralegal II – Education Waiver	Have current paralegal credentials from a national paralegal association, including one of the following: CP, RP, CRP, or PP	1,500 hours within the last three years; 1/3or 500 hours must be in Family Law to receive that Endorsement or 1/6 must be in landlord/tenant and evictions to receive that Endorsement	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar
Highly Experienced Paralegal III – Education Waiver	Active duty, retired, former military, or the reserve component of any branch of the US Armed Forces, rank of E6 or above in a paralegal specialty rate or higher as a supervisory paralegal.	1,500 hours within the last three years; 1/3 or 500 hours must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/ tenant and evictions to receive that Endorsement	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar

Admission by Motion – Education Waiver	Licensed to practice in another jurisdiction	1,500 hours within the last three years; 1/3 or 500 hours must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/ tenant and evictions to receive that Endorsement	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar
Other Education – Education Waiver	Applicants with one of the following: a Masters or Ph.D. in any course of study; or a Bachelor degree or higher in any course of study; or Applicants with an Associate degree or higher in any course of study + a paralegal certificate	1,500 hours within the last three years; 1/3 or 500 hours must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/ tenant and evictions to receive that Endorsement	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar
JD Degree – Education Waiver	Applicants with a J.D. Degree from an ABA-Approved law school	Minimum 6-months or 750 hours of substantive experience should include substantive paralegal experience, as defined above; law clerk experience; court proceeding observation (self-certification of no more than 100 hours) or work in pro bono or low bono.	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar

Evaluation of Core Competencies

The Committee spent considerable time discussing the issue of how to evaluate the competency of a potential LP. As with attorneys, identifying specific skillsets or attributes is difficult, and thus often not explicitly required as part of licensure. However, the Committee concluded it was important to set explicit expectations regarding LPs' core competencies. This recommendation is also reflected to some degree in Futures Task Force Recommendation 1.2, which discusses approved coursework, and Futures Task Force Recommendation 1.3 relating to minimum education requirements.

An example of a list of core competencies, as applied to attorneys, was set out in the Institute for the Advancement of the American Legal System report

Building a Better Bar[8]. In the report, the author lays out the following twelve core competencies:

The ability to act professionally and in accordance with the rules of professional conduct;

- An understanding of legal processes and sources of law;
- An understanding of threshold concepts in many subjects;
- The ability to interpret legal materials;
- The ability to interact effectively with clients;
- The ability to identify legal issues;
- The ability to conduct research;
- The ability to communicate as a lawyer;
- The ability to see the "big picture" of client matters;
- The ability to manage a law-related workload responsibly;
- The ability to cope with the stresses of legal practice; and
- The ability to pursue self-directed learning.

While these are intended for lawyers, the Committee recommends a similar list of competencies be established with respect to LPs.

The recommendation of the Committee is that a board of volunteer lawyers, members of the public, and eventually LPs be authorized to assess whether applicants meet core competencies and make admissions decisions accordingly. While some applicants will have gone through an Oregon-based paralegal studies program that may have considered these core competencies, many will have taken other pathways. The Committee makes no recommendation regarding curricula of educational institutions and does not recommend that the bar approve individual paralegal programs. To do so could result in disparate treatment of institutions from inside and outside Oregon, and could have the unintended consequence of discouraging students from taking the first pathway toward licensure.

The Committee recommends that as part of the application process, all applicants submit a portfolio containing a body of work for assessment of the competency of each candidate. Competencies the portfolio might address could include: (Recommendation #3)

1. Understanding of legal ethics;
2. Understanding of the scope in the specific practice area in which the candidate seeks endorsement;

8 See Deborah Jones Merritt & Logan Cornett, Building a Better Bar: The Twelve Building Blocks of Minimum Competence, at 31 (Dec. 2020), *https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf*.

3. Understanding of requirements to refer clients outside of that scope;
4. Ability to competently apply the fundamental principles of law;
5. Ability to competently undertake fundamental legal skills commensurate with being a licensed paralegal, such as legal reasoning and analysis, recollection of complex factual information and integration of such information with complex legal theories, problem-solving, and recognition and resolution of ethical dilemmas;
6. Ability to:
    a. Communicate honestly, candidly, and civilly with clients, licensed paraprofessionals, attorneys, courts, and others;
    b. Conduct financial dealings in a reasonable, honest, and trustworthy manner;
    c. Conduct oneself with respect for and in accordance with the law;
    d. Demonstrate regard for the rights, safety, and welfare of others;
    e. Demonstrate good judgment on behalf of clients and in conducting one's professional business;
    f. Act ethically, diligently, reliably, and punctually in fulfilling obligations to clients, adversaries, courts, and others;
    g. Comply with deadlines and time constraints;
    h. Maintain confidentiality of client information and client data.

As an additional aid to the Bar, attorneys employing paralegals, and other parties, Attachment D at the end of Appendix A of this report includes examples of specific tasks that the Committee believes are reasonable to assume that most LPs will be trained and competent in. While it is not expected that every LP will have experience with every item on the list, it may be a useful aid in understanding the types of experiences and competencies that the bar would expect applicants to be able to demonstrate prior to licensure.

STAKEHOLDERS WORKGROUP REPORT

The Stakeholders Workgroup has worked throughout the past year both to inform the legal community and Oregonians of the paralegal licensure proposal, and to solicit input on the proposal that will ultimately inform the Oregon Supreme Court's decision.

While some of this input has already been received and is included for the BOG's consideration, the work of the Stakeholders Workgroup is ongoing and will continue until the Supreme Court makes a final decision on the proposal. If the proposal is approved, outreach may continue beyond that point to inform decisions on the administration of the program. In the Committee's July 2021 Progress Report, the workgroup identified three broad categories of individuals from whom it was important to solicit input:

- OSB and OJD groups
- External legal advocacy groups
- Public and community advocacy groups

The workgroup continues to believe that soliciting input from all of these groups is critical. To that end, the bar has continued the outreach strategy developed over the summer. Input has been received by the bar in several ways, and will be expanded throughout the fall.

Opportunities for Input

The OSB is welcoming public comments on the proposal at both the November 2021 and February 2022 BOG meetings. Additionally, the OSB has been receiving input on the proposal at the paraprofessionalcommittee@osbar.org email address for several months. These comments have been compiled by OSB staff and are available for review.

Surveys

The OSB has already sent out targeted surveys to two specific groups. The first is students and alumni of the two community college paralegal programs in Oregon. The second is judges and court staff. While both of these surveys invite broad input, the purpose of the student survey is to gauge interest in becoming an LP. The purpose of judicial survey is to gauge the level of difficulty courts currently have with unrepresented parties and to what extent those parties would benefit from consulting with LPs prior to appearance. In addition, the OSB will be completing a statewide survey and conducting targeted focus groups before the end of the year.

Direct Outreach

Over the past several months, Senior Judge Dan Harris has presented to the Oregon Judicial Conference, the State Family Law Advisory Committee, several OSB sections, and numerous other groups. The purpose of this outreach has been to inform these major stakeholder groups of the proposal and directly solicit suggestions and input. The comments he has received have been reported back to the Committee and incorporated into the draft proposal. This outreach will continue until the Supreme Court makes its final decision.

EVALUATING THE PROGRAM

The Committee had several discussions on how the OSB or the courts would evaluate the efficacy of an LP program after it is implemented. As has been discussed, there exists a well-documented access to justice gap, in particular in family law and landlord/tenant cases. While representation rates in these cases are low across the board, rates of representation are even lower for persons of color, rural residents, and low-income residents generally. The explicit goal of an LP program is to allow new opportunities to provide legal services to

Oregonians who are currently unserved by attorneys. Documenting whether or not this occurs is a critical metric in evaluating the program.

One framework for how this might be accomplished is contained in the report Assessing Improvements in Access to Justice[9] recently published by the National Center for State Courts.

To paraphrase the report, one important prerequisite to this evaluation is ensuring that Oregon courts are able to collect information in the case management system that will distinguish between attorney-represented, LP-represented, and self-represented parties. Based on initial conversations with the OJD, it appears that the current case management system would be able to accomplish this task. The OJD also has baseline statistics on the number of parties who are appearing in court without an attorney today. With this information in hand, it should be possible in the future to measure how many parties are using LPs and how many are remaining self-represented, and potentially evaluate different case outcomes for these different groups.

Additionally, the report recommends the development of user satisfaction surveys that could be distributed to court users who had retained the services of LPs at some point in the process. This could involve working directly with LPs to solicit feedback, or it could be a process by which a random sample of all court users are surveyed, to help determine the overall percentage who worked with an LP.

While specific recommendations regarding evaluating the program are beyond the scope of this Committee, members generally supported having a formal method of evaluating the success of the program.

ORGANIZATIONAL STRUCTURE

When the Futures Task Force recommended that the OSB develop a license for paralegals, the task force sought to balance three interests: protecting consumers, increasing access to justice, and cost-efficiency. With respect to cost-efficiency, the Task Force sought to take advantage of existing system-wide efficiencies within the OSB for the administration of a new license.

The Committee agrees that cost efficiency should be considered in development and administration of the LP program. To that end, the Committee envisions the following organizational structure for paraprofessional licensing.

SB 768, which passed into law earlier this year, expands the OSB's governing statute to allow for associate membership in the bar under ORS 9.241. It provides in pertinent part:

9 An Evaluation Framework for Allied Legal Professional Programs: Assessing Improvements in Access to Justice; State Justice Institute and National Center for State Courts; Andrea L Miller Ph.D., J.D., Paula Hannaford-Agor, J.D., Kathryn Genthon, M.S.; May 2021.

(3) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to ORS 9.210 to admit individuals with substantial legal education as associate members of the Oregon State Bar without taking the examination required by ORS 9.210. An individual admitted as an associate member under this subsection must meet all character and fitness requirements under ORS 9.220.

This change allows another class of membership administered and regulated by the OSB, pursuant to Supreme Court rules, rather than creating a separate, duplicative, licensing entity.

The proposed paralegal admission requirements include an educational component, experiential practice, and the character and fitness examination. Existing procedures for evaluating character and fitness of applicants for a lawyer license would be used to evaluate the character and fitness of applicants for the paraprofessional license. Character and fitness evaluations could be performed by OSB Admissions staff, and the BBX could oversee the character and fitness examination process, at least at the outset of program implementation. A new board may be created to provide oversight, when demand for the license exceeds the capacity of the BBX, and application fees can fund additional administrative costs.

With respect to the educational and experiential practice requirements, the Committee anticipates (at minimum) the development of a certification form to be used by the schools and lawyer supervisors. Whether additional oversight by a volunteer board would be necessary has yet to be determined. Creation of a volunteer board would result in increased administrative costs to support the work of the board. As noted above, however, depending on demand for the license, application fees could potentially fund these increased costs at some point in the future, as long as existing OSB Admissions staff and OSB operations could be leveraged to reduce overhead. These issues are still under consideration.

The paraprofessional regulatory framework includes compliance with mandatory CLE requirements and applicable rules of professional conduct, IOLTA certification, and malpractice liability insurance coverage. OSB staff are already responsible for administration of these requirements for lawyers, and the OSB has an existing procedural framework in place to do so. The Committee recommends adding the paraprofessional regulatory work to the existing disciplinary proceeding framework and other regulatory frameworks that currently exist for lawyers. By doing so, the unnecessary cost of duplicating an existing administrative framework is avoided. While OSB staff anticipate incurring additional costs for initial implementation (e.g., to reconfigure existing software and draft new rules), they do not anticipate a need for additional staffing once implemented. This organization framework would also allow for more consistent application of standards to similar situations faced by both groups of licensees.

The admission and regulation of licensed paraprofessionals within the existing OSB and Supreme Court regulatory frameworks would allow for comprehensive planning with respect to the provision of legal services to the public. A separate licensing entity, on the other hand, could inevitably result in conflict, on any number of issues of public policy and concern.

APPENDICES

Appendix A

Paraprofessional Licensing Implementation Committee (PLIC)
Admissions and Education Workgroup ("the Workgroup")
Framework and Recommendations for Licensed Paraprofessionals (LPs)
(November 2021)

Recommendations

Recommendation #1 - Standards of a Licensed Paraprofessional (LP)

A licensed paraprofessional should have a record of conduct that demonstrates a level of judgment and diligence resulting in competent representation in the best interests of their clients and that justifies the trust of those clients, adversaries, courts, and the public concerning the professional duties and obligations owed to each group.

Recommendation #2 - Oversight Through Volunteer Board

The Committee recommends that a board of volunteer lawyers, members of the public, and ultimately licensed paralegals should be created and charged with the duty and vested with the power and authority to:

1. Determine the eligibility of applicants for an LP;
2. Determine reciprocal jurisdictions for purposes of admission by motion under this LP program;
3. Establish a fee schedule for applicants for Licensed Paraprofessionals and other services;
4. Establish subcommittees, as appropriate, to perform its duties;
5. Delegate to any of its members, subcommittees, or administrator, all or any part of its duties and responsibilities under the LP program;
    a. The board may create an as needed advisory board, initially including some members of the PLIC, to oversee hearings of LPs; assess competencies of applicants, denials of LP applications and appeals of denials of applications of LPs; and research and provide recommendations for future changes to the LP program.
    b. Upon approval of the proposed LP Program, the board should add a paralegal or LP to provide perspective and comments on issues affecting the LP program that are germane to character and fitness reviews.
    c. The board should add a paralegal or LP to the MCLE Review Board to assist with paralegal CLE review and approvals germane to LP practice.
6. Establish a budget, expend funds, enter into contracts and retain the assistance of experts and other personnel when deemed necessary for the efficient discharge of its duties;
7. Oversee and administer LP Admissions; and
8. Promulgate, amend and revise regulations relevant to the above duties to administer the LP program. The policies and procedures of the board should be consistent with these Recommendations.

Recommendation #3 - Minimum Eligibility Qualifications for LP Applicants

1. 18 years of age or older;
2. Meet the moral character and fitness standards to practice law under the LP program;
3. Submit a Paraprofessional License application and pay the appropriate fee, as set forth by the OSB Board of Governors, including a portfolio containing a body of work for assessment of the competency of each candidate in ethics, scope in the specific practice area seeking endorsement, and requirements to refer client outside of that scope[1]. The portfolio could be used by the admissions board to evaluate the applicant's:
    a. Ability to competently apply the fundamental principles of law and application;

[1] A summary of Portland Community College's Paralegal Portfolio Program is included as Attachment B and is the recommended method for assessing the LP candidates' competencies. This recommendation is similar to the recommendations currently being proposed for Oregon State Bar Attorney applicants, instead of a Bar Exam. The Admissions & Education Workgroup also considered a Bar-type exam and recommends against the creation or use of an examination for the reasons outlined previously.

b. Ability to competently undertake fundamental legal skills commensurate with being a licensed paraprofessional, such as legal reasoning and analysis, recollection of complex factual information and integration of such information with complex legal theories, problem-solving, and recognition and resolution of ethical dilemmas;
c. Ability to:
    i) Communicate honestly, candidly, and civilly with clients, licensed paraprofessionals, attorneys, courts, and others;
    ii) Conduct financial dealings in a reasonable, honest, and trustworthy manner;
    iii) Conduct oneself with respect for and in accordance with the law;
    iv) Demonstrate regard for the rights, safety, and welfare of others;
    v) Demonstrate good judgment on behalf of clients and in conducting one's professional business;
    vi) Act ethically, diligently, reliably, and punctually in fulfilling obligations to clients, adversaries, courts, and others;
    vii) Comply with deadlines and time constraints;
    viii) Maintain confidentiality of client data.
d. Understand and Agree to:
    i) Comply with the requirements of applicable state, local and federal laws, rules, and regulations; any applicable order of a court or tribunal; and the Rules of Professional Conduct.
    ii) Comply with the MCLE requirements, including Ethics, Access to Justice, and Abuse Reporting;
    iii) Comply with the requirements to maintain IOLTA accounts, as appropriate;
    iv) Comply with the requirements to carry malpractice liability insurance;
    v) Comply with the requirement to pay into the Client Security Fund;
    vi) Comply with prohibitions regarding fee sharing;
    vii) Comply with the requirements to use written agreements, mandatory disclosures, and referrals to licensed attorneys for services exceeding the scope of licensing authority;
    viii) Comply with the requirements that a person shall not represent they are a licensed paraprofessional or are authorized to provide legal services without holding a valid license according to the LP program.

Recommendation #4 – Partnership with the Community Colleges and the Oregon State Bar

The Admissions & Education Workgroup has had multiple conversations with community colleges within the state to determine if they would:
1. Be interested in collaborating with the Oregon State Bar to develop a statewide education program to that would be available to a broader audience across the state, offering three different education tracks to the various applicant types.
2. The Admissions & Education Workgroup, with input provided by the community colleges, recommends three education tracks be considered as part of the partnership with the Oregon State Bar:

a. The **Standard Application Education Track** (or also referred to as a CTE program) outlined in Recommendation #4A below would be tailored around Recommendation #5 below through a degree or certificate program;
b. The **Education Waiver Application Track** (or Workforce Development of Incumbent Workers) outlined in Recommendation #4B below, providing non-credit courses in the twenty identified topics for the **Education Waiver Applicants** (for highly experienced paralegals and JD applicants), detailed in Recommendation **#**12 below.

In conversations with the Community Colleges Partners, this could be offered as a bundle of 20-hour or two 10-hour track of non-credit courses but the details of such a proposal are yet to be determined and subject to approval of these recommendations.

c. The **Mandatory CLE Requirements for Renewal of License of LP** Track (through Workforce Development) outlined in Recommendation #4C below, providing non-credit continuing legal education courses for LPs to renew their licenses.

Recommendation #4A – Standard Application Education Track (or also referred to as a CTE program)] as a first education track.

1. The paralegal programs offering the additional Standard Education Application Track must be institutionally accredited by a regional educational institution, such as the Northwest Commission on Colleges and Universities, which oversees accreditation for colleges and universities in Oregon and Washington.
2. If the Applicant obtained their degree from a school in a foreign jurisdiction, as defined by ORS 9.242(2), the board overseeing admissions shall evaluate whether the Applicant's education program meets this requirement. To assist in this determination, the board may require that the Applicant's educational program be assessed by a commercial evaluator of the board's choosing and at the Applicant's expense.
3. Standard Application Education Track Programs offered out-of-state, such as in Washington, California, or Idaho, may not offer the Oregon-specific content (such as IOLTA account administration or mandatory elder abuse reporting), and those applicants may need to complete the 20 CLES required for Education Waiver applicants but defer to the OSB to determine those guidelines.

Recommendation #4B – *Education Waiver Application Track* through a Partnership with Oregon Community Colleges (Workforce Development of Incumbent Workers)

Education Waiver Application Track offered through a Partnership with Oregon Community Colleges (Workforce Development of Incumbent Workers) and the Oregon State Bar to provide the recommended 20 courses for those applicants who do not meet the Standard Application education requirements.

The Futures Task Force recommended an exemption for JD applicants and those highly experienced paralegals who are extremely competent and skilled because many paralegals did not follow the standard path to become a paralegal offered by an associate degree in paralegal studies. The exemption outlined by the Futures Task Force took this into account.

The Education Waiver Pathways exempts those specific applicants from the degree requirements in Recommendation #5. However, after careful consideration the Admissions & Education Workgroup identified 20 course topics with which these applicants should be competent. Because these applicants may not have received training on these topics through formal education, and may not have been exposed to these issues in their supervised training, the Admissions & Education Workgroup felt exposure to these topics was vital enough to be required of all applicants.

Recommendation #4C – Continuing Legal Education

In addition to the usual and customary MCLE programs offered to attorney-members of the Bar, the Admissions & Education Workgroup also recommends a partnership between Oregon community colleges and the Oregon State Bar to offer the CLEs necessary for LPs to renew their licenses every three years. One option for offering CLEs to LPs could be modeled after the Florida Bar's Florida Registered Paralegal (FRP) program as either part of the membership benefits of licensure or as part of a stand-alone CLE program.

A summary of the Florida Bar's FRP CLE Program provided by Florida Bar, Programs Division Assistance Director, Francisco-Javier P. Digon-Greer, Esq is included in Attachment C, at the end of this Appendix.

Recommendation #5 – Standard Eligibility Pathway; Minimum Education Requirements

The Standard Eligibility Pathway requires an education sufficient to ensure legal education training in the subject matter necessary to provide adequate legal services as outlined in the Futures Task Force Recommendation No. *1.2*[2]. To meet this standard, the applicant must have an Associate Degree or higher in paralegal studies from an U.S. institutionally accredited paralegal program.

Applicants seeking licensure though the Standard Pathway are still required to obtain the Minimum Experience Requirement of 1,500 hours, with 500 hours in Family Law and 250 in Landlord/Tenant law. The Committee recommends that 750 hours of this requirement could be completed as part of the Standard Education Application through a structured practicum or internship program offered by a paralegal program, provided the students are

[2] "*An applicant should have an associate's degree or better and should graduate from an ABA-approved or institutionally accredited paralegal studies program, including approved coursework in the subject matter of the license. Highly experienced paralegals and applicants with a J.D. degree should be exempt from the requirement to graduate from a paralegal studies program.*"

supervised by the program faculty with routine feedback and assessment. Verification of the student's competency and experience is verified in much the same manner as the Attorney verification, using the Attorney Certification Template as a basis for such an assessment.

Recommendation #6 - Minimum Paralegal Experience

The purpose of the paralegal experience is to ensure the competency of the Licensed Paraprofessional applicant.

1. "Minimum paralegal experience" or "minimum work experience" is full-time employment of at least one year, or a minimum of 1,500 hours of "substantive paralegal experience" of which a majority of the time is under the direct supervision of an attorney licensed to practice in Oregon or as part of a paralegal program practicum or internship as outlined in Recommendation 5above. Part-time employment is calculated on a pro-rata basis.
2. "Substantive Paralegal Experience" is the performance of substantive work performed a majority of the time that requires knowledge of legal concepts and processes that are customarily, but not exclusively, performed by a lawyer, is not administrative and is supported by a lawyer education, certification or training in the legal profession.
3. The paralegal may be contracted with or employed by a lawyer, law office, governmental agency, or other entity; or may be authorized by administrative, statutory, or court authority to perform substantive work, such as that of a court facilitator outlined by ORS 3.428. For use in meeting the experience requirement, the 1,500 hours of substantive paralegal experience must be obtained within three years preceding the license application date
4. The substantive paralegal experience shall be verified through certification by the supervising attorney(s). Each attorney certification must include a declaration verifying:
    a. The specific dates of employment;
    b. The work performed is not administrative;
    c. The work performed would otherwise be performed by an attorney;
    d. A list of the paralegal's substantive duties;
    e. Whether the position was full time or part-time;
    f. The average number of hours worked per week;
    g) The duration of employment;
    h) The majority of the time was spent performing substantive paralegal duties; and
    i) The attorney is in support of the individual's application and verifies the Applicant's competency in the practice area seeking Endorsement. See Attachment A –Attorney Certification of Substantive Paralegal Experience [Template].
    j) Tiered Endorsements
        i. For applicants seeking Endorsement as a Document Preparer (with no carve-out for providing legal advice), the 1,500 hours of substantive paralegal experience described previously is adequate, with Attorney Certification.

ii. For applicants seeking Endorsement in Family Law, 1/3 of the required 1,500 hours, or 500 hours, must be obtained within the subject matter seeking Endorsement.

iii. For applicants seeking Endorsement in landlord/tenant and evictions, 1/6 of the required 1,500 hours, or 250 hours, must be obtained within the subject matter seeking Endorsement.

iv. Experience within the subject- matter seeking Endorsement may be verified through certification by the supervising attorney as outlined above or as follows:

1. Observation of court proceedings in the subject matter seeking Endorsement such as first appearances, *ex parte* proceedings, etc., may account for no more than 100 hours of the required experience hours.

    i. The Applicant must locate a willing and respected member within the legal community to debrief about what they observe within any court proceedings or process. The legal professional may be a judge, attorney, paralegal, court facilitator, law clerk, or similar. The legal professional must be willing and able to document their discussions with the Applicant about the court observations and confirm the substance is pertinent to the subject matter endorsement.

        a. Both the Summary by the Applicant and verification by the legal professional must accompany the court observation form.

    ii. Observation experience must include a prescribed form verified by

        a. Self-certification by declaration of the Applicant evidencing the dates and duration of the proceedings observed, the parties to the proceeding, the judge overseeing the proceeding, and the type of proceeding being observed for verification purposes.

        b. Be signed by a court official authorized to verify the attendance, such as the Judicial Court Clerk, Trial Court Administrator, Court Facilitator, or other authorized court staff confirming the date, time, and court proceeding in attendance.[3]

2. Work with a pro bono or low bono experience verified by the supervising attorney or agency or any other paid or unpaid positions with the same experience requirements.

3. "Substantive Educator/Trainer Experience" is the research and publication of authoritative articles, manuals or related educational/instructional material, online or in-person instruction

[3] The Admissions & Education Workgroup requested outreach to the Court Facilitators and Trial Court Administrators to elicit feedback and interest in drafting language and possible enlistment of Court Facilitators to train and educate LPs on court forms for Family Law matters. Initial responses from this group in support of this proposal.

and/or the performance of substantive work performed a majority of the time that requires knowledge of legal concepts and processes that are customarily in the area seeking endorsement, but not exclusively, performed by a lawyer, is not administrative and is supported by a lawyer education, certification or training in the legal profession and certified by an attorney using the Attorney Certification of Substantive Paralegal Experience Form as a verification of same [Template].

Recommendation #7 – Attorney Verification of Paralegal's Substantive Experience

The Workgroup recommends the Bar research and draft ethical requirements and guidelines to ensure attorneys are ethically bound to respond to a request to verify a paralegal's experience, just as they respond to a client's request for their file when they terminate the attorney-client relationship. An exception can and should be carved out for a claim of incompetence. Still, the goal would be to ensure attorneys cannot withhold their verification without cause, for instance, if they were angry that the paralegal applied for the license. For that reason, the Committee also recommends an ethics analysis or opinion outlining an attorney's obligations to respond to a request for verification of substantive paralegal experience.

Recommendation #8 - Potentially Ineligible Individuals or Conduct

The revelation or discovery of any of the following may be treated as cause for further inquiry before the Board determines whether the Applicant possesses the character and fitness to practice law under the LP program:

1. Attorneys who have been disbarred, suspended for disciplinary reasons, or who resign Form B;
2. An individual disciplined for practicing UPL in any jurisdiction;
3. An individual convicted of a crime, the commission of which would have led to disbarment in all the circumstances present, had the person been licensed to practice law in Oregon at the time of conviction.
4. Unlawful conduct that reflects adversely on the Applicant's character and fitness;
5. Academic misconduct;
6. Making or procuring any false or misleading statement or omission of relevant information in connection any bar application or any testimony or sworn statement submitted to any licensing or certification board;
7. Misconduct in employment;
8. Acts involving dishonesty, fraud, deceit, or misrepresentation;
9. Actions that demonstrate a disregard for the rights or welfare of others;
10. Abuse of legal process, including the filing of vexatious or frivolous lawsuits or the raising of vexatious or frivolous defenses;
11. Neglect of financial responsibility;
12. Neglect of professional obligations;
13. Violation of an order of a court;

14. Conduct that evidences current drug or alcohol use to such an extent that it could impair the ability to practice law under the LP program;
15. Denial or delays of admission to the bar in another jurisdiction on character and fitness grounds; or
16. Adjudicated disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction with a final decision resulting in an action or finding against the legal professional.
17. Other conduct that evidences an inability to practice law under the LP program.

Recommendation #9 - Factors Considered for Present Character

In reviewing any prior conduct, if the conduct is identified necessitating additional inquiry by the Board as outlined in the previous section, then the following factors shall be considered potentially mitigating or aggravating regarding an applicant's present good moral character or fitness to practice law under the LP program:

1. Applicant's age at the time of the conduct;
2. Length of time since the conduct occurred;
3. Rehabilitation/character reformation:
4. Seriousness of the conduct;
5. Factors or circumstances underlying the conduct;
6. Cumulative nature of the conduct;
7. Candor in the admissions process; and
8. Materiality of any omissions or misrepresentations during the admissions process.

Recommendation #10 - Rehabilitation/Character Reformation

An applicant may assert rehabilitation by submitting evidence of one or more of the following:

1. Acknowledgment the conduct was wrong and has accepted responsibility for the conduct;
2. Strict compliance with the conditions of any disciplinary, judicial, administrative, or other order, where applicable;
3. Lack of malice toward those whose duty compelled bringing disciplinary judicial administrative or other proceedings against Applicant.
4. Full cooperation and candor in the admission process;
5. A commitment to conform with the standards of good character and fitness for the practice of law under the LP program;
6. Restitution of funds or property, where applicable;
7. Positive social contributions through employment, community service, or civic service;
8. Engagement with a qualified treatment provider or participation in a generally recognized treatment program that addresses the behavior or conduct that is

potentially disqualifying, and compliance with the recommendations of the qualified provider or recognized treatment program;
9. Recent conduct that demonstrates that the Applicant meets the essential eligibility requirements for the practice of law under the LP program and justifies the trust of clients, adversaries, courts, and the public;
10. Character evidence from people who know and have had the opportunity to observe the Applicant;
11. Other factors that support an assertion of rehabilitation.

Recommendation #11 - Nondiscrimination Policy

In determining good moral character and fitness to practice law under the LP program, the Board shall not discriminate against any applicant based on:
1. Race, color, or ethnic identify;
2. Gender or gender identity;
3. Sexual orientation;
4. Marital status;
5. Creed or religion;
6. Political beliefs or affiliation;
7. Sensory, mental, or physical disability;
8. National origin;
9. Age;
10. Honorably discharged veteran or military status;
11. Use of a trained service animal by a person with a disability; or
12. Any other class protected under state or federal law.

Recommendation #12 - Applicants Seeking Waiver of the Minimum Education Requirements

The Admissions and Education Workgroup worked diligently to identify a number of different Waiver Pathways that would meet the exception requirement of the Futures Task Force, taking into account the many different pathways an individual may have traveled to become a paralegal, such as military service, education in another discipline, working their way up in a law firm, etc. The Admissions and Education Workgroup felt strongly the education waiver pathways outlined below address the exemption that the Futures Task Force identified, as well as considering access and equity issues of the LP applicants.

The LP applicants must:
1. Pay an administrative fee approved by the Board, unless a fee waiver is approved pursuant to the LP program guidelines ultimately approved;
2. Complete the 20-Hour Mandatory Courses Requirement for Applicants Seeking a Waiver of the Minimum Education Requirements;
3. Meet the Minimum Experience Requirements, except as amended for the Highly Experienced Paralegal I – Education Waiver and the JD Degree – Education Waiver; and
4. Meet one of the following eligibility criteria:

a. **Highly Experienced Paralegal**: Applicant must meet one of the following criteria to qualify under this eligibility:
    i. **Highly Experienced Paralegal I – Education Waiver**. A paralegal with a minimum of 5 years or 7,500 hours of substantive paralegal experience," with a minimum of 1,500 hours having been obtained within the last three years under the direct supervision of an attorney licensed to practice in Oregon. For use in waiving the Minimum Education Component, the Substantive Paralegal Experience will be verified through the Certification of Substantive Paralegal Experience of Applicant Letter [Sample]requirements – see Attachment A at the end of this Appendix]. 750 of the required 1,500 hours may be obtained through a practicum or structured internship offered by a qualifying paralegal program as noted previously.
    ii. **Highly Experienced Paralegal II – Education Waiver.** A paralegal who has successfully passed one of the listed national paralegal certification exams, evidenced by submission of evidence of passing the exam, as well as evidence that the credential remains current and in good standing with the issuing organization on the date of application submission:
        1. The National Association of Legal Assistants (NALA) Certified Paralegal Exam® (CP) with current CP® Credentials
        2. The National Federation of Paralegal Associations' (NFPA)
            (a) Paralegal Advanced Competency Exam® (PACE) with current RP® Credentials; or
            (b) Paralegal Core Competency Exam® (PCCE) with current CRP™ credentials;
        3. The NALS Professional Paralegal (PP) Exam with current PP™ Credentials.
    iii. **Highly Experienced Paralegal III – Education Waiver.** A member of the active duty, retired, former military, or the reserve component of any branch of the US Armed Forces, qualified in a military operation specialty with a minimum rank of E6 or above in a paralegal specialty rate as a Staff Sergeant (Army and Marines), Petty Officer First Class (Navy), Technical Sergeant (Air Force), or higher as a supervisory paralegal within the noted branch of service as evidenced by the submission of one of the following:
        1. Enlisted Record Brief ("ERB");
        2. Affidavit from the military paralegal's commanding officer confirming the rank and title of the military paralegal;
        3. For retirees or veterans, submission of the Certificate of Release or Discharge from Active Duty form, also known as the DD214, setting forth the last rank held and all MOS (jobs), duration, etc.

b. **Admission by Motion – Education Waiver.** Applicants seeking Admission by Motion from other qualifying jurisdictions.
    1. For purposes of this rule, a "qualifying jurisdiction" means any other United States jurisdiction with mirror reciprocity for licensing paraprofessionals to practice law in the practice area of license offered through the LP program.

c. **Other Education – Education Waiver**[4]**.** Applicants who have obtained one of the following degrees from a U.S. institutionally accredited school:
   i. Applicants with a master's or Ph.D. in any course of study; or
   ii. Applicants with a bachelor's degree or higher in any course of study; or
   iii. Applicants with an Associate degree or higher in any course of study have obtained a paralegal certificate for an accredited institution.
   iv. If the applicant obtained their degree from a school in a foreign jurisdiction, as defined by ORS 9.242(2), the Board shall evaluate whether the applicant's education program meets this requirement. To assist in this determination, the Board may require that the applicant's educational program be evaluated by a commercial evaluator of the Board's choosing and at the applicant's expense. The Board will review the resulting analysis to assist in determining compliance with the LP program[5].

d. **J.D. Degree – Education Waiver**. Applicants who have obtained a J.D. Degree from an ABA-Approved law school and have a minimum of 6-months, or 750 hours, of Substantive Experience obtained in the last three years, the JD Applicant would not be required to have the 500 hours in Family Law or 250 in Landlord/Tenant for certification in those areas, the experience shall include one of or a combination of the following:
   i. Substantive paralegal experience as defined previously; or
   ii. Legal practice experience, including any activity related to the substantive legal work performed (whether paid, unpaid, pro bono, or low bono) and must be verified by a supervising attorney licensed to practice in Oregon, a Judge or agency overseeing the work, as demonstrated using the Certification of Substantive Paralegal Experience of Applicant Letter [Sample], Attachment A, as a template, modifying for the specific experience to be verified; or

iii. Observation of court proceedings in the subject matter seeking Endorsement such as first appearances, *ex parte* proceedings, etc., may account for no more than 100 hours of the required experience hours.
   iv. The Applicant must locate a willing and respected member within the legal community to debrief about what they observe within any court proceedings or process. The legal professional may be a judge, attorney, paralegal, court facilitator, law clerk, or similar. The legal professional must be willing and able to document their discussions with the Applicant about the court observations and confirm the substance is pertinent to the subject matter endorsement.

[4] Note, Portland Community College and Umpqua Community College's paralegal programs agree with the Futures Task Force Recommendation 1.2 requiring an exemption for the highly experienced paralegals and JD applicants, but disagree that other education consisting of a bachelor's degree, master's degree, and PhD in any subject should qualify an applicant for an education waiver. Portland Community College and Umpqua Community College agree that highly experienced paralegals (7,500 hours of experience or more) and those with J.D.'s should not have to complete the requisite education.

[5] This language is similar to that outlined for the assessment of foreign degrees for an attorney applicant.

1. Both the Summary by the Applicant and verification by the legal professional must accompany the court observation form.

v. Observation experience must include a prescribed form verified by
   1. Self-certification by declaration of the Applicant evidencing the dates and duration of the proceedings observed, the parties to the proceeding, the judge overseeing the proceeding, and the type of proceeding being observed for verification purposes.
   2. Be signed by a court official authorized to verify the attendance, such as the Judicial Court Clerk, Trial Court Administrator, or other authorized court staff confirming the date, time, and court proceeding in attendance[6]; or

e. Law clerk position as substantiated by the court; or
f. Work with a pro bono or low bono experience verified by the supervising attorney or agency or any other paid or unpaid positions with the same experience requirements.

Recommendation #13 - Fee Waivers and Needs-Based Scholarships

1. Fee Waivers for Qualified Veterans

To be eligible for a fee waiver, an applicant shall be applying for the LP program under the **Highly Experienced Paralegal III – Education Waiver** and shall be all the following:

a. An individual.
b. A resident of Oregon.
c. A veteran, as defined by the Highly Experienced Paralegal III – Education Waiver, or one of the following:
   i. A member of a reserve component of the U.S. armed forces or the national guard, as defined in 32 U.S.C § 101(3), who has served under honorable conditions for at least one year beginning on the member's date of enlistment in a reserve component of the U.S. armed forces or the national guard.
   ii. A person who was discharged from a reserve component of the U.S. armed forces or the national guard, as defined in 32 U.S.C. § 101 (3), if that discharge was an honorable discharge or a general discharge under honorable conditions.

2. Need-Based Scholarships

Applicants may qualify for need-based scholarship funds if they come from low-income backgrounds. Qualification is determined based on family income, and Applicant must be eligible under one of the eligibility pathways to receive any funds.

[6] Id.

3. Individuals who meet the criteria for the fee waiver or Needs-Based Scholarship under these provisions and request a waiver of their fees under the LP program shall be granted a waiver of those fees.

Recommendation #14 - Mandatory Course Requirements (in advance of a License) for Applicants Seeking Waiver of Minimum Education Requirements

This recommendation is in conjunction with Recommendation 4B to collaborate with the Oregon Community Colleges to provide these Bar approved courses.
All applicants seeking a waiver of the minimum education requirements must complete twenty (20) courses approved by the Board within twelve months before the application date.
Mandatory Course Subjects (in advance of a License):

1. Three (3) hours must cover Diversity, Equity and Inclusion, and/or Access to Justice. Three principles should guide access to Justice CLE credit:
    a. Promote access to justice by eliminating systemic barriers that prevent people from understanding and exercising their rights.
    b. Work to achieve fairness by delivering fair and just outcomes for all parties, including those facing financial, racial, gender, or equity disparities.
    c. Address systemic failures that lead to a lack of confidence in the justice system by creating meaningful and equitable opportunities to be heard. Access to Justice Courses should include activities directly related to the practice of law and designed to educate the licensed paraprofessionals to recognize, identify and address within the legal profession barriers to access to justice arising from both the provision of legal services and from the practice of law and should address each of the following topics:
        i. Age
        ii. Culture
        iii. Disability
        iv. Ethnicity
        v. Gender and gender identity or expression
        vi. Geographic location
        vii. Immigration status
        viii. National origin
        ix. Race
        x. Religion
        xi. Sex and sexual orientation
        xii. Socioeconomic status
        xiii. Veteran status
2. Two (2) hours of Legal Ethics (Oregon Code of Professional Responsibility);
3. One (1) hour must cover IOLTA account administration;
4. Two (3) hours must cover introductory Oregon Rules of Civil Procedures to include:
    a. Oregon State Specific Court Practice for Trial Court Rules including Uniform Trial Court Rules,
    b. Supplemental Local Rules; and

    c. Uniform Trial Court Rules;
5. One (1) hour must cover identifying Scope of License and Practical Identification of Mandatory Referral Scenarios;
6. One (1) hour must cover education on limited scope law practice management skills for newly licensed paraprofessionals;
7. One (1) hour must cover Mandatory Reporting of Child Abuse and Sexual Abuse;
8. One (1) hour must cover Mandatory Reporting of Elder Abuse;
9. One (1) hour must cover mental health/substance abuse in the legal profession; and
10. Remaining six (6) hours must cover the practice area seeking Endorsement and must be accredited by the Oregon State Bar Minimum Continuing Legal Education Program Manager, which should include CLES approved for attorneys or paralegals;

Recommendation #15 - Renewal of License

1. Continue to meet the moral character and fitness standards to practice law under the LP program;
2. Continue to comply with Professional Rules of Conduct;
3. Submit a Paraprofessional License Renewal application and pay the appropriate fee, as set forth by the OSB Board of Governors;
4. Submit the required number and type of Mandatory CLE Requirements (after Endorsement) for the Renewal of the LP every three years.

Recommendation #16 - Mandatory CLE Requirements for Renewal of LP Endorsements

All applicants seeking to renew their Endorsement in a specific practice area must complete 40 hours of continuing legal education every three years as approved by the Board.
Mandatory CLE Subjects (after Endorsement):

1. Three (3) hours must cover Diversity, Equity and Inclusion, and/or Access to Justice. Three principles should guide access to Justice CLE credit:
    a. Promote access to justice by eliminating systemic barriers that prevent people from understanding and exercising their rights.
    b. Work to achieve fairness by delivering fair and just outcomes for all parties, including those facing financial, racial, gender, or equity disparities.
    c. Address systemic failures that lead to a lack of confidence in the justice system by creating meaningful and equitable opportunities to be heard. Access to Justice Courses should include activities directly related to the practice of law and designed to educate the licensed paraprofessionals to recognize, identify and address within the legal profession barriers to access to justice arising from both the provision of legal services and from the practice of law and should address each of the following topics:
        i. Age
        ii. Culture
        iii. Disability
        iv. Ethnicity

v. Gender and gender identity or expression
vi. Geographic location
vii. Immigration status
viii. National origin
ix. Race
x. Religion
xi. Sex and sexual orientation
xii. Socioeconomic status
xiii. Veteran status

2. Four (4) hours of Legal Ethics (Oregon Code of Professional Responsibility);
3. One (1) hour must cover IOLTA account administration;
4. Two (2) hours must cover Updates to Oregon Rules of Civil Procedures;
5. One (1) hour must cover identifying Scope of License and Practical Identification of Mandatory Referral Scenarios;
6. One (1) hour must cover Mandatory Reporting of Child Abuse or Sexual Abuse;
7. One (1) hour must cover Mandatory Reporting of Elder Abuse;
8. One (1) hour must cover Mental Health/Substance Abuse in the Legal Profession; and
9. Remaining twenty-six (26) hours must cover the practice area seeking Endorsement and must be accredited by the Oregon State Bar Minimum Continuing Legal Education Program Manager, which should include CLES approved for attorneys or paralegals;
10. The Oregon State Bar should offer low or no-cost options for the paraprofessional licensees to access CLEs, like those provided to new attorneys or student learners, including access to bar books, PLF recorded CLEs, etc.
11. MCLE Program should offer the same access to free or low-cost CLEs available to new attorneys or student learners; access to bar materials; preferred rates such as those provided to attorneys with less practice experience.
12. MCLE to offer CLEs in the practice area-specific topics.
13. Applicants showing good faith efforts should be allowed to complete CLES within a 12-month window in advance of their application.
14. OSB to create an LP section and make available through Bar Membership.
15. LPs seeking renewal of multiple endorsements may use CLEs for duplicative license renewals, except the specific subject matter CLEs required for the renewal must be unique and specific to the endorsement content and fulfill the number required for this purpose.

Recommendation #17 – Metrics for Measuring Success of Program

1. Monitor and evaluate the program's success, including measuring the program using existing metrics, such as bar complaints and the number of client representations, case types, and impacts on those numbers.
2. Number of LPs and renewals.
3. Polls and assessments of end-users, LPs, and the Courts.
4. The end-user experience is crucial and should be considered at the beginning, middle, and end of the evaluation (number of individuals served for example).
5. Financial viability as a program and as a LP.

6. Measure impact of those accessing the legal services through a decrease in the number of self-represented individuals and other metrics as approved by the Bar.
7. Measure the success of LP service providers periodically through self-reporting to include financial and client representation case types and numbers and if the LP stops practicing in a specific practice area before the renewal period.

Attachment A: Sample Attorney Certification of Substantive Paralegal Experience [Template]

[Date]

Oregon State Bar
Attn. Admissions
PO Box 231935
Tigard, OR 97281-1935
admissions@osbar.org

Dear Board of Admissions

RE: Certification of [Applicant Name]'s Substantive Paralegal Experience for Application for Endorsement in [Document Preparation], [Family Law] or [Landlord/Tenant]

Dates of employment performing paralegal duties from [month/year] to [month/year].
Type of employment: [Full time] [Part time]
Average number of hours worked per week: _____
Confirmation that a majority of the Applicant's time was spent performing substantive paralegal tasks that would otherwise have been performed by an attorney and would not otherwise be considered administrative duties.

List the types of substantive duties performed by applicant. Please use as much room as necessary to detail the list of duties as appropriate). Some possible examples of substantive duties may include: draft and revise pleadings; draft motions and orders, draft parenting plans/financial disclosure statements; communicate with clients, counsel and court representatives, etc.

_____
_____
_____
_____

For subject matter specific experience verification, confirm:

1. The applicant meets the 1/3 hours of 1,500 hours requirement, or 500 hours, in Family Law; Yes _____ No _____
2. The applicant meets the 1/6 hours of 1,500 hours requirement, or 250 hours, in landlord/tenant or eviction matters? Yes _____ No _____

I support this individual's application and believe them to be competent in the practice area seeking Endorsement. I declare that all the information provided above is true and accurate.

Attorney name/Bar Number
Attorney Signature
Attorney email address
Attorney phone number

Attachment B: Summary of Capstone Assessment Program of Paralegal Students at Portland Community College

Assessment of Competency

The PCC paralegal program employs a variety of means to assess the efficacy of its program, and to provide program level snapshots of student learning. The primary methods used to assess program efficacy include a capstone portfolio project, exit surveys from graduating students, course evaluations for all courses, faculty assessments, six-month graduate employment surveys, occasional student surveys, and surveys of paralegal employers. The faculty in the program review the assessment information to inform changes to the program. The College reviews the assessment results to ensure that the program's students are achieving its stated outcomes.

Portfolio as a Means of Assessment

The PCC Experience

For many years, PCC used a complex and extensive portfolio project embedded in a required paralegal course to assess our degree and certificate outcomes. In a Portfolio project, students select artifacts to demonstrate competence in, or satisfaction of, specified program outcomes. For example, to demonstrate competence in legal analysis and writing, students would select an analytical legal document, or to demonstrate competence in technology, students would take and report industry-standard testing results that meet a defined level of accomplishment. The Portfolio also included a cover letter and resume, and a reflection essay intended to articulate the student's attainment of competence in each specified outcome area, and the relationship between the outcome area and the artifact selected. The completed portfolio was reviewed by the assigned faculty member for the student's grade and was then passed to a panel of legal professionals to review and comment upon in a brief one-on-one meeting with the student. If the student satisfied the panel that they demonstrated competence in almost all the outcome areas via the portfolio and the meeting, the student would pass the class and graduate from the paralegal program. Over the time PCC has implemented the portfolio, the outcomes measured have been reorganized and pared down, to reflect the reality that a portfolio project demands significant resources in both classroom time with students to explain and review the portfolio project, and volunteer and other assistance from the community to review the portfolios.

Currently, PCC uses a project, called a Capstone, which is a portfolio-based project, to measure four program outcomes. The Capstone includes a resume and cover letter to the student's dream position, a writing sample of 10-pages or less, and a reflective essay describing how the student attained the outcomes and the relationship between the artifact selected and the outcomes. The Capstone is scored by the class instructor based upon a specific set of performance criteria integrated into a scoring rubric. Students have opportunities to revise their work in response to feedback. Once the Capstone is finalized, students are matched with a legal professional (based on location or area of practice) who volunteers to review the Capstone and score it using specified criteria in a rubric. This

rubric asks the legal professional to rank the student as exceeding criteria, meeting criteria, or failing to meet criteria in the four specified outcome areas. The legal professional then meets with the student to discuss their Capstone, their career plans, and other informational topics. The legal professional then returns the completed scoring sheet to the program and student. The scoring of the Capstone by the instructor yields the course grade, but the Capstone determines whether the student can graduate the program or not - a successful Capstone must be completed and reviewed for a student to earn a passing grade in the class.

Portfolio Projects in General

The approach of mapping specified outcomes to artifacts and using the artifacts to demonstrate specific competencies is the essence of a portfolio-based assessment. The necessary ingredients for designing a defensible portfolio review include: (1) specific assessable outcomes; (2) a sufficiently limited number of specific outcomes to be reasonably assessable via the portfolio method; (3) trained portfolio reviewers with acceptable inter-rater reliability; (4) guidelines for participants on what items to include (a portfolio with more than 3-4 artifacts and a reflective essay will likely be too extensive to reasonably review); (5) scoring criteria to judge the quality of the portfolio; and (6) established standards of performance and examples (e.g. examples of high, mid, and low scoring portfolios).

Once these ingredients have been developed, implementing the portfolio process takes three primary steps. First, the authority must communicate with applicants about how to: (a) collect artifacts; (b) select artifacts and map them to specific outcomes; (c) write a reflective essay that explains their selection and how the artifacts demonstrate their satisfaction of the specific outcomes; and (d) format and submit the document. Next, the authority organizes the scoring of the portfolios using the scoring criteria and reviewers who have been shown examples and completed inter-rater reliability training. Finally, the authority collects the portfolio scoring sheets and portfolios from the reviewers.

The primary advantage of using a portfolio-based assessment is that this type of assessment is particularly well suited to assessing complex tasks with examples of different types of work. The primary disadvantage of using a portfolio-based assessment is the cost and time associated with training reviewers and reviewing the portfolios.

Attachment C: Summary of the Florida Bar's Florida Registered Paralegal (FRP) CLE Program

In 2008, the Florida Registered Paralegal Committee was created after the Supreme Court of Florida adopted Ch. 20 of the Rules Regulating The Florida Bar, which establishes the Florida Registered Paralegal Program, a voluntary registration for paralegals which also outlines how complaints are handled against a Florida Registered paralegal. To become a Florida registered paralegal (FRP), a paralegal must meet one of three eligibility requirements — education and training, certification by NALA or NAFP, or grandfathering through work experience alone. However, the grandfathering provision was designed to sunset in three years from its adoption, which was March 2011.

The **Florida Registered Paralegal Enrichment Committee** is charged with developing education programming, creating networking and social events to foster camaraderie among FRPs, and raising awareness of the FRP program and the benefits of FRP membership. The **Florida Registered Paralegal Enrichment Committee** is the committee that sponsors the monthly Continuing Education (CE). The Committee has a CE Subcommittee, and this Subcommittee is responsible for finding the CE speakers. Once they find the speaker, the administrator works with the speaker to get the course approved for TFB CE and set up all the logistics for the monthly CE currently offered via zoom. During the shutdown caused by COVID, the Subcommittee went virtual and now has a free monthly CE as a membership benefit for their FRP credential holders.

Francisco-Javier P. Digon-Greer, Esq.
Assistant Director, Programs Division
The Florida Bar

Attachment D: Examples of Action Items and Specific Tasks that could be used to assess the Competencies identified in the Futures Task Force Recommendation 1.2

- Access to Justice
    - Promote access to justice by eliminating systemic barriers that prevent people from understanding and exercising their rights.
    - Work to achieve fairness by delivering fair and just outcomes for all parties, including those facing financial, racial, gender, or equity disparities.
    - Address systemic failures that lead to a lack of confidence in the justice system by creating meaningful and equitable opportunities to be heard. Access to Justice Courses should include activities directly related to the practice of law and designed to educate the licensed paraprofessionals to recognize, identify and address within the legal profession barriers to access to justice arising from both the provision of legal services and from the practice of law and should address each of the following topics.
    - Access to Justice Courses should include activities directly related to the practice of law and designed to educate the licensed paraprofessionals to recognize, identify and address, within the legal profession, barriers to access to justice arising from both the provision of legal services and from the practice of law and should include each of the following topics[7]:
        - Age
        - Culture
        - Disability
        - Ethnicity
        - Gender and gender identity or expression
        - Geographic location
        - Immigration status
        - National origin
        - Race
        - Religion
        - Sex and sexual orientation
        - Socioeconomic status
        - Veteran status
- Enter a contractual relationship with an unrepresented party to provide advice and assistance in domestic relation proceedings.
- Assist clients in court-sponsored mediation.
- Consult with clients to understand their needs and goals and obtain facts relevant to achieving the client's objectives.
- Support clients in navigating the legal system by providing information and advice relating to the Family Law proceedings, including:
    - Explain the process and timelines;
    - Explain what to expect at a hearing;

[7] The Admissions & Education Committee feel strongly that the language incorporated into Recommendation 5(4)(xxii-xxiv) and (5)(xxvi-xxviii) is exemplary of the higher goals of access to justice and equity designed to not only identify systemic issues, but as a larger goal of changing the very system that creates it.

    - Help clients understand court scheduling, protocols and procedures, what to bring, and how to dress and act in court.
- Guide clients through court-specific procedures, requirements, and operations.
- Review documents and exhibits of another party, explain those documents and exhibits to clients, and communicate with another party or the party's representative(s) regarding the relevant forms and matters.
- Advise clients on other documents or pleadings that may be necessary to support the client's case and explain how such additional documents or pleadings may affect the client's case.
- Assist clients in understanding the relevance of facts in their case and organizing their evidence and paperwork to present to the court, including where and how to obtain necessary documents or records.
- Provide the clients with self-help materials prepared by an Oregon lawyer, approved by the Oregon State Bar, or approved by the court containing information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements.
- Advise clients to seek legal advice from an attorney if a licensee knows or reasonably should know that a client requires services outside of the limited scope of practice.
- Provide emotional and administrative support to the client in court.
- Provide second-hand trauma coping resources—the ability to refer to mental health specialists when necessary.
- Screen for domestic violence, child abuse, and elder abuse. Ability to refer to shelters and report abuse as required by statute.
- Promote access to justice by eliminating systemic barriers that prevent people from understanding and exercising their rights.
- Achieve fairness by delivering fair and just outcomes for all parties, including those facing financial, racial, gender, or other equity disparities.
- Address systemic failures that lead to a lack of confidence in the justice system by creating meaningful and equitable opportunities to be heard.
- Be able to appropriately identify and apply Oregon State Courts' rules and procedures, including process for submission of evidence, trial prep, and service requirements.
- Assist qualifying clients and their families who are victims of domestic violence, sexual assault, or stalking to understand their rights and procedure for terminating their tenancy or retaining possession following the perpetrator's removal.
- Assist qualifying servicemembers and their families to understand and apply for a stay of eviction proceedings.
- Assist clients to understand the process and timeline for recovering abandoned personal property post-tenancy.
- Assist clients in selecting and completing the forms and understanding the process and procedure to bring an action for recovery of personal property.
- Consult with clients to understand the client's needs and goals and obtain facts relevant to achieving the client's objectives.
- Support clients in navigating the legal system by providing information and advice relating to the landlord/tenant matters and eviction proceedings, including:

- Explain the process and timelines;
- Explain what to expect at a hearing;
- Help clients understand court scheduling, protocols and procedures, what to bring, and how to dress and act in court.

- Apply and identify elements of diminished capacity to client's unique situation.

Table 1 – Eligibility Pathways Summary

Pathway	Education, Certification, Licensure, or Military Experience	Substantive Paralegal Experience verified through Attorney Certification . A portion of the hours may also be obtained through a supervised practicum/internship overseen by a qualifying paralegal program	Education Requirements
Document Preparer *Limited in scope, No legal advice may be provided	Associates Degree or higher in Paralegal Studies from an institutionally accredited paralegal program	1,500 hours within the last three years	Competencies assessed by a Board or Committee under the Bar
Standard Endorsement in either Family Law or Landlord/Tenant	Associates Degree or higher in Paralegal Studies from an institutionally accredited paralegal program	1,500 hours within the last three years; 1/3 or 500 hours must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/tenant and evictions to receive that Endorsement	Competencies assessed by a Board or Committee under the Bar
Highly Experienced Paralegal I – Education Waiver	N/A	Five years or 7,500 hours, with a minimum of 1,500 hours within the last three years; 1/3 or 500 hours must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/tenant and evictions to receive that Endorsement	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar
Highly Experienced Paralegal II – Education Waiver	Have current paralegal credentials from a national paralegal association, including one of the following: CP, RP, CRP, or PP	1,500 hours within the last three years; 1/3or 500 hours must be in Family Law to receive that Endorsement or 1/6 must be in landlord/tenant and evictions to receive that Endorsement	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar
Highly Experienced	Active duty, retired, former military, or	1,500 hours within the last three years; 1/3 or 500 hours	20 hours predetermined courses in advance of

Paralegal III – Education Waiver	the reserve component of any branch of the US Armed Forces, rank of E6 or above in a paralegal specialty rate or higher as a supervisory paralegal.	must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/tenant and evictions to receive that Endorsement	Endorsement, with Competencies assessed by a Board or Committee under the Bar
Admission by Motion – Education Waiver	Licensed to practice in another jurisdiction	1,500 hours within the last three years; 1/3 or 500 hours must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/tenant and evictions to receive that Endorsement	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar
Other Education – Education Waiver	Applicants with one of the following: a Masters or Ph.D. in any course of study; or a Bachelor degree or higher in any course of study; or Applicants with an Associate degree or higher in any course of study + a paralegal certificate	1,500 hours within the last three years; 1/3 or 500 hours must be in Family Law to receive that Endorsement or 1/6 or 250 hours must be in landlord/tenant and evictions to receive that Endorsement	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar
JD Degree – Education Waiver	Applicants with a J.D. Degree from an ABA-Approved law school	Minimum 6-months or 750 hours of substantive experience should include substantive paralegal experience, as defined above; law clerk experience; court proceeding observation (self-certification of no more than 100 hours) or work in pro bono or low bono.	20 hours predetermined courses in advance of Endorsement, with Competencies assessed by a Board or Committee under the Bar

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THE SHELY FIRM, PC

Arizona ABS Entities, Paying Referral Fees, Legal Paraprofessionals, and Advertising Rule Changes

February, 2022

By Lynda C. Shely[1]
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I. 2021 Changes in the Regulation of Legal Practice in Arizona - Overview

The Arizona Supreme Court approved amendments to the Arizona Rules of Professional Conduct, Ariz. R.S.Ct. 42 ("ERs"), and Arizona Supreme Court Rules 31 and 33 ("Rules") that permit (among other things), *effective January 1, 2021*[2]*:*

a) A new category of licensed non-lawyer legal service provider (Legal Paraprofessionals)
b) nonlawyer ownership, investment in, and/or officers of law firms that become certified alternative business structures ("ABS")
c) fee-sharing with *anyone*
d) paying referral fees for client referrals

This article will focus on the ABS regulations and advertising rule changes, with the following brief summary about non-lawyer legal service providers in Arizona.

II. Legal Paraprofessionals (a quick explanation):

The "practice of law" in Arizona is governed by Arizona Supreme Court Rules 31 – 33. Only lawyers and others specifically authorized by those Rules may provide legal services – including representing clients before tribunals, giving legal advice, negotiating legal matters, and preparing legal documents for others.

Arizona authorized the licensing of "certified legal document preparers" ("CLDPs") to prepare legal documents in 2003. As of January, 2021 there are approximately 700 licensed CLDPs in Arizona. While the licensing of CLDPs was intended to assist with filling the need for modestly priced document services, CLDPs are not permitted to appear on behalf of customers in any court proceedings, they are not permitted to give legal advice, and are not authorized to work with lawyers or through law firms.

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[2] *The Advertising Rule changes are in Ariz. S.Ct. Order No.R-20-0030 (8/27/2020) and the ABS certification authorization, LP licensing authorization, and other amendments to the Arizona Rules of Professional Conduct are in Ariz. S.Ct. Order No. R-20-0034 (8/27/2020).*

To address the still unmet need for representation of individuals in certain court matters and administrative proceedings the Arizona Supreme Court approved licensing a new category of legal service providers – legal paraprofessionals ("LPs"). LPs will be licensed to provide legal services in certain family law, criminal law (not involving possible incarceration), civil justice court matters, and administrative proceedings.

The licensing criteria and code of conduct for LPs is located in the Arizona Code of Judicial Administration ("ACJA") 7-210, available on the Arizona Supreme Court webpage: https://www.azcourts.gov/Licensing-Regulation/Legal-Paraprofessional-Program .

Applicants must *first* pass the LP exams (one exam on core skills and one for each of the four practice areas) created by the Supreme Court. After successful completion of the exams, candidates may file an application with the Supreme Court's Board of Nonlawyer Legal Service Providers.

Eligibility requirements include *either* 7 years of law-related work experience or a variety of educational requirements, including law school, paralegal courses, undergraduate degree in a legal field, etc. along with character and fitness standards.

LPs may be employed by lawyers or work independently. This means that law firms may employ LPs to represent clients and the LPs do not need to be supervised by an attorney.

LPs may appear in court on behalf of clients – but only in the four practice areas noted above. LPs must maintain trust accounts and pay into a Client Protection Fund and must comply with the Rules of Professional Conduct.

LPs will be affiliate members of the State Bar of Arizona and subject to discipline investigation for violations of their code of conduct, including the Rules of Professional Conduct. Licensed LPs will be listed on the State Bar of Arizona website database.

Communications between LPs and their clients will be considered "privileged" according to Arizona Rule of Evidence 513.

**January, 2022 Update: Fifteen applicants who passed both the core skills and family law (13), criminal (1), or civil(1) exams were approved for licensure by the Board of Nonlawyer Legal Service Providers and are now listed on the State Bar of Arizona website as "LPs"! Court administration will continue to offer testing in the core skills, family law, civil law, and criminal law areas each month and is in the process of drafting the administrative law exam.*

III. The Regulatory Framework for ABS Certification

**February 8, 2022 Update: As of this month the Arizona Supreme Court has licensed 17 ABS applicants and the Committee approved one more for certification on February 8th.*

ABS	Practice Areas	Compliance Lawyer	Investors
Arete Financial Solutions (f/k/a MLR Professional Tax Services)	Accounting, tax, legal, financial planning	Edwin Ashton	Mary Lue Reha, Edwin Ashton, Esq., Kevin McCloud will each own 33%
BOSS Advisors (formerly Payne Huebsch, LLC)	Accounting, tax, legal	Michael Payne	Michael Payne, Esq. 50% and Chad Huebsch 50%(through Huebsch Financial LLC)
Bridgemont Group, ABS (formerly Wall and Olson, LLC)	Mass tort	Stephen Wall	Stephen Wall, Esq. 50% and Mark Olson 50%
eLegacy Law, LLC	Estate planning	Ryan Crandall	Ryan Crandall, Jeff Crandall, and John Powers (marketing company Veritas Consulting)
ElevateNext US, LLC	Corporate	Patrick Lamb	Affiliated with ElevateNext UK ABS; 100% owned by Elevate Services Inc.
Elias Mendoza Hill Law Group, LLC	Immigration	Elias Mendoza	51% Jim Hill and 49% Elias Mendoza, Esq.
Esquire Law Group, LLC	Personal injury and workers comp	Richard Stagg	Steiner, Greene & Feiner (FL lawyers) entity will own and will seek additional outside investment
Hive Legal, LLC	Estate planning	Peter Robinson	51% lawyer owned, 49% by Chris Brown (marketing professional)
KWP Estate Planning, LLC	Estate planning	Leah Ellsworth	Ellsworth, Esq. 50% and John Hagensen (Keystone Wealth Partners) 50%
LegaFi Law, LLC	Class actions	Camille Bass	Scott Hardy 85% (topclassactions.com), Camille Bass, Esq. 10%, Steve Williams 5%
Legal Help Partners, PLLC	Personal injury and mass tort	Stephanie Long	Long, Esq. 10%, Mark Rinehard 45%, Mark Sullivan 45%; Rinehard and Sullivan also own marketing business Key Contacts LLC
LZ Legal Services, LLC	Legal Zoom services	Don Bivens	100% owned by LegalZoom.com
Motion Law, LLC	immigration	Natalia Artemieva	100% nonlawyer owned by Andrew Haywood
Novus Lex, LLC*	Litigation?	Kelli Proctor	100% owned by Novus Law LLC (ediscovery and legal project management)
Radix Professional Services, LLC	General corporate and litigation	Jonathan Frutkin	33% Andy Kvesic (holding as nonlawyer even though AZ lawyer); 2/3 ownership will be held back for future investment

Singular Law Group, PLLC	Bilingual services for small businesses	Mary Ellen Juetten	Mary Ellen Juetten, Esq. 50% and 50% Allen Rodriguez (through Justice Forward and his company One400 will provide marketing)
Trajan Estate, LLC	Estate planning and financial planning	Kent Phelps	Kent Phelps, Esq. 50% and Jeff Junior 50% (through Leola Marketing)
Vantage Law Firm	Mass torts	Bob Goldwater	Paul Cody 22.4%, Megan Payne 22.4%, Steve Mingle 22.4%, Todd Kushman 22.4%, Bob Goldwater, Esq. 10%, Quinn DeAngelis, Esq. .25%

**Approved February 8th and pending Court licensing*

Another 14 applications for certification currently are pending.

A. What Is An ABS?

As noted above, the Arizona Supreme Court will continue to regulate who may practice law in Arizona. The definition of the "practice of law" has NOT changed. The preparing of legal documents, negotiating legal matters for others, representing someone in a tribunal, and giving of "legal advice" are all still the "practice of law" according to Arizona Supreme Court Rule 31.2.

Any entity that "includes nonlawyers who have an economic interest or decision-making authority as defined in ACJA 7-209 may employ, associate with, or engage a lawyer or lawyers to provide *legal services to third parties* only if" it is certified as an ABS and legal services are provided by someone authorized to do so. Arizona Supreme Court Rule 31.1(c).

A certified ABS entity is not authorized to practice law.

An ABS must employ someone who is an active member of the State Bar of Arizona, pursuant to Rule 31.1(c)(1), to practice law and supervise the ABS (the ABS "Compliance Lawyer").

The enabling regulations for ABS certification and the code of conduct are codified in the Arizona Code of Judicial Administration ("ACJA") 7-209. The regulations, application forms, and Committee information are available on the Arizona Supreme Court website: https://www.azcourts.gov/Licensing-Regulation/Alternative-Business-Structure .

An ABS is defined in ACJA 7-209A. as:

> a business entity that includes nonlawyers who have an economic interest *or* decision-making authority in the firm and provides legal services in accord with Supreme Court Rules 31 and 31.1(c).

The ACJA 7-209 provisions define both "decision-making authority" and "economic interest":

- "Economic interest" means (1) a share of a corporation's stock, a capital or profits interest in a partnership or limited liability company, or a similar ownership interest in any other form of entity, or

> (2) a right to receive payments for providing to or on behalf of the entity management services, property, or the use of property (including software and other intangible personal property) that is based, in whole or in part, on the firm's gross revenue or profits or any portion thereof. Notwithstanding the foregoing, "economic interest" does not mean employment-based compensation pursuant to a plan qualified under the Internal Revenue Code of 1986, as hereafter may be amended, or any successor rule, or discretionary bonuses paid to employees."

- "Decision-making authority" in an ABS means the authority, by operation of law or by agreement, to directly or indirectly:
  - Legally bind the ABS;
  - Control or participate in the management or affairs of the ABS;
  - Direct or cause the direction of the management and policies of the ABS; or
  - Make day-to-day or long-term decisions on matters of management, policy, and operations of the ABS.

Clarification: Note that while the definition of "decision-making authority" may seem to encompass the job descriptions of traditional law firm administrators/managers, it was not the intent of the Arizona Task Force on the Delivery of Legal Services that made these recommendations to include traditional law firm administrators. Again, the Task Force *did not intend to have traditional law firms required to apply to be ABS entities* if the law firm is not changing the responsibilities of a traditional firm administrator – even if the administrator has an ex-officio title of "officer" or "director" of the firm.

Caution: The definition of "economic interest" is fairly broad and could be interpreted to cover regular lending agreements where a bank or other lender loans money to a law firm in exchange for a percentage of fees. While the Task Force did not intend to extend ABS certification requirements to traditional litigation funding arrangements between law firms and lenders, there are not yet any advisory opinions or disciplinary cases interpreting the scope of the reach of the "economic interest" definition.

In addition to adopting the Supreme Court Rule changes to permit certification of ABS entities, the Court also amended several Arizona Rules of Professional Conduct, Ariz. R.S.Ct. 42 ("ERs") and other Supreme Court Rules to address these concepts. These changes include eliminating ER 5.4, the Ethical Rule that prohibited sharing legal fees with nonlawyers and giving equity/ownership interests in a law firm to a nonlawyer. A complete list of the Ethical Rules amended follows *infra*.

B. ***The ABS Review Committee***

The Arizona Supreme Court appointed a Committee on Alternative Business Structures, comprised of lawyers, judges, and nonlawyers. The Committee reviews applications for entities seeking ABS certification. Rule 33.1 and ACJA 7-209D.5 define the role and responsibilities of the Supreme Court's Committee in reviewing and making recommendations to the Court on certification of ABS entities and renewal of certification licenses.

The Committee's review of applications will consider regulatory objectives as set forth in ACJA 7-209E.2.a:

> (1) Decisions of the Committee must take into consideration the following regulatory objectives:
>
> (A) protecting and promoting the public interest;

(B) promoting access to legal services;
(C) advancing the administration of justice and the rule of law;
(D) encouraging an independent, strong, diverse, and effective legal profession; and
(E) promoting and maintaining adherence to professional principles.

(2) The Committee shall examine whether an applicant has adequate governance structures and policies in place to ensure:

(A) lawyers providing legal services to consumers act with independence consistent with the lawyers' professional responsibilities;
(B) the alternative business structure maintains proper standards of work;
(C) the lawyer makes decisions in the best interest of clients;
(D) confidentiality consistent with Supreme Court Rule 42 is maintained; and
(E) any other business policies or procedures do not interfere with a lawyers' duties and responsibilities to clients.

Note that each ABS application must explain how the applicant will satisfy one or more of the "regulatory objectives."

Clarification: The ABS Committee may request to see an applicant's proposed policies and procedures, Bylaws, and Operating Agreement to assure the applicant is contemplating sufficient structures to conform with the regulatory objectives. Applicants should anticipate this request and create appropriate employee manuals and policies to confirm that lawyers will be able to provide legal services in conformity to their obligations under the Rules of Professional Conduct and that nonlawyers will be trained in those ethical obligations as well as restricted in their access to confidential client information.

C. ***ABS Application Disclosures***

To apply for certification as an ABS entity in Arizona that provides legal services, four applications must be submitted and are available on the Arizona Supreme Court website:

- an ABS application describing the business and its services,
- a Designated Principal for the ABS,
- a Compliance Lawyer application, and
- applications for each person or entity that fits the definition of an "Authorized Person."

The initial ABS application must be completed online on the Arizona Supreme Court website. Then individual links are sent to each "authorized person," "designated principal," and "compliance lawyer" to complete their own online forms.

There also is an application fee, as listed in the ACJA 7-209.

Note that while an ABS applicant does not need to form the business entity prior to filing an application for certification, the applicant must provide at least draft documents, explaining how the applicant anticipates forming the business entity, if approved. The business entity does not have to be an Arizona corporation/LLC/PLLC, etc.

Note also that applicants SHOULD NOT advertise ABS services prior to certification!

ACJA 7-209 will require that each application for ABS certification disclose:

- Every person with decision-making authority in the ABS *or* anyone (including an entity that holds the interest) holding a 10% or more "economic interest" in the ABS (collectively "authorized persons").
- All business affiliations with parent companies, officers, directors, etc. and all subsidiaries operating in the state.
- The "compliance lawyer" designated to be responsible under ER 5.3(d) for ABS compliance with all rules and regulations.
- Whether or not the ABS is covered by professional liability insurance.
- An entity representative and statutory agent
- Letters of good standing from the Arizona Corporation Commission.
- That the entity meets the "objectives" listed in Rule 33.1(b)(assuring ethical requirements for lawyers and legal clients).

Applicants should anticipate being asked for resumes for each "authorized person" as the Committee has expressed an interest in learning the business backgrounds of the individuals who may be making decisions for the ABS.

The Committee "shall" recommend denial of an ABS application for a number of reasons set forth in ACJA 7-209E.2.d, including if any authorized person or the entity has:

- Material misrepresentations or omissions in the application
- Felony convictions
- Convictions of a misdemeanor involving legal services
- Disbarred lawyers, individuals denied admission in any state ,and individuals currently suspended from the practice of law in any state
- Other professional license discipline "relevant" to ABS licensure
- Civil liability or court rulings involving misrepresentation, fraud, theft, or conversion
- Violations of any court orders
- Business record of conduct involving dishonesty or fraud

The Committee's recommendation to deny an application is appealable.

Clarification: While the application will require the disclosure of only those individuals (lawyers and nonlawyers) who have decision-making authority *or* hold an economic interest of 10% or more, a law firm that will have *any* nonlawyer ownership (even less than 10%) must apply for ABS certification. For instance, a law firm that wants to give its paralegal a 1% equity interest in the firm must apply to be an ABS, but the application will not require that the paralegal be listed as an "authorized person" because the paralegal will have less than a 10% interest.

Even if a nonlawyer has less than a 10% ownership interest (and therefore does not need to be disclosed on the ABS application), firms still should conduct robust due diligence of all potential equity owners, to assure that they meet the ACJA7-209 criteria listed above.

D. ***ABS Compliance Attorney***

Every certified ABS must designate an Arizona "compliance lawyer." Rule 31.1(c)(1).

The compliance lawyer must be at least an employee or manager of the ABS and a member in good standing with the State Bar of Arizona.

The compliance lawyer must "possess credentials and experience in the legal field to ensure that the ethical obligations, protection of the public, and standards of professionalism are adhered to." (ACJA 7-209F.3.a.) The current ABS application for Compliance Lawyers does not require a specific number of years of experience for the Compliance Lawyer but applicants should anticipate that a designated Arizona Compliance Lawyer needs sufficient familiarity in their prior jobs to demonstrate supervisory and management skills.

The compliance lawyer will be responsible under revised ERs 5.1 and 5.3 and ACJA7-209F.3.b for:

- Appropriately supervising nonlawyers in the ABS to assure compliance with the ERs and ABS Code of Conduct;
- Establishing policies and procedures in the firm to, among other things, protect client confidential information and avoid conflicts of interest
- Ensure all "authorized persons" in the ABS comply with the Code of Conduct
- Notify the State Bar if the compliance lawyer ceases to serve as the compliance lawyer and/or of any facts that the compliance lawyer reasonably believe demonstrate a violation of the regulations
- "prevent nonlawyers in a firm from directing, controlling, or materially limiting the lawyer's independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent." ER 5.3(a)(1)(*see attached full text of Rule).*

Clarification: While the Rules do not *require* that the Arizona Compliance Lawyer have an ownership interest in the ABS, it seems advisable that the Compliance Lawyer have some equity or at least contractual authority in the ABS, because an employee of a firm may not have sufficient authority within the entity to enforce the policies and procedures required under the Rules. It is unclear whether a lawyer may be the "Compliance Lawyer" for more than one ABS, but if a lawyer was, presumably client conflicts would be imputed between the two firms.

Operating Agreements and ABS Company Policy Manuals should at least identify that the Compliance Lawyer will be the ultimate authority for decisions regarding clients, legal services, and case management.

E. ***ABS Code of Conduct***

The ABS Code of Conduct is set forth in ACJA 7-209K. and applies not only to the entity ABS but also is the responsibility of all lawyers who are members of the ABS. The Code includes:

- Complying with all ABS certification requirements
- Avoiding conflicts of interest under the Rules of Professional Conduct
- Not taking any action "that interferes with the professional independence of lawyers or others authorized to provide legal services"
- Ensure legal services are provided diligently
- Refrain from misleading clients, courts or others
- Comply with ER 1.15 and Rule 43 regarding safeguarding property

- Maintain financial viability or begin an orderly wind-down
- "maintain effective governance structures, arrangements, systems, and controls to ensure" everyone complies with the Ethical Rules.

F. *ABS Discipline*

Complaints about ABS violations of the Code of Conduct will be investigated by State Bar Counsel, with recommendations for sanctions going to the Attorney Probable Cause Committee of the Supreme Court.

Hearings on misconduct will be conducted by the Presiding Disciplinary Judge and discipline imposed by the Supreme Court, the Presiding Disciplinary Judge, Hearing Panels, or the Probable Cause Committee.

Sanctions for violations of the Code of Conduct include: revocation or suspension of the ABS license, reprimand, admonition, probation, and monetary penalties. ACJA 7-209H. Those are the sanctions against the ABS entity, but separate violations may be found against the Compliance Lawyer for either violations of the ACJA provisions or the Rules of Professional Conduct.

IV. 2021 Ethical Rule Changes in Arizona Permitting Fee Sharing and Referral Fees

A. Amendments to the Rules of Professional Conduct

Regardless of whether a lawyer will work in an ABS or in a traditional law firm, many of the Arizona Ethical Rules changed in 2021.

Here is a summary of the changes:

- ER 1.0 – Terminology – Amended to define a "firm" and other clarifications for business transactions with clients.
- ER 1.5 – Fees – Amended paragraph (e) regarding fee sharing among lawyers in different firms.
- ER 1.6 – Confidentiality - Added Comment 22 language to assure confidentiality preserved in an ABS
- ER 1.7 – Conflicts of Interest – Added new paragraph (c) specifying that law firms with any common management or ownership (of 10% or more owners) may not represent adverse parties when party is asserting a "claim" against the other party.
- ER 1.8 – Conflicts - Added new paragraph (m) regarding disclosure of financial interests in firm transactions (to clarify that if a legal client is referred to another professional within the ABS the lawyer may receive a financial benefit from those other services being provided to the client and must obtain an ER 1.8(a) waiver).
- ER 1.10 – Imputed Conflicts - Conflicts of interest within an ABS are imputed to all lawyers and nonlawyers (and vice versa) unless they can be screened for a personal interest conflict; Added new paragraph (f) regarding nonlawyer personal interest conflicts are not imputed to entire firm unless the nonlawyer is an owner/partner/manager.

- ER 1.17 - Sale of Practice - Amended to clarify the necessary client disclosures and how fees cannot be increased to pay for the purchase
- ER 5.1 – Supervisory Lawyers – Revised duties of lawyers who are owners, managers or supervisors to establish internal controls and level of supervision needed with firms over other lawyers
- ER 5.3 – Responsibilities Regarding Nonlawyers (*full text of revised Rule is attached)* – Revised specific duties to supervise nonlawyers in a firm including adding paragraph d) requiring firms to designate one responsible lawyer if firm has nonlawyer
- ER 5.4 – DELETED (professional independence of a lawyer)
- ER 5.7 – DELETED (law-related services)
- ER 7.1 – Advertising – Amended to move into Rule requirements on: 1) disclosing firm name and contact information from ER 7.2; 2) "Certified Specialist" requirements from ER 7.4; and 3) comments related to firm names from ER 7.5
- ER 7.2 – DELETED (requirements for "contact information" and firm name moved to ER 7.1)
- ER 7.3 – Solicitation – Amended to define "solicitation," deletes the "ADVERTISING MATERIAL" disclaimer and filing requirements for written solicitations, and adds a new category of individuals that can be directly solicited in person or by phone for business people who regularly hire lawyers for business legal services.
- ER 7.4 – DELETED (requirements for "certified specialists" moved to ER 7.1)
- ER 7.5 – DELETED (explanatory comments about firm names moved to ER 7.1)
- ER 8.3 – Reporting Misconduct – added reporting misconduct of ABS entities and LPs.

B. Advertising Rule Changes That Apply to ALL Arizona Law Firms

As noted above, the Rules regarding advertising, ERs 7.1 through 7.5, changed January 1, 2021. These changes apply to all lawyers and law firms – not just ABS entities. The Rules were consolidated, with only amended ER 7.1 and revised ER 7.3 on solicitation remaining. The changes will be significant, with respect to permitting the payment of referral fees – to anyone. The following are some specific topics to consider.

1. Still no false or misleading communications

Lawyers are responsible for all advertising, websites, and marketing. ER 8.4(a). This means a lawyer cannot have someone else do something that the lawyer could not do directly. The Arizona Rules still provide:

- No "false or misleading" advertising. ER 7.1
- All advertising must include the firm name and contact information. ER 7.1(c)
- Firm names must not be misleading. ER 7.1
- Lawyers may identify themselves as "certified specialists" only if they *are certified*. ER 7.1(b).

2. No direct solicitation of potential clients (with some exceptions)

Amended ER 7.3 includes a definition of "solicitation" and continues to prohibit direct, in person or real time communication with potential clients except:

1) friends;
2) family;
3) former/current clients/business associates;
4) other lawyers; and/or
5) (NEW) businesses that regularly use the legal services offered by the lawyer.

Solicitation letters sent to specific individuals/homes do NOT need to be marked "advertising material" and DO NOT need to be sent to the State Bar anymore.

Cautions:

- Lawyers CANNOT have referral sources solicit in person if the lawyer could not. *See ER 8.4(a)*
- There is even some ambiguity about whether a referral source may solicit the source's own friends and family (since they are not the *lawyer's* friends or family). Caution referral sources, including existing clients, law firm employees, and others to refrain from soliciting strangers in person (or by telephone or real time electronic means) – at all.
- Lawyers may pay anyone for referrals but be extremely careful to warn the referral sources about the restrictions on in-person solicitation, truthfulness in statements about the lawyer, and asking the potential clients to contact the lawyer (not the other way around).
- Lawyers need to explain to referral sources that the mere fact that a potential client speaks with the lawyer is "confidential" information under both ER 1.6 and ER 1.18, which means that lawyers cannot pay referral sources for a specific new client *unless the client consents to the disclosure of that information to the referral source.*
- Again, lawyers must obtain client consent to disclose that the client has contacted the lawyer. This means at least getting client consent to send "thank you" notes to the referral source (with or without a referral fee!).

3. Lawyers may pay referral fees – to anyone – but be careful

ER 5.4, which prohibited sharing legal fees with nonlawyers, is deleted. ER 7.2(b), that previously prohibited giving "anything of value" to anyone for recommending a lawyer's services or referring someone to a lawyer, also is deleted.

This means that Arizona lawyers may pay:

- A fee to a referral website for each potential client sent to the firm.
- A fee to a traditional referral source, such as an existing client, a banker, doctor, accountant, social worker, or realtor for each client sent to the lawyer.

- A fee to law firm employees or former clients for referrals
- A referral fee to anyone – and that fee may be a percentage of the legal fee earned by the lawyer.

Yes, this is a significant change. Yes, the referral fee paid to nonlawyers may be either a flat fee or a percentage of the legal fees earned by the lawyer (saying this at least twice because it is important!).

Lawyers do not need to disclose in the client fee agreement that the lawyer is going to pay a referral fee to a nonlawyer. But lawyers do need client consent to confirm to a referral source that someone is a client. Also be careful about not disclosing the amount of a contingent fee the firm may earn, as that could disclose how much the client may be receiving, and unless the lawyer has the express informed consent of the client to disclose that information, it should be kept confidential. Also note that many settlement agreements that contain confidentiality provisions restrict disclosures to others about the terms, which a referral fee payment could violate.

Cautions:

- It is unclear how other states will view Arizona's open referral fee options. For instance, will an out-of-state lawyer be found to have violated her state's anti-referral fee rules if she agrees to co-counsel on a case with an Arizona lawyer and the out-of-state lawyer *knows* that the Arizona lawyer paid a referral fee for the case? Does the answer depend on whether the Arizona lawyer was advertising for cases in that other state? The New York City Bar Opinion 2020-1, which permits a New York lawyer to co-counsel with an Arizona lawyer, even if the Arizona lawyer is an ABS, suggests that at least New York lawyers could co-counsel with an Arizona lawyer who pays referral fees to others (even though New York lawyers cannot). Another caution: In order to have a "co-counsel" arrangement the New York lawyer and Arizona lawyer would need to be in separate law firms, to share a fee under ER 1.5(e). If they are in the *same* firm, that could be problematic for the New York lawyer.
- If a lawyer is admitted in *both* Arizona and another jurisdiction, there also may be some question about whether other jurisdictions will permit the lawyer to pay for referrals. Presumably there should be a good faith argument that if the lawyer is entering into attorney/client relationships (and fee agreements) through the lawyer's Arizona license (and office), then the Arizona Rules of Professional Conduct apply to the relationship – including what the lawyer can do with the fees. If the lawyers can demonstrate that the "predominant effect" of the representation is with Arizona, then under ER 8.5(the choice of law Rule), there is an argument that Arizona's Ethical Rules should apply to the matter.
- These and many other ethics issues still need to be addressed by other jurisdictions. Lawyers in other jurisdictions *should seek ethics advice in their jurisdictions regarding these issues*.

4. Paying a referral fee to *another lawyer*

- Yes, Arizona lawyers may now pay a referral fee to another Arizona lawyer for sending them a client.
- Flat fee: If the payment is a flat amount that is not part of the legal fees that will be earned, presumably the receiving lawyer may pay the flat amount to the referring lawyer without any notice to the client in the fee agreement.
- Percentage of Fees Earned: Arizona lawyers may pay a referral fee to another Arizona lawyer for sending them a client and that referral fee may be a percentage of the fees earned on the case. However,

there is some ambiguity about whether ER 1.5(e) must be followed if a referring lawyer will not remain jointly responsible but just wants a percentage of the fees earned for the referral. Revised ER 1.5(e) provides:

> **(e)** Two or more firms jointly working on a matter may divide a fee paid by a client if:
> (1) the firms disclose to the client in writing how the fee will be divided and how the firms will divide responsibility for the matter among themselves;
> (2) the client consents to the division of fees in a writing signed by the client;
> (3) the total fee is reasonable; and
> (4) the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

- There is an argument that ER 1.5(e) does *not* apply to paying a percentage of fees earned merely for a referral, because the two lawyers are not "jointly working on a matter". As a risk management recommendation, however, until there is further clarification of this Rule (*an advisory opinion is being requested of the Arizona Supreme Court's Attorney Ethics Advisory Committee)*, lawyers should either decline a fee split with another firm or comply with ER 1.5(e) and explain, in the written fee agreement with the client, the percentage the referring lawyer will receive and that the referring lawyer will not be responsible for the legal work performed but is merely receiving a fee for the referral.
- *Caution:* If the referring lawyer is sending an existing *client* to another lawyer for separate legal services and the referring lawyer will get a referral fee from that referral (i.e., the referring lawyer will make money from the referral), the referring lawyer must disclose this financial benefit to their client in the form of an ER 1.8(a) WRITTEN AND SIGNED business transaction disclosure. An ER 1.8(a) written disclosure statement is required because clients are entitled to rely on the fiduciary obligations of their lawyers to give them objective recommendations of other service providers.
- *Caution II:* These Rule changes apply only to Arizona lawyers. If a lawyer from another jurisdiction refers a case to an Arizona lawyer (or vice-versa) the Arizona lawyer should inform the out-of-state referring attorney that they must confirm if their state's rules permit referral fees.

C. Some specific ABS ethics questions.

The following are *initial* answers to some of the more frequent ethics questions associated with ABS entities.

1. *Can an ABS owner (lawyer or nonlawyer) own interests in firms that are representing opposing parties in litigation?*

   No – new ER 1.7(c). Opposing law firms in litigated matters cannot have common ownership – either of lawyers or nonlawyers.

2. *What if an ABS nonlawyer owner/partner has an ownership interest in an opposing party the ABS lawyer is suing on behalf of a client?*

If the interest in an opposing party is held by an owner/manager/partner of a law firm – whether they are a lawyer or a nonlawyer, that ownership interest could be imputed to the lawyers in the ABS, per amended ER 1.10.

3. Can an Arizona ABS have partners (or employees) who are lawyers admitted and working in other states?

This will depend upon whether the other state permits their lawyers to have partnerships with nonlawyers. At this point, only D.C. and the Utah Supreme Court's Regulatory Sandbox permit their lawyers to partner with nonlawyers or have nonlawyers holding an equity interest in a law firm. Lawyers admitted in jurisdictions other than Arizona, D.C. or Utah should check with the licensing jurisdiction's ethics committee on guidance about whether or not they can practice law in partnership with nonlawyers.

The American Bar Association issued ABA Op. 499 (September, 2021), which concluded that lawyers admitted in other jurisdictions may have some *passive investment* interest in an Arizona ABS (i.e., they just invest but do not practice law with or through the ABS), if certain criteria are satisfied. A "passive investment" would mean just investing money in an ABS and not practicing law through an ABS or holding themselves out as lawyers practicing through an ABS. Note that while ABA Opinions are not binding on lawyers, they are deemed by many states as persuasive.

However, even if out-of-state lawyers cannot have an ownership interest in an ABS, they *may* be able to fee-share with an ABS lawyer in a co-counsel arrangement, as discussed above, where the out-of-state lawyer is not a partner/attorney/employee in the same firm as the ABS lawyer, per ER 1.5(e). *See ABA Op.* 13-464; *NYC Op. 2020-1; FL Op. 17-1; but see MD. Op. 2012-12 (Maryland lawyer may not serve as co-counsel to DC lawyer if DC lawyer has nonlawyer partners).* In other words, for instance, a lawyer in a New York firm may co-counsel with an Arizona lawyer on a case-by-case basis, even if the Arizona lawyer happens to work in an ABS. The fee sharing agreement between co-counsel will be governed by ER 1.5(e).

Another option: If a lawyer admitted in another jurisdiction also is admitted to practice law in Arizona and they place their other state license on "inactive" or "retired" status, and practice *exclusively* through their Arizona law license, while working/owning an ABS, that *might* be permissible with other state regulators. *See NYSBA Op. 1234 (Dec. 2021).* "Might" is the operative word at this point…check with applicable licensing authorities!

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INTERIM REPORT AND RECOMMENDATIONS TO THE MINNESOTA SUPREME COURT

STANDING COMMITTEE FOR LEGAL PARAPROFESSIONAL PILOT PROJECT

ADM19-8002

December 27, 2021

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I. INTRODUCTION

Minnesota's Legal Paraprofessional Pilot Project (Pilot Project) aims to increase access to civil legal representation in case types where one or both parties typically appear without legal representation. The Minnesota Supreme Court (Supreme Court) adopted Court Rule amendments on September 29, 2020, which authorize the Pilot Project, effective March 1, 2021 through March 2023.

The Pilot Project permits legal paraprofessionals, under the supervision of a Minnesota licensed attorney, to provide legal advice and, in some cases, represent a client in court and mediation in two legal areas: landlord-tenant disputes and family law disputes.

The work to determine the structure and processes for the Pilot Project began in March 2019 when the Supreme Court issued an order (Order ADM19-8002) that established the Implementation Committee for the Proposed Legal Paraprofessional Pilot Project. The Implementation Committee spent a year assessing the needs of Minnesota courts and available options. Their final report, filed in March 2020, provided recommendations for implementing and evaluating the Pilot Project.

The Supreme Court ordered a public comment period on the proposed Pilot Project and issued the Order Regarding Public Hearing on the Proposed Legal Paraprofessional Pilot Project. The public hearing was held on August 11, 2020. The Court's Order Implementing Legal Paraprofessional Pilot Project was filed in September 2020. The Legal Paraprofessional Pilot Project Standing Committee (Standing Committee) was established in November to oversee the Pilot Project and evaluate its success. [1]

II. STANDING COMMITTEE WORK BEFORE PILOT PROJECT LAUNCH

The Standing Committee started meeting in December 2020 and met weekly in preparation for the Pilot Project launch date of March 1, 2021. During these meetings, the Standing Committee members determined the tasks required for their work based on the Supreme Court Order and amended Rule 12. They established subcommittees to focus on the four primary areas of work: application process, complaint process, communication and outreach, and evaluation. *See Appendix A, Standing Committee Membership Roster*.

The State Court Administrator's Office (SCAO) established a Project Team in January 2021 to assist the Standing Committee. The Project Team included subject matter experts from court operations, research and evaluation, technology, training, and communications. In consultation with the Standing Committee, the Project Team completed tasks, which included creating a unique certificate of representation[2] and establishing new MNCIS[3] codes to track representation

[1] See the Implementation Committee for Proposed Legal Paraprofessional Pilot Project website (www.mncourts.gov/Implementation-Committee) for court orders and information about their work.
[2] See Certificate of Representation and Parties and Authorization to Appear in Court at www.mncourts.gov/lppp, Apply to Participate tab.
[3] MNCIS, Minnesota Case Information System, is the statewide case management system.

in court by legal paraprofessionals. The Project Team also developed and delivered training sessions for judicial officers and court administration staff.

The SCAO project was closed in October 2021, having completed its tasks. *See Appendix B, Legal Paraprofessional Pilot Project - Close-Out Summary*.

In addition to the work of each subcommittee as summarized in this report, the Standing Committee and Project Team members also built a new webpage for the Pilot Project on the Judicial Branch's website.[4] The Pilot Project webpage is the central source of information about the Pilot Project and includes materials for the application process and complaint process, the roster of approved legal paraprofessionals, and other resources.

A. Application Subcommittee Overview

The Application Subcommittee was formed to develop the application criteria and create the participant application form and process. Based on Recommendations 2.1 and 2.2 in the Implementation Committee's Report and Recommendations to the Court and working with the criteria set forth by the Court in amended Rule 12, the subcommittee created an application process and form for attorneys and paraprofessionals. One of the challenges was addressing approval for a paraprofessional who may work for more than one attorney or law firm (i.e., a freelance paralegal) without requiring an individual who was already approved to complete a second application form. To address this, the subcommittee added a checkbox for the paraprofessional to indicate they are already approved with another attorney. The subcommittee worked on extensive instructions as well as a checklist to simplify the approval process. Finally, the Project Team formatted the application as a fillable form and posted it on the website on the tab named "Apply to Participate."

Once the application period opened, the subcommittee began its review process. Applications were forwarded to the subcommittee for review. Each member indicated their approval, denial, or request for additional information via email. If an application needed input from others, such as when a legal paraprofessional answered "yes" to one of the "Additional Eligibility Information" questions, the subcommittee sent it to the Standing Committee for their review as well. When a member of the subcommittee supervised the legal paraprofessional or if one of the legal paraprofessionals on the subcommittee applied for the Pilot Project, that member recused from deciding on their application.

B. Complaint Process Subcommittee Overview

Pursuant to Recommendation 2.3 in the March 2, 2020 Report and Recommendation to the Supreme Court, the Standing Committee created a Complaint Process Subcommittee to develop a method for the submission and review of complaints about the actions of a legal paraprofessional participant in the Pilot Project. The subcommittee met several times in January and February 2021. The subcommittee reviewed similar complaint

[4] See www.mncourts.gov/lppp

processes used by other programs, such as the ADR rule Code of Ethics Procedures. They also met with and sought input and review from the director of the Office of Lawyers Professional Responsibility Board.

In March 2021, the subcommittee finalized a detailed set of Complaint Procedures, as well as a fillable form, which were adopted by the Standing Committee. The information was added to the Pilot Project website under the heading "Make a Complaint."

C. Communication and Outreach Subcommittee Overview

Prior to launching the Pilot Project, the Communication and Outreach Subcommittee developed a plan for public outreach, training, and engagement. The subcommittee used the suggestions from the Implementation Committee's Recommendation 5 to inform their work. They collaborated with representatives from the SCAO Court Information Office and identified focus areas for communications: explain the Pilot Project's scope, highlight the goals, increase access to justice, ensure long-term sustainability and economic viability, and respond to questions from participants and interested individuals.

The Standing Committee identified key stakeholders and opportunities for outreach among housing and family law attorneys, legal paraprofessionals, bar associations, the Judicial Branch, and the public. Within these stakeholder groups, the subcommittee identified subgroups to target with its outreach, including legal aid organizations, large and small law firms, freelance paraprofessionals, the Minnesota Paralegal Association (MPA), and Minnesota State Bar Association (MSBA) sections, including New Lawyers, Family, and Access to Justice.

The subcommittee drafted sample language and materials that the Standing Committee could use for outreach to different stakeholder groups. It created a spreadsheet, which was used to track the variety of engagement efforts. The Communication and Outreach Subcommittee also worked with the Project Team and focused their collaboration on the communications strategy with Judicial Branch personnel. The Standing Committee shared announcement, training, conference, and informal opportunities with the subcommittee to round out the list of outreach efforts. *See Appendix C, Communication and Outreach Plan Tracker and Toolkit.*

D. Evaluation Subcommittee Overview

After the Evaluation Subcommittee was created, it was charged with determining how to measure the Pilot Project's effectiveness as outlined in Recommendation 4 in the Implementation Committee's Report and Recommendations. The subcommittee met frequently in early 2020 and discussed the types of data and information that should be collected during the Pilot Project to measure its success. The Project Team members from the business process team and the research and evaluation team also worked with the subcommittee.

In consultation with the Standing Committee, the subcommittee established three goals: increase litigant representation, improve court efficiency, and promote sustainability. The

subcommittee identified outcome measures and potential data sources for each goal, as well as an evaluation timeline. The data sources include surveys of participants and others who interact with the legal paraprofessionals, MNCIS, completed case reporting by the legal paraprofessionals, and the Pilot Project artifacts (e.g., numbers of applicants and complaints). *See Appendix D, Evaluation Plan Draft.*

The Project Team evaluated options for collecting and reporting on case-related data in MNCIS when a legal paraprofessional represents a client in a court proceeding. This included creating MNCIS codes that are specific to the Pilot Project. By creating these codes, SCAO can routinely verify the accuracy of the specific cases and data collection for evaluation purposes. The Project Team implemented a strategy for quickly creating new party records for each approved legal paraprofessional to ensure the new party's information is available in MNCIS when they are ready to file documents in a case.

Significant effort also went into creating the survey questions and a timeline for seeking responses. The subcommittee identified three groups, judicial officers, supervising attorneys, and legal paraprofessionals, who would receive surveys to provide data on their experiences.

III. ACTIVITY SINCE PILOT PROJECT LAUNCH

A. Applications, Approvals, and Complaints

The Pilot Project successfully launched on March 1, 2021. Since then, the Standing Committee has received and approved applications for thirteen legal paraprofessionals. The Pilot Project participants work with legal aid offices, at private law firms, and as freelance paralegals in a range of locations around the state. *See Appendix E, Roster of Approved Legal Paraprofessionals.*

As of the date of this interim report, no complaints have been filed through the Complaint Process.

B. Communication and Outreach

The Communication and Outreach Subcommittee has tracked program involvement since the Pilot Project opened. The subcommittee met frequently to discuss areas requiring improved communications as well as further opportunities to promote and share information about the Pilot Project. In response to questions received during training sessions, conference presentations, and from participants, the subcommittee developed a robust collection of frequently asked questions which have been published on the Pilot Project webpage.

The subcommittee invited Justice Constandinos "Deno" Himonas from the Utah Supreme Court to speak with the Standing Committee about Utah's Licensed Legal Practitioners program. After providing the background on their program, he focused on the marketing and communication strategies that Utah used to build support around the state for their program.

Through the Standing Committee's various outreach efforts and spurred by questions from approved legal paraprofessionals and their supervising attorneys, the Supreme Court issued an Order Amending Rules Governing Legal Paraprofessional Pilot Project on December 9, 2021. The Order revised amendments to Rule 12.01 to clarify the scope of work that legal paraprofessionals can provide in family cases during the Pilot Project. *See Appendix F, Order Amending Rules Governing Legal Paraprofessional Pilot Project.*

C. Evaluation Efforts

In early October, the first set of evaluation surveys were distributed to judicial officers, legal paraprofessionals, and supervising attorneys. The recipients were given two weeks to respond. The survey responses presented key findings that will guide the Standing Committee's work for the remaining year of the Pilot Project. *See Appendix G, Interim Evaluation Survey Responses.*

Nine of the approved legal paraprofessionals responded to the survey and their input showed high rates of satisfaction with the Pilot Project. They reported that they have represented clients collectively in seventeen cases, 75% family law cases and 25% housing cases. The survey also sought feedback on their experience with the application process and all respondents indicated that it was a straightforward and easy to understand process. They also responded they are very satisfied with the quality of assistance from their supervising attorney.

The legal paraprofessionals were asked to share information about the clients they have represented. Based on the information provided, about half of the clients would have been unrepresented without the assistance of the legal paraprofessional and a little over half of them charged the client for their services. Those who reported not charging the clients provided pro bono services or are affiliated with legal aid offices. There was a broad range of opinions about whether the Pilot Project provides a financially sustainable practice, primarily because the Pilot Project is still new and there are not enough clients yet to have confidence in longer term financial impacts.

In response to the question about suggestions they have for the Pilot Project, the legal paraprofessionals shared that they would like to see the program expand into other areas, including cases related to domestic and/or child abuse. They also requested more education on effective courtroom representation and practices. The legal paraprofessionals who responded to the survey believe that the Pilot Project provides individuals who cannot afford an attorney with quality alternative legal services, providing access to justice for more Minnesotans.

Eight supervising attorneys responded to the survey. Their results indicated that they found the legal paraprofessionals to be "careful, serious, and excellent." They did not have complaints about the legal paraprofessional's performance in court nor with how they managed cases. Overall, the supervising attorneys reported satisfaction with the application process and the Pilot Project. One area of uncertainty reflected in the

responses from the supervising attorneys centered on understanding how much supervision they are expected to provide.

When asked to provide additional suggestions for the Pilot Project, supervising attorneys shared that they would like more guidance on their duties and responsibilities, more clarity about who can complete and sign court forms and documents, and to remove the limitation for legal paraprofessionals to provide representation and advice in cases involving claims of domestic and/or child abuse.

A select group of judicial officers connected to cases which show a legal paraprofessional was engaged in the case were also asked to respond to the survey. The questions on their survey sought input on the type(s) of case(s) handled by legal paraprofessionals and their experience working with them on the case. Eleven judicial officers completed the survey and two of them reported they had a participating legal paraprofessional represent a client in their courtroom. Seven responded that a paraprofessional had not appeared in their courtroom yet and two were unsure. Of the judicial officers who had a paraprofessional appear on a case, one expressed disagreement with the goals of the Pilot Project, noting a preference for supporting new attorneys. The responders agreed that the legal paraprofessionals displayed appropriate decorum in the courtroom and knew the applicable court rules.

IV. RECOMMENDATIONS

The Order Implementing Legal Paraprofessional Pilot Project directs the Standing Committee to provide in its interim status report "recommendations for any further rule amendments or other refinements to the pilot project." Since the Pilot Project launched in March 2021, the Standing Committee has received informal questions and feedback on the scope of the Pilot Project from legal paraprofessional and attorney participants and non-participants. Based on this input and the interim evaluation survey responses the Standing Committee respectfully submits six substantive recommendations and one question for future consideration.

Recommendation 1: Amend Rule 12.01(e) to remove the prohibition against providing advice and representation in court or at mediations if the family law case involves allegations of domestic abuse or child abuse.

Consistent with the Court's goals for the Pilot Project and based on feedback from participating lawyers and paraprofessionals, permitting legal paraprofessionals to represent and give advice to clients in family law cases where there are allegations or findings of domestic and/or child abuse will expand the opportunities for quality, low-cost representation. The Standing Committee believes that giving discretion to the supervising attorney and the legal paraprofessional to assess the circumstances on a case-by-case basis is preferable to an absolute exclusion. Often cases with allegations of abuse also have court orders or other prohibitions against the parties communicating with each other. Expanding the scope in this way may encourage settlement, assure equitable representation opportunities, and protect parties through a third-party representative.

However, the Standing Committee does not recommend expanding the scope of legal paraprofessional work in cases where a child protection case has been filed under Minnesota Statues, Chapter 260C. Since this action moves the case to the juvenile protection system and parties are eligible for court appointed attorneys the Standing Committee believes that adequate structures are in place to provide access to representation.

The Standing Committee proposes amending Rule 12.01(e) as follows:

(e) Under no circumstances shall a legal paraprofessional provide advice or appear in court or at a mediation under this paragraph if a petition for a child in need of protection has been filed under Minn. Stat. Ch. 260C~~the family law case involves allegations of domestic abuse or child abuse~~.

Recommendation 2: Amend Rule 12.01(b) and (c) to include the establishment of child support.

Establishing child support is a process that is fundamentally similar to modifying child support. Expanding the scope in this area to include establishing child support increases the types of cases legal paraprofessionals are permitted to handle within the Pilot Project, without magnifying the complexity of the work. Additionally, legal paraprofessionals are permitted by the current rule to provide representation in paternity cases and those cases often include an establishment of child support component. Restricting the ability to assist with establishing child support needlessly limits the cases a legal paraprofessional can manage within a permitted case type.

The Standing Committee proposes amending Rule 12.01(b) and (c) as follows:

(b) Appear in court on behalf of clients in family law cases at default hearings, pretrial hearings, and informal family court proceedings, and hearing related to establishing child support, child-support modifications, parenting-time disputes, and paternity matters.

(c) Provide advice to clients in family law cases related to establishing child support, child-support modifications, parenting-time disputes, paternity matters, and stipulated dissolution and custody/parenting time agreements, including the drafting of stipulated dissolution and custody/parenting time agreements.

Recommendation 3: Amend Rule 12.01(a) to eliminate the requirement that a "district court have an established Housing Court or a dedicated calendar for housing disputes" for a legal paraprofessional to provide services in that court.

The number of Minnesota district courts that have established a dedicated housing court or housing court calendar is minimal. The requirement has caused confusion over what constitutes an established Housing Court or a dedicated calendar for housing disputes. Removing this restriction will increase the areas around the state where a legal paraprofessional can give advice to and represent clients in their landlord-tenant case.

The Standing Committee proposes amending Rule 12.01(a) as follows:

(a) Provide advice to and appear in court on behalf of tenants in housing disputes as defined in Minnesota Statutes Chapter 504B and Minnesota Statutes § 484.014~~. Eligible legal paraprofessionals may only provide such services in district courts that have established a Housing Court or a dedicated calendar for housing disputes~~, except that eligible paraprofessionals shall not appear in Housing Court in the Fourth Judicial District.

Question for Future Consideration 1: Should Rule 12.01(a) be amended to also remove the Fourth Judicial District Housing Court exception?

The Standing Committee discussed an additional recommendation to remove the exclusion of legal paraprofessional appearances in housing court in the Fourth Judicial District. Most landlord-tenant cases in the state are venued in the Fourth Judicial District and some private law firms that practice in the judicial district have noted this as a barrier to participating in the Pilot Project. The Standing Committee intends to do further research in the coming months to determine if a recommendation is warranted in the future.

Two actions the Standing Committee will take:

- Analyze the effect of the Minneapolis city ordinance on landlord-tenant cases in the largest city in Hennepin County, and
- Meet with representatives from Mid-Minnesota Legal Assistance to understand their ongoing connection and work with the Hennepin County housing court, as well as their perspective on adjusting the Pilot Project to permit engagement in the Fourth Judicial District.

Recommendation 4: Amend Rule 12.01(f) to clarify Appendix 1 to Rule 12 of the Supervised Practice Rules.

Questions about the ability to prepare and file documents that are not included in Appendix 1 is a frequent question raised by participants. It is difficult to predict exactly which documents may be filed in a specific case. Therefore, the Standing Committee recommends that Rule 12.01(f) be amended as follows:

(f) With authorization from the supervising attorney, prepare and file ~~a limited set of~~ documents which include but are not limited to the documents identified in Appendix 1 to these rules.

Recommendation 5: Add eligibility to provide advice and representation in Order for Protection and Harassment Restraining Order cases to the scope of work in which a legal paraprofessional may provide services.

Orders for Protection (OFP) and Harassment Restraining Orders (HRO) may be additional legal actions or components in a family law case. Adding the option for an eligible legal paraprofessional to provide advice and representation to clients in OFP and HRO cases to the scope of work aligns with the Pilot Project's goal of expanding access to justice and representation for Minnesota's citizens.

Both areas of law have low representation rates, consistent with the rates presented to the Court in the Implementation Committee's Report and Recommendations. SCAO research analysts pulled representation data from MNCIS for OFP and HRO cases using the same methodology for the prior data.[5] Among the cases disposed from 2018 to 2020, 97% of petitioners and 95% of respondents in OFP cases were unrepresented. The data are similar for HRO cases disposed during the same timeframe, with 97% of petitioners and 98% or respondents unrepresented. The low rates of representation show that OFP and HRO cases are another area of unmet civil legal need in Minnesota courts.

Additionally, in OFP cases, non-lawyer domestic abuse advocates often assist parties, but they are not allowed to address the court, so the valuable services they can provide are limited in a court setting. Legal paraprofessionals are currently eligible under the Pilot Project to provide legal advice and representation to parties in evidentiary proceedings for landlord-tenant cases. OFP and HRO evidentiary hearings are comparable when considering the related legal time frames, rules, and complexity of the evidence.

Adding OFP and HRO cases as an area of law to the Pilot Project may result in more effective court hearings, continuity of representation in a case, and more equitable outcomes for parties.

The Standing Committee recommends amending Rule 12.01 as follows:

An eligible legal paraprofessional may, under the supervision of a member of the bar, provide the following services:

(f) Appear in court on behalf of clients, and provide advice to clients, in proceedings seeking Orders for Protection under Minn. Stat. § 518B.01 and Harassment Restraining Orders under Minn. Stat. § 609.748.

~~(f)~~ (g) Prepare and file ~~a limited set of~~ documents identified in Appendix 1 to these rules without the supervising attorney's final review . . .

Recommendation 6: Extend the Pilot Project and continue the amended Supervised Practice Rules that govern the Pilot Project to March 31, 2024.

The Standing Committee believes that the ongoing COVID-19 pandemic has impacted the ability to mature the Pilot Project. Both federal and state eviction moratoriums have affected court filings in the housing case area. When the moratoriums fully lift an influx of cases is expected, accompanied by an increased demand for representation in landlord-tenant cases.

The Standing Committee also thinks that organizations have focused their efforts on other business needs due to the pandemic which has resulted in lower Pilot Project participation

[5] See the Implementation Committee's Report and Recommendations (www.mncourts.gov/Implementation-Committee), Appendix B, Minnesota Case Types with Asymmetrical or Low Representation of the Report and Recommendations. As outlined in the appendix, the methodology considers a litigant as "unrepresented if, for at least 90% of the days in the life of the case, the MNCIS record shows no attorney representing that litigant."

numbers than might be expected absent the pandemic impacts on businesses. Considering this along with the Standing Committee's experiences that family court cases take six months to a year on average to conclude, it will be difficult to convince more legal paraprofessionals and attorneys to participate with only a year left in the Pilot Project.

VI. CONCLUSION

The Standing Committee believes that the Pilot Project thus far has had a positive, although small impact and shows that legal paraprofessionals can successfully provide quality services to parties in family and housing cases. The Standing Committee encourages the Supreme Court to consider its recommendations and modify the Pilot Project scope and amend the rules accordingly to support the continued growth of the Pilot Project.

The Standing Committee appreciates the cooperation it received from district court judges, legal paraprofessionals, attorneys, the MPA, the MSBA and its sections, the Project Team, and others who helped the Standing Committee launch the Pilot Project.

Respectfully Submitted,

STANDING COMMITTEE FOR
THE LEGAL PARAPROFESSIONAL PILOT PROJECT

INDEX OF APPENDICES

MINNESOTA JUDICIAL BRANCH

Legal Paraprofessional Pilot Project
Standing Committee Membership Roster

Members	Subcommittee Assignments
Gregory L. Richard, Standing Committee Chair *Professor at Winona State University*	Complaint Process
Liz Altmann *Altmann Paralegal Service, LLC*	
Tiffany Doherty-Schooler *Director of Advocacy* *Legal Aid Service of Northeastern Minnesota*	Application Process
Rebecca Hare *Public Health Law Center*	Communication and Outreach Evaluation Plan
Hon. Thomas R. Lehmann *District Court Judge, 10th Judicial District*	
James J. Long *Maslon LLP*	Communication and Outreach Complaint Process
Susan J. Mundahl *Mundahl Law, PLLC*	Communication and Outreach Complaint Process Evaluation Plan
Maren Schroeder *NFPA Director of Positions & Issues* *MJoy, LLC*	Application Process
Associate Justice Paul Thissen *Supreme Court Liaison* *Minnesota Supreme Court*	

Project Close-out Summary

MINNESOTA JUDICIAL BRANCH
STRATEGIC PLANNING & PROJECTS OFFICE

EP305 Legal Paraprofessional Pilot Project

09/01/2021

This document summarizes the project outcomes and compares them to the baseline plans. Approval indicates acceptance of the project outcomes and is an agreement that the project is complete.

The document audience is the project sponsor, project owner, PMO manager, and other critical stakeholders.

This document is written and published by the Minnesota State Court Administrator's Office.

Click here to go to mncourts.gov

Project Overview

Strategic Focus

The initial strategic focus remained consistent throughout the project., "The Legal Paraprofessional Pilot Project is authorized by Supreme Court Order and is a continuation of the FY20 operational initiative, Implementation Committee. This project will focus on establishing a Standing Committee and MJB project team that will complete tasks in preparation for a one and a half to a two-year pilot project. The pilot project will permit legal paraprofessionals, under the supervision of a licensed attorney, to provide legal advice and representation to parties under specified parameters." The strategic focus clearly supported the various tasks and deliverables leading to the project's overall success.

Opportunity Statement

At the start of the project, the Opportunity Statement was: "The expected outcomes are to increase access to civil legal services for otherwise unrepresented parties and decrease the congestion of court calendars. The results of the pilot project will provide data and experience that will tell the MJB whether implementing enhanced legal paraprofessional services will resolve long-term disparities in representation in civil legal case types."

The Implementation Committee for the Proposed Legal Paraprofessional Pilot Project (Implementation Committee) was an initiative within the FY20 Operational Plan. The Implementation Committee's work led to the launch of the Legal Paraprofessional Pilot Project which is expected to continue as an initiative under Strategic Priority 2A. Broaden the oneCourtMN vision to establish a high-quality, consistent, and convenient external court customer experience, through promoting innovation. . The Supreme Court will evaluate the results of the Pilot Project after March 1, 2021 to decide whether the project will or will not continue.

Legal paraprofessionals are approved to work within the Pilot Project and are currently providing services to clients as described by the project's opportunity statement. The Pilot Project's final outcomes will be reported to the Supreme Court at the end of the Pilot Project, after this EP project is closed.

Vision

The vision for this project is to decrease disparities in representation for parties in certain civil legal case types, specifically housing and family disputes.

Throughout the project, this vision remained consistent.

Project Scope

In Scope	Status at End of the Project
Create a communication and marketing plan and strategy.	Fully Delivered
Develop a pilot evaluation plan and timeline (success criteria, metrics for tracking such as MNCIS event/case types, feedback loops, surveys, etc.) Establish associated application and approval process.	Fully Delivered
Create and maintain a roster/database that will hold information on approved pilot participants.	Fully Delivered
Solicit and secure the pilot participants.	Fully Delivered
Create and implement the plans for communications, training, and OCM considerations for internal and external stakeholders.	Fully Delivered – Additional expansion and outreach has been undertaken as part of this beyond the originally defined communication plan.
Launch the pilot and provide support until stable.	Fully Delivered
Complete pilot operations plan and transition support for the pilot to those individuals.	Fully Delivered
Update the certificate of representation.	Fully Delivered
The Standing Committee will report on the pilot progress required at mid-point, on or before December 31, 2021, and end of the pilot, on or before January 17, 2023. R&E project team members will assist with these reports as part of the ongoing efforts taken by the standing committee in the pilot.	Partially Delivered – Information about what to include in the reports has been discussed and identified, but the report will not be sent until after this project's closure.

Out of Scope	Status at End of the Project
Determine a statewide implementation plan after completion of the pilot.	Remained out of scope
Support or expansion of the pilot after project tasks are completed and the pilot is fully functional, operational support will be turned over to the standing Committee.	Remained out of scope
External marketing and communication services.	Remained out of scope

Project Goals & Performance Indicators

Goals & Performance Indicators

Goals	Performace Indicators	Status at Project Closure
1. Evaluation plan created for monitoring pilot progress.	R&E project team members and Standing Committee members approve the evaluation plan. The evaluation plan will be used for the duration of the pilot.	Complete
2. Update Certificate of Representation	Form will be updated and approved through COAW. The certificate is a requirement for legal paraprofessionals to appear in court and provide representation to clients and includes an attorney attestation form as required in the amended rule.	Complete
3. Tracking & roster of legal paraprofessionals and supervising attorneys.	MNCIS updated with new field/event type to track pilot cases. Provide reports throughout the project to the Standing Committee.	Complete
4. Transition ongoing pilot monitoring to the Standing Committee for duration of pilot.	The EP305 project team has provided the resources to allow for the standing committee members to monitor the pilot progress until March 2023. All goals listed above are met. Future checkpoints will be established between the Standing Committee and members of MJB.	Complete

Standard Project Performance Indicators

The Project Management Office (PMO) has established three primary performance indicators that all projects are evaluated against. They are rated as green, yellow or red status in every bi-weekly status report generated throughout the project. A high number of yellow or red status occurrences show a project had experienced significant challenges or changes.

Rate of occurrence in this project for each indicator

	Total # of status reports		
Metric	Green	Yellow	Red
Schedule Variance	16		
Cost Variance	16		
Issues	16		

The criteria used to determine the status can be found here. The project ends with Schedule Variance in green state, Cost Variance in green state, and Issues in green state.

Project Cost & Resources

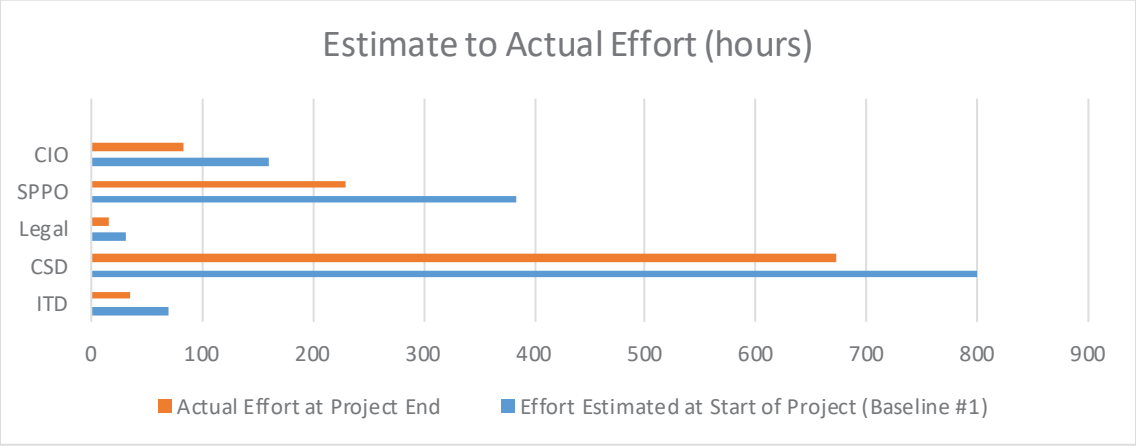
As stated in the project charter, all project costs remained internal with the largest of those being the external marketing done by the Court Information Office. All other resource costs were for MJB staff and the Standing Committee, which did not affect budgets.

Project Resources

Name	Project Role/Title
Lissa Finne	CIO – Branch Communication Specialist
Jodie Metcalf	CSD – Child Support Magistrates/Family Law Dispute SME
Kim Larson	CSD – Project Owner/Sponsor
Sarah Welter	CSD – Research and Evaluation Analyst
Ellen Bendewald	CSD – Research and Evaluation Analyst
Morgan Spah	CSD – SRL Program Specialist
Sara Kronmiller	CSD BPE – Business Initiatives Specialist
Megan Rix	CSD BPE – Training & Education
Meaghan Crimmins	ITD – Application Specialist – MNCIS
Stacey Ericksen	ITD – Tester/Test Coordinator
Renee Pennington	Legal Counsel
Connie Gackstetter	SPPO – OCM Consultant
Mitch Gardner	SPPO – Program/Project Manager

Estimated to Actual Effort Comparison

This table compares the original effort estimate from the start of the project with the final actual effort of the project.



Lessons Learned

Meetings to identify lessons learned during this project were held with the following groups:

- EP305 Project Team
- Standing Committee Members

All lessons learned were entered into the PMO's centralized Lessons Learned Repository. Click here to go to that list and search for project EP305 Legal Paraprofessional Pilot Project.

Significant Project Issues and Risks

This project did not experience significant issues or risks that affected the project. Some risks were identified in the lessons learned, which can be accessed above.

Considerations for Ongoing Work

The ongoing maintenance and support of the efforts needed post project closure are defined in the Project Transition Plan document. The Standing Committee continues to approve pilot participants. The Standing Committee and MJB staff support will work on the evaluation and interim and final reports.

Approval

By signing this document, you agree that this project is complete, meets the operational acceptance criteria, and can be closed.

Role	Name	Signature
Project Sponsor/Owner	Kim Larson	Kimberly A. Larson Larson, Kimberly 2021.09.03 07:45:15 -05'00'
Project Manager	Mitch Gardner	

Appendix A: Important Project Links

1. Project Charter
2. Project Workbook (for issue, risk, change logs, budget, team resource list)
3. Operations & Transition Plan
4. Status Reports
5. Lessons Learned – Central Repository
6. Legal Paraprofessional Pilot Project Standing Committee Work Site
7. Legal Paraprofessional Pilot Public Facing Site

Date	Type	Completed Actions/Events	Audience/Organization	Event Contact	Notes
3/1/2021	Announcement	Email sent to all SRL Staff about launch; included talking points	Self Help Centers/Morgan Spah	Morgan Spah	
3/1/2021	Announcement	LPPP Launch Article included in March Branching Out Edition	Lissa Finne	Lissa Finne	
3/1/2021	Presentation	Family Law Roundtable	Susan Mundahl	Susan Mundahl	
3/1/2021	Announcement	news release sent on 3/1 to MSBA, Bench & Bar, MN Paralegal Association, and MN Lawyer	Jodi Boyne	Jodi Boyne	
3/1/2021	Announcement	News item re: Launch on MJB public website	SCAO Court Information Office	Lissa Finne	
3/2/2021	Announcement	New Lawyers Section list serv (3/2/21)	New Lawyers Section	Rebecca Hare	Received a follow-up question regarding program.
3/3/2021	Announcement	MSBA Legal News Digest Newsletter (3/3/21)	MSBA/Cheryl Dalby	Jim Long	
3/4/2021	Presentation	Presentation to 90+ LSAC/legal services attendees	Legal aid orgs	Tiffany Doherty-Schooler	90+ attended
3/5/2021	Announcement	New Lawyers newsletter (3/5/21)	New Lawyers Section	Rebecca Hare	
3/17/2021	Training	3/17/2021 Judge Training: What You Need to Know about the LPPP	MJB Kim Larson/Lissa Finne	Judge Lehmann and Justice Thissen	This training was attended by judges, judge team members, and district/court administrators
3/23/2021	Training	3/23/2021 Judge Training: What You Need to Know about the LPPP	MJB Kim Larson/Lissa Finne	Judge Lehmann and Justice Thissen	This training was attended by judges, judge team members, and

Date	Type	Completed Actions/Events	Audience/Organization	Event Contact	Notes
					district/court administrators
4/9/2021	Presentation	Presentation to Rochester MPA Chapter on 4/9	Minnesota Paralegal Association	Maren Schroeder	About 35 people attended. A lot of great questions. Creating FAQ for website based on these questions.
4/20/2021	Press Release	Minnesota Lawyers Mutual Extends Coverage to Supervised Legal Paraprofessionals	Minnesota Lawyers Mutual		Emailed directly to all attorneys that are direct subscribers to MLM and a letter to all clients
5/1/2021	Presentation	Panel presentation	Minnesota Paralegal Association	Maren Schroeder	
5/1/2021	Presentation	CLE	Solo/Small Practice Experience	Susan Mundahl	
5/5/2021	Presentation	Presentation: "Changing the Unauthorized Practice of Law Rules in More Ways and Places" led by the National Center for Access to Justice	Equal Justice Conference	Tiffany Doherty-Schooler	10-15 minutes of overview, structure, and Q & A. Many questions from folks in other states, overall, it was positive, and people were interested in it. Utah, Washington, and California were also discussed. 104 people attended. Follow-up from attorney Denise Colón (dcgreena@nycourts.gov) at NYS Court System's Office for Justice Initiatives working on implementing certified social worker program:

Date	Type	Completed Actions/Events	Audience/Organization	Event Contact	Notes
					https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf
5/6/2021	Meeting	Met with Ashton Boon, Legal Counsel at Mayo Clinic	Mayo Clinic Legal Department	Kim Larson	Answered questions about the program and discussed opportunities for the Mayo Clinic Legal Department's paralegals to connect with local area attorneys to provide services under the pilot
6/12/2021	Presentation	Panel on state regulatory reform	Regulation Conference held by National Federation of Paralegal Associations	Gregory Richard	
6/15/2021	Email	Follow-up with Mayo Clinic Legal Department			
8/1/2021	Presentation	Panel		Maren Schroeder	
8/11/2021	Presentation	MPA Presentation in conjunction with Fredrickson		Maren Schroeder, Tiffany Doherty-Schooler, Gregory	

Communication and Outreach Plan Tracker and Toolkit

Date	Type	Completed Actions/Events	Audience/Organization	Event Contact	Notes
				Richard, and Kim Larson	

Key Communications Documents for Outreach	Purpose	Status	Notes
Fact Sheet	Share with those seeking a quick overview of LPPP	Published	Available on LPPP webpage and shared site (under Published Documents)
Overview Talking Points	Use and share with champions and presenters for background	Reviewed	Available on internal shared workspace (under Communications)
Slide Deck	Use and share for presentations	Reviewed	Two slide decks - one with graphics – available on internal shared workspace (under Communications)
Webpage Link	Holds all public-facing content about the program	N/A	News item re: Launch on MJB public website (www.mncourts.gov/lppp)
Sample contact language			

Language to contact champions within the Courts:

I am a member of the Supreme Court Standing Committee for the Legal Paraprofessional Pilot. The pilot launched March 1, 2021 and is intended to increase access to civil legal representation in tenant-landlord and family law cases where one or both parties typically appear without legal representation. The Pilot Project permits legal paraprofessionals, under the supervision of a Minnesota attorney, to provide legal advice and, in some cases, represent a client in court in these areas. View more program details at mncourts.gov/LPPP

We are seeking to inform Court staff about the pilot and to provide support to staff in publicizing this pilot project within the Court system, to potential paraprofessional and attorney participants, and to prospective clients.

We would appreciate your assistance and thoughts on this. It would be great if you and I could have a preliminary discussion at some point in the next week or so about the program and how court staff could be involved. Please let me know if you are interested and if so, when a convenient time might be. (I have copied the Standing Committee chair and the Communications sub-group chair)

Language to notify members of the Bar:

The Legal Paraprofessional Pilot launched March 1, 2021 and is intended to increase access to civil legal representation in tenant-landlord and family law cases where one or both parties typically appear without legal representation. The Pilot Project permits legal paraprofessionals, under the supervision of a Minnesota attorney, to provide legal advice and, in some cases, represent a client in court in these areas.

We are sharing this information to inform members of the Bar about the pilot and to encourage attorneys and qualifying paraprofessionals to participate. If you are interested in learning more about the program, visit https://mncourts.gov/LPPP

If you have any questions or would like a presentation to your section, staff, or affiliate group, you may contact the Standing Committee via the contact form on the LPPP website.

Communication and Outreach Plan Tracker and Toolkit

Language to contact the public/community organizations:

The Legal Paraprofessional Pilot Project launched March 1, 2021 - and the Court-appointed Standing Committee is accepting applications from legal paraprofessionals and supervising attorneys who wish to participate in the Pilot. The two-year, statewide Pilot Project allows approved legal paraprofessionals to represent and advise clients in select housing and family matters with oversight by a licensed Minnesota Attorney. The Pilot Project is intended to increase access to legal representation in select civil case types where parties are disproportionately unrepresented.

Information about the Standing Committee, the application process, and other details are available on the Legal Paraprofessional Pilot Project webpage at https://mncourts.gov/LPPP

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
Client survey	Promote sustainability	Overall satisfaction with services received from paraprofessional	1) On a scale of 1 to 10, how likely are you to recommend this legal paraprofessional to a friend or family member? 2) Please rate your satisfaction with the services you received from the legal paraprofessional in your case. [Very satisfied -> Very dissatisfied] Please explain your rating and what, if anything, could improve your satisfaction. [open response]
Court administration survey	Promote sustainability	Feedback and suggestions to improve the pilot	Think of the pilot as a whole. Overall, what feedback or suggestions do you have to improve the pilot? (For example, practice areas, supervision, effectiveness) [open response]
Judicial officer survey		Threshold question: Have you worked with a paraprofessional in the pilot?	Have you had a paraprofessional participating in the Legal Paraprofessional Pilot Project represent a client in your courtroom? [Yes; No; Don't know/don't remember]
Judicial officer survey		Types of cases with paraprofessional	For what type of case have you had a paraprofessional represent a client in your courtroom? (Check all that apply.) [Eviction; Eviction Expungement; Other Housing (please specify); Custody; Dissolution; Legal Separation; Paternity; Child Support; Other Family (please specify)]
Judicial officer survey		Courtroom decorum by paraprofessionals	Thinking about all paraprofessionals who appeared in your courtroom during this pilot, please provide your level of agreement with the following statement [Strongly agree -> Strongly disagree] Paraprofessionals displayed the appropriate decorum in the courtroom.

Appendix D

Evaluation Plan Draft

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
Judicial officer survey		Court rules followed by paraprofessionals	Thinking about all paraprofessionals who appeared in your courtroom during this pilot, please provide your level of agreement with the following statement [Strongly agree -> Strongly disagree] Paraprofessionals were aware of the applicable court rules.
Judicial officer survey		Courtroom courtesies by paraprofessionals	Thinking about all paraprofessionals who appeared in your courtroom during this pilot, please provide your level of agreement with the following statement [Strongly agree -> Strongly disagree] Paraprofessionals observed courtroom courtesies.
Judicial officer survey		Training or support needed for paraprofessionals	Based your experience in this pilot, do you think any additional training or support is needed for paraprofessionals? [Yes (please explain); No; Don't know]
Judicial officer survey	Promote sustainability	Quality of paraprofessional work	Please provide any comments regarding the quality of the representation provided by paraprofessionals in your courtroom. [open response]
Judicial officer survey	Improve efficiency/Reduce court congestion	Efficiency of hearings	1) In your experience, do hearings where a party is represented by a paraprofessional take more or less time than hearings with self-represented litigants? 2) In your experience, do hearings where a party is represented by a paraprofessional take more or less time than hearings where a party is represented by an attorney?

Evaluation Plan Draft

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
Judicial officer survey	Promote sustainability	Overall satisfaction with pilot	1) Please rate your overall satisfaction with the pilot. [Very satisfied -> Very dissatisfied]2) Please explain your overall satisfaction rating. [open response]
Judicial officer survey	Promote sustainability	Feedback and suggestions to improve the pilot	Think of the pilot as a whole. Overall, what feedback or suggestions do you have to improve the pilot? (For example, feedback on practice areas, supervision, effectiveness, etc.)
MNCIS	General pilot performance	Type of cases	
MNCIS	General pilot performance	Number of participating clients in each judicial district and county (litigation only)	
MNCIS	Improve efficiency/Reduce court congestion	Resolution prior to court hearing (dismissal prior to hearing, canceled appearance/hearing)	
MNCIS	Improve efficiency/Reduce court congestion	Time to disposition	
MNCIS	Improve efficiency/Reduce court congestion	Number of hearings per case	
MNCIS	Increase representation/Reduce unmet legal needs	Representation rate (attorney, paraprofessional, self-represented)	
MNCIS	Promote sustainability	Default rate in family law cases	

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
MNCIS	Promote sustainability	Default rate (default judgment)	
MNCIS	Promote sustainability	Eviction rate (eviction judgment, affidavit of non-compliance, writ of recovery issued, writ of recovery returned)	
Paraprofessional case reporting	General pilot performance	How did clients find you?	How did clients find you?
Paraprofessional case reporting	General pilot performance	Case number	Court case number, if any
Paraprofessional case reporting	General pilot performance	Type of case	Type of case [Eviction; Eviction Expungement; Other Housing (please specify); Custody; Dissolution; Legal Separation; Paternity; Child Support; Other Family (please specify)]
Paraprofessional case reporting	General pilot performance	County of case	County of the court case or, if no court case exists, the client's county of residence
Paraprofessional case reporting	General pilot performance	Case referral date	Date this matter was referred to you
Paraprofessional case reporting	General pilot performance	Client referral information	How did this client find you? Please select one. [MN Judicial Branch website; Referral from court staff or judicial officer; Referral from attorney; Web search; Other (please specify); Unknown]
Paraprofessional case reporting	General pilot performance	Case resolution date	Date this matter was resolved
Paraprofessional case reporting	General pilot performance	Type of work provided	Type(s) of work you provided. Please select all that apply. [Document preparation; Legal advice; Mediation; Representation in court; Other (please specify)]

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
Paraprofessional case reporting	General pilot performance	Case transfer data	Was this case transferred to your supervising attorney for any of the following reasons? Please select all that apply. [Not transferred; Domestic abuse; Child abuse; Complexity; Removed from roster; Left employment; Outside of scope of agreement; Other (please specify)]
Paraprofessional case reporting	General pilot performance	Ongoing comments on pilot	Please provide additional comments related to the pilot arising from this case, if any [open response]
Paraprofessional survey	General pilot performance	How did you find out about the LPPP?	How did you learn about the Legal Paraprofessional Pilot Project? [Referral from a colleague; Referral from employer; Referral from school or certificate program; Referral from professional association; MN Judicial Branch website; Other (please specify)]
Paraprofessional survey	General pilot performance	Case type	For what type(s) of case have you participated in the Legal Paraprofessional Pilot Project? (Check all that apply.) [Eviction; Eviction Expungement; Other Housing (please specify); Custody; Dissolution; Legal Separation; Paternity; Child Support; Other Family (please specify)]
Paraprofessional survey	General pilot performance	Length of participation	How long have you participated in the Legal Paraprofessional Pilot Project? [Less than a month; 1 - 3 months; 4 months or more]
Paraprofessional survey	Promote sustainability	Pilot Retention Rate	1) Are you actively participating in the Legal Paraprofessional Pilot Project? [Yes; No (please explain)] 2) Do you plan to resume active participation in the pilot at a later date? [Yes; No; Unsure]
Paraprofessional survey	General pilot performance	Type of law firm	How would you describe where you work as a paraprofessional? [Private: Solo; Private: 2 – 50 attorneys; Private: over 50 attorneys; Public Defender;

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
			City or County Attorney; Legal Aid or other non-profit agency; Other (please specify)]
Paraprofessional survey	General pilot performance	Satisfaction with application process	1) Please rate your satisfaction with the Legal Paraprofessional Pilot Project application process. [Very satisfied -> Very dissatisfied] 2) Please explain your satisfaction rating with the application process and what, if anything, could improve your satisfaction. [open response]
Paraprofessional survey	General pilot performance	Satisfaction with supervision	1) Please rate your satisfaction with the supervision provided by your Legal Paraprofessional Pilot Project supervising attorney. [Very satisfied -> Very dissatisfied] 2) Please explain your satisfaction rating with the supervision provided by your supervising attorney and what, if anything, could improve your satisfaction. [open response]
Paraprofessional survey	Increase representation/Reduce unmet legal needs	Improve access to legal representation	Have you represented any clients in court who you believe would otherwise have been self-represented? [Yes; No; Unsure]
Paraprofessional survey	Promote sustainability	Sustainability of income (qualitative)	1) Please rate your level of agreement with the following statement: My expanded role through the Legal Paraprofessional Pilot Project allows me to have a financially sustainable practice. [Strongly agree -> Strongly disagree; N/A] 2) Please comment on the sustainability of income from participating in this project. [open response]

Evaluation Plan Draft

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
Paraprofessional survey	Promote sustainability	Fees charged	How do you charge for services under the Legal Paraprofessional Pilot Project? [Pro bono; By the hour; Flat fee; Other (please explain); Unsure]
Paraprofessional survey	Promote sustainability	Overall satisfaction with pilot	1) Please rate your overall satisfaction with the Legal Paraprofessional Pilot Project. [Very satisfied -> Very dissatisfied] 2) Please explain your satisfaction rating with the project. [open response]
Paraprofessional survey	Promote sustainability	Feedback and suggestions to improve the pilot	Think of the pilot as a whole. Overall, what feedback or suggestions do you have to improve the Legal Paraprofessional Pilot Project? (For example, feedback on practice areas, services allowed, supervision, effectiveness, etc.) [open response]
Standing Committee	General pilot performance	Number of applications received	
Standing Committee	General pilot performance	Number of applications approved/rostered	
Standing Committee	General pilot performance	Number of paraprofessionals in each judicial district and county	
Standing Committee	General pilot performance	Number of participating clients in each judicial district and county (across litigation and out-of-court representation)	
Standing Committee	Promote sustainability	Number of complaints submitted	
Standing Committee	Promote sustainability	Types of complaints submitted	

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
Standing Committee	Promote sustainability	Complaint outcomes	
Supervising attorney survey		Number of paraprofessionals supervising	How many paraprofessionals have you supervised through the Legal Paraprofessional Pilot Project? [1; 2 - 3; 4 - 5; 6 - 10; More than 10; None]
Supervising attorney survey		Case types	For what type of case have you supervised paraprofessionals through the Legal Paraprofessional Pilot Project? (Check all that apply.) [Eviction; Eviction Expungement; Other Housing (please specify); Custody; Dissolution; Legal Separation; Paternity; Child Support; Other Family (please specify)]
Supervising attorney survey		Length of participation	How long have you been participating in the Legal Paraprofessional Pilot Project? [Less than a month; 1 - 3 months; 4 months or more]
Supervising attorney survey	Promote sustainability	Pilot Retention Rate	1) Are you actively participating in the Legal Paraprofessional Pilot Project? 2) If no, please explain. [fill in the blank] Do you plan to resume active participation in the pilot at a later date? [Yes; No; Unsure]
Supervising attorney survey		Insurance policy changes	1) Were you required to modify your legal liability insurance policy to allow for supervising paraprofessionals through the Legal Paraprofessional Pilot Project? [Yes (please explain); No; Don't know] 2) Did the cost of legal liability insurance impact your participation in this project? [Yes (please explain); No]

Evaluation Plan Draft

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
Supervising attorney survey	General pilot performance	Client declined representation?	1) Did anyone decline paraprofessional representation? [Yes; No; Don't remember] 2) What was the outcome for the client? [Worked only with you; Worked only with other attorney at your firm; Declined to be represented by your firm; Other (please explain)]
Supervising attorney survey		Financial stability of program	Please rate your level of agreement with the following statement: the expanded paraprofessional role through the Legal Paraprofessional Pilot Project allows me to have a financially sustainable practice. [Strongly agree -> Strongly disagree; N/A]
Supervising attorney survey	General pilot performance	Satisfaction with application process	1) Please rate your satisfaction with the Legal Paraprofessional Pilot Project application process. [Very satisfied -> Very dissatisfied] 2) Please explain your satisfaction rating with the application process and what, if anything, could improve your satisfaction. [open response]
Supervising attorney survey	General pilot performance	Satisfaction with supervisory role	1) Please rate your satisfaction with supervising participating paraprofessionals. [Very satisfied -> Very dissatisfied]2) Please explain your satisfaction rating with supervising participating paraprofessionals and what, if anything, could improve your satisfaction. [open response]
Supervising attorney survey	Promote sustainability	Satisfaction with paraprofessional work	1) Please rate your satisfaction with the quality of paraprofessional work by participating paraprofessionals you have supervised. [Very satisfied -> Very dissatisfied] 2) Please explain your satisfaction rating with the

Data Source	Evaluation Goal	Measure	Possible Survey Questions (if applicable)
			quality of paraprofessional work by participating paraprofessionals you have supervised. [open response]
Supervising attorney survey	Promote sustainability	Overall satisfaction with the pilot	1) Please rate your overall satisfaction with the Legal Paraprofessional Pilot Project. [Very satisfied -> Very dissatisfied] 2) Please explain your satisfaction rating with the project. [open response]
Supervising attorney survey	Promote sustainability	Feedback and suggestions to improve the pilot	Think of the Legal Paraprofessional Pilot Project as a whole. Overall, what feedback or suggestions do you have to improve the project? (For example, feedback on practice areas, services allowed, supervision, effectiveness, etc.)

MINNESOTA JUDICIAL BRANCH

Roster of Approved Legal Paraprofessionals

Legal Paraprofessional	Supervising Attorney	Approval Date
Rachel R. Albertson P.O. Box 804 Brainerd, MN 56401 ralbertson@lasnem.org Work #: 218-454-1701	**Christopher J. Macy** P.O. Box 804 Brainerd, MN 56401 cmacy@lasnem.org Work #: 218-454-2026	May 11, 2021
Aprille A. Beyer 227 West First Street, Suite 610 Duluth, MN 55802 abeyer@btolawyers.com Work #: 218-722-1000	**Matthew H. Beaumier** 227 West First Street, Suite 610 Duluth, MN 55802 mbeaumier@btolawyers.com Work #: 218-722-1000	August 11, 2021
Cortney L. Bivens 300 S. 4th Street, RM 600 Minneapolis, MN 55412 cozichicparalegalsvc@icloud.com Work #: 651-456-8363	**Elizabeth A. Kelly** 600 Nicollet Mall, Suite 390A Minneapolis, MN 55402 beth.kelly@vlnmn.org Work #: 612-752-6608	April 29, 2021
Nacole L. Carlson 302 Ordean Building 424 W. Superior Street Duluth, MN 55802 ncarlson@lasnem.org Work #: 218-623-8116	**Ellen R. Anderson** 302 Ordean Building 424 W. Superior Street Duluth, MN 55802 eanderson@lasnem.org Work #: 218-623-8114	April 21, 2021
Kelli J. Crary 3003 43rd Street NW, Suite 101 Rochester, MN 55901 kelli@dnavarrolaw.com Work #: 507-216-7853	**Dominique J. Navarro** 3003 43rd Street NW, Suite 101 Rochester, MN 55901 dom@dnavarrolaw.com Work #: 507-216-7853	April 8, 2021
Norina J. Dove 4660 Slater Road, Suite 128 Eagan, MN 55122 ndove@swhitefamilylaw.com Work #: 612-750-6284	**Spencer T. White** 4660 Slater Road, Suite 128 Eagan, MN 55122 swhite@swhitefamilylaw.com Work #: 651-454-8783	August 19, 2021
Nicole R. DeJarlais 1932 Second Ave. E., Suite 2 Hibbing, MN 55746 nicole@prebichlaw.com Work #: 218-262-6601	**Richard E. Prebich** 1932 Second Ave. E. Suite 2 Hibbing, MN 55746 rickprebich@gmail.com Work #: 218-262-6601	April 8, 2021
Sherry L. Gruenhagen 1015 7th Ave. North Moorhead, MN 56560 sgruenhagen@lsnmlaw.org Work #: 218-233-8585	**Heidi H. Uecker** 1015 7th Ave. North Moorhead, MN 56560 huecker@lsnmlaw.org Work #: 218-233-8585	May 21, 2021

MINNESOTA JUDICIAL BRANCH

Legal Paraprofessional	Supervising Attorney	Approval Date
Lori A. Hogen 7900 Highway 7 Minneapolis, MN 55426 lori@metroattorneymn.com Work #: 612-361-2226	**Adam Y. Galili** 7900 Highway 7 Minneapolis, MN 55426 adam@metroattorneymn.com Work #: 612-888-9620	April 21, 2021
Rachel A. Mitchell 215 E. Elm Avenue P.O. Box 249 Waseca, MN 56093 rachel.mitchell@phblawoffice.com Work #: 507-835-5240	**Perry A. Berg** 215 E. Elm Avenue P.O. Box 249 Waseca, MN 56093 perry.berg@phblawoffice.com Work #: 507-835-5240	June 21, 2021
Mary D. Russom 302 Ordean Building 424 W. Superior Street Duluth, MN 55802 mrussom@lasnem.org Work #: 218-623-8105	**Tiffany Doherty-Schooler** 302 Ordean Building 424 W. Superior Street Duluth, MN 55802 tschooler@lasnem.org Work #: 218-623-8101	May 26, 2021
Mary J. Vrieze 903 W. Center St., Suite 230 Rochester, MN 55904 mary.vrieze@smrls.org Work #: 507-292-0080	**Brian N. Lipford** 903 W. Center St., Suite 230 Rochester, MN 55904 brian.lipford@smrls.org Work #: 507-282-0080	May 26, 2021
Jennifer A. Waletzko P.O. Box 232 Forest Lake, MN 55025 scribesinbox@gmail.com Work #: 763-245-1625	**Amanda T. Mason-Sekula** 310 Fourth Avenue S., Suite 5010 Minneapolis, MN 55415 amanda@sekulafamilylaw.com Work #: 612-206-3755, ext: 1077	August 18, 2021

Appendix F

STATE OF MINNESOTA

IN SUPREME COURT

ADM19-8002

ORDER AMENDING RULES GOVERNING LEGAL PARAPROFESSIONAL PILOT PROJECT

In an order filed September 29, 2020, we established a pilot project to evaluate the delivery of legal services by legal paraprofessionals who are supervised by a licensed Minnesota attorney, in certain areas of unmet civil legal needs. We also promulgated Rule 12 of the Supervised Practice Rules, to govern the work of the participants in that project. The Standing Committee appointed to administer the pilot project has recommended amendments to Rule 12.01, to clarify the scope of services that can be provided in the project. We have reviewed the recommendation and the proposed amendments to Rule 12.01, and agree that as amended, the rule will clarify the scope of services for the pilot project participants.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that Rule 12.01 of the Supervised Practice Rules is amended as shown below. The rule as amended is effective as of January 1, 2022, and applies to cases pending on, and filed on or after, the effective date.

Dated: December 9, 2021

BY THE COURT:

Lorie S. Gildea
Chief Justice

SUPERVISED PRACTICE RULES

[Note: in the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]

Rule 12. Authorized Practice by Legal Paraprofessionals in Pilot Project

Rule 12.01 Scope of Work

An eligible legal paraprofessional may, under the supervision of a member of the bar, provide the following services:

* * *

(b) ~~Provide advice to and a~~Appear in court on behalf of clients in family law cases~~, but such services shall be limited to advice and~~ at default hearings, pretrial hearings, and informal family court proceedings, and hearings related to child-support modifications, parenting-time disputes, and paternity matters. ~~With the approval of the supervising attorney, legal paraprofessionals may also appear in court in family law cases for the following purposes: (1) default hearings, (2) pretrial hearings, and (3) informal family court proceedings.~~

(c) Provide advice to clients in family law cases related to child-support modifications, parenting-time disputes, paternity matters, and stipulated dissolution and custody/parenting time agreements, including the drafting of stipulated dissolution and custody/parenting time agreements.

(d) ~~Legal paraprofessionals may also a~~Appear with a client in family law mediations where, in the judgment of the supervising lawyer, the issues are limited to less complex matters, which may include simple property divisions, parenting-time matters, and spousal-support determinations.

(e) Under no circumstances shall a legal paraprofessional provide advice or appear in court or at a mediation under this paragraph if the family law case involves allegations of domestic abuse or child abuse.

~~(e)~~(f) With authorization from the supervising attorney, prepare and file a limited set of documents identified in Appendix 1 to these rules~~ without the supervising attorney's final review~~.

Communications between the client and the eligible legal paraprofessional shall be privileged under the same rules that govern the attorney-client privilege and work product doctrine.

For each case where a legal paraprofessional will appear in court on behalf of the client, the certificate of representation for the matter must identify both the supervising attorney and the legal paraprofessional. The legal paraprofessional may sign the certificate of representation, but must include with the filed certificate of representation a statement signed by the supervising

attorney that authorizes the legal paraprofessional to appear in court. The signed authorization must identify the types of proceedings for which the legal paraprofessional is authorized to provide services and the starting and ending dates during which the paralegal is authorized to appear in court.

* * *

Appendix 1 to Rule 12 of the Supervised Practice Rules

General Filing Documents

- Notice of Appearance
- Certificate of Representation
- Application to Serve by Alternate Means
- Affidavit of Default
- Affidavit of Service
- Substitution of Counsel
- Notice of Withdrawal
- Notice of Filing
- Affidavit for Proceeding In Forma Pauperis
- Proposed In Forma Pauperis Order
- Settlement Agreement
- Request for Continuance
- Motion to Request Correction of Clerical Mistakes

Landlord-Tenant Specific

- Affidavit of Compliance and Proposed
- Order for Expungement
- Notice of Motion and Motion for Expungement of Eviction Record
- Petition for Emergency Relief Under Tenant Remedies Act
- Rent Escrow Affidavit
- Eviction Answer
- Eviction Action Proposed Findings of Fact, Conclusions of Law, Order and Judgment
- Answer and Motion for Dismissal or Summary Judgment (Eviction)
- Notice of Motion and Motion to Quash Writ of Recovery
- Petition for Possession of Property After Unlawful Lockout

Family Law Specific

- Confidential Information Form 11.1
- Confidential Information Form 11.2
- Felon name change notice
- Notice to Public Authority
- Notice of Default and Nonmilitary Status Affidavit of Non-Military Status
- Default Scheduling Request
- Notice of Intent to Proceed to Judgment
- Proposed Default Findings
- Initial Case Management Conference Data Sheet
- Scheduling Statement
- Parenting/Financial Disclosure Statement
- Discovery (Interrogatories, Request for Production of Documents, Request for Admissions)
- Summary Real Estate Disposition
- Judgment
- Certificate of Dissolution and Stipulated Dissolution
- Delegation of Parental Authority
- Revocation of Delegation of Parental Authority
- Application for Minor Name Change
- Parenting/Financial Disclosure Statement
- Certificate of Settlement Efforts
- Notice of Motion and Motion to Modify Parenting Time
- Stipulation of the Parties, including for custody/parenting time agreements
- Notice of Motion and Motion to Modify Child Support/Medical Support
- Notice of Motion and Motion (examples: Stop COLA, Reinstate Driver's License)
- Request for County to Serve Papers

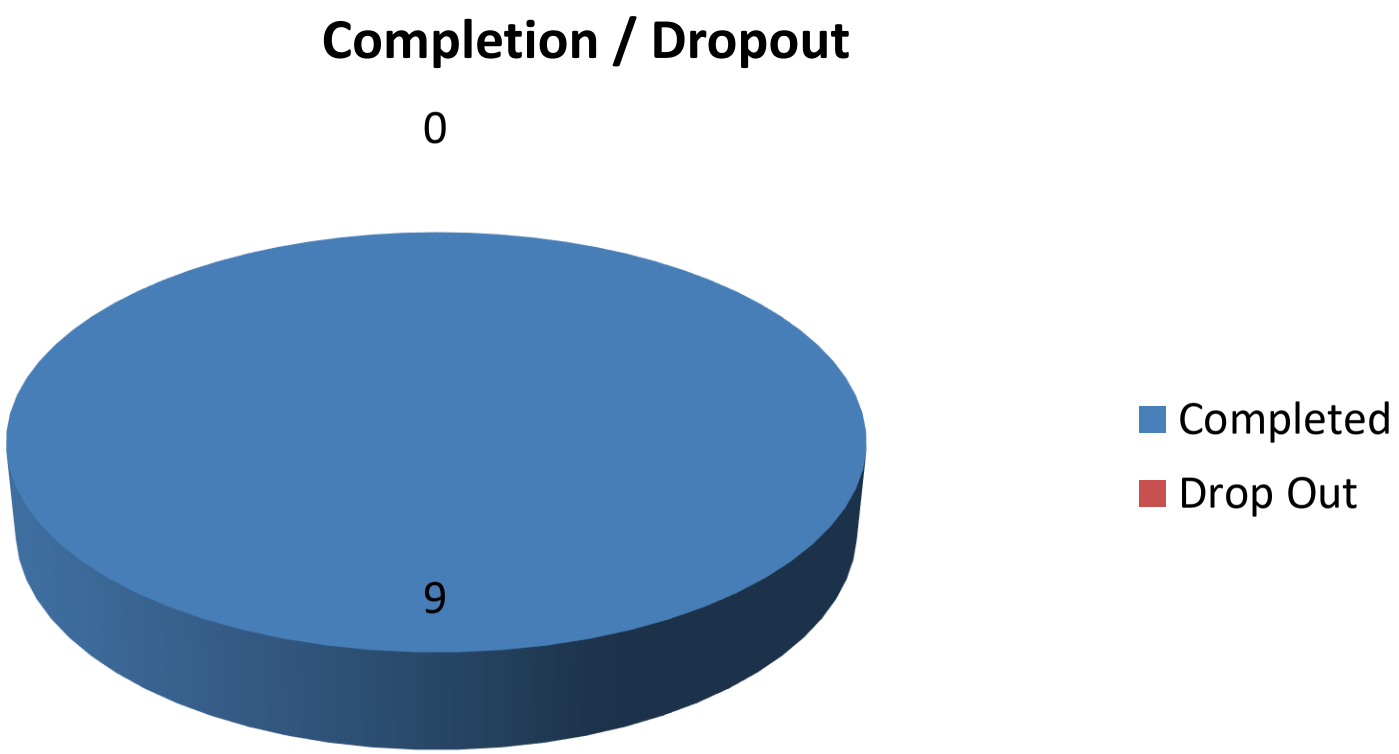
MINNESOTA JUDICIAL BRANCH

Legal Paraprofessional Pilot Project: Paraprofessional Survey

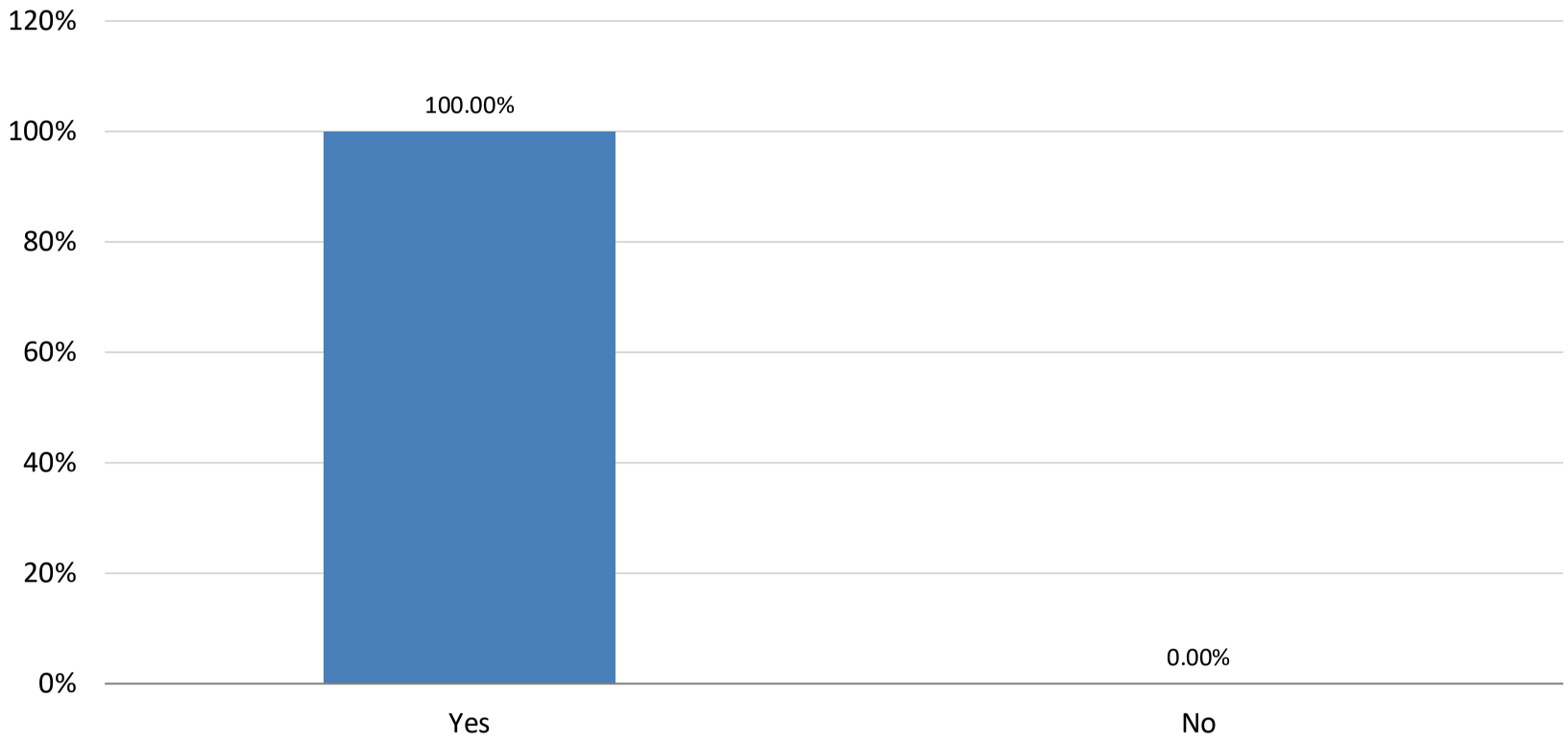
Appendix G

QuestionPro

Survey Overview



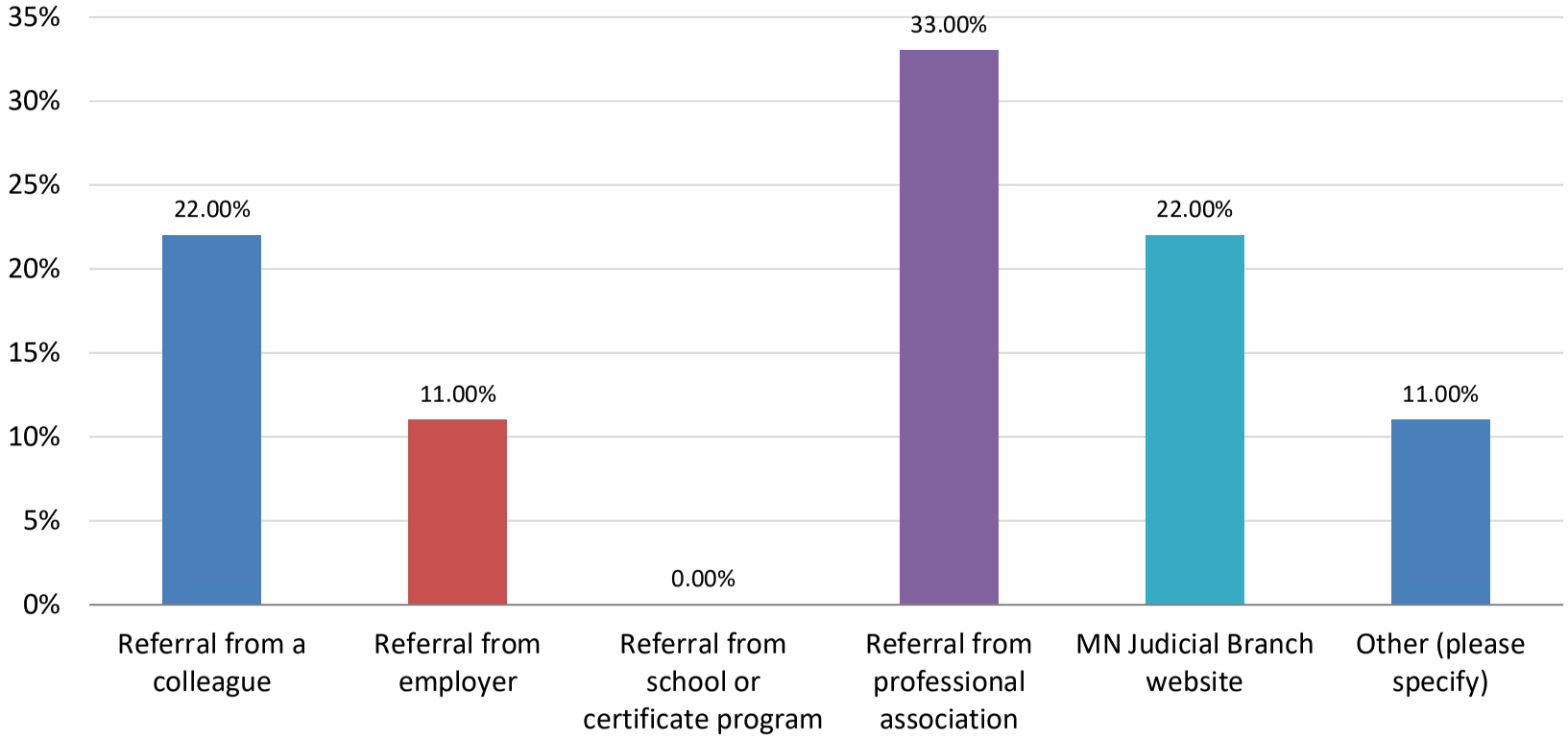
Are you actively participating in the Legal Paraprofessional Pilot Project?



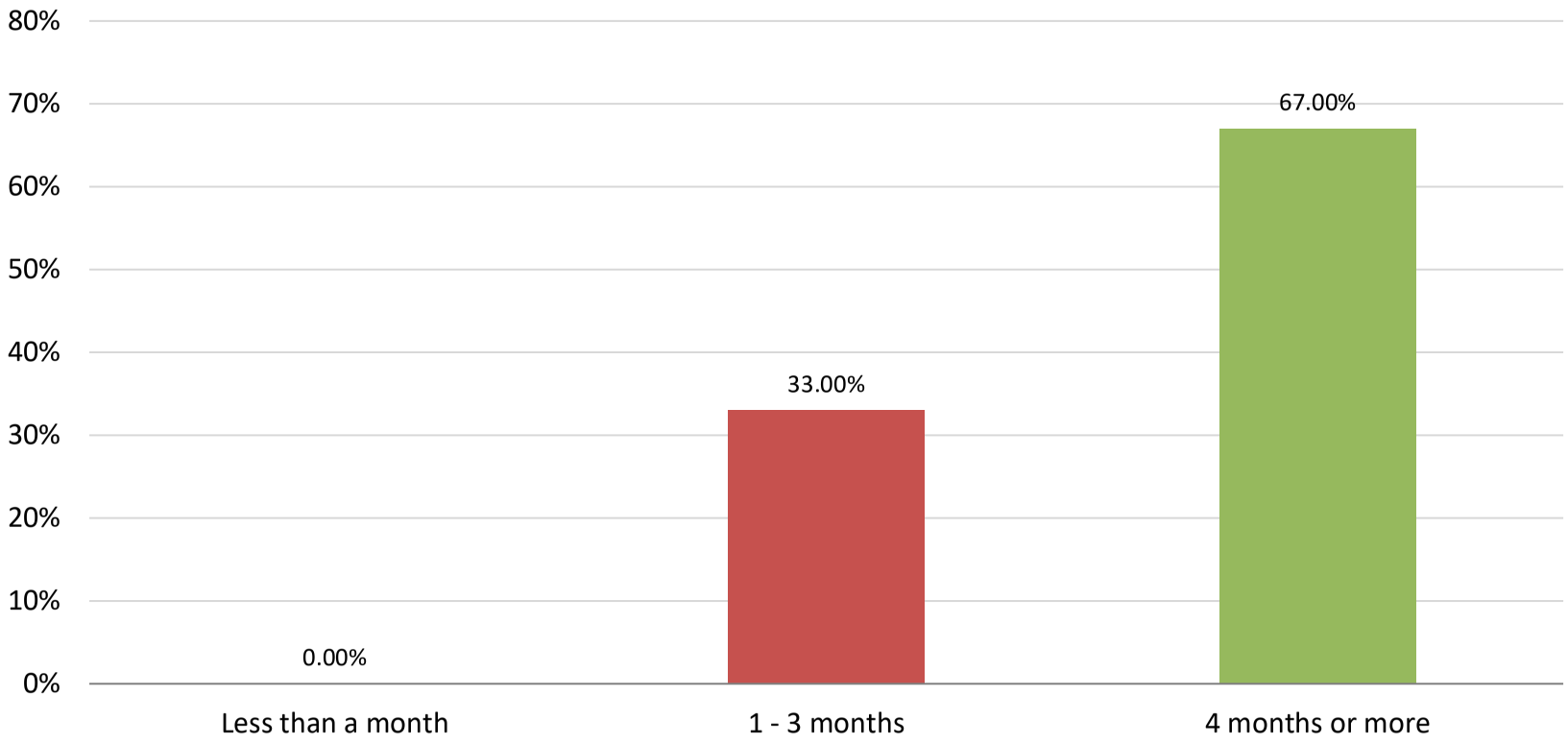
How many clients are you currently assisting through the Legal Paraprofessional Pilot Project?

Response
0
0
6
1
1
5
2
0
2

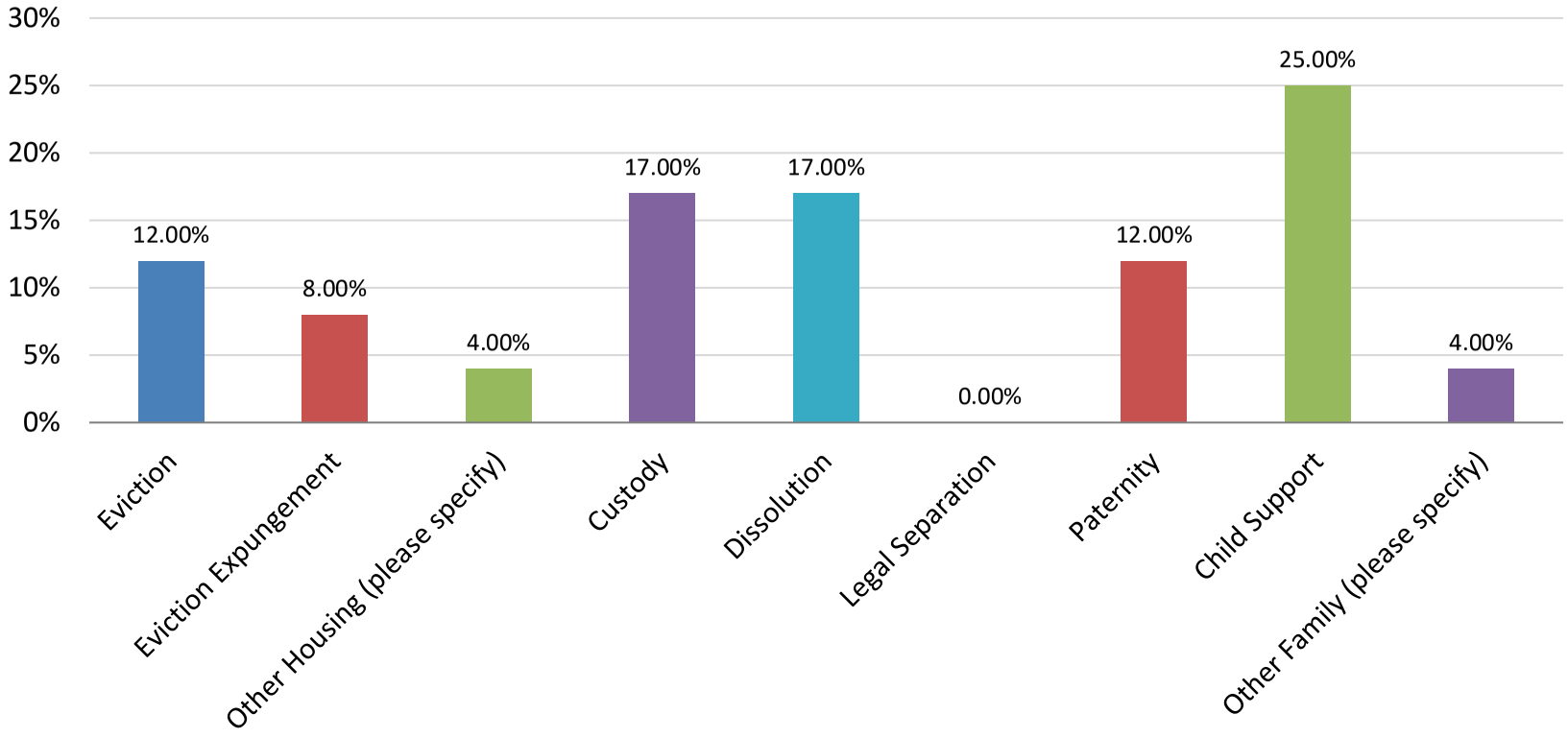
How did you learn about the Legal Paraprofessional Pilot Project?



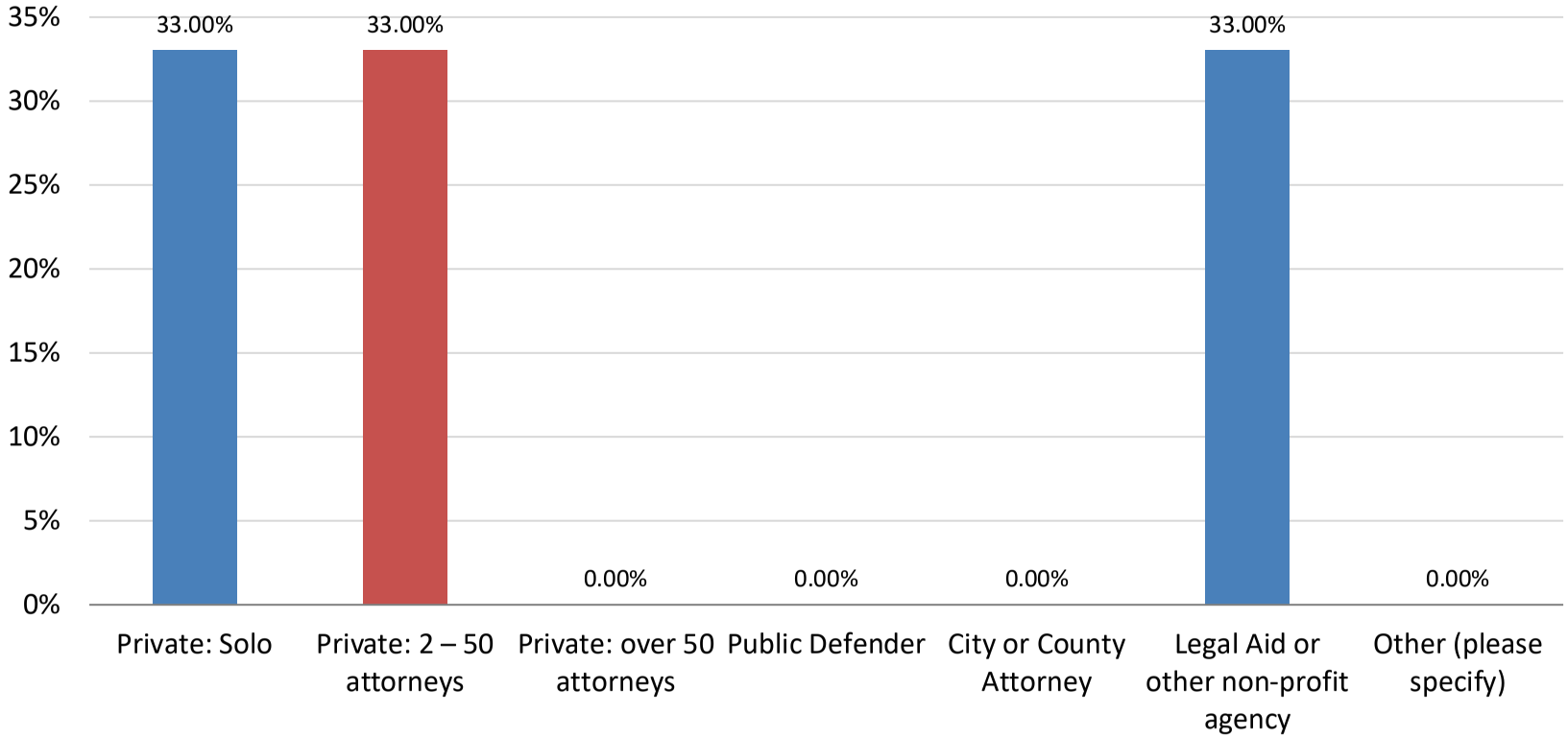
How long have you participated in the Legal Paraprofessional Pilot Project?



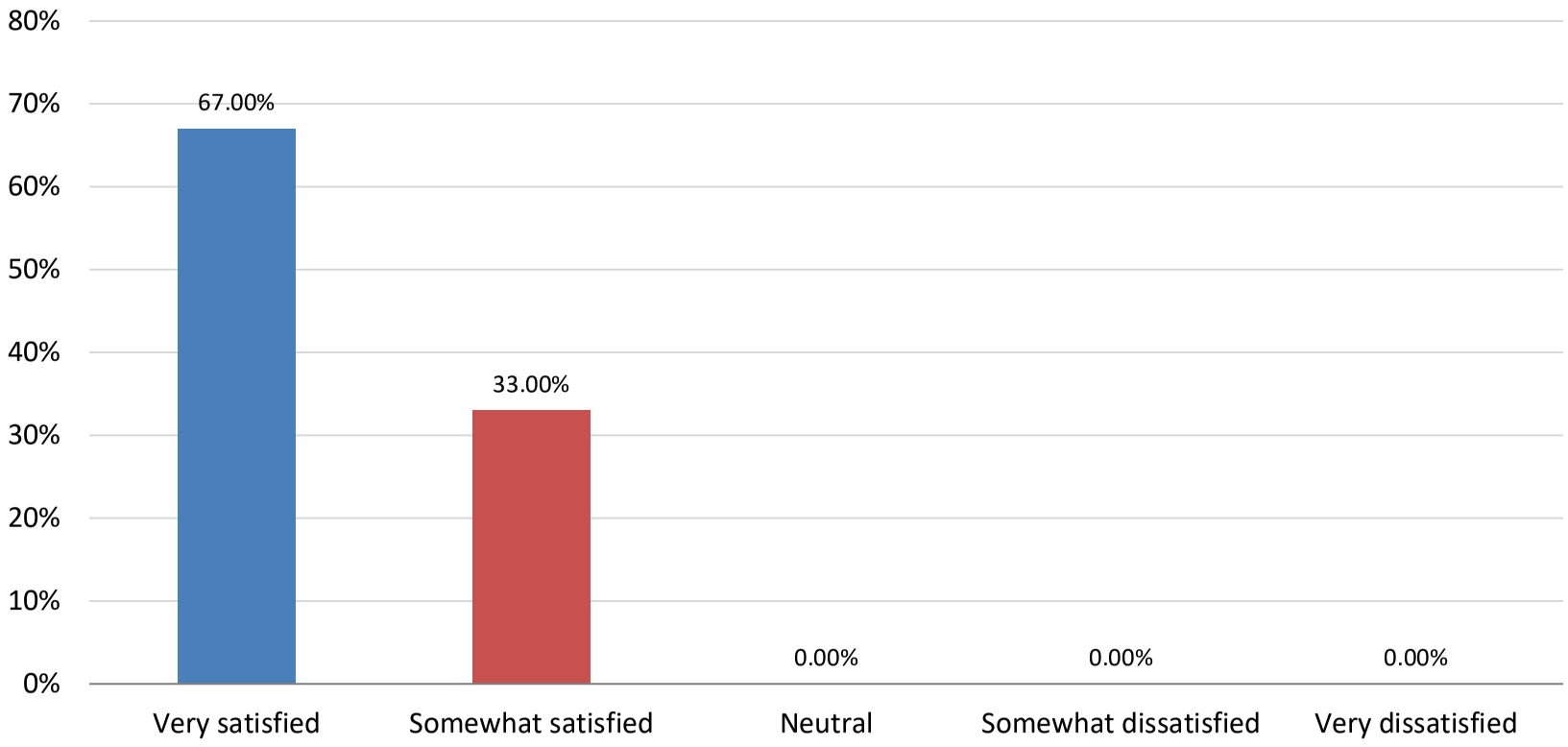
For what type(s) of case have you participated in the Legal Paraprofessional Pilot Project? (Check all that apply.)



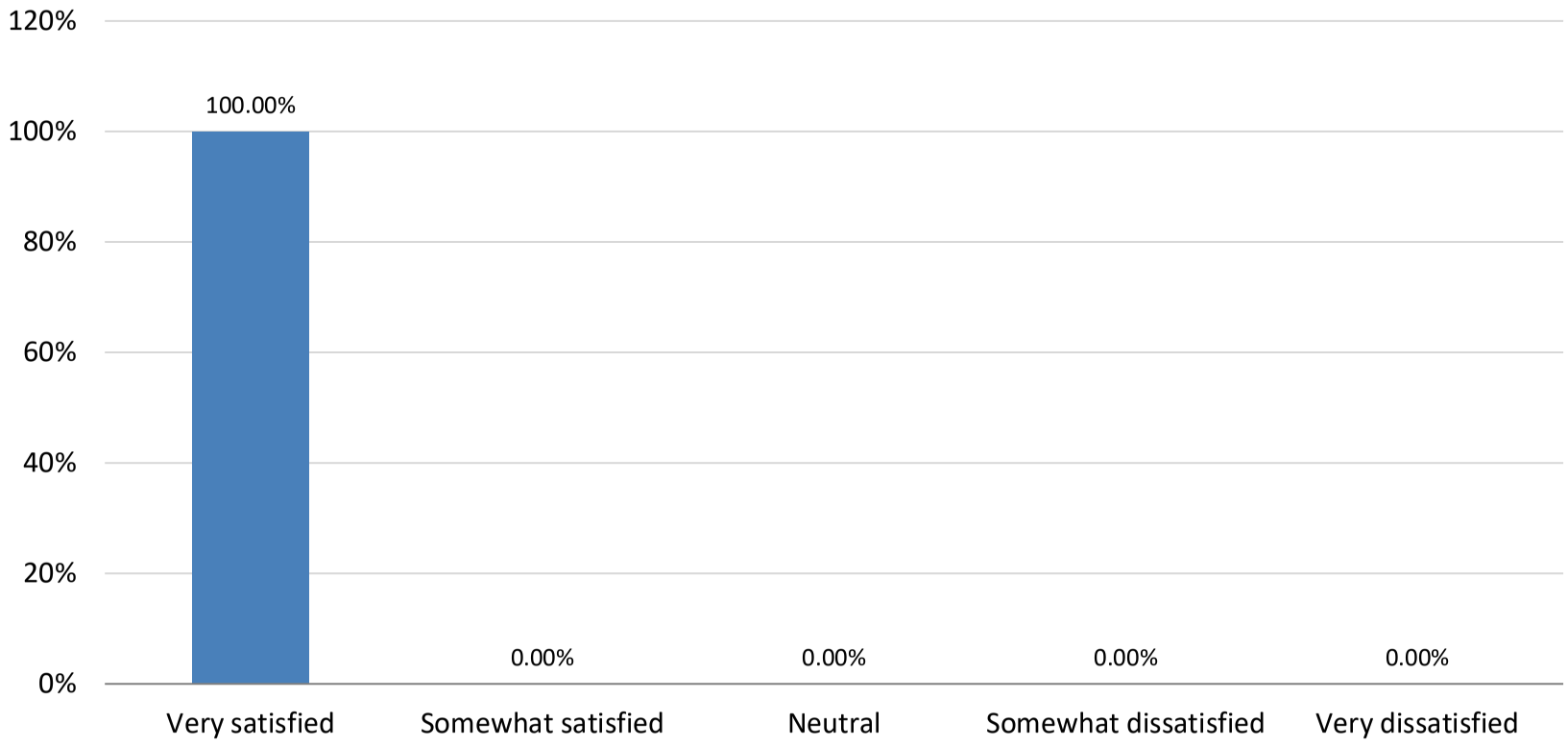
How would you describe where you work as a paraprofessional?



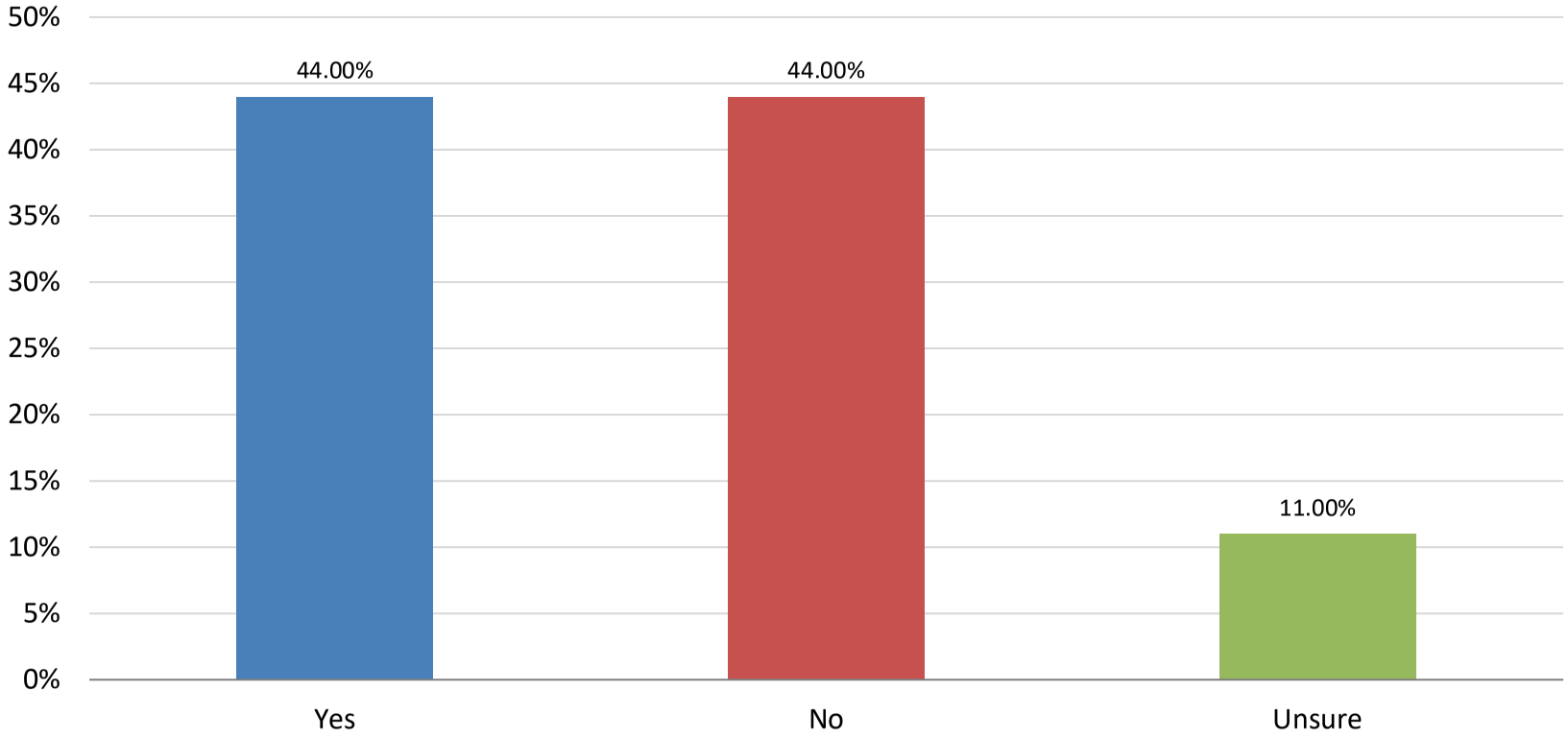
Please rate your satisfaction with the Legal Paraprofessional Pilot Project application process.



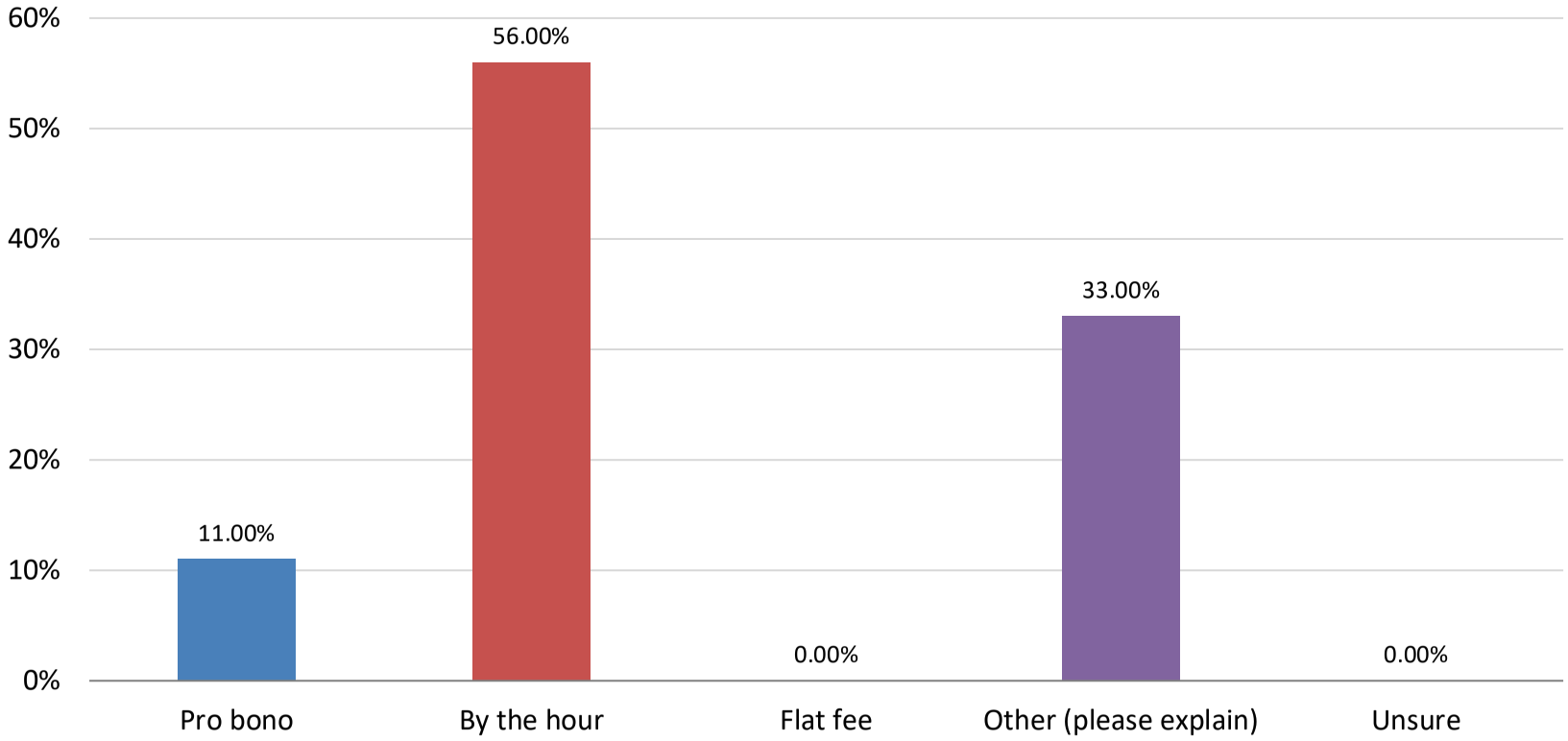
Please rate your satisfaction with the supervision provided by your Legal Paraprofessional Pilot Project supervising attorney.



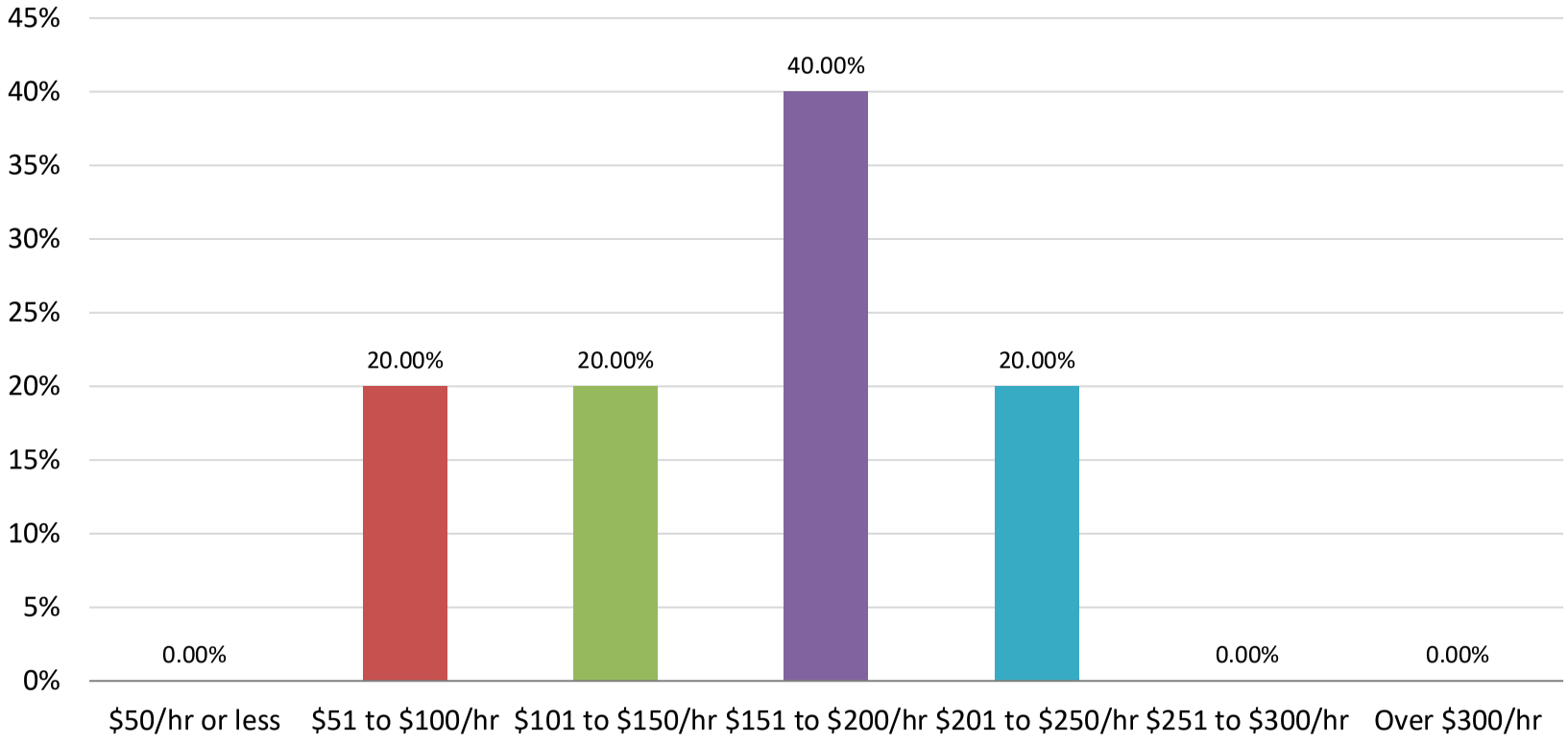
Have you represented any clients in court who you believe would otherwise have been self-represented?



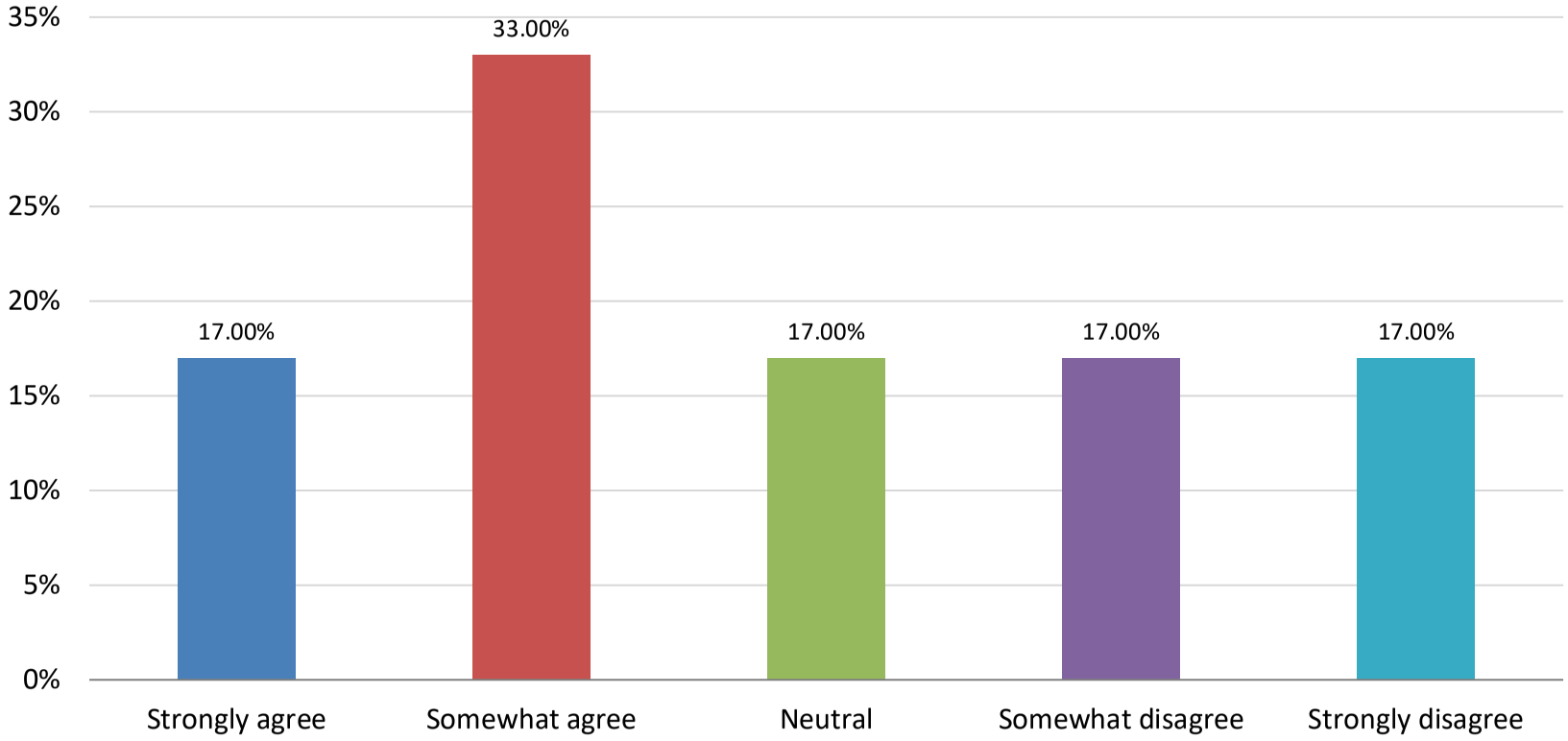
How do you charge for services under the Legal Paraprofessional Pilot Project?



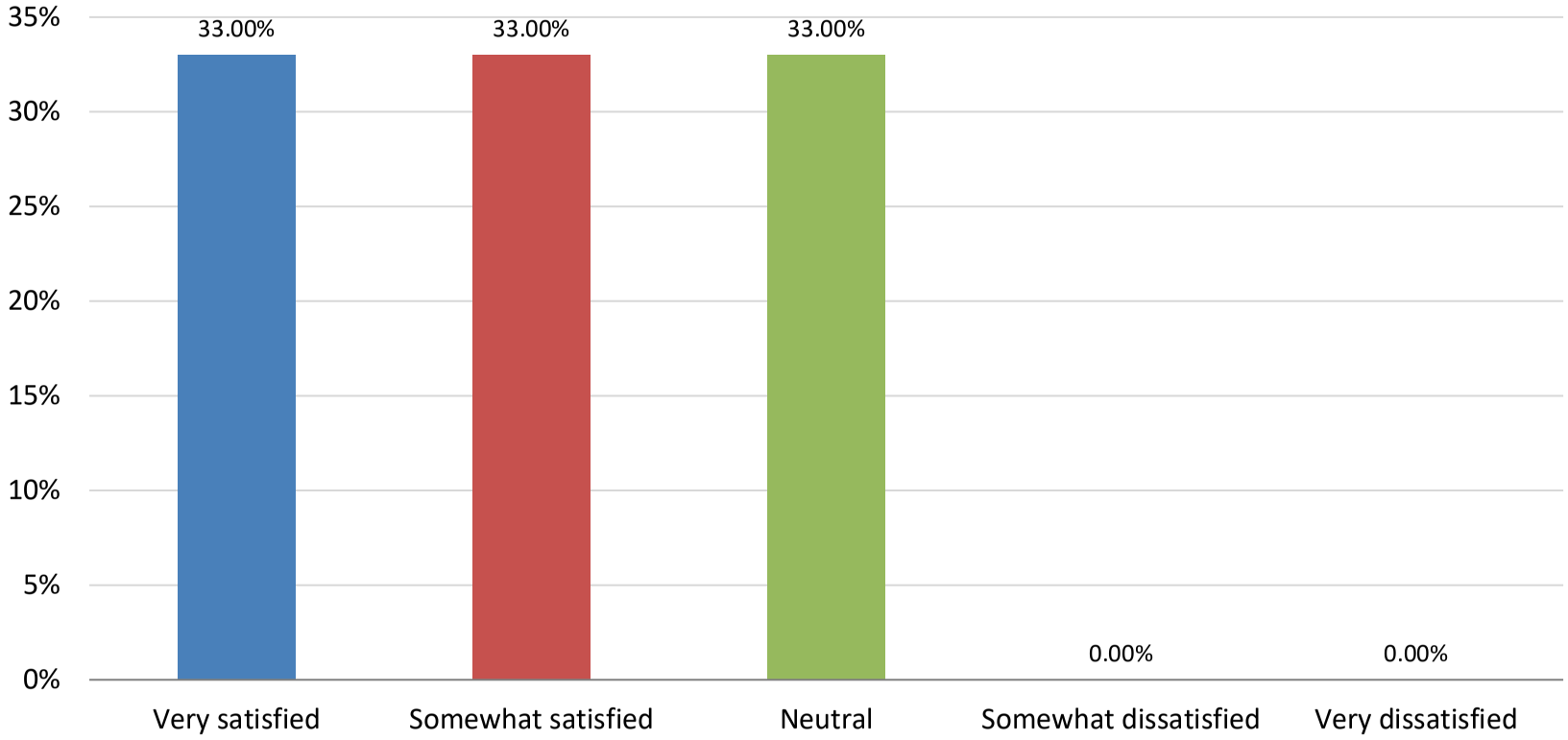
How much do you charge per hour, on average, for your services under the Legal Paraprofessional Pilot Project?



Please rate your level of agreement with the following statement: My expanded role through the Legal Paraprofessional Pilot Project allows me to have a financially sustainable practice.



Please rate your overall satisfaction with the Legal Paraprofessional Pilot Project.

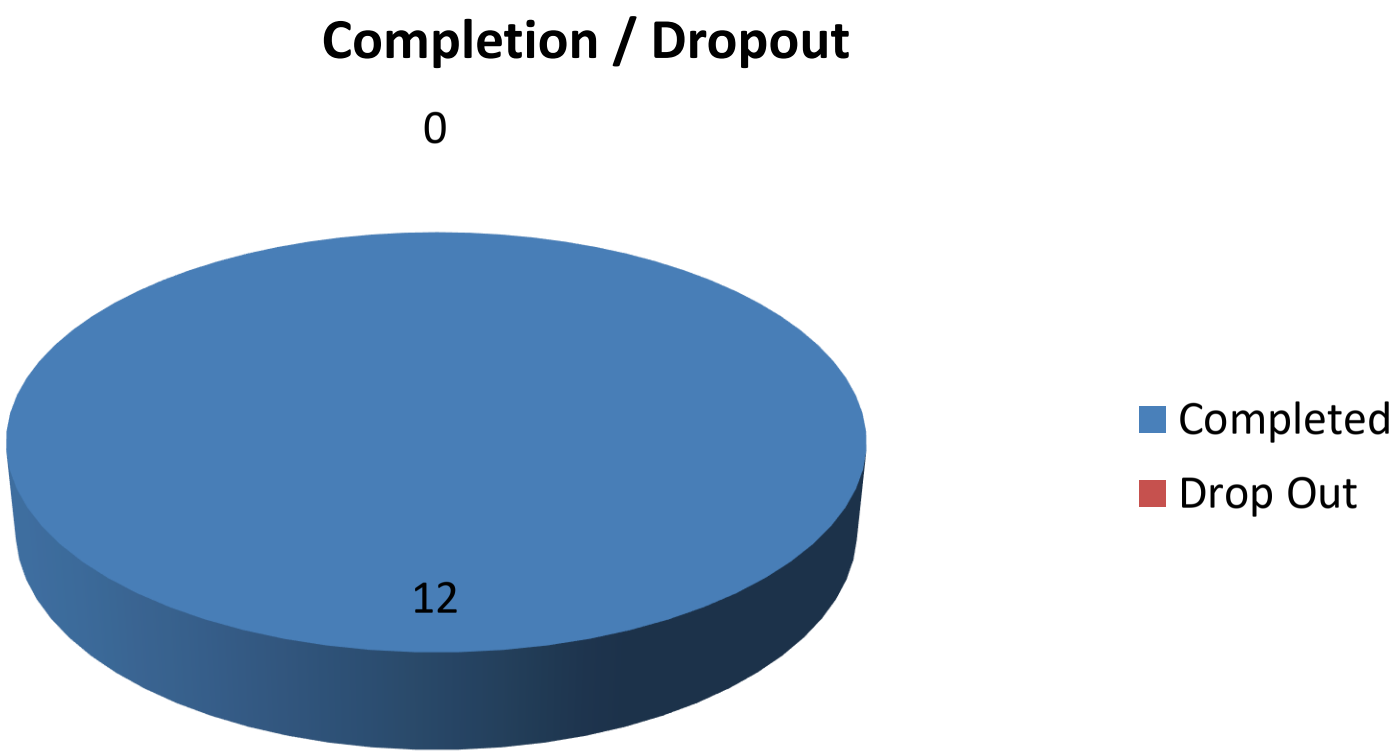


MINNESOTA JUDICIAL BRANCH

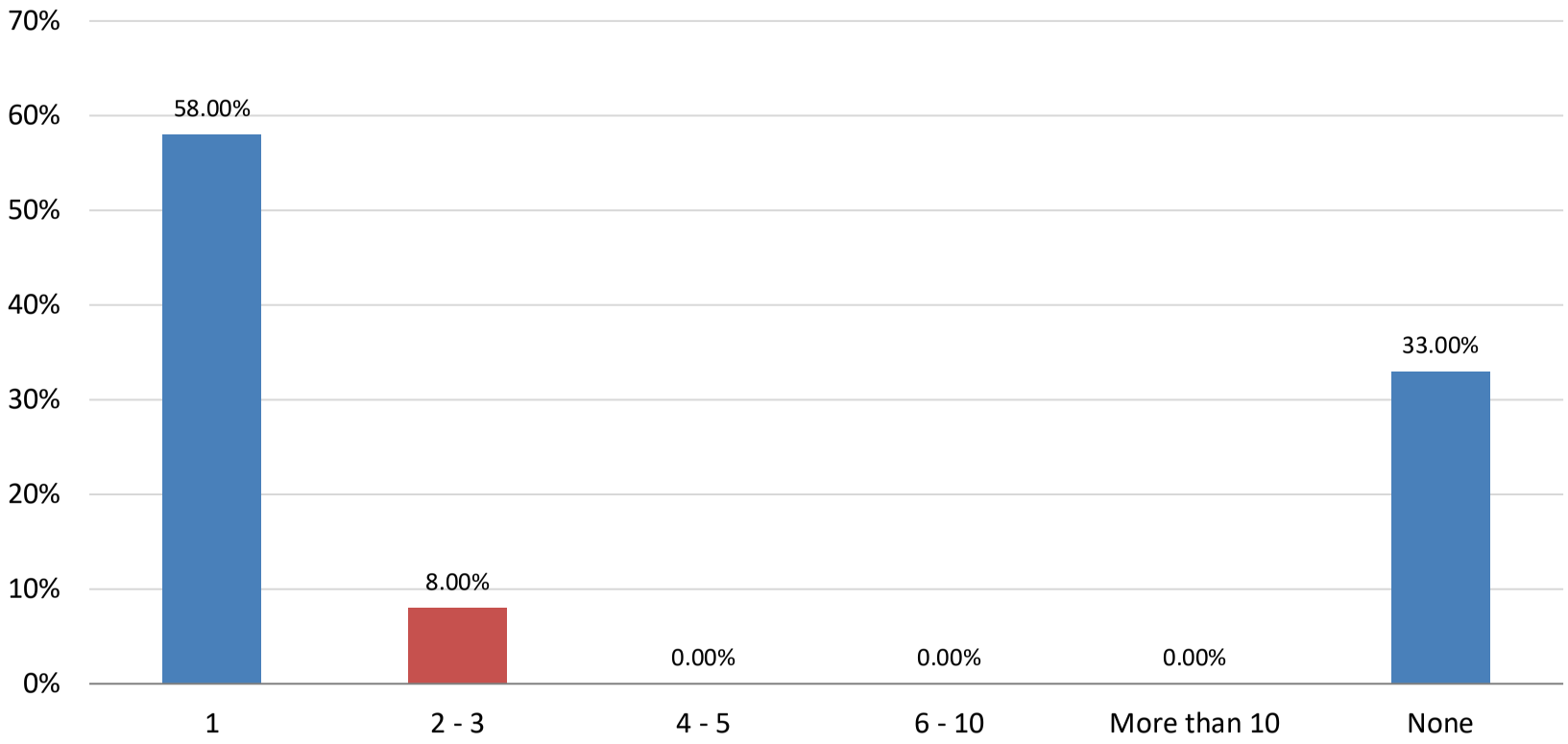
Legal Paraprofessional Pilot Project: Supervising Attorney Survey

QuestionPro

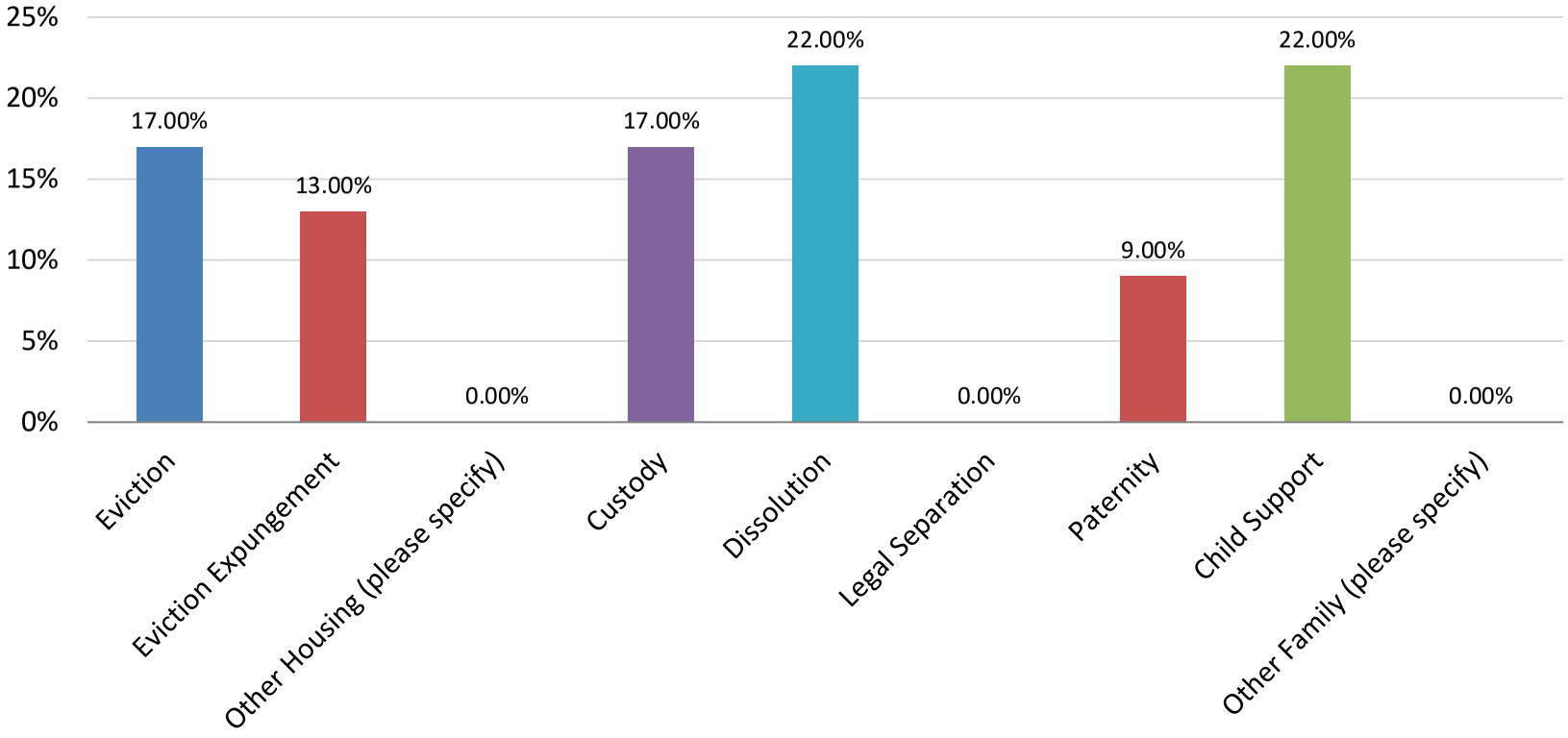
Survey Overview



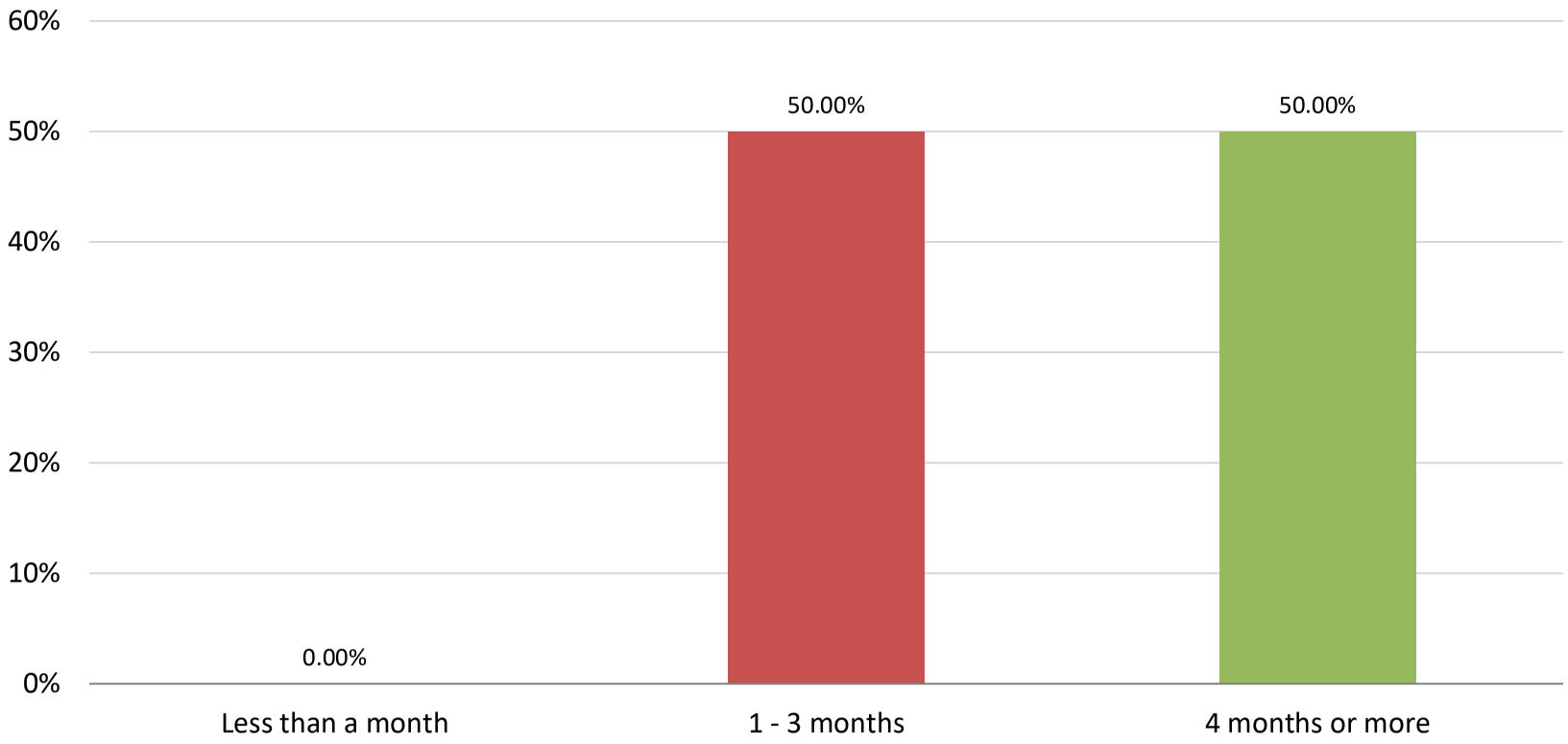
How many paraprofessionals have you supervised through the Legal Paraprofessional Pilot Project?



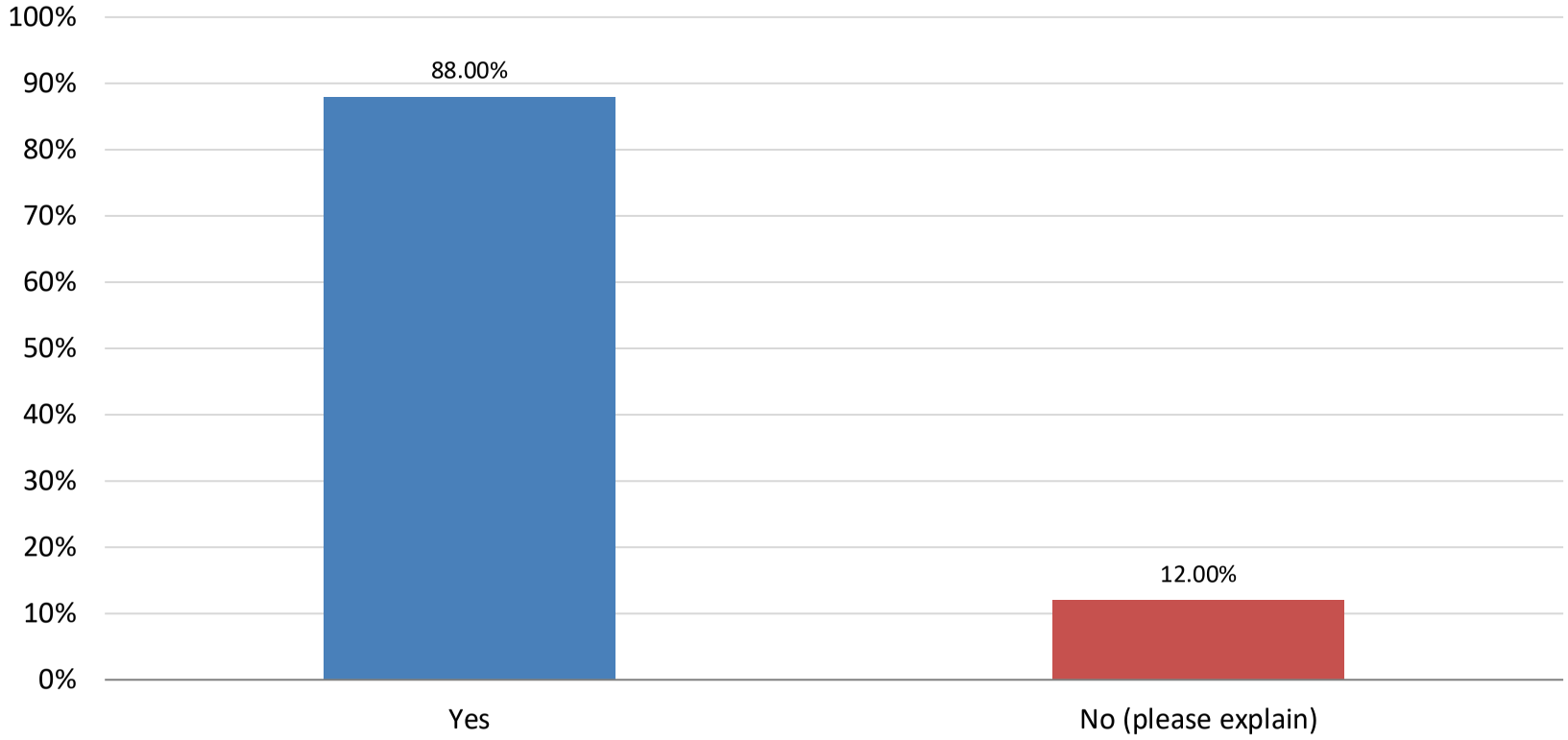
For what type of case have you supervised paraprofessionals through the Legal Paraprofessional Pilot Project? (Check all that apply.)



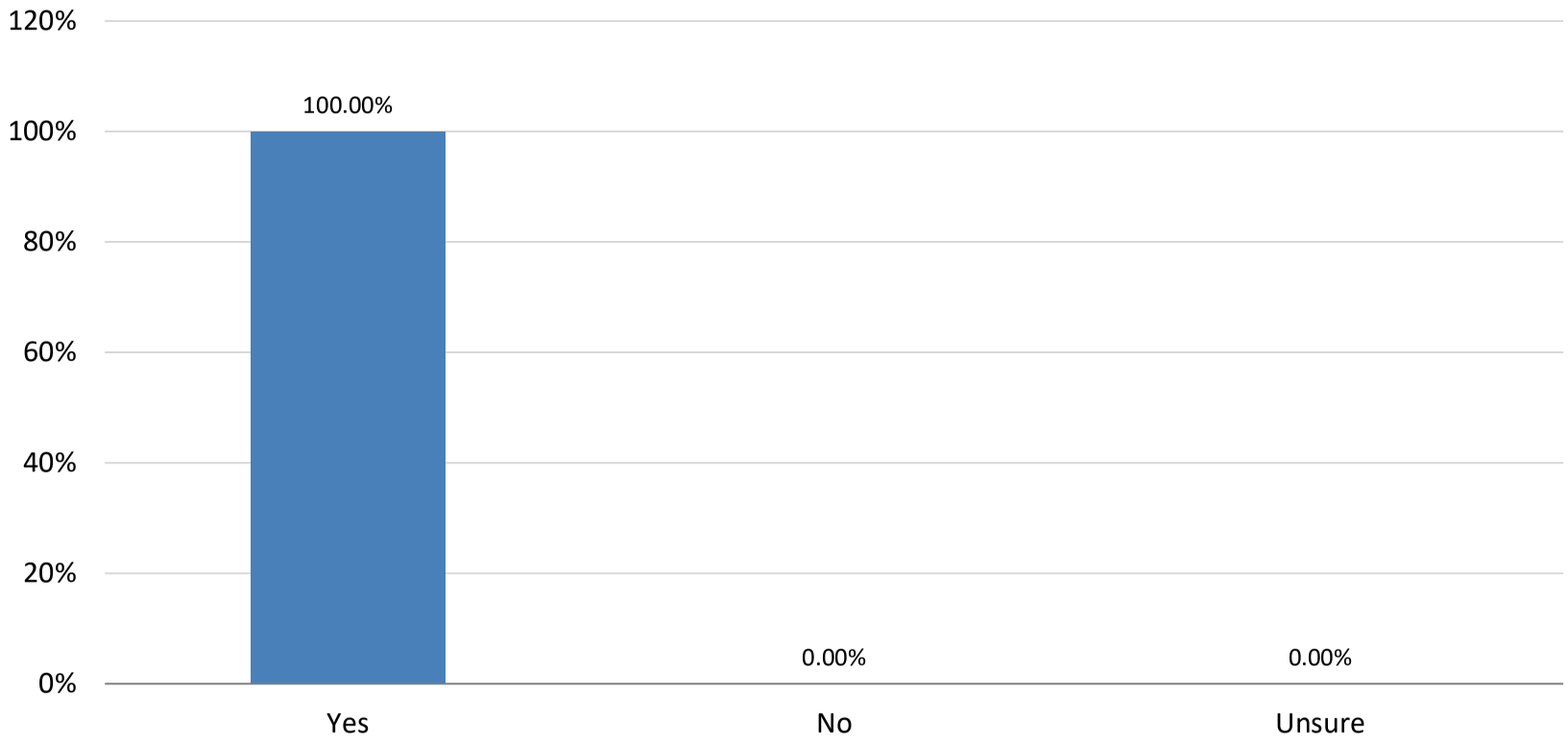
How long have you been participating in the Legal Paraprofessional Pilot Project?



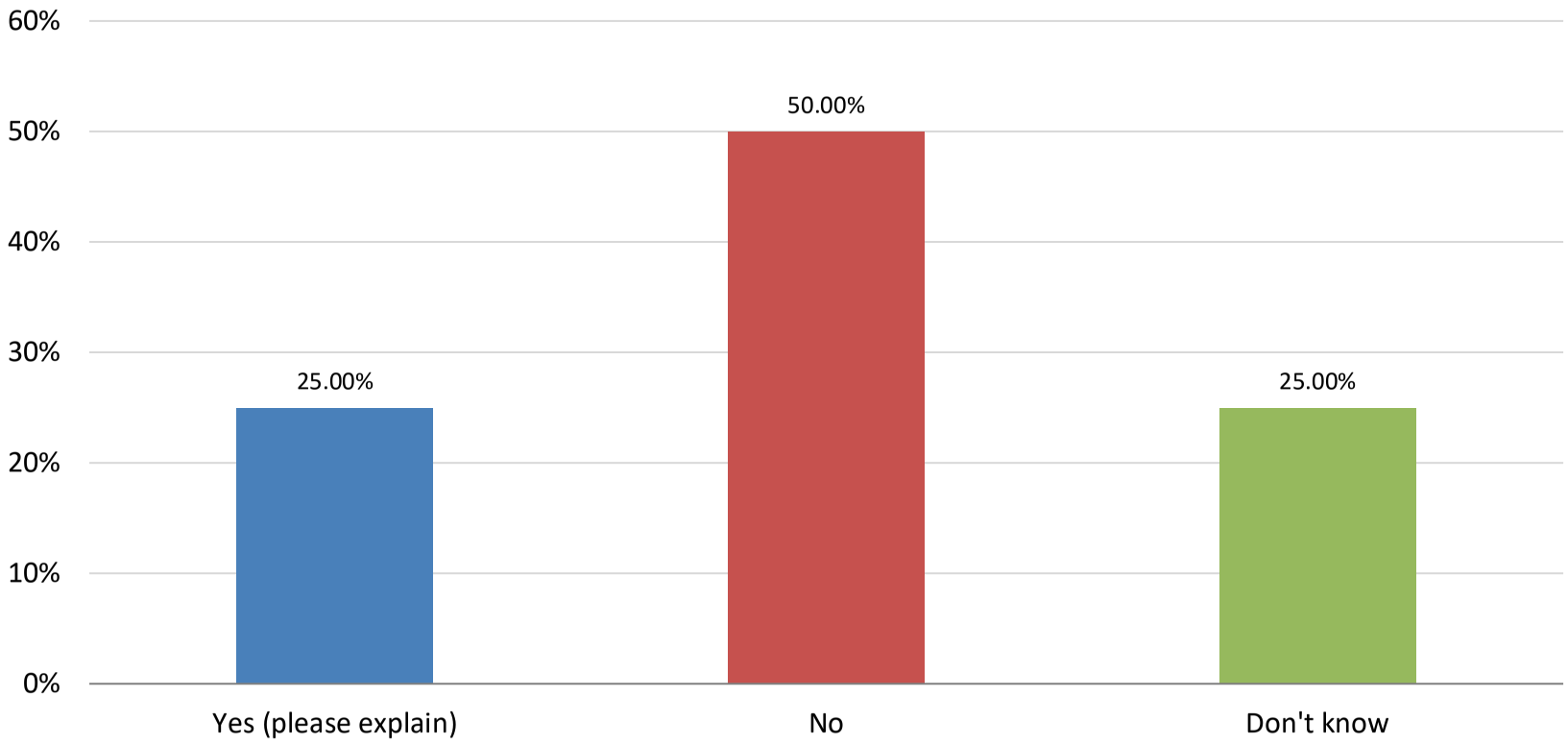
Are you actively participating in the Legal Paraprofessional Pilot Project?



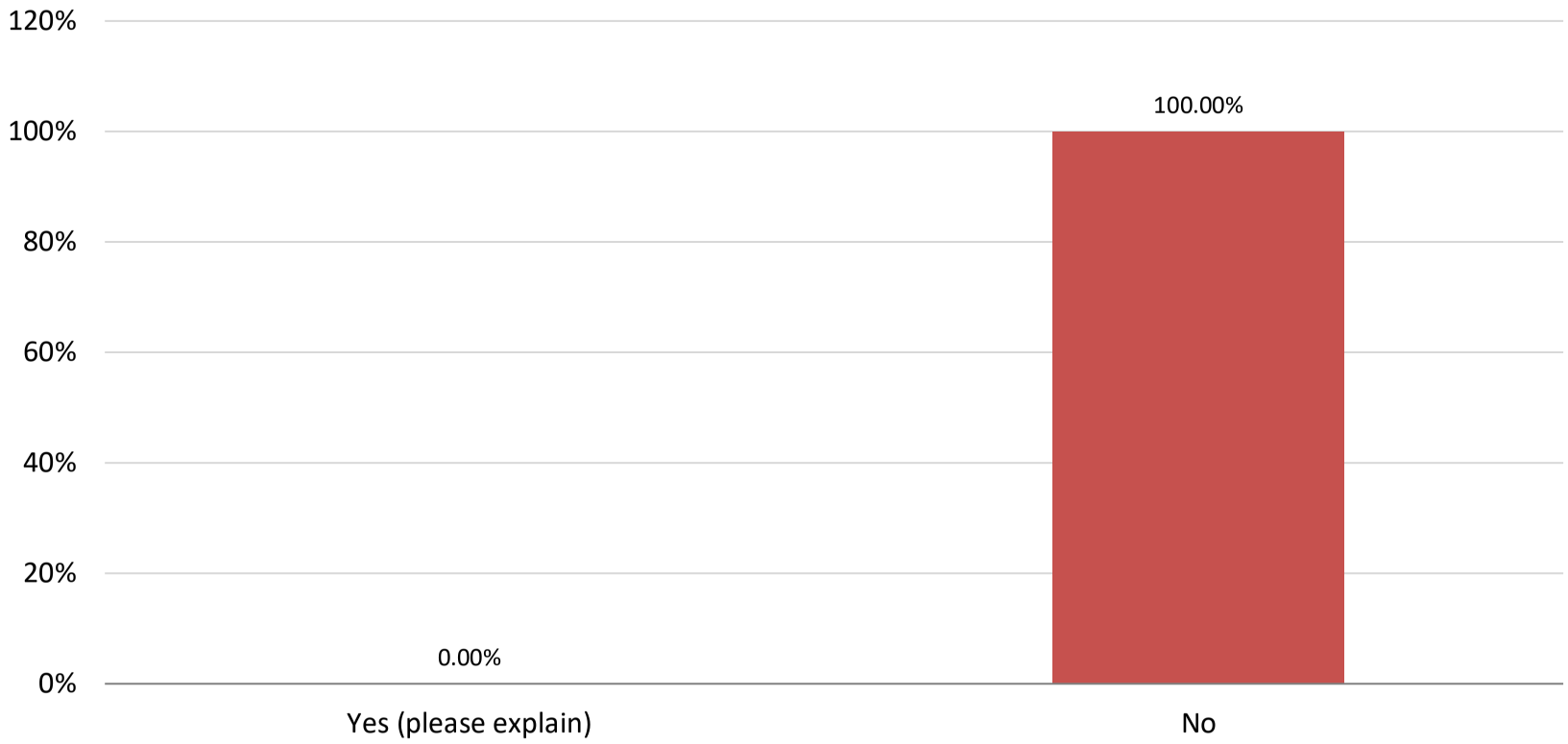
Do you plan to resume active participation in the Legal Paraprofessional Pilot Project at a later date?



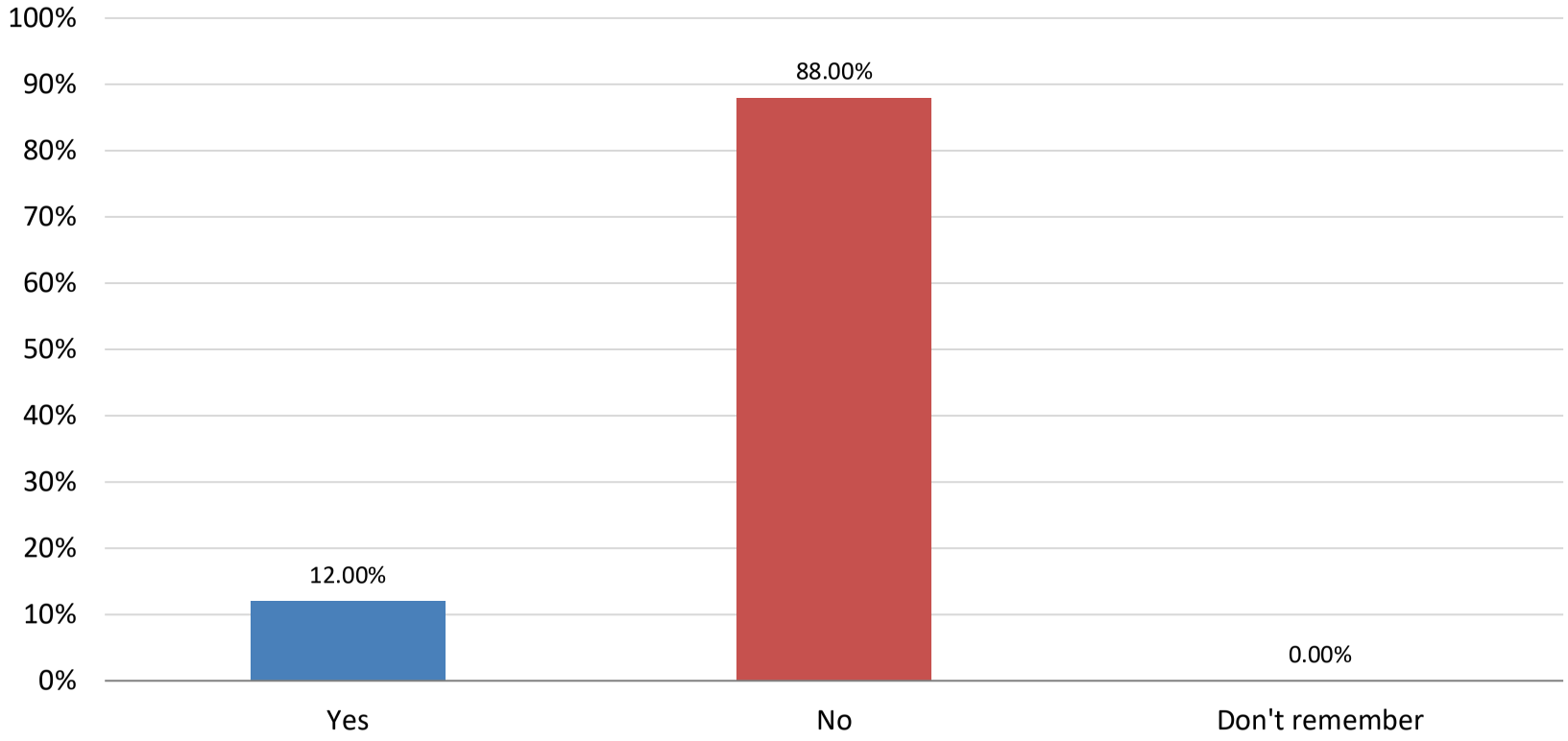
Were you required to modify your legal liability insurance policy to allow for supervising paraprofessionals through the Legal Paraprofessional Pilot Project?



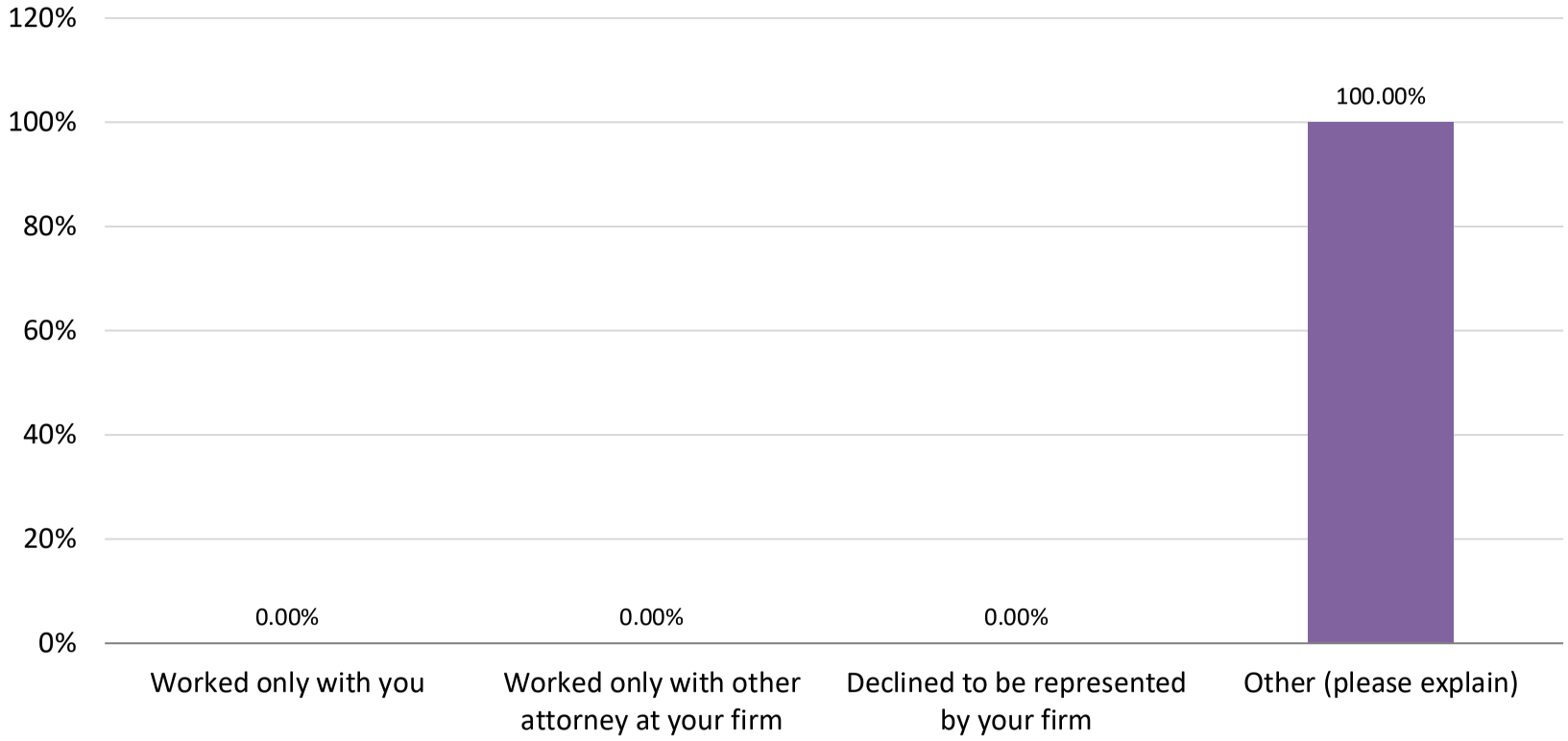
Did the cost of legal liability insurance impact your participation in this project?



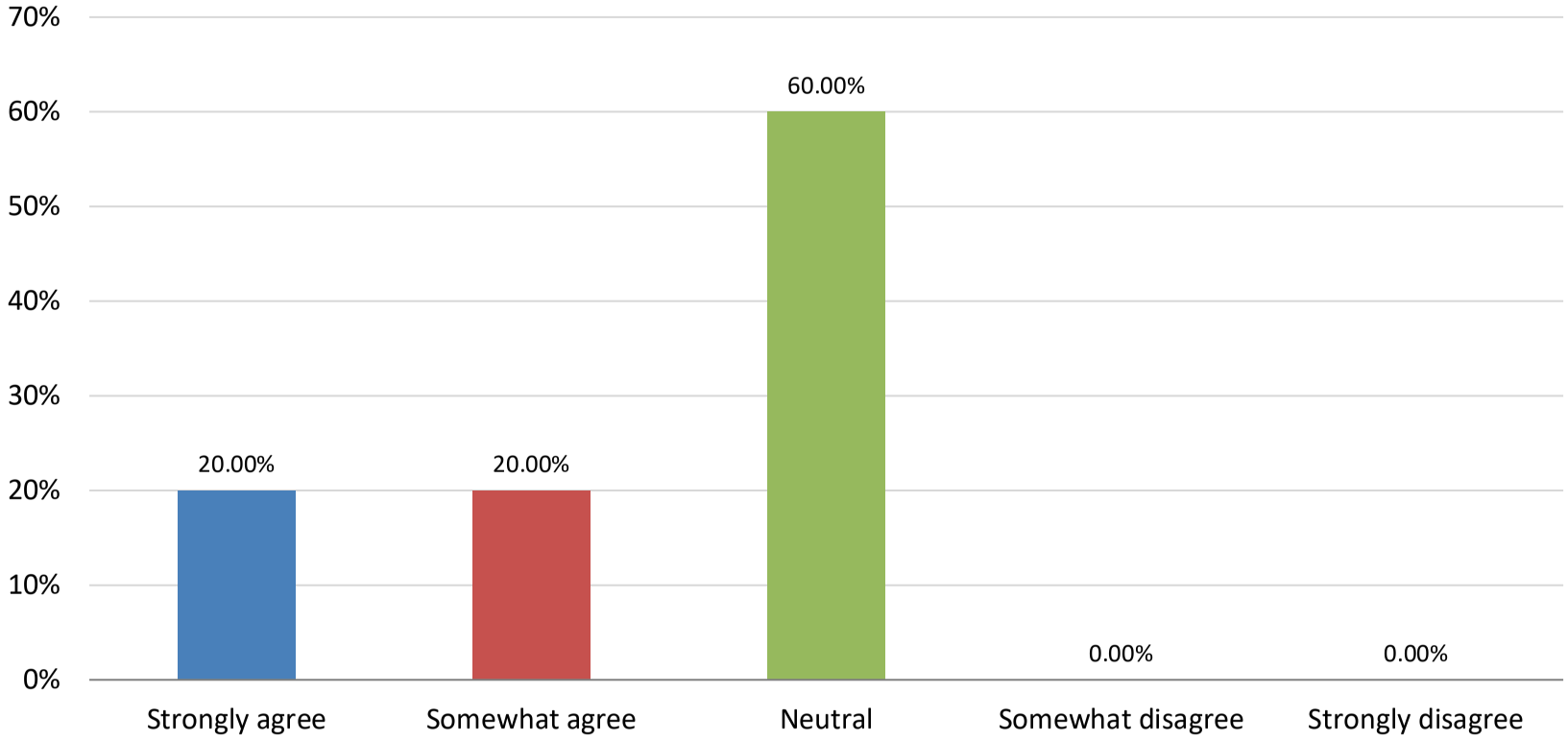
Did anyone decline paraprofessional representation?



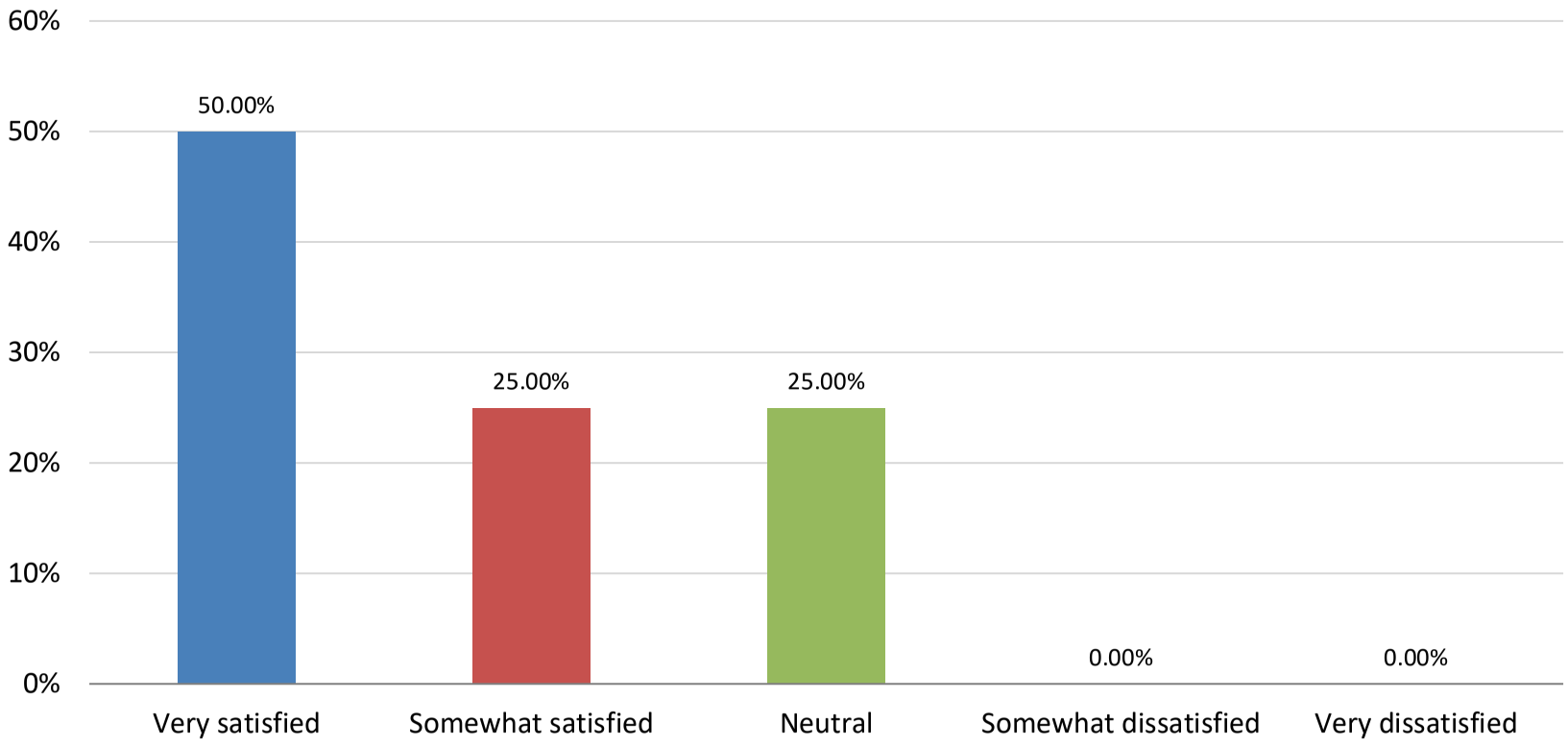
What was the outcome for the client?



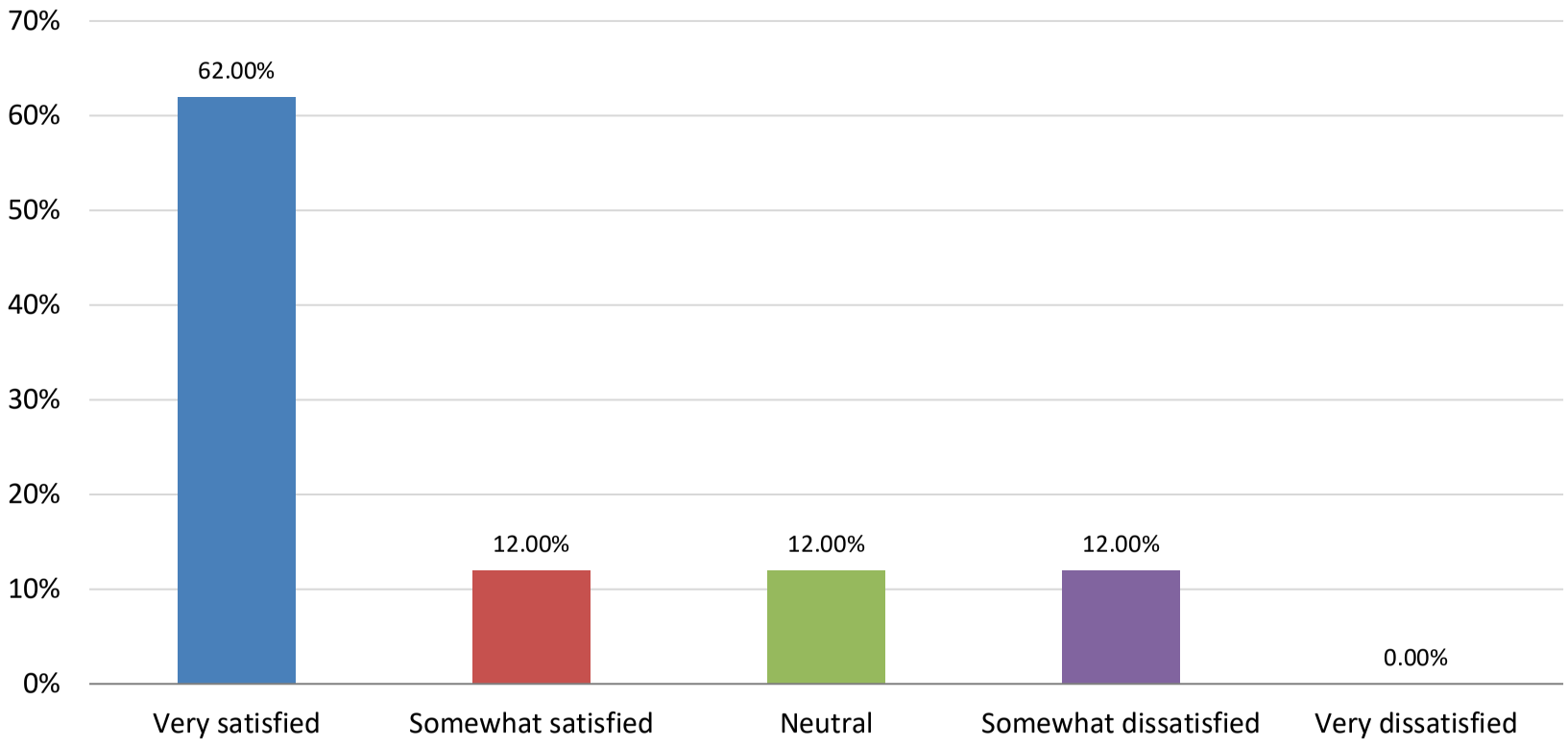
Please rate your level of agreement with the following statement: the expanded paraprofessional role through the Legal Paraprofessional Pilot Project allows me to have a financially sustainable practice.



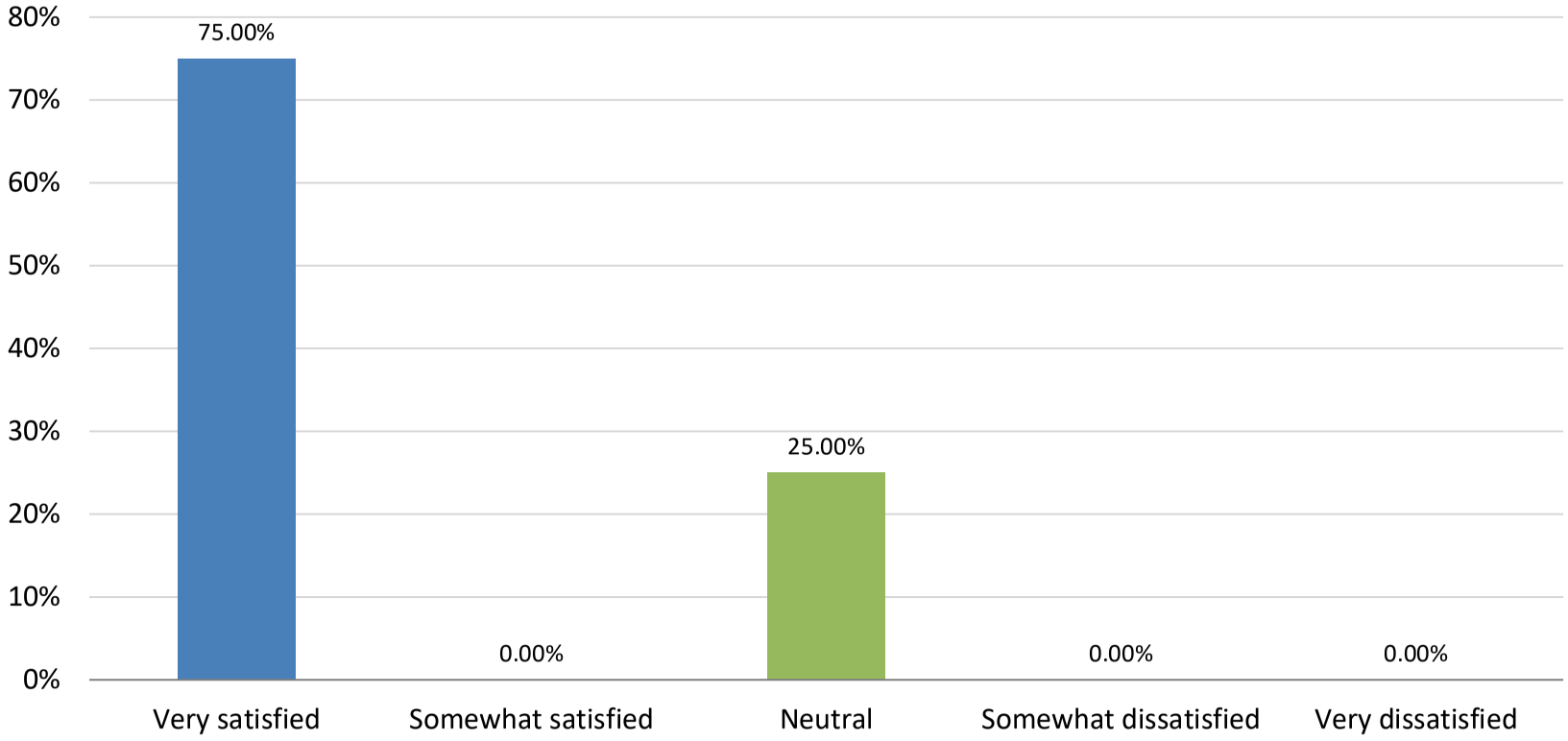
Please rate your satisfaction with the Legal Paraprofessional Pilot Project application process.



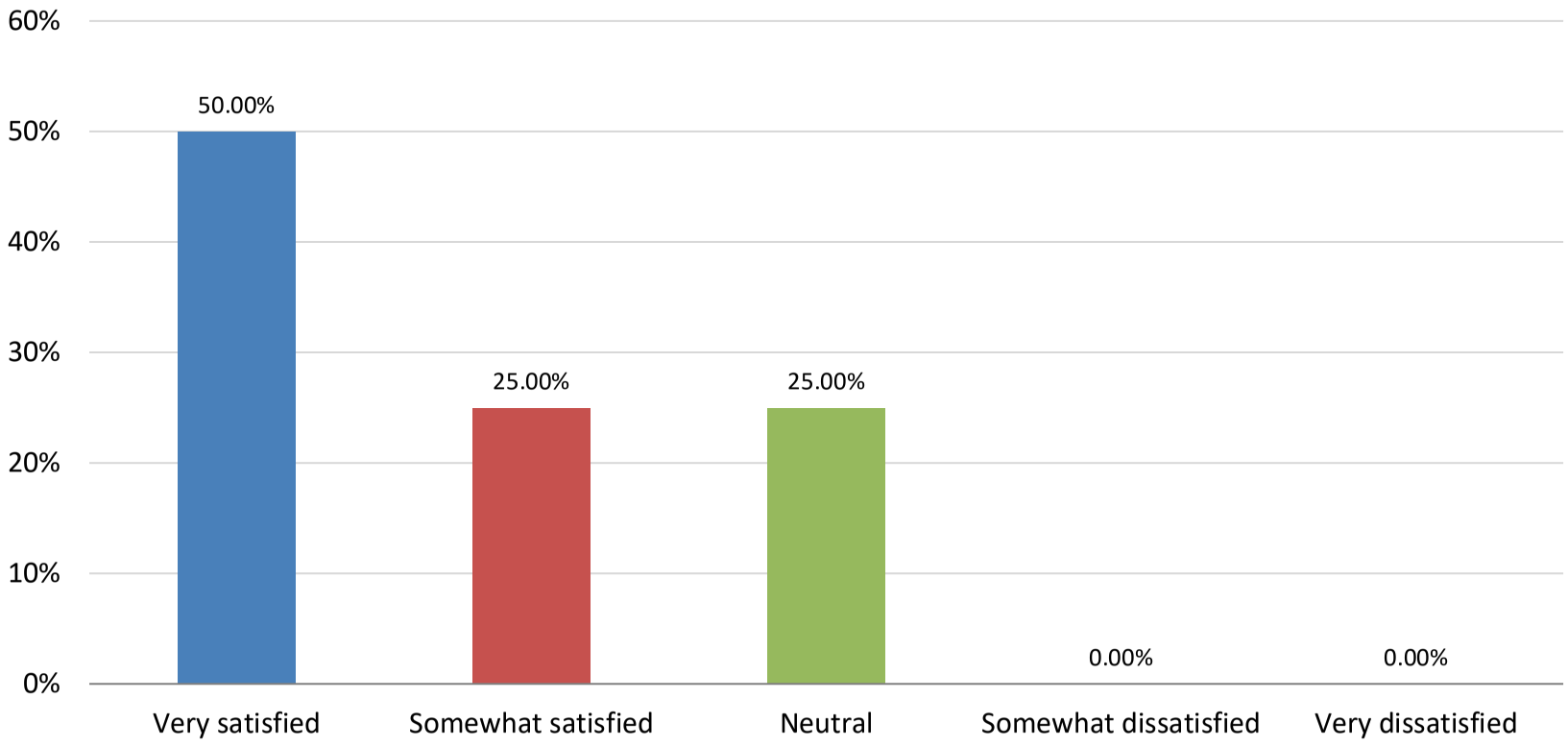
Please rate your satisfaction with supervising participating paraprofessionals.



Please rate your satisfaction with the quality of paraprofessional work by participating paraprofessionals you have supervised.



Please rate your overall satisfaction with the Legal Paraprofessional Pilot Project.

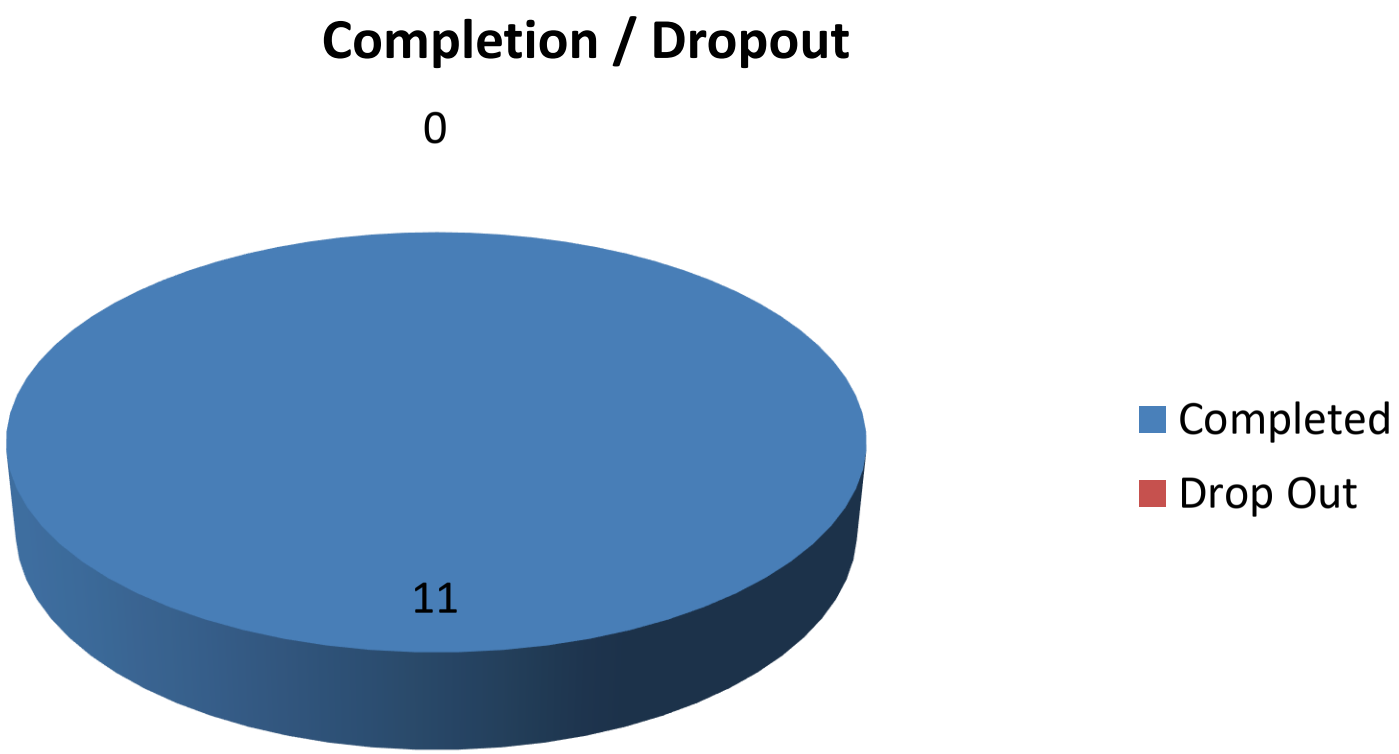


MINNESOTA JUDICIAL BRANCH

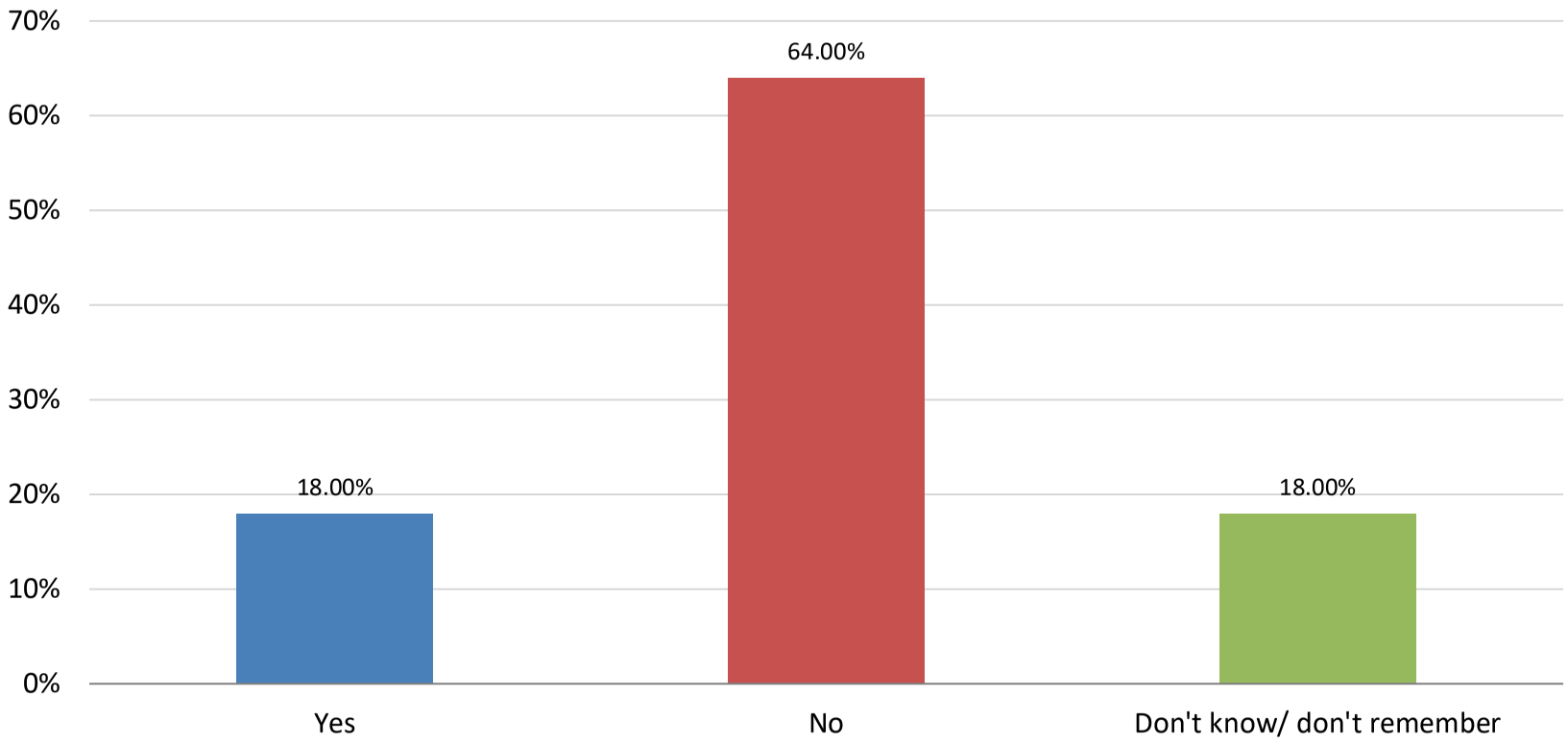
Legal Paraprofessional Pilot Project: Judicial Officer Survey

QuestionPro

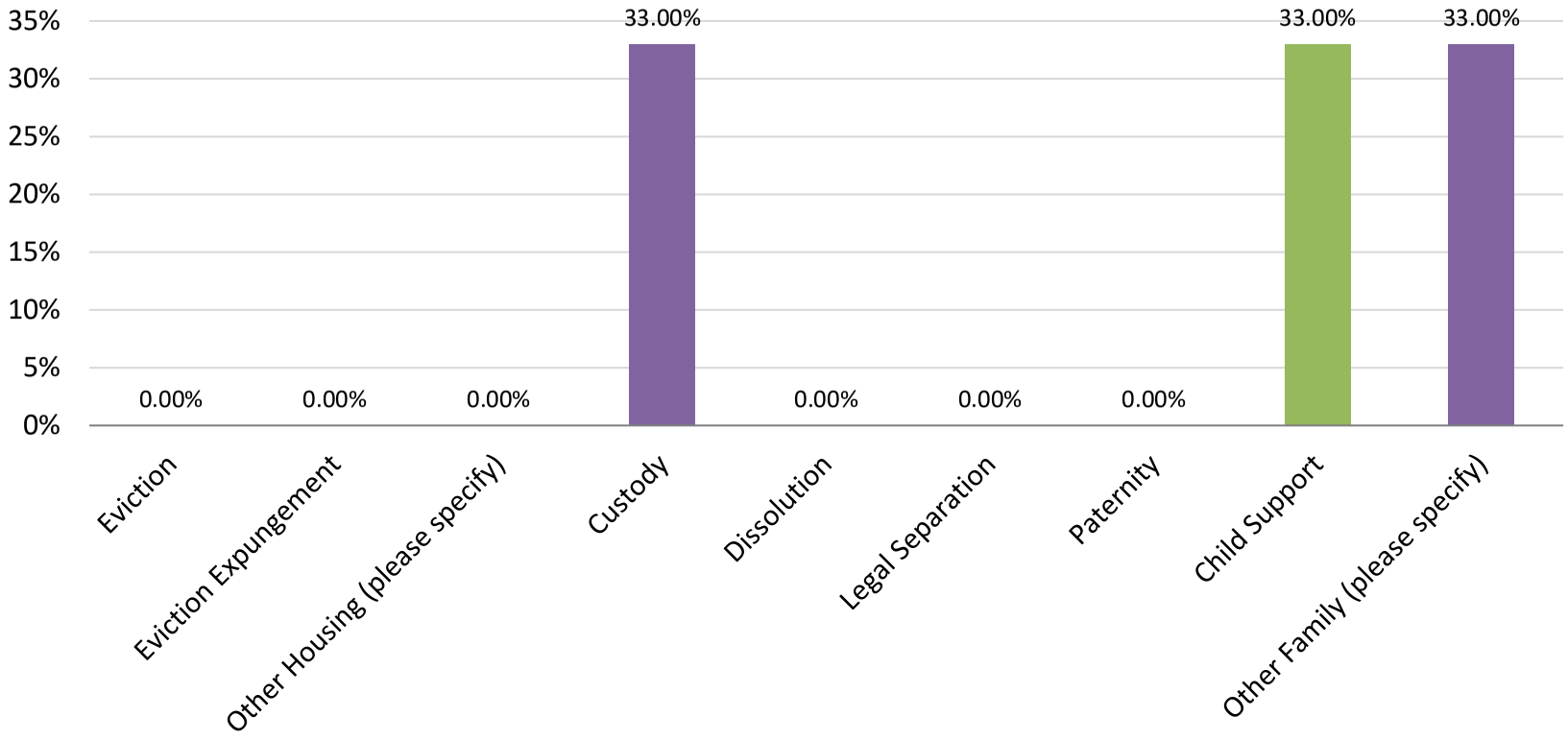
Survey Overview



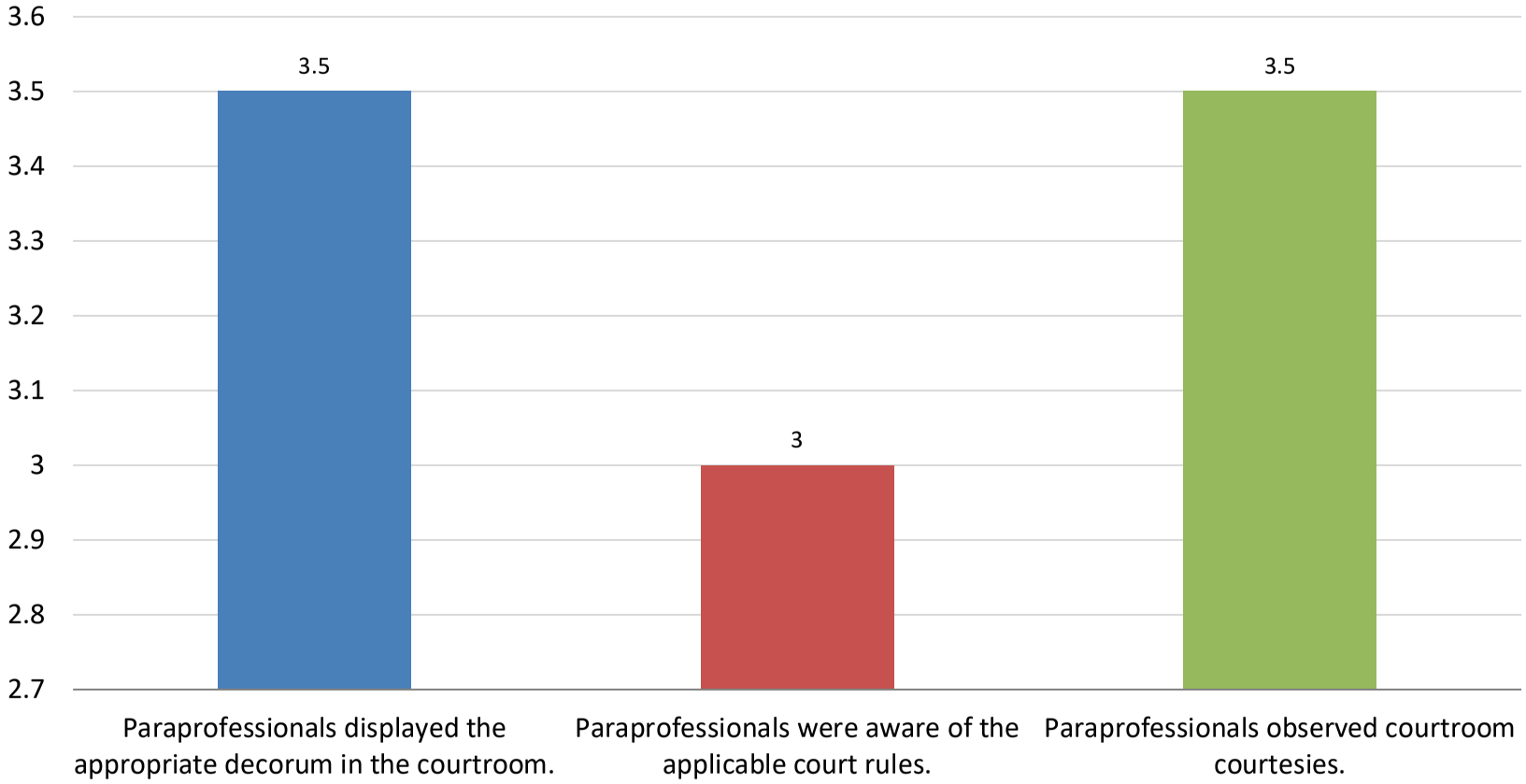
Have you had a paraprofessional participating in the Legal Paraprofessional Pilot Project represent a client in your courtroom?



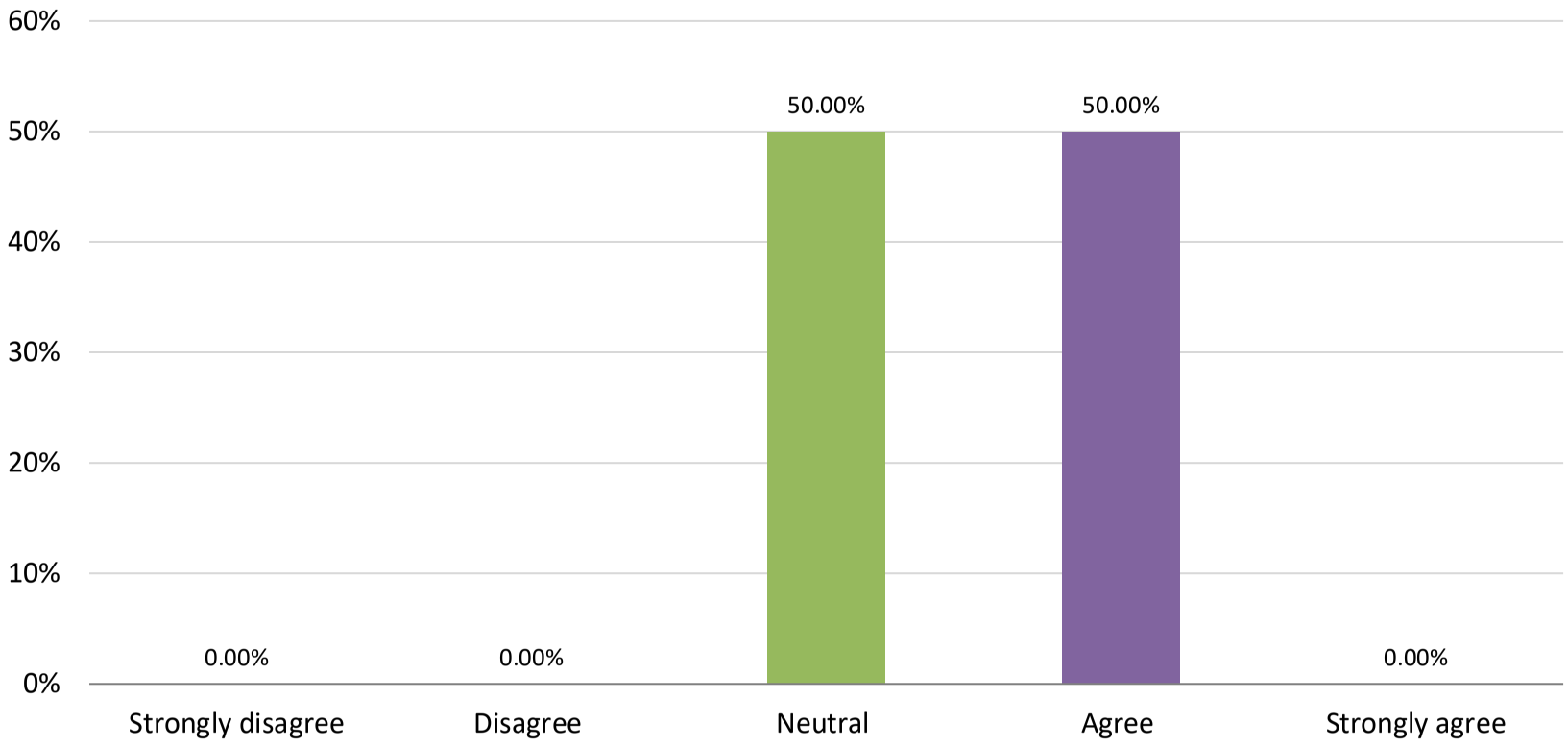
For what type of case have you had a paraprofessional represent a client in your courtroom? (Check all that apply.)



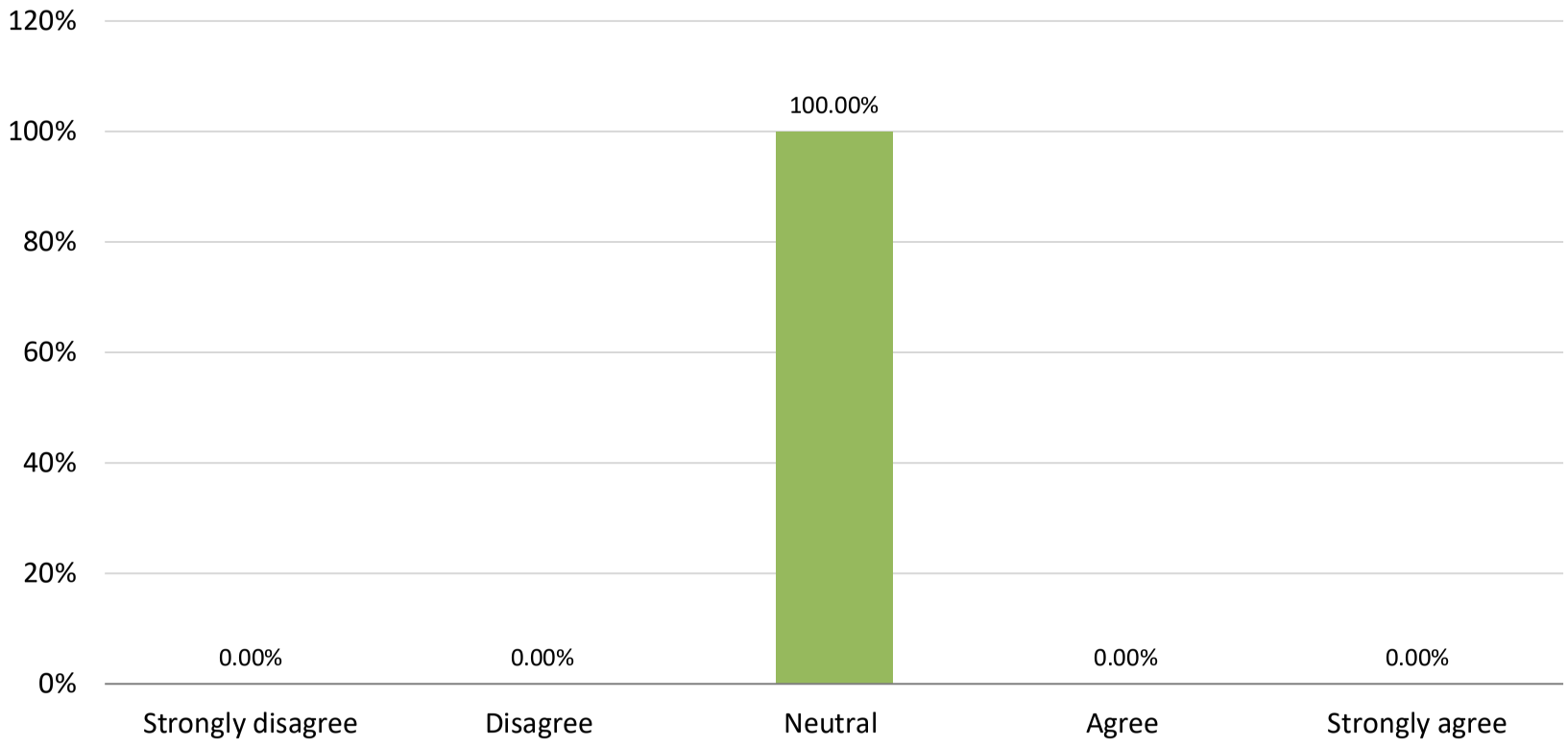
Thinking about all paraprofessionals who appeared in your courtroom during this pilot, please provide your level of agreement with the following statements.



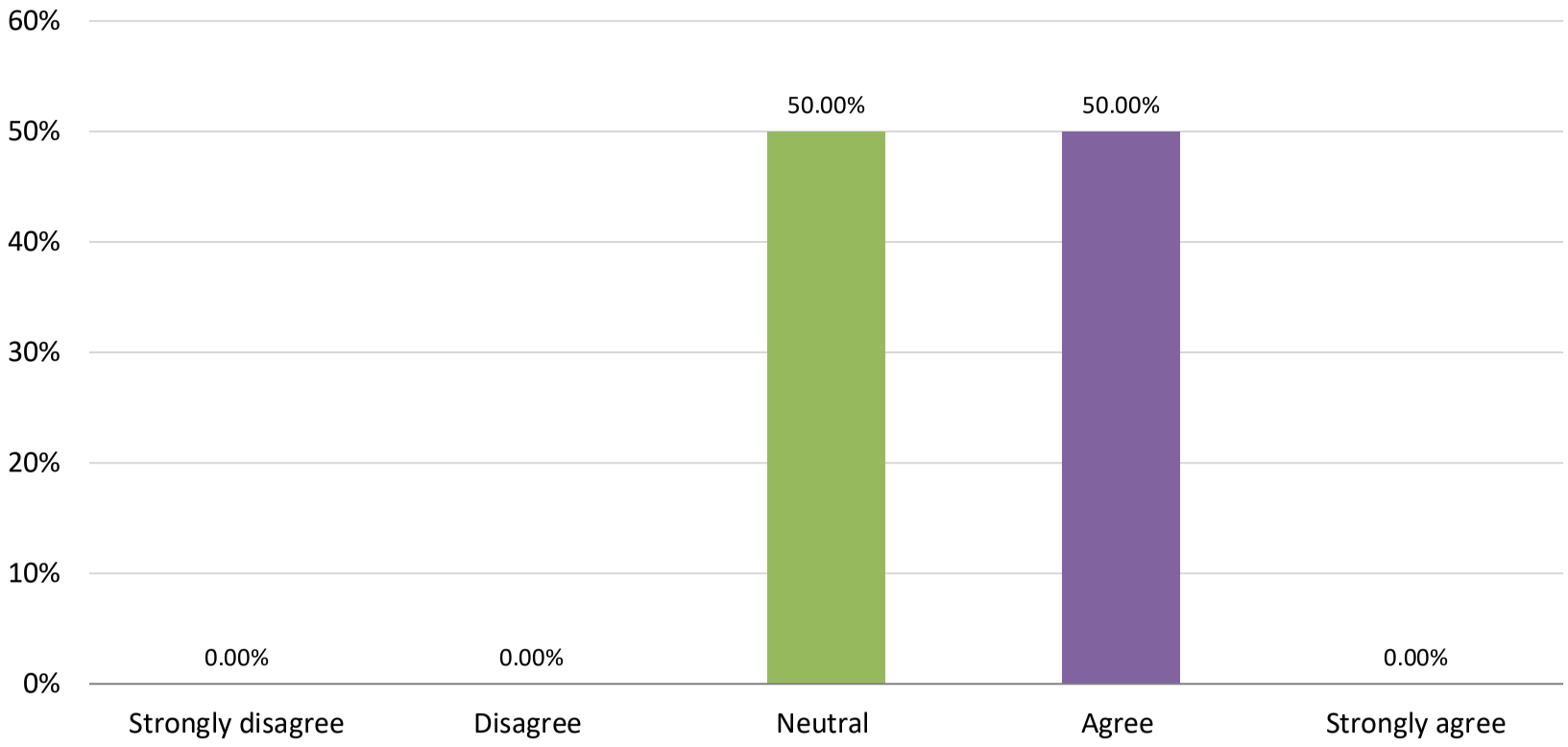
Paraprofessionals displayed the appropriate decorum in the courtroom.



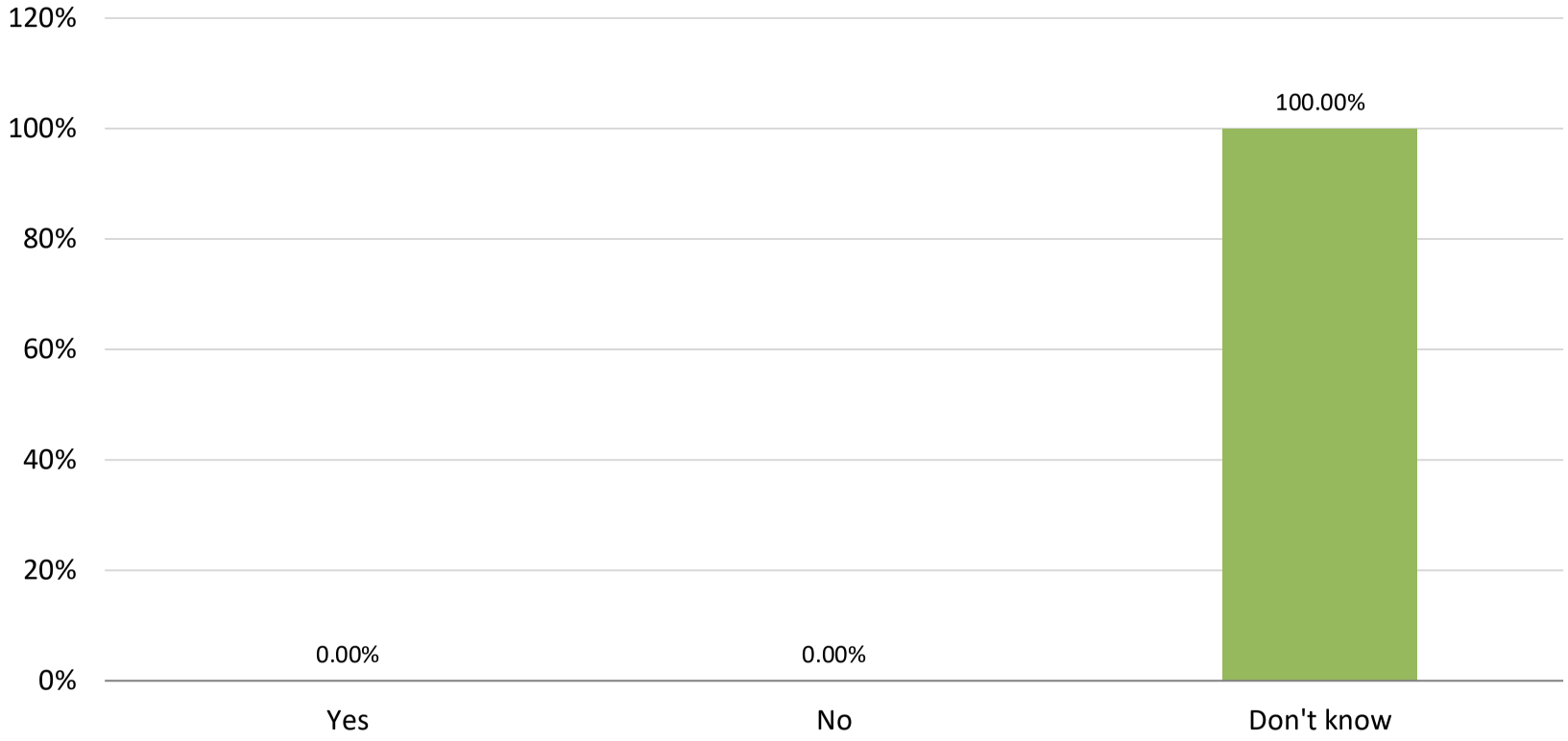
Paraprofessionals were aware of the applicable court rules.



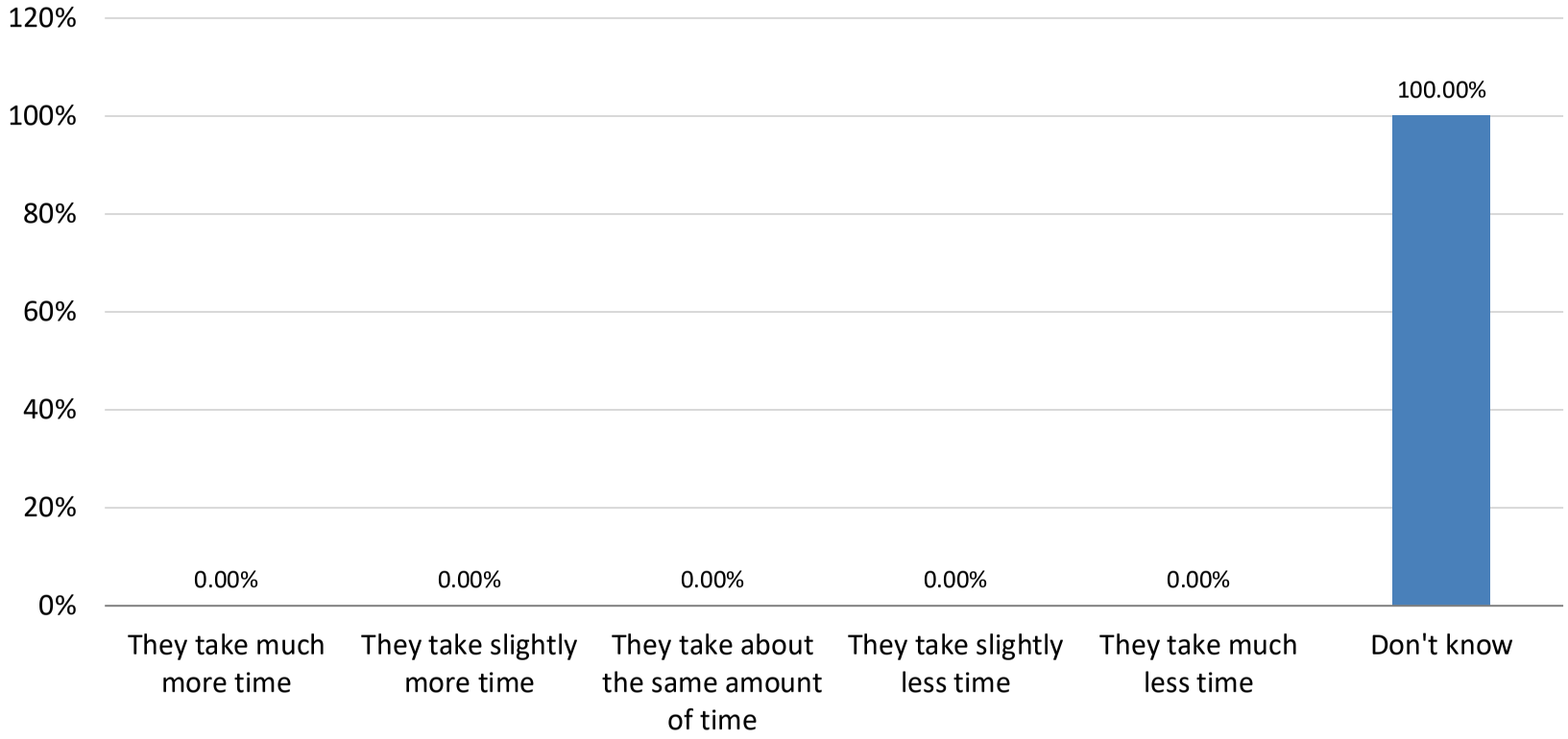
Paraprofessionals observed courtroom courtesies.



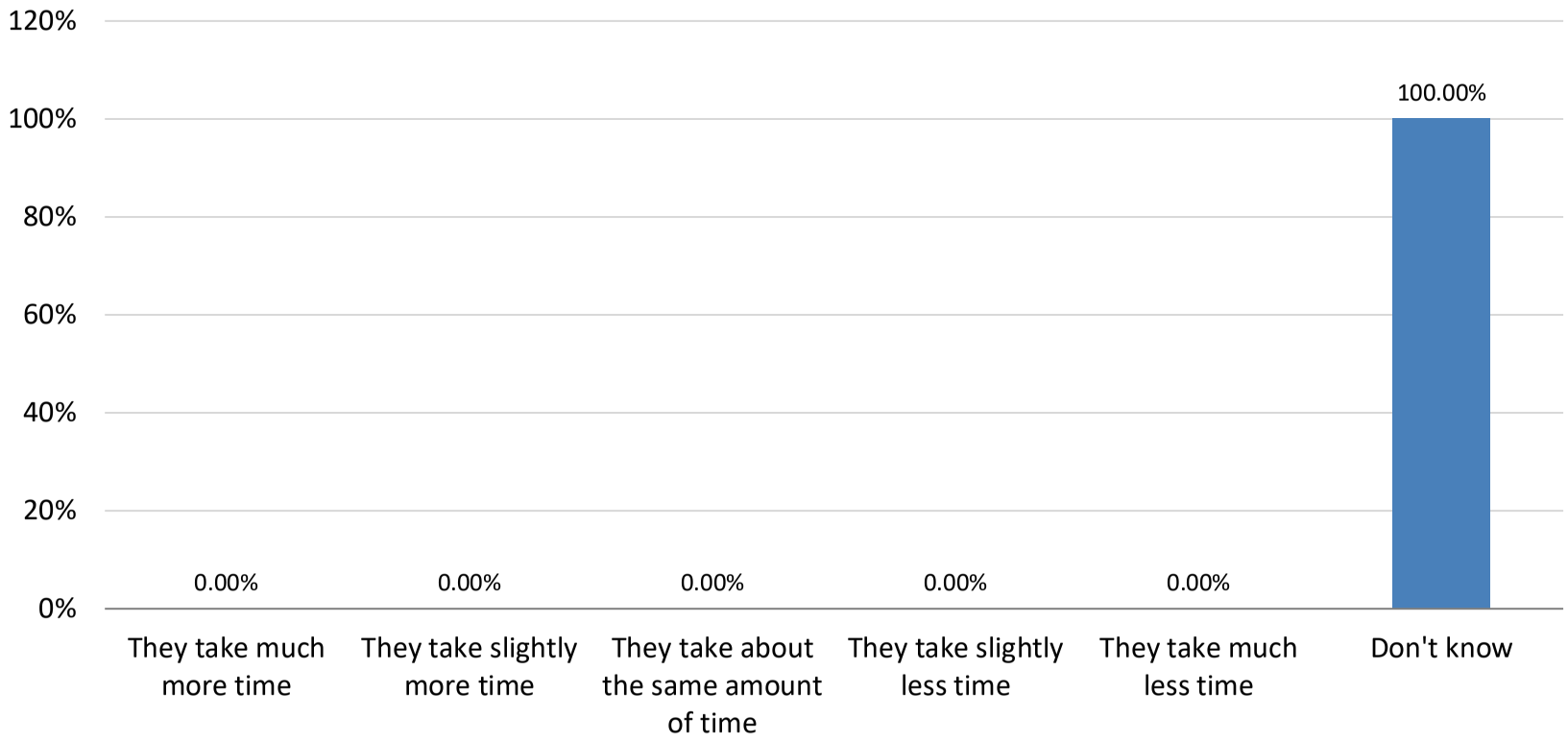
Based your experience in this pilot, do you think any additional training or support is needed for paraprofessionals?



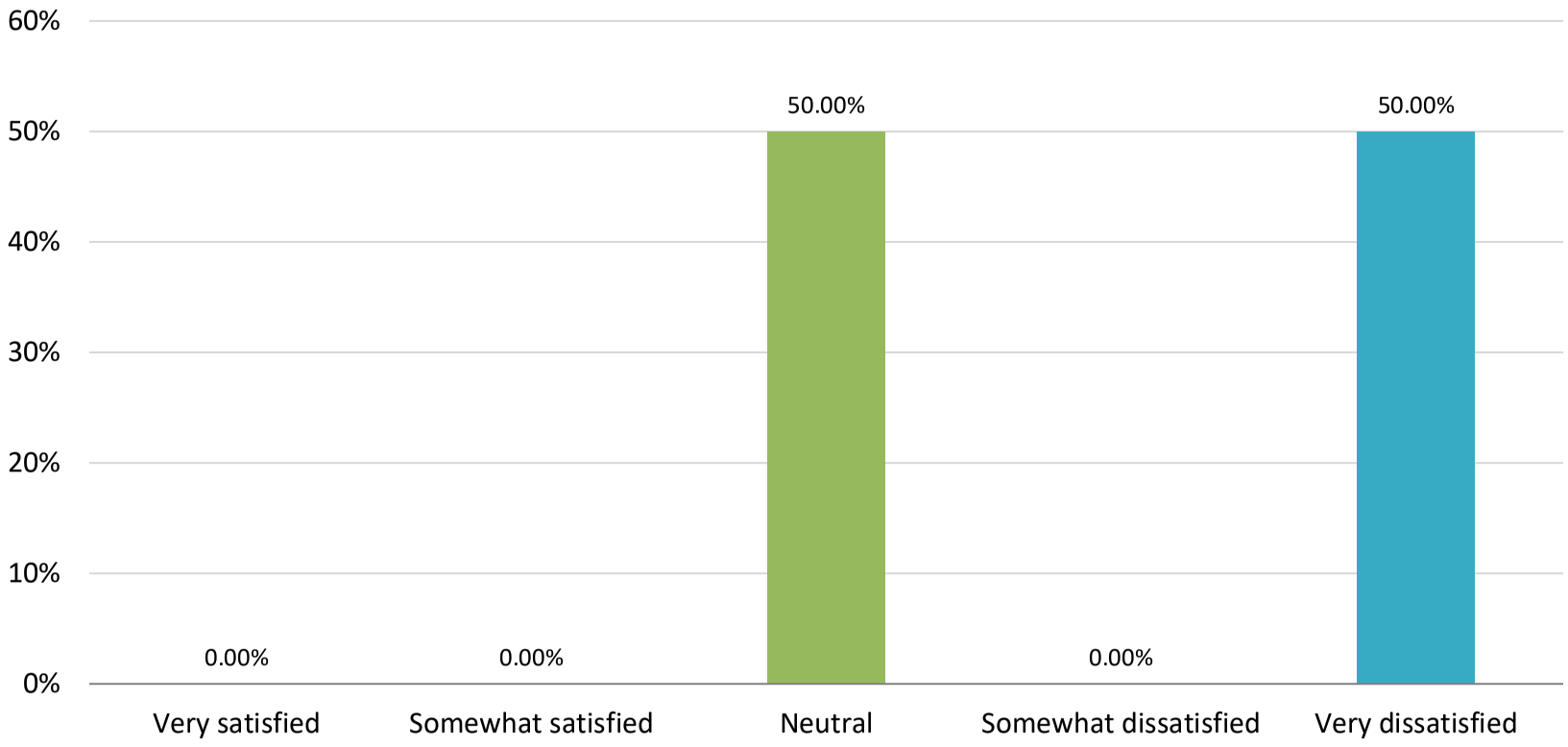
In your experience, do hearings where a party is represented by a paraprofessional take more or less time than hearings with self-represented litigants?



In your experience, do hearings where a party is represented by a paraprofessional take more or less time than hearings where a party is represented by an attorney?



Please rate your overall satisfaction with the pilot.



Narrowing the Access-to-Justice Gap by Reimagining Regulation

Report and Recommendations from

THE UTAH WORK GROUP ON REGULATORY REFORM

August 2019

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INTRODUCTION: Toward Equal Access to Justice

"An estimated five billion people have unmet justice needs globally. This justice gap includes people who cannot obtain justice for everyday problems, people who are excluded from the opportunity the law provides, and people who live in extreme conditions of injustice."[1] This predicament is not unique to third-world countries: According to the World Justice Project, the United States is presently tied for 99th out of 126 countries in terms of access to and affordability of civil justice.[2] An astonishing "86% of the civil legal problems reported by low-income Americans in [2016–17] received inadequate or no legal help."[3] Yet at the same time, access to justice should be the very hallmark of the American legal system. To quote Chief Justice John Marshall, the "essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws . . . ."[4] And "[o]ne of the first duties of government is to afford that protection."[5]

The Utah Judiciary, the branch of government with constitutional responsibility for the administration of justice, has been in the vanguard of initiatives aimed at solving the access-to-justice problem. The judiciary, under the leadership of the Utah Supreme Court (Supreme Court or Court) and the Judicial Council, has established state-wide pro bono efforts, moved to systematize court-approved forms and make them easily accessible online, established a new legal profession in Licensed Paralegal Practitioners (LPPs), and piloted an online dispute resolution model for small claims court. Each of these initiatives takes an important step toward narrowing the access-to-justice gap. But the most promising initiative, and the focus of this report, involves profoundly reimagining the way legal services are regulated in order to harness the power of entrepreneurship, capital, and machine learning in the legal arena.

In the latter part of 2018, the Supreme Court, at the request of the Utah State Bar (Utah Bar or Bar), charged Justice Deno Himonas and John Lund (past President of the Bar) with organizing a work group to study and make recommendations to the Court about optimizing the regulatory structure for legal services in the Age of Disruption. More specifically, the work

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[1] Task Force on Justice, *Measuring the Justice Gap*, WORLD JUSTICE PROJECT (Feb. 6, 2019), https://worldjusticeproject.org/sites/default/files/documents/Measuring%20the%20Justice%20Gap_Feb2019.pdf (last visited Aug. 12, 2019); *see also* GILLIAN K. HADFIELD, RULES FOR A FLAT WORLD: WHY HUMANS INVENTED LAW AND HOW TO REINVENT IT FOR A COMPLEX GLOBAL ECONOMY 281 (2017) (estimating four billion people live "outside of the rule of law—with little access to basic legal tools").

[2] WORLD JUSTICE PROJECT, *Rule of Law Index 2019*, https://worldjusticeproject.org/sites/default/files/documents/WJP_RuleofLawIndex_2019_Website_reduced.pdf (last visited Aug. 12, 2019).

[3] LEGAL SERVICES CORPORATION, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* (June 2017), https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf (last visited Aug. 12, 2019).

[4] *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

[5] *Id.*

group was charged with optimizing regulation in a manner that fosters innovation and promotes other market forces so as to increase access to and affordability of legal services. With this objective firmly in mind, members of the Utah court system and the Utah Bar, leading academics, and other experts, working closely together, have outlined what a new regulatory structure should look like. This new regulatory structure provides for broad-based investment and participation in business entities that provide legal services to the public, including non-lawyer investment in and ownership of these entities, through two concurrent approaches: (1) substantially loosening restrictions on the corporate practice of law, lawyer advertising, solicitation, and fee arrangements, including referrals and fee sharing; and (2) simultaneously establishing a new regulatory body (sometimes referred to as a regulator) under the supervision and direction of the Supreme Court to advance and implement a risk-based, empirically-grounded regulatory process for legal service entities. The new regulatory structure should also solicit non-traditional sources of legal services, including non-lawyers and technology companies, and allow them to test innovative legal service models and delivery systems through the use of a "regulatory sandbox" approach, which permits innovation to happen in designated areas while addressing risk and generating data to inform the regulatory process.[6]

Bridging the access-to-justice gap is no easy undertaking: it requires multi-dimensional vision, strong public leadership, and perseverance. It also requires timely action. And it is the view of the work group that the time for regulatory reform is now. Without such reform, it is our belief that the American legal system will continue to underserve the public, causing the access-to-justice gap to expand. Therefore, the work group respectfully urges the Supreme Court to adopt the recommendations outlined in this report.

THE UTAH WORK GROUP ON REGULATORY REFORM

The core mission of the work group is to optimize the regulatory structure for legal services in the Age of Disruption in a way that fosters innovation and promotes other market forces so as to increase access to and affordability of legal services.

In the fall of 2018 and winter of 2019, Supreme Court Justice Deno Himonas and John Lund, past president of the Utah Bar, gathered members of the Utah court system and the Bar, leading academics, and other experts to form the work group. Justice Himonas and Mr. Lund

[6] The Utah work group is not going it alone in this space. Arizona, California, and the Institute for the Advancement of the American Legal System are all evaluating and moving toward regulatory reform in an effort to narrow the access-to-justice gap. *See* Brenna Goth & Sam Skolnik, *Arizona Weighs Role of Non-Lawyers in Boosting Access to Justice*, BLOOMBERG BIG LAW BUSINESS (Aug. 15, 2019), https://biglawbusiness.com/arizona-weighs-role-of-non-lawyers-in-boosting-access-to-justice (last visited Aug. 16, 2018); *see also* Institute for the Advancement of the American Legal System, *Unlocking Legal Regulation*, UNIVERSITY OF DENVER (forthcoming) (on file with author).

co-chair the work group. In addition to Justice Himonas and Mr. Lund, the group is comprised of H. Dickson Burton, immediate past President of the Bar; Dr. Thomas Clarke, Vice President of Research and Technology for the National Center for State Courts (NCSC) (ret.); Cathy Dupont, Deputy Utah State Courts Administrator; Dr. Gillian Hadfield, Professor of Law and Professor of Strategic Management, University of Toronto Faculty of Law; Dr. Margaret Hagan, Director of the Legal Design Lab and Lecturer in Law at Stanford Law School; Steve Johnson, past Chair of the Court's Advisory Committee on the Rules of Professional Conduct; Lucy Ricca, former Executive Director of and current Fellow with the Stanford Center on the Legal Profession; Gordon Smith, Dean of the J. Reuben Clark Law School at Brigham Young University and Glen L. Farr Professor of Law; Heather White, past Co-Chair of the Bar Innovation in Law Practice Committee; and Elizabeth Wright, General Counsel to the Bar.[7]

The impetus for the work group was a letter sent by Mr. Burton to the Court on behalf of the State Bar.[8] The letter correctly noted that "[a]ccess to justice in Utah remains a significant and growing problem." The Bar set forth its belief that, to help combat that problem, "a key step to getting legal representation to more people is to substantially reform the regulatory setting in which lawyers operate." The Bar therefore requested that "the Court establish a small working group to promptly study possible reforms and make recommendations for revisions, possibly major revisions, to the rules of professional responsibility so as to permit lawyers to more effectively and more affordably provide legal services and do related promotion of those services."

The work group understood from the outset that, as outlined in the letter to the Court, the charge involved "the consideration" and evaluation of "(1) the effect of modern information technology and modern consumer patterns on the current rules, (2) the potential value, in terms of making legal services accessible to clients, of non-lawyer investment and ownership in entities providing legal services and the related regulatory issues, (3) the prospect of broadening the availability of legal services through flat fee and other alternative fee arrangements not currently permitted by the rules, (4) whether there is continuing justification for the rules against direct solicitation, (5) whether and how to permit and structure lawyer use of referral systems such as Avvo in light of the rule against referral fees[,] and [(6)] the related trends and approaches being considered and/or implemented in other bars, such as Oregon and the [American Bar Association's (ABA)] work in this area."

[7] A short biography for each member of the work group can be found at Appendix A. We would also like to extend a special thanks to Dolores Celio, Judicial Assistant to Justice Himonas, and Kevin Heiner (J.D. 2018, Columbia Law School) and John Peterson (J.D. 2016, Harvard Law School), law clerks to Justice Himonas, for their invaluable help researching, writing, and editing this report.

[8] A copy of Mr. Burton's letter is attached at Appendix B.

THE NEED FOR REGULATORY REFORM TO ADDRESS THE ACCESS-TO-JUSTICE GAP IN THE AGE OF DISRUPTION

Nelson Mandela poignantly observed that "[a] nation should not be judged by how it treats its highest citizens, but its lowest ones."[9] In the United States, millions of our citizens who experience problems with domestic violence, veterans' benefits, disability access, housing conditions, health care, debt collection, and other civil justice issues cannot afford legal services and are not eligible for assistance from the civil legal aid system. This failure affects not only low-income people, but wide swaths of the population.[10] The inability of these people to seek and obtain a remedy through the courts or through informal dispute resolution processes undermines the operation of the rule of law. Our justice system should be judged harshly by this failure.

This failure, however, should not be laid at the feet of lawyers. As a profession, lawyers have and continue to give generously of their time and money in an effort to mind the gap. But, as history has shown, we cannot volunteer or donate the problem away. Likewise, minor tweaks, while often helpful, are just that—minor. Serious reform requires recognition that our existing regulatory approaches are not working. And they are not working because they are not risk-sensitive and market-driven. Instead, they attempt to solve potential problems by imagining what could possibly go wrong and then dictating the business model for how legal services must be provided. This protectionistic approach has had catastrophic effects on access to justice. What follows is an examination of why and how we must shift from such a prescriptive approach based on abstract risk considerations to an outcomes-based and risk-appropriate paradigm.

[9] NELSON MANDELA, LONG WALK TO FREEDOM 23 (1994).

[10] *See*, *e.g.*, GILLIAN K. HADFIELD, RULES FOR A FLAT WORLD: WHY HUMANS INVENTED LAW AND HOW TO REINVENT IT FOR A COMPLEX GLOBAL ECONOMY 179 (2017).

The Access-to-Justice Gap

In this report, we describe the "access-to-justice gap" as the difference between the legal needs of ordinary Americans and the resources available to meet those needs. As noted, the civil justice system in the United States currently is tied for 99th out of 126 countries in terms of access and affordability.[11] And the United States has consistently shown poorly when it comes to access and affordability of civil justice: in 2015, the U.S. ranked 65th out of 102 countries[12]; in 2016, 94th out of 112[13]; and in 2017-2018, 94th out of 112.[14,15] Without access to justice, "people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable."[16] In the U.S., many people "go it alone without legal representation in disputes where they risk losing their job, their livelihood, their home, or their children, or seek a restraining order against an abuser."[17]

The access-to-justice gap is especially acute among low-income Americans. In 2017, the Legal Services Corporation (LSC) contracted with NORC at the University of Chicago to explore the extent of the access-to-justice gap. NORC conducted a national survey of "low-income households" (i.e., households at or below 125% of the Federal Poverty Level (FPL)) and analyzed data from LSC's 2017 Intake Census, through which 133 LSC grantee programs "tracked the number of individuals approaching them for help with a civil legal problem whom they were unable to serve, able to serve to some extent (but not fully), and able to serve fully."[18] The Census Bureau estimates that the number of people living below the FPL is about 60 million

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[11] WORLD JUSTICE PROJECT, *Rule of Law Index 2019*, https://worldjusticeproject.org/sites/default/files/documents/WJP_RuleofLawIndex_2019_Website_reduced.pdf (last visited Aug. 12, 2019).

[12] WORLD JUSTICE PROJECT, *Rule of Law Index 2015*, https://worldjusticeproject.org/sites/default/files/documents/roli_2015_0.pdf (last visited Aug. 12, 2019).

[13] WORLD JUSTICE PROJECT, *Rule of Law Index 2016*, https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf (last visited Aug. 12, 2019).

[14] WORLD JUSTICE PROJECT, *Rule of Law Index 2017–2018*, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf (last visited Aug. 12, 2019).

[15] The World Justice Project generates these rankings using data generated from questionnaires. The questionnaires are sent to people that the World Justice Project has identified as local experts. The responses to the questionnaires are codified as numeric values, normalized, and then subjected to a series of tests to identify possible biases and errors. The data are also subjected to a sensitivity analysis to determine the statistical reliability of the results. The data are then converted to country scores and rankings that represent the assessment of more than 120,000 households and 3,800 legal experts across the countries included in the rankings. *See* WORLD JUSTICE PROJECT, *Rule of Law Index 2019*, https://worldjusticeproject.org/sites/default/files/documents/WJP_RuleofLawIndex_2019_Website_reduced.pdf (last visited Aug. 12, 2019) (explaining methodology for the World Justice Project Rule of Law Index).

[16] UNITED NATIONS AND THE RULE OF LAW, *Access to Justice*, https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/ (last visited Aug. 12, 2019).

[17] LEGAL SERVICES CORPORATION, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* (June 2017), https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf (last visited Aug. 12, 2019).

[18] *Id.*

people, including roughly 19 million children. The three key findings of the report about this population are equal parts fascinating and disturbing:

1. Eighty-six percent [86%] of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help;
2. Of the estimated 1.7 million civil legal problems for which low-income Americans seek LSC-funded legal aid, 1.0 to 1.2 million (62% to 72%) receive inadequate or no legal assistance; and
3. In 2017, low-income Americans will likely not get their legal needs fully met for between 907,000 and 1.2 million civil legal problems that they bring to LSC-funded legal aid programs due to limited resources among LSC grantees. This represents the vast majority (85% to 97%) of all the problems receiving limited or no legal assistance from LSC grantees.[19]

According to the LSC report, the most common civil legal problems relate to health (41% of low-income households) and consumer-finance (37% of low-income households) issues. Several other categories of civil legal problems—rental housing, children and custody, and education—affected more than one-fourth of low-income households.[20]

In a study conducted in 2015, two years before the LSC report, NCSC looked at the access-to-justice gap by examining the non-domestic civil caseloads in 152 courts in 10 urban counties. The resulting report, *The Landscape of Civil Litigation in State Courts* [hereinafter the *Landscape*],[21] showed that civil litigation predictably clusters around a few subjects (debt collection, landlord/tenant cases, and small claims cases involving disputes valued at $12,000 or less) and results in very small monetary judgments ("three-quarters (75%) of all judgments were less than $5,200"), suggesting that, "[f]or most represented litigants, the costs of litigating a case through trial would greatly exceed the monetary value of the case."[22] Not surprisingly then, at least one party was self-represented in most cases (76%), proving that "[t]he idealized picture of an adversarial system in which both parties are represented by competent attorneys who can assert all legitimate claims and defenses is an illusion."[23] A majority of cases were disposed of through default judgments or settlements.[24] The report concluded, "[t]he picture of

[19] *Id.*
[20] *Id.*
[21] Civil Justice Initiative, *The Landscape of Civil Litigation in State Courts*, NATIONAL CENTER FOR STATE COURTS, https://www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx (last visited Aug. 12, 2019). The "*Landscape* dataset consisted of all non-domestic civil cases disposed of between July 1, 2012[,] and June 30, 2015[,] in 152 courts with civil jurisdiction in 10 urban counties. The 925,344 cases comprise approximately five percent (5%) of state civil caseloads nationally." *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*

civil litigation that emerges from the *Landscape* dataset confirms the longstanding criticism that the civil justice system takes too long and costs too much." The result is predictable: "[M]any litigants with meritorious claims and defenses are effectively denied access to justice in state courts because it is not economically feasible to litigate these cases."[25]

Raw data from the Third District Court for the State of Utah suggest that its caseload tracks the caseloads studied in the *Landscape* report.[26] In 2018, 54,664 civil and family law matters were filed in the Third District.[27] Of these cases, 51% were debt collection, 7% were landlord/tenant, and approximately 19% were family law cases. Moreover, the data show that the idealized adversarial system in which both parties are represented by competent attorneys is not flourishing in Utah: ***At least one party was unrepresented throughout the entirety of the suit in 93% of all civil and family law disputes disposed of in the Third District in 2018.***

And the public is taking notice. In the 2018 State of the State Courts-Survey Analysis commissioned by NCSC, "[a] broad majority (59%) say 'state courts are not doing enough to empower regular people to navigate the court system without an attorney.'"[28] And "[o]nly a third (33%) believe courts are providing the information to do so.[29]

The Supreme Court and the Judicial Council are resolutely working toward narrowing the access-to-justice gap. To this end, they have established a statewide pro bono system to improve the delivery of free legal services to needy parties; established a new profession—the LPP—to deliver legal services in debt collection, landlord/tenant, and family law matters; and piloted an online dispute resolution model in small claims court. These efforts are important and should be supported and expanded. But they are not enough. As NCSC recognized in the *Landscape*, "civil justice reform can no longer be delayed or even implemented incrementally through mere changes in rules of procedure."[30] What "is imperative [is] that court leaders move with dispatch to improve civil case management with tools and methods that align with the

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[25] *Id.* A legal needs survey conducted by New York in 2010 demonstrates just how stark this problem is. For example, the New York Task Force found that, in New York City, 99 percent of tenants are unrepresented when faced with eviction and homelessness. THE TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, *Report to the Chief Judge of the State of New York* 17 (Nov. 2010), http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-TaskForceREPORT.pdf (last visited Aug. 12, 2019). In consumer credit card debt collection matters, 99 percent of New Yorkers were unrepresented, while 100 percent of the entities bringing the collections were represented. *Id.* at 16.

[26] The data set forth in this paragraph were provided by court services personnel for the Administrative Office of the Courts of Utah.

[27] For purposes of this report, the Third District Court includes all adult courts, including justice courts, in Salt Lake, Summit, and Tooele Counties.

[28] Memorandum from GBA Strategies to National Center for State Courts (Dec. 3, 2018) (on file with author).

[29] *Id.*

[30] Civil Justice Initiative, *The Landscape of Civil Litigation in State Courts*, NATIONAL CENTER FOR STATE COURTS, https://www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx (last visited Aug. 12, 2019).

realities of modern civil dockets to control costs, reduce delays, and ensure fairness for litigants."[31] And, perhaps, if we move efficiently and meaningfully enough, we can avoid a harsh but accurate assessment of our civil justice system by future generations.

The Age of Disruption

We live in an age where disruptive innovation is occurring non-stop.[32] So-called "incumbent" institutions must continuously innovate to maintain and protect their positions and functions in society. The justice system is no exception. The shift of most court civil business to cases involving self-represented litigants, the rise of average education levels, and the unaffordability of lawyers has driven a new market for legal services serviced partly by non-traditional providers, which pushes the boundaries of what is the unauthorized practice of law.

Courts have struggled to adjust to a world in which unrepresented litigants are the norm. Many cases resolve by default or by failures to comply with required court processes. Judges either require special training to facilitate cases or must create special dockets where the rules of evidence are suspended. Civil and family caseloads are dropping as lawyers become ever more expensive and some litigants decide to proceed without assistance.[33] At the same time, alternative providers of dispute resolution are enticing more and more litigants away from the courts at both the high end (complex civil cases) and the low end (parking tickets, consumer debt, simple divorces, etc.).

Technology has been the leading force in disrupting the way we acquire and consume goods, sleep, work, and play. And it has certainly already altered the practice of law as we have heretofore known it. It has enabled litigants to reduce the costs of litigation, from providing them with access to information about the legal system they did not previously have to pressuring lawyers to use tools that make the litigation process less costly. Automated forms have empowered litigants to represent themselves and helped generate effective documents ranging from transactional documents (such as those used in wills, real estate purchase contracts, and business formations) to litigation pleadings (such as those in divorces, debt collection actions, and contract disputes). Moreover, lawyers have been forced to compete by lowering prices by means such as using electronic communications and document storage and transmittal, eliminating copying costs, electronically Bates stamping discovery documents

[31] *Id.*

[32] *See* Clayton M. Christensen, Michael E. Raynor & Rory McDonald, *What is Disruptive Innovation?*, HARVARD BUSINESS REVIEW (Dec. 2015), https://hbr.org/2015/12/what-is-disruptive-innovation (last visited Aug. 12, 2019).

[33] *See* NATIONAL CENTER FOR STATE COURTS, *Data Visualizations*, https://public.tableau.com/profile/ncscviz/vizhome/CSPCaseloadDashboard/CaseDashboard (last visited Aug. 12, 2019), and Court Statistics Project, *National Overview*, NATIONAL CENTER FOR STATE COURTS, http://www.courtstatistics.org/NCSC-Analysis/National-Overview.aspx (last visited Aug. 12, 2019) for data summaries of the trends.

(reducing the time to do so from hours to seconds), and even employing artificial intelligence that can review thousands of pages of documents and pull relevant documents for review and use with greater accuracy than humans.

Lawyers have also benefitted from the rise of technology in several ways. Technology has enabled lawyers and law firms to dramatically cut costs in certain areas by streamlining communications with clients, simplifying and streamlining case management and billing, automating discovery, and enabling telecommuting—which allows lawyers to conduct business remotely rather than having to travel hundreds, if not thousands, of miles—just to name a few.

And, again, courts have not been immune from disruption. They, too, compete in this ever-changing world that continuing advances in technology bring. More access for litigants means a heavier workload for many already overburdened judges and their staff. Courts also have been required to handle more cases with unrepresented litigants, which increases the time spent reviewing arguments and theories and preparing rulings and orders that people without legal training can understand and follow without explanation from a lawyer. But not all disruption has created legal burdens. Disruption has also brought with it increases in efficiency, from electronic filing and storage to telephone conferences for discovery disputes and other non-dispositive matters. Information filed with the court is now more easily retrieved as well.

The potential benefits for access to justice from legal disruptions are significant. If legal services can be provided to litigants and those with potential legal problems in a much more cost effective way, then true access to justice becomes possible for millions of people who currently get no help and do nothing. Technology, especially online legal services, exponentially increases the potential to improve access to justice. But it also simultaneously increases the risk of legal and practical harm to users if those services are not of sufficient quality. However, the potential benefits are too large to pass up, so changing how legal services are regulated to both open the door to innovation and protect litigants and other users in responsible ways is critical.

Because of the assumed monopoly on the provision of legal services by lawyers (and a few related, sanctioned roles[34]), current regulation focuses on requirements for lawyers. If

[34] For example, Utah allows LPPs to assist clients in a limited number of areas in which the LPP is licensed. UTAH STATE BAR, *Licensed Paralegal Practitioner*, https://www.utahbar.org/licensed-paralegal-practitioner/ (last visited Aug. 12, 2019). Other states have similar programs. Washington allows limited license legal technicians to advise and assist people through divorce, child custody, and other family law matters, WASHINGTON STATE BAR ASSOCIATION, *Limited License Legal Technicians* (July 24, 2019), https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians (last visited Aug. 12, 2019), and permits limited practice officers to select, prepare, and complete certain approved documents used in loan agreements and the sale of real or personal property, WASHINGTON STATE BAR ASSOCIATION, *Limited Practice Officers*, https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-practice-officers (last visited Aug. 12, 2019). And Arizona

innovation brings a wide variety of legal services to consumers, then the strategy of regulating narrow roles will no longer suffice. There needs to be a way to regulate a broad array of legal services created and provided in different ways. This approach needs to be consistent, cost effective, and safe.

ACHIEVING REFORM—A ROADMAP TO SUCCESS

Fundamental reform of how legal services are regulated requires equal parts courage, caution, imagination, and deliberation. The current paradigm is deeply entrenched in the country's justice system, in the hearts and minds of those who have dedicated themselves to the law, and even in our society at large. With rare exception, long gone are the days when an Abraham Lincoln could "read into" the practice of law. For over a century now, the entry point to be allowed to provide legal services has been territory controlled by law schools molding Juris Doctors (JDs) and courts and bar associations assessing the character and fitness and broad legal knowledge of those JDs. Oddly though, in most jurisdictions, once admitted—and subject only to continuing legal education and conduct requirements—an attorney may provide any legal service across the entire spectrum of needs, everything from writing a will or closing a major contract to defending a felony or filing a class action. While very few divorce lawyers would take on a major real estate deal, their licenses allow them to do just that. The regulatory scheme regulates the provider, not the service.

This approach, though faithfully followed for the past century, has not yielded a broad-based legal services industry that provides affordable legal services to all members of society. Far from it. And this approach is coming under more pressure on a daily basis. Technologies and market forces keep undermining the fundamental premise that lawyers, and lawyers alone, can provide suitable legal services as consumers are increasingly finding tools to meet their needs outside of the regulated legal profession.

As to what the future holds for legal services, hardly anything is clear. What the Greek philosopher Heraclitus said in the 5th century B.C. is as true now as it was then: "Life is flux."[35] The only constant is change. So, realistically, drafting a roadmap for the way forward is best viewed as attempting to chart a course in the right direction, watching how the winds blow, tending the lines carefully, and trimming the sails as needed.

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allows legal document preparers to prepare and provide certain legal documents without the supervision of an attorney. STATE BAR OF ARIZONA, *Legal Document Preparers*, https://www.azbar.org/lawyerconcerns/regulationofnon-lawyers/legaldocumentpreparers/ (last visited Aug. 12, 2019).

[35] Joshua J. Mark, *Heraclitus of Ephesus*, ANCIENT HISTORY ENCYCLOPEDIA (July 14, 2010), https://www.ancient.eu/Heraclitus_of_Ephesos/ (last visited Aug. 10, 2019).

To correctly set that course, we have studied other regulatory reform efforts and how they have fared. The most comprehensive example, and a good source of guidance and insight, is the United Kingdom's Legal Services Act of 2007 (the LSA). We have provided a thorough discussion of the LSA and its strengths and weaknesses in Appendix C. The LSA is a broad-based reform that identifies key elements for success, such as independent regulators, a risk-based approach, use of guiding principles, and the articulation of the specific outcomes expected from the regulation. With these elements in place, room can be made both for new approaches by lawyers and for innovators with ideas for legal services that do not involve lawyers.

We have also spent a great deal of time thinking about, researching, and analyzing the rules of professional responsibility and the creation of a new regulator of legal services. Through our deliberative process we came to think of two tracks, both of which are critical to the path to successful reform.

Track A: Loosening restrictions on lawyers—To make room for new approaches by lawyers, we informed ourselves about movements across the county to loosen some of the restrictions on lawyers so that they can both compete and innovate. We collaborated with the Court's Advisory Committee on the Rules of Professional Conduct. That committee participated in a design lab led by Professor Margaret Hagan of Stanford Law, which allowed for all who participated to imagine rule changes that would still fully protect clients without unduly hampering lawyers from harnessing the power of capital, collaboration, and technology. Our specific recommendations for changes to the Rules of Professional Conduct and the supporting rationale are set forth below.

Track B: The creation of a new regulatory body—Lawyers are no longer the only ones who provide legal services. There are now LPPs and other licensed paralegal professionals.[36] There are companies providing online legal forms and assistance with court processes. There are referral services. There are even limited types of legal services being provided by other professionals, such as real estate professionals and tax preparers. And there are many others who would be fully capable of providing discrete legal services but who lack the required license to do so. If one considers the byzantine world of Social Security, there are undoubtedly clerks working for the Social Security Administration who, if they were allowed to, could give someone much better advice about how to process a claim than could all but a few of the lawyers licensed to practice law in Utah.

So should room be made for people other than lawyers and organizations other than law firms to provide certain legal services? The answer is clearly yes. We have concluded that allowing for greater competition, subject to proper regulatory oversight, will bring innovation

[36] Utah will license its first LPPs within the next few weeks.

to the legal services industry in ways that are not even imaginable today. Critically, we believe that allowing for that innovation will be the solution to the access-to-justice problem that plagues our country. The question is: How can we allow for that innovation without creating intolerable levels of risk for the consumers of legal services? Our full answer to that is the detailed recommendation set forth below and in Appendix D. But the key steps we recommend are first to create a regulatory body armed with a set of risk-based principles for regulation, and second to permit that body to allow providers to provisionally test and prove their services in a "regulatory sandbox" environment, where data can be gathered and innovation can be assessed and revised as needed before more permanent licensure is granted. This body would operate under the supervision and direction of the Supreme Court. Initial funding would be obtained through grants.[37]

Track A: Freeing Up Lawyers to Compete By Easing the Rules of Professional Conduct

Certain rules of professional conduct have been viewed by lawyers as impeding their ability to increase business and survive in the online world. Restrictions on lawyer advertising, fee sharing, and ownership of and investment in law firms by non-lawyers are concepts that need serious amendment if we are to improve competition and successfully close the access-to-justice gap.[38] This is a step that we believe must be taken independent of the creation of a new regulatory body. Nor are we alone in this belief. "California has taken a step towards altering the role of lawyers after a state bar task force [in June 2019] advanced controversial proposals for new ethics rules that would allow non-lawyers to invest in law firms and tech companies to provide limited legal services."[39] And Arizona has recently followed suit.[40]

Lawyer Advertising

Traditionally, lawyer advertising was frowned upon as being undignified. Courts went so far as to say that advertising would undermine the attorney's sense of self-worth and tarnish the dignified public image of the profession. This changed somewhat with the United States Supreme Court's decision in *Bates v. State Bar of Arizona*, which recognized that the lawyer

[37] By way of example, the Administrative Office of the Utah Courts should soon have the opportunity to enter into a Memorandum of Understanding (MOU) with the Institute for the Advancement of the American Legal System. As envisioned, the MOU would provide partial backing for this project. Implementation of the MOU would be subject to, among other items, the Court adopting the work group's report and recommendations.

[38] Some of these restrictions are already worked around and effectively bypassed through means such as litigation financing. By loosening these restrictions and bringing some of these workarounds within the purview of the new rules, we can ensure more effective regulation of those workarounds and provide better protection for consumers.

[39] Roy Strom, *California Opens Door to More Legal Tech, Non-Lawyer Roles (1)*, BLOOMBERG BIG LAW BUSINESS (July 2, 2019), https://biglawbusiness.com/california-opens-door-to-more-non-lawyer-roles-tech-solutions (last visited Aug. 10, 2019).

[40] Brenna Goth & Sam Skolnik, *Arizona Weighs Role of Non-Lawyers in Boosting Access to Justice*, BLOOMBERG BIG LAW BUSINESS (Aug. 15, 2019), https://biglawbusiness.com/arizona-weighs-role-of-non-lawyers-in-boosting-access-to-justice (last visited Aug. 16, 2018).

advertising ban in place in Arizona inhibited the free flow of information and kept the public in ignorance.[41] The Court held that Arizona's total ban on lawyer advertising violated the free speech guarantee of the First Amendment.[42] This case opened the door to lawyer advertising across the country.

The *Bates* Court did, however, allow states to ban false, deceptive, or misleading advertising, and to regulate the manner in which lawyers may solicit business in person. States can require warnings and disclaimers on advertising and impose reasonable restrictions on the time, place, and manner of advertising. And following the *Bates* decision, most states included such restrictions in their rules of professional conduct. Utah was one of those states.

Despite *Bates* and the many other court rulings since 1977 that removed restrictions on lawyer advertising, the belief on the part of some that lawyer advertising needs to be carefully constrained has persisted. As recently as 2013, the Bar submitted a petition to the Supreme Court requesting that lawyers be required to submit copies of all advertising and solicitations to a Lawyer Advertising Review Committee no later than the date of mailing or publishing of the advertisements or solicitations, so that the ads could be reviewed for appropriateness. The purpose of the proposed rule was to prevent Las Vegas-style advertising from creeping into Utah. Thankfully, the proposed rule was not adopted.

Last year, in recognition of the changing legal landscape, the ABA attempted to simplify the advertising and solicitation rules. Certain changes were made to the Model Rules of Professional Conduct, and states were encouraged to adopt similar rules. The Court's Advisory Committee on the Rules of Professional Conduct has monitored these changes to the Model Rules and has a review and update of the Utah advertising rules on its agenda.

The Advisory Committee's review includes an analysis of the purpose of the rules and the need to protect the public while simultaneously allowing the members of the public to be better-informed of the legal services available to them. The Committee must consider the reality that lawyers may advertise online and through attorney-matching services, pay-per-click ads, link-sharing, legal blogs, and social network accounts in order to promote services. The main concern should be the protection of the public from false, misleading, or overreaching solicitations and advertising. Any other regulation of lawyer advertising seems to serve no legitimate purpose; indeed, it is blunt, ex ante, and—like so many current regulations— neither outcomes-based nor risk-appropriate.

[41] 433 U.S. 350, 365 (1977).
[42] *Id.* at 384.

The Committee's review of advertising standards is well underway and we understand that a proposal should be sent to the Court for its consideration within the next two months. We applaud the Committee's efforts with respect to lawyer advertising.

Lawyer Referral Fees

Utah Rule of Professional Conduct 7.2 prohibits a lawyer from giving anything of value to a person for recommending the lawyer's services or for channeling professional work to the lawyer.[43] But use of paid referrals is one method for allowing clients to find needed legal services and one of the ways lawyers can find new clients. Again, this rule should be amended to balance the risk of harm to prospective clients with the benefit to lawyers and clients through an outcomes-based and risk-appropriate methodology.

Ownership of Law Firms and Sharing Legal Fees with Non-Lawyers

Non-lawyers have traditionally been prohibited from owning and controlling any interest in law firms. Utah Rule of Professional Conduct 5.4 provides that a "lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."[44] The rules also prohibit a lawyer from "practic[ing] with or in the form of a professional corporation or association authorized to practice law for a profit" if a non-lawyer owns any interest therein, if a non-lawyer is a director or officer or has a similar position of responsibility in the firm, or if a non-lawyer has a right to direct or control the professional judgment of the lawyer.[45]

The ABA Ethics 2000 Commission vigorously debated the concept of non-lawyer ownership of law firms in 2000. The ABA House ultimately rejected a proposal to allow non-lawyer ownership of law firms. Since then, however, a number of jurisdictions have seen the need to reevaluate such proposals. In Washington, D.C., the rules of professional conduct now allow for non-lawyer ownership of firms under certain conditions.[46] And as of June 2019, a state bar task force in California advanced a proposal that would allow non-lawyers to invest in law firms.[47] Most notably, "[i]n a July 11 meeting, the Arizona task force voted to recommend

[43] UTAH R. PROF'L CONDUCT 7.2(f).

[44] UTAH R. PROF'L CONDUCT 5.4(c).

[45] UTAH R. PROF'L CONDUCT 5.4(d).

[46] D.C. R. PROF'L CONDUCT 5.4(b). Rule 5.4(b) permits non-lawyer ownership of firms if (1) the law firm has as its sole purpose the provision of legal services, (2) all persons having management duties of an ownership interest agree to abide by the rules of professional conduct for lawyers, (3) the managing lawyers in the firm undertake to be responsible for the non-lawyer participants, and (4) these conditions are set forth in writing. *See id.*

[47] California has proposed two different amendments to its own rule 5.4. The first proposal is seen as an incremental evolution of the current rule. *See* STATE BAR OF CALIFORNIA TASK FORCE ON ACCESS THROUGH INNOVATION OF

scrapping Rule 5.4 . . . in its entirety."[48] And, "[i]n a related move, the panel voted . . . to amend the state's ethical rules to allow lawyers and nonlawyers to form new legal services businesses known as 'alternative business structures.'"[49] We believe the Arizona approach has much to offer. Indeed, we view the elimination or substantial relaxation of Rule 5.4 as key to allowing lawyers to fully and comfortably participate in the technological revolution. Without such a change, lawyers will be at risk of not being able to engage with entrepreneurs across a wide swath of platforms.

Track B: The Creation of a New Regulatory Body

Alongside the proposed revisions set forth in Track A, we propose developing a new regulatory body for legal services in the State of Utah. Rule revisions are necessary to propel any change, but our position is that wide-reaching and impactful change will only follow reimagining the regulatory approach. Therefore, as the Supreme Court moves forward with revising the rules of practice, we endorse the simultaneous creation of a new regulator, operating under the supervision and direction of the Supreme Court, for the provision of legal services.

The proposed regulator will implement a regulatory system:

LEGAL SERVICES, *Recommendation Letter on Proposed Rule 5.4 [Alternative 1]* (June 18, 2019), http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000024362.pdf (last visited Aug. 12, 2019). The second proposal is much more comprehensive and is meant to create a major shift in how financial arrangements with non-lawyers are regulated. *See* STATE BAR OF CALIFORNIA TASK FORCE ON ACCESS THROUGH INNOVATION OF LEGAL SERVICES, *Recommendation Letter on Proposed Rule 5.4 [Alternative 2]* (June 14, 2019), http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000024359.pdf (last visited Aug. 12, 2019). This proposal allows for fee sharing between a lawyer or law firm and any person or organization not authorized to practice law if:

> (1) the lawyer or law firm enters into a written agreement to share the fee with the person or organization not authorized to practice law; (2) the client has consented in writing, either at the time of the agreement to share fees or as soon thereafter as reasonably practicable, after a full written disclosure to the client of: (i) the fact that the fee will be shared with a person or organization not authorized to practice law; (ii) the identity of the person or organization; and (iii) the terms of the fee sharing; (3) there is no interference with the lawyer's independent professional judgment or with the lawyer-client relationship; and (4) the total fee charged is not unconscionable as that term is defined in rule 1.5 and is not increased solely by reason of the agreement to share the fee.

Id.

[48] Brenna Goth & Sam Skolnik, *Arizona Weighs Role of Non-Lawyers in Boosting Access to Justice*, BLOOMBERG BIG LAW BUSINESS (Aug. 15, 2019), https://biglawbusiness.com/arizona-weighs-role-of-non-lawyers-in-boosting-access-to-justice (last visited Aug. 16, 2018).

[49] *Id.*

1. Driven by clearly articulated policy objectives and regulatory principles (objectives-based regulation);
2. Using appropriate and state-of-the-art regulatory tools (licensing, data gathering, monitoring, enforcement, etc.); and
3. Guided by the assessment, analysis, and mitigation of consumer risk (risk-based regulation).[50]

We suggest the following core policy objective for the new system: ***To ensure consumers access to a well-developed, high-quality, innovative, and competitive market for legal services.***

As the core policy objective indicates, the explicit goal of this approach is to develop a regulatory framework that allows, supports, and encourages the growth of a vibrant market for legal services in Utah and, ultimately, across the United States. At every regulatory step, the regulator should consider how its actions impact the core objective, choosing those paths that enhance, not diminish, the achievement of that objective. Potential impacts on the core objective, from either the regulator's own decisions or from actions by participants in the market, will be measured and assessed in terms of risk to the core objective. The regulator will be guided by this primary question: What is the evidence of risk, if any, that this action will create in the consumer market for legal services? This is objectives-based, risk-based regulation.[51]

Examples:

- *What evidence do we see of consumer harm caused by improper influence by non-lawyer owners over legal decisions? What steps can we take to mitigate these risks in the market?*
- *What do the data tell us about the risks of consumer harm from software-enabled legal assistance in an area such as will writing? Are the actual risks of harm more likely or more significant than the risks of a consumer acting on their own or through a lawyer?*[52] *How can the risks be mitigated?*

[50] Robert Baldwin & Julia Black, *Really Responsive Regulation*, 71 MOD. L. REV. 59, 65–68 (2008) (explaining risk-based regulation).
[51] *Id.*
[52] In the U.K., for example, will writing is not a regulated legal activity. The government considered and ultimately rejected a proposal to make will writing a regulated legal activity because it found that there was not a sufficient showing that regulation was necessary or that other interventions could not address concerns around quality and service. *See* Catherine Fairbairn, *Regulation of will writers, Briefing Paper No. 05683* 16, HOUSE OF COMMONS LIBRARY (Nov. 29, 2018), http://researchbriefings.files.parliament.uk/documents/SN05683/SN05683.pdf (last visited Aug. 21, 2019). The investigation by the government showed essentially the same error rate (about 1 in 4) in wills drafted by attorneys and non-attorney legal service providers. The error rate was the same across complex and simple wills. *See* LEGAL SERVICES CONSUMER PANEL, *Regulating will-writing* 3 (July 2011),

- *What do the data indicate about the risk of consumer harm from non-lawyers providing legal advice in the area of eviction defense? Is the risk of these kinds of harm more significant than the harm we currently see for pro se defendants? What steps should be required to ensure and maintain quality service?*
- *What are the data on the risks of cyber and data security to consumers of legal services? Where is the impact most likely and greatest, and what regulatory resources should be brought to bear?*

This approach is meant to be open, flexible, and focused on the reality of the consumer experience with the law and legal services. The system we propose is designed specifically for the regulation of consumer-facing legal services and targeted at the risks posed to the purchasers of legal services. Opening the legal services market to more models, services, and competition will serve other important objectives including access to justice, the public interest, the rule of law, and the administration of the courts.

We propose development of the new regulatory system take place in two phases.

Phase 1

In Phase 1, the Supreme Court will set up an implementation task force much akin to the approach the Court took with respect to LPPs and online dispute resolution.[53] The implementation task force will be responsible for, among other items, (1) obtaining funding for the regulator, primarily through grant applications, (2) recommending necessary rule changes to the Court, (3) creating and operating a Phase 1 regulator responsible for overseeing a legal regulatory sandbox for non-traditional legal services, (4) gathering and analyzing data and other information in order to evaluate and optimize the regulatory process, and (5) preparing a final report and recommendation to the Court regarding the structure of the Phase 2 regulator. We believe Phase 1 should last approximately two years.

In short, in Phase 1, the regulator will operate as a pilot and will focus on developing an empirical approach to objectives- and risk-based regulation of legal services. The regulator will operate within the Court as part of the implementation task force.

https://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_WillwritingReport_Final.pdf (last visited Aug. 21, 2019).

[53] The implementation task force may include representatives from the Court, from Bar leadership, and others with applicable expertise—including perhaps representatives from the legal technology sector.

During Phase 1, the regulator will operate alongside the Utah Bar, which will continue to have authority over lawyers and LPPs.[54] The regulator will regulate non-traditional legal services: organizations offering legal services to the public that have ownership, a business structure/organization, or service offerings currently not authorized under Utah practice of law and professional conduct rules. Non-traditional legal entities could include: non-lawyer owned and/or managed corporations or non-profits or individuals/entities proposing to use non-lawyer human or technology expertise to provide legal assistance to the public. The regulator's focus will be on the activity or service proposed and the risks presented to consumers by that activity or service.

Also during Phase 1, the regulator will oversee the limited market of legal entities admitted to participate in a legal regulatory sandbox. The regulatory sandbox is a policy structure that creates a controlled environment in which new consumer-centered innovations, which may be illegal (or unethical) under current regulations, can be piloted and evaluated. The goal is to allow the Court and aspiring innovators to develop new offerings that could benefit the public, validate them with the public, and understand how current regulations might need to be selectively or permanently relaxed to permit these and other innovations. Financial regulators have used regulatory sandboxes over the past decade to encourage more public-oriented technology innovations that otherwise might have been inhibited or illegal under existing regulations.[55] In the legal domain, the United Kingdom's Solicitors Regulation Authority (SRA) has also created a structure—the Innovation Space—that introduces a system of waivers of regulatory roles for organizations to pilot ideas that might benefit the public.[56]

Establishing a legal regulatory sandbox is inherent to Phase 1 of our proposed new regulatory system. Although we are well aware that particular rules will need to be relaxed or

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[54] Given the Bar's expertise regulating lawyers, including in licensing and enforcement, the regulator may benefit from drawing on such expertise.

[55] The United Kingdom's Financial Conduct Authority created the first regulatory sandbox in 2016. Since then, it has overseen 4 cohorts of regulatory sandboxes to promote financial services innovation. The Monetary Authority of Singapore has run sandboxes to encourage experimentation with financial technology. Abu Dhabi's Regulatory Lab set up a sandbox for financial technology that involved the Abu Dhabi Registration Authority, Financial Services Regulatory Authority, and the courts. Other financial technology sandboxes have been run in Australia, Mauritius, the Netherlands, Canada, Thailand, Denmark, and Switzerland. Some of the things being tested in financial sandboxes include new insurance, retirement, retail banking, investment, and retail lending offerings. In 2018, Arizona launched a regulatory sandbox for financial technology, specifically to promote entrepreneurship and investment around blockchain, cryptocurrencies, and other emerging technologies. *See* Arizona Attorney General, *Welcome To Arizona's FinTech Sandbox*, STATE OF ARIZONA, https://www.azag.gov/fintech (last visited Aug. 21, 2019). And in May 2019, Utah launched its own financial technology sandbox. *See* Department of Commerce, *Regulatory Sandbox*, STATE OF UTAH, https://commerce.utah.gov/sandbox.html (last visited Aug. 21, 2019).

[56] SOLICITORS REGULATION AUTHORITY, *Enabling innovation: Consultation on a new approach to waivers and developing the SRA Innovation Space* (Apr. 12, 2018), https://www.sra.org.uk/sra/consultations/enabling-innovation.page (last visited Aug. 12, 2019).

eliminated to permit innovation, we are less certain what might be on the other side of regulatory reform. What new regulations might be appropriate to ensure that new services do not generate unacceptable risks? Because the legal market has been so strictly limited, we cannot presently catalog the risks that might develop or the regulatory methods that might be effective to appropriately identify and manage those risks. Hence, the regulatory sandbox will be as much for the development of the regulator as for the development of the models, products, and services within. Below, we have put together the key features of our sandbox for Phase 1 of the project. These are features present in regulatory sandboxes around the world.

Three key features to the regulatory sandbox:

1. **Testing out what innovations are possible.** With the relaxation or elimination of the rules around unauthorized practice, fee sharing, and corporate practice of law, we can see how much and what kinds of new innovation might be possible in the legal sector. We expect to see innovations around business models (new financing, ownership or contracting models), services (new roles for experts in other fields, collaborating with lawyers), and technology (increased use of technology to offer legal advice and guidance, use of technologies such as artificial intelligence, blockchain, and mobile). Through the sandbox, we can learn what is possible, what benefits may be realized, and what risks these new offerings present. The sandbox enables the Court and the public to understand how much innovation potential there is in the legal ecosystem, beyond mere speculation that emerging tech has promise in the legal market if regulations were changed.
2. **Tailored evaluation plans focused on risk.** The sandbox model puts the burden on companies to define how their services should be measured in regard to benefits, harms, and risks. They must propose not only what innovation is possible, but also how it can be assessed. Risk self-assessment by companies participating in the sandbox will be a key requirement in order to further our regulatory goals.
3. **New sources of data on what regulation works best.** The sandbox will be the source for the new regulator's data-driven, evidence-backed policy-making. Because sandbox participants gather and share data about their offerings' performance (at least with the regulators, if not more publicly), the sandbox can help develop standards and metrics around data-driven regulation. This is particularly needed in the legal arena because we have so little data about how people engage with the legal world. It can incentivize more companies to evaluate their offerings through a rigorous understanding of benefits and

harms to the public, and it can help regulators develop protocols to conduct this kind of data-driven evaluation.

Sandbox participants could be an accounting firm proposing to offer legal services provided by lawyers alongside its accounting services, a technology startup using AI-enhanced software to help consumers complete legal documents (wills, trusts, incorporations, etc.), or a non-profit proposing to allow its expert paralegal staff to offer limited legal advice to clients independent of lawyer supervision. To participate in the sandbox, each provider will have to agree to share relevant data with the regulator. The regulator will identify, measure, and assess potential consumer risk and then determine whether the provider will be permitted to participate in the sandbox and with what form of security (please see a more detailed outline of our proposed Phase 1 regulatory process at Appendix D). All consumer participants in the sandbox must provide informed consent. Over the course of the two-year Phase 1 sandbox, the regulator will build up its regulatory approach—in particular, its risk identification, quantification, and response approach.

Throughout Phase 1, the regulator will be in regular reporting and communication with the Supreme Court.[57] It is the goal that, by the end of Phase 1, the regulator will have developed and refined a data-driven regulatory framework focused on the identification, assessment, mitigation, and monitoring of risk to consumers of legal services, and an enforcement approach designed to respond to evidence of consumer harm as appropriate to support the core objective. The regulator will then present a comprehensive report and proposal for Phase 2 to the Court for its review and approval.

Phase 1 needs from the Supreme Court include the following:

1. Establish the Phase 1 regulator as an implementation task force of the Court and delegate regulatory authority to set up and run the regulatory sandbox. The Court should also outline regulatory objectives and regulatory principles for the Phase 1 regulator. (Suggested principles may be found at Appendix D).
2. Establish by appropriate means that providers (including their ownership/management and their employees) approved to participate in the regulatory sandbox by the Phase 1 regulator are not engaged in the unauthorized practice of law in Utah.

[57] We wish to be quite clear that, as we have reinforced throughout the report, the regulator must be, and will be, subject to the supervision and direction of the Supreme Court.

3. Establish that licensed Utah lawyers will not be subject to discipline for entering into business with or otherwise providing services with providers approved by the Phase 1 regulator for participation in the sandbox.

Phase 2

In Phase 2, we anticipate some form of an independent, non-profit regulator with delegated regulatory authority over some or all legal services.[58] However, we will not say much about Phase 2 in this report because we do not wish to put the cart before the horse. Phase 1 of this project allows for the carefully controlled research and development of objectives-based, risk-based regulation of legal services. Phase 2 may implement the regulatory approach across the Utah legal market more broadly.[59]

It is our belief that the objectives- and risk-based regulatory approach should be the future of regulation for legal services in Utah, and indeed throughout the country. Utah has an opportunity to be a leader nationwide. Phase 2 could proceed in multiple different directions as long as the objectives-based, risk-based approach remains its key characteristic. The Court may determine that the regulator is best suited for entity regulation (i.e., regulation of non-traditional legal entities like companies) and should operate alongside the Bar, which will continue to regulate lawyers. It would then be up to the Bar, in cooperation with the Court, to assess whether and how it wants to implement objectives-based, risk-based regulation for lawyers.

The Court may, on the other hand, determine that the new regulator and the objectives-based, risk-based approach should be rolled out for all legal services in Utah. In that case, the Court will have to revise its delegation of authority to regulate the practice of law via Rule 14-102 from the Bar to the new regulator. The Bar could continue to function as a mandatory Bar with regulatory functions operated under the auspices of the Court, but now through the regulator. Alternatively, the Bar could function solely as a membership organization that awards professional titles and specialized practice certifications, maintains ethical standards,

[58] We also wish to be quite clear about the meaning of the word "independent." By independent, we mean a regulator independent from management and control by those it regulates, i.e., lawyers. We do not mean independent of control of the Supreme Court. The independent regulator we propose in Phase 2 would, as the Bar is now, no longer be operating within the Court, but would, as the Bar also is now, still ultimately be answerable to the Court for achieving the core regulatory objective and would be subject to any requirements established by the Court.

[59] The task force is aware that the Institute for the Advancement of the American Legal System presently intends to "develop a model for a regulatory entity that would focus on risk-based regulation for legal services and would operate across state lines." Institute for the Advancement of the American Legal System, *Unlocking Legal Regulation*, UNIVERSITY OF DENVER (forthcoming) (on file with author).

engages in advocacy, and provides continuing education.[60] It may be that those professional titles will be required by the regulator in certain oversight roles for legal service entities (e.g., Big Box Stores offering legal services to the public may be required to have Bar-approved lawyers in managerial roles) or that the Court will decide for public policy reasons that only Bar-approved lawyers may perform certain activities before the Court.

CONCLUSION

Decade after decade our judicial system has struggled to provide meaningful access to justice to our citizens. And if we are to be truly honest about it, we have not only failed, but failed miserably. What this report proposes is game-changing and, as a consequence, it may gore an ox or two or upend some apple carts (pick your cliché). Our proposal will certainly be criticized by some and lauded by others. But we are convinced that it brings the kind of energy, investment, and innovation necessary to seriously narrow the access-to-justice gap. Therefore, we respectfully request that the Supreme Court adopt the recommendations outlined in this report and direct their prompt implementation.

[60] The professional titles offered by the Bar in this system could be market indicators of levels of education, qualification and, perhaps, service. It is possible the Bar could continue to tie access to titles and certification to ethical standards of service. However, the Bar would no longer have the authority to regulate the market for legal services and members of the Bar would be forced to compete in a larger market.

APPENDIX A

DENO HIMONAS (CO-CHAIR)

Justice Deno Himonas was appointed to the Utah Supreme Court in 2015. For the decade prior, he served as a district court judge, where he was able to try hundreds of criminal, civil, and family law cases and run a felony drug court.

In addition to his judicial duties, Justice Himonas has taught at the S.J. Quinney College of Law at the University of Utah and has been a visiting lecturer at universities in Kiev, Ukraine. He is the 2017 Honorary Alumnus of the Year of the S.J. Quinney College of Law, a recipient of the Judicial Excellence award from the Utah State Bar, and a Life Fellow of the American Bar Foundation.

Justice Himonas is deeply involved in the access-to-justice movement and can often be found speaking about access-to-justice around the country. He currently chairs two access-to-justice task forces, one on licensed paralegal practitioners and the other on online dispute resolution, and co-chairs a third, which is reimagining the regulation of the practice of law.

Justice Himonas graduated with distinction from the University of Utah with a bachelor's degree in economics and went on to receive his J.D. from the University of Chicago. Upon graduation, he spent fifteen years primarily litigating complex civil matters in private practice.

JOHN LUND (CO-CHAIR)

John Lund has practiced law the old-fashioned way since 1984. He is a shareholder with Parsons Behle & Latimer, where he represents clients in challenging litigation and trials throughout the West. Mr. Lund is recognized by Chambers USA as a Band 1 lawyer for commercial litigation and is also a Fellow of the International Academy of Trial Lawyers. Mr. Lund is the immediate past president of the Utah State Bar and has been involved in leadership of the Utah Bar for over a decade. He recently concluded two terms as the lawyer representative on Utah's Judicial Council, which oversees Utah's judicial branch. He has served on various committees and projects relating to improving access to justice and innovation in the practice of law. These include co-chairing the Utah Bar's 2015 Futures Commission, developing the Utah Bar's online interactive directory of lawyers, serving on the Utah Supreme Court's task force for Licensed Paralegal Practitioners, serving on the Utah Supreme Court's task force for reform of Utah's attorney discipline system, and establishing Utah's newly formed Access to Justice Commission. Currently, Mr. Lund co-chairs a joint task force of the Utah Supreme Court and the Utah Bar that is recommending significant and potentially disruptive changes to the regulation of legal services in order to bring innovation to legal services and thereby improve access to justice.

H. DICKSON BURTON

Mr. Burton is the past President of the Utah State Bar, completing his term in July 2019. In his day job, Mr. Burton is the Managing Shareholder of TraskBritt, a nationally-recognized Intellectual Property law firm, where he litigates patent, trademark, and trade secret matters in courts around the country. He is also frequently called upon to mediate or arbitrate patent and other complex intellectual property disputes, with mediation training and certification from both the World Intellectual Property Organization and Harvard Law School. He has also served as an Adjunct Professor at the University of Utah S.J. Quinney College of Law teaching patent litigation.

Mr. Burton is the current Chair of the Local Rules Committee for the U.S. District Court for the District of Utah, and is currently serving on the Magistrate Judge Merit Selection Panel for that court.

Mr. Burton has been honored for many years in peer-review lists including Best Lawyers, IP Stars, Chambers USA, and SuperLawyers, including being listed as one of the Top 100 of all lawyers in the Mountain States.

THOMAS CLARKE

Tom Clarke has served for fourteen years as the Vice President for Research and Technology at the National Center for State Courts. Before that, Tom worked for ten years with the Washington State Administrative Office of the Courts first as the research manager and then as the CIO. As a national court consultant, Tom consulted frequently on topics relating to effective court practices, the redesign of court systems to solve business problems, access to justice strategies, and program evaluation approaches. Tom concentrated the last several years on litigant portals, case triage, new non-lawyer roles, online dispute resolution, public access/privacy policies, and new ways of regulating legal services.

CATHERINE DUPONT

Cathy Dupont is the Deputy State Court Administrator in Utah. Prior to serving as the Deputy State Court Administrator, Cathy was the Appellate Court Administrator and served as one of the Utah Supreme Court's legislative liaisons during the 2019 Legislative Session. Before joining the courts, Cathy worked as the Director of Strategy and External Relations for the state's Public Employee Health Plan and managed the Provider Relations Department and the Marketing and Communications Department. She also worked for over 20 years as an associate general counsel for the Office of Legislative Research and General Counsel, a non-partisan office responsible for drafting legislation and staffing legislative committees.

GILLIAN HADFIELD

Gillian Hadfield, B.A. (Hons.) Queens, J.D., M.A., Ph.D. (Economics) Stanford, is the Schwartz Reisman Chair in Technology and Society, Professor of Law and Professor of Strategic Management at the University of Toronto. She also serves as Director of the Schwartz Reisman Institute for Technology and Society. Her research is focused on innovative design for legal and dispute resolution systems in advanced and developing market economies; governance for artificial intelligence; the markets for law, lawyers, and dispute resolution; and contract law and theory. Professor Hadfield is a Faculty Affiliate at the Vector Institute for Artificial Intelligence in Toronto and at the Center for Human-Compatible AI at the University of California Berkeley and Senior Policy Advisor at OpenAI in San Francisco. Her book, *Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy*, was published by Oxford University Press in 2017.

Professor Hadfield served as clerk to Chief Judge Patricia Wald on the U.S. Court of Appeals, D.C. Circuit. She was previously on the faculty at the University of Southern California, New York University, and the University of California Berkeley, and has been a visiting professor at the University of Chicago, Harvard, Columbia, and Hastings College of Law. She was a 2006-07 and 2010-11 fellow of the Center for Advanced Study in the Behavioral Sciences at Stanford and a National Fellow at the Hoover Institution in 1993. She has served on the World Economic Forum's Global Future Council for Agile Governance, Future Council for the Future of Technology, Values and Policy, and Global Agenda Council for Justice. She is currently a member of the American Bar Association's Commission on the Future of Legal Education and is an advisor to courts and several organizations and technology companies engaged in innovating new ways to make law smarter and more accessible.

MARGARET HAGAN

Margaret Hagan is the Director of the Legal Design Lab at Stanford University, as well as a lecturer in the Institute of Design (the d.school). She is a lawyer, and holds a J.D. from Stanford Law School, a DPhil from Queen's University Belfast, an MA from Central European University, and an AB from University of Chicago. She specializes in the application of human-centered design to the legal system, including the development of new public interest technology, legal visuals, and policy design. Her research and teaching focuses on the development and evaluation of new interventions to make the legal system more accessible. Her recent articles include "Participatory Design for Innovation in Access to Justice" (Daedalus 2019) and "A Human-Centered Design Approach to Access to Justice" (Ind. JL & Soc. Equal. 6, 199, 2018).

STEVEN JOHNSON

Steven Johnson is a 1977 graduate of the J. Reuben Clark Law School at Brigham Young University. He has been a member of Utah State Bar since 1977, and of the State Bar of California since 1989. He has worked for a small Salt Lake City law firm, is the former general counsel for an international marketer of turkeys and turkey products, and is currently a solo practitioner in Highland, Utah, advising and representing clients in a variety of legal matters including business and corporate issues, real property matters, and contracts; and he has also served as an arbitrator and mediator in private practice and for the Better Business Bureau.

He has spent a good part of his career serving in the Bar and serving the courts of the State of Utah to enhance access to justice. He has served as an officer, including chair, of both the Corporate Counsel Section and of the Dispute Resolution Section of the Bar. He has been a member of Utah State Bar's Fee Arbitration Panel since 1999, and chaired the Panel from 2006 to 2010. He was appointed as a member of the Supreme Court's MCLE Board in 1999, and served as Trustee of the Board for 4 years. He served 7 years as an Associate Editor of the *Utah Bar Journal* beginning in his second year of law school, and served for 10 years as a member of the Bar's Government Affairs Committee.

Mr. Johnson has served 20 years on the Supreme Court's Advisory Committee on the Rules of Professional Conduct, and for the last 9 years has served as chair of that committee. He has served as a member of the Supreme Court's Commissioner Conduct Commission for the past 9 years, and currently serves as a member of the Fourth District Justice Court Nominating Commission. He is a member of the Utah State Courts' Certified Panel of Arbitrators.

The Supreme Court has also asked him to serve on three Court task forces—the Licensed Paralegal Practitioner Task Force, the Office of Professional Conduct Task Force, and the Task Force on Regulatory Reform.

In 2018, the Supreme Court awarded him the Service to the Courts Award for his contributions to Utah's judicial system. In 2019, he was awarded the Utah State Bar's Distinguished Service Award.

Mr. Johnson served on 3 different occasions in the countries of Ethiopia and Eritrea, teaching government employees how to organize and manage farmer cooperatives so that they can go out and teach farmers how to run cooperatives to better their economic status. He has helped them to amend their cooperative codes to eliminate inconsistencies and to fill in gaps in the laws.

LUCY RICCA

Lucy Ricca is a Fellow and former Executive Director of the Stanford Center on the Legal Profession at Stanford Law School. Ricca was a Lecturer at the law school and has written on the regulation of the profession, the changing practice of law, and diversity in the profession. As Executive Director, Ricca coordinated all aspects of the Center's activities, including developing the direction and goals for the Center and overseeing operations, publications, programs, research, and other inter-disciplinary projects, including development and fundraising for the Stanford Legal Design Lab. Ricca joined Stanford Law School in June 2013, after clerking for Judge James P. Jones of the United States District Court for the Western District of Virginia. Before clerking, Ricca practiced white collar criminal defense, securities, antitrust, and complex commercial litigation as an associate at Orrick, Herrington & Sutcliffe. Ricca received her B.A. cum laude in History from Dartmouth College and her J.D. from the University of Virginia School of Law.

D. GORDON SMITH

D. Gordon Smith is the Dean and Glen L. Farr Professor of Law of the J. Reuben Clark Law School, Brigham Young University. Dean Smith is a leading figure in the field of law and entrepreneurship and has done foundational work on fiduciary theory. He has also made important contributions to the academic literature on corporate governance and transactional lawyering. For his work in promoting the study of corpus linguistics and design thinking in law schools, Dean Smith was included in the Fastcase 50 (2017), which honors "the law's smartest, most courageous innovators, techies, visionaries, & leaders."

Dean Smith earned a JD from the University of Chicago Law School and a BS in Accounting from Brigham Young University. He has taught at six law schools in the U.S., as well as law programs in Australia, China, England, Finland, France, Germany, and Hong Kong. Before entering academe, Dean Smith clerked for Judge W. Eugene Davis in the United States Court of Appeals for the Fifth Circuit and was an associate in the Delaware office of the international law firm Skadden, Arps, Slate, Meagher & Flom.

HEATHER S. WHITE

Heather White is a partner with the Salt Lake City-based law firm of Snow Christensen & Martineau, where she leads the firm's Governmental Law Practice Group. Her primary focus is on the defense of government entities in high profile civil rights disputes. Heather is a 1996 graduate of the University of Utah, S.J. Quinney College of Law.

Heather defends governmental entities and their officers against complaints asserting the deprivation of civil rights. These include all types of claims of alleged misconduct, such as excessive force, search and seizure, wrongful arrest, false imprisonment, malicious prosecution, abuse of process and denial of medical care, to name a few. At any given time, Heather is involved in multiple officer-involved shooting cases from inception, including investigations by the Department of Justice and press inquiries, through conclusion.

With deep respect for her Utah police officer clients, and their dedication to society at great personal expense, Heather has become their trusted confidant and advisor. She listens closely to determine individual needs – whether in out-of-court settlements or in public trials – then presses forward assertively with a customized approach and legal strategy. To better understand and closely connect with her clients, and the matters they are involved in, Heather regularly joins officers in the field participating in police ride-alongs. She is certified by the Force Science Institute and conducts training sessions for law enforcement throughout the state, including both client and non-client entities.

Heather also represents the two primary insurers of government entities in the State of Utah—the Utah Risk Management Mutual Association and the Utah Local Governments Trust—as well as a number of self-insured governmental agencies. She believes in the importance of educating her clients on legally related elements of their complex, public careers. In this effort, Heather regularly speaks to agencies and insurers on police training issues, liability, risk management, and incident-prevention issues.

Heather has an extensive track record of governmental civil rights cases and trials, with multiple favorable defense verdicts in state and federal trial and appeals courts. In addition, Heather regularly defends governments against claims involving accidents with government vehicles and premises liability, such as "slip and fall" accidents that might involve sidewalks, water meters, or swimming pools, cemeteries, playgrounds, recreational centers and others.

Heather is a frequent trainer, presenter, and author, covering a wide range of governmental law topics and current governmental law headline subjects.

Heather is actively involved in professional and civic organizations including: American Academy of Trial Attorneys; Utah Bar Technology and Innovation Committee; Salt Lake County

Bar, Utah State Bar, and Federal Bar Association; Model Utah Jury Instructions, Chair of Subcommittee on Civil Rights Instructions; Magistrate Merit Selection Panel; Defense Research Institute; Utah Defense Lawyers Association; and Utah Municipal Attorneys Association

Heather has maintained a steady 5.0 Martindale-Hubbell® Peer review rating; is consistently recognized as a Utah Super Lawyer by Super Lawyer Magazine; is regularly recognized as a Utah Legal Elite by Utah Business Magazine; is listed in Best Lawyers in America; and was named a Distinguished Faculty member by Lorman Education Services.

ELIZABETH A. WRIGHT

Elizabeth Wright is General Counsel for the Utah State Bar. She is a graduate of Hamilton College and Case Western Reserve School of Law. She is admitted in New York and Utah and was an Assistant Corporation Counsel for the City of New York before moving to Utah. Wright began working for the Utah State Bar in 2011 as the Coordinator of the New Lawyer Training Program. She became General Counsel in 2014. As General Counsel, Elizabeth represents the Bar and also works closely with Bar and Court committees to modify and propose rules governing the practice of law in Utah. Elizabeth served on both the Executive and Steering Committees for Utah's Licensed Paralegal Practitioner Program helping to develop rules for the program. Elizabeth currently serves on the Utah Task Force on Legal Reform which is exploring changing the regulatory structure in Utah to foster innovation and promote market forces to increase access to and affordability of legal services.

APPENDIX B

Utah State Bar.

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http://www.utahbar.org

August 22, 2018

VIA EMAIL to cathyd@utcourts.gov

Justices of the Utah Supreme Court
c/o Appellate Court Administrator
450 S. State Street
P.O. Box 140230
Salt Lake City, UT 84114

Dear Justices of the Utah Supreme Court,

Access to justice in Utah remains a significant and growing problem. It can be readily seen in the data regarding self-represented parties in the Utah court system. However, it is a much broader and complex issue which not only involves all sort of legal needs but overlaps with a host of other challenges confronted by low and middle-income people living in Utah. We believe lawyers can and should be part of the solution to this problem. There are times well before a court action when some simple advice from an attorney could prevent a problem or resolve a conflict. Yet, as the Bar's recent survey shows, very high percentages of individuals and businesses in Utah have no sense of the value lawyers can provide, they do not know how to find the right lawyer and they believe that it will be too costly to get a lawyer's help.

There are undoubtedly many steps needed in many places. However, we believe a key step to getting legal representation to more people is to substantially reform the regulatory setting in which lawyers operate. We request the Court establish a small working group to promptly study possible reforms and make recommendations to the Court. The purpose of the working group would be to evaluate and make recommendations for revisions, possibly major revisions, to the rules of professional responsibility so as to permit lawyers to more effectively and more affordably provide legal services and do related promotion of those services. The specific areas of focus would be rules concerning (1) fee sharing, (2) advertising and (3) fee arrangements. There are also some conflict of interest issues implicated by some of the possible revisions in these areas.

The work would include consideration of (1) the effect of modern information technology and modern consumer patterns on the current rules, (2) the potential value, in terms of making legal services accessible to clients, of non-lawyer investment and ownership in entities providing legal services and the related regulatory issues, (3) the prospect of broadening the availability of legal services through flat fee and other alternative fee arrangements not currently permitted by the rules, (4) whether there is continuing justification for the rules against direct solicitation, (5) whether and how to permit and structure lawyer use of referral systems such as Avvo in light of the rule against referral fees and (5) the related trends and approaches being considered and/or implemented in other bars, such as Oregon and the ABA's work in this area.

In terms of the makeup of the group, we suggest that the group be co-chaired by a Supreme Court Justice and the immediate past president of the Bar, John Lund. We believe the Bar's general counsel can provide support. We would also suggest including the chair of Court's Committee on the Rules of Professional Responsibility and would also ask that Cathy Dupont be appointed to the committee. Importantly the group should be made up of people who will actually study and consider recommended changes. In that vein, we propose including one of the leaders from the Bar's Innovation in Law Practice Committee, possibly Heather White, Co-chair of that Committee.

Once established, we believe the group could be expected to provide a report and recommendation to the Court within 6 months.

We would be most pleased to attend the Court's Conference on August 27 and discuss our proposal in more detail and answer any questions or concerns from the members of the Court.

Sincerely,

H. Dickson Burton

cc: Richard H. Schwermer (ricks@utahcourts.gov)
John R. Lund (jlund@parsonsbehle.com)
John Baldwin (jbaldwin@utahbar.org)

APPENDIX C

THE LEGAL SERVICES ACT OF 2007

The Legal Services Act (LSA) overhauled the regulation of legal services in the United Kingdom.[61] The regulatory overhaul was precipitated by an overall push for regulatory reform across the U.K., looking particularly at how restrictive rules and norms in the professions impacted competition and the cost of legal services. The goal of the regulatory reform was explicitly consumer and competition focused: "Putting Consumers First."[62] Through these reforms, the U.K. legal profession lost its self-regulatory power. The profession is now regulated by an entity, not controlled by lawyers, answerable to Parliament.

Approach of the LSA

The LSA sought to create an objectives-based, risk-based system for the regulation of legal services in the U.K. The Act itself does not set out detailed, prescriptive rules of behavior to be followed by regulated entities. Rather, the Act sets out regulatory objectives and principles to guide the regulators. It is the responsibility of the regulators to develop the details of the system within those guidelines. "Regulation needs to be proportionate and targeted, focused on outcomes and reflecting real risks in the market. It needs to tackle risk of consumer detriment but, in doing so, stop short of creating an excessive burden that might stifle innovation or restrain competition."[63]

1. **Objectives and Principles (set out in the LSA)**
   a. **Objectives:**[64]
      i. Protecting and promoting the public interest;
      ii. Supporting the constitutional principle of the rules of law;
      iii. Improving access to justice;
      iv. Protecting and promoting the interests of consumers;
      v. Promoting competition in the provision of regulated services;

[61] These reforms were limited to England and Wales. Scotland is independently assessing legal market reforms. The U.K. has always had a very different system from the U.S.—split bar system, several other legal roles, many services we consider to be practice of law are not so considered in the U.K. (including providing legal advice). *See* Stephen Mayson, *Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework* (University College London Centre for Ethics & Law, Working Paper LSR-0, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-0_assessment_1903_v2.pdf (last visited Aug. 13, 2019).

[62] *See* LEGAL SERVICES BOARD, *History of the reforms*, https://www.legalservicesboard.org.uk/about_us/history_reforms/index.htm (last visited Aug. 13, 2019).

[63] *See* LEGAL SERVICES BOARD, *Improving Access to Justice: Rationalising the Scope of Regulation*, https://www.legalservicesboard.org.uk/projects/rationalising_scope_of_regulation/index.htm (last visited June 13, 2019).

[64] The objectives are not defined in the Act but the LSB published a separate paper defining the objectives. *See* LEGAL SERVICES BOARD, *The regulatory objectives: Legal Services Act 2007*, https://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf (last visited Aug. 13, 2019).

vi. Encouraging an independent, strong, diverse, and effective legal profession;
vii. Increasing public understanding of the citizen's legal rights and duties; and
viii. Promoting and maintaining adherence to professional principles.

b. **Principles:**
i. Authorized persons should act with independence and integrity;
ii. Authorized persons should maintain proper standards of work;
iii. Authorized persons should act in the best interests of clients;
iv. Those who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorized persons should comply with their duty to the court to act with independence in the interests of justice; and
v. Affairs of clients should be kept confidential.[65]

What Is the Regulatory Structure?

The LSA establishes one overarching regulator, the Legal Services Board (LSB). The LSB is a government regulator accountable to Parliament. The primary duty of the LSB is to "promote the regulatory objectives" when carrying out its regulatory functions.[66]

The Lord Chancellor, a member of the U.K. Parliament and also Secretary of State for Justice, appoints the members of the LSB. The Board is made up of both lawyers and laypeople, and has a lay chairperson.[67] The Act creates a Legal Services Consumer Panel made up of lay people that advises the LSB on various relevant topics, particularly those considering public interest.[68] The Act also establishes a separate Office of Legal Complaints to address and help resolve consumer complaints.

Instead of directly regulating legal services providers, the LSB regulates multiple "front-line" regulators, which in turn regulate different sectors of the profession (see chart below for

[65] Legal Services Act 2007, c.29, Part 1, § 1, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019).
[66] *Id.*, Part 2, § 3, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019). The LSB does not have a standalone objective or the power to promote the regulatory objectives separate from its established regulator functions.
[67] *Id.*, sch. 4, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019).
[68] *Id.*, Part 2, § 8, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019). The Consumer Panel has significant independent authority under the Act, including the ability to independently report to the public on advice that it gives the LSB.

overview). The LSB has authority to set governance requirements and performance targets, review rules and procedures, and investigate the front-line regulators.[69]

The LSA defines certain regulated activities and persons. Both the activities and the persons follow historically grounded legal roles in the U.K. As will be discussed in more detail below, recent reviews of the effectiveness of the LSA reforms have offered strong criticism of the retention of these traditional activities and roles within the new regulatory regime.

The LSA designates six specific activities as "reserved activities":

1. The exercise of a right of audience;
2. The conduct of litigation;
3. Reserved instrument activities (transactions involving real or personal property but not including wills);
4. Probate activities;
5. Notarial activities; and
6. The administration of oaths.[70]

Those activities can only be performed by people ("authorized persons") granted a license through one of the regulators. It is a criminal offense for an unauthorized person to perform any of the reserved activities.[71] All activities other than these six are unregulated (such as the provision of ordinary legal advice or assistance with legal documents) and may be performed by any person or entity.[72]

Nine roles are designated "authorized persons" under the LSA.

1. Solicitor;
2. Barrister;
3. Legal executive;
4. Notary;
5. Licensed conveyancer;
6. Patent attorney;

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[69] *Id.*, Part 4, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019). The chart below does not list all of the front-line regulators. A complete list can be found here: http://www.legislation.gov.uk/ukpga/2007/29/schedule/4.

[70] *Id.*, Part 3, § 12(1), https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019).

[71] *Id.*, Part 3, §§ 14, 17, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019).

[72] In June 2016, the LSB published a report on the unregulated market for legal services. It estimated that, in cases in which parties sought legal advice, 37% was sought from non-profit legal service providers and between 4.5–5.5% was sought from for profit providers. *See* LEGAL SERVICES BOARD, *Research Summary: Unregulated Legal Services Providers* (June 2016), https://research.legalservicesboard.org.uk/wp-content/media/Unregulated-providers-research-summary.pdf (last visited Aug. 13, 2019). Based on this data, the LSB decided not to extend their regulatory reach at this time.

7. Trademark attorney;
8. Costs lawyer;[73] and
9. Chartered accountant.[74]

Each group is authorized to perform certain reserved activities (e.g. barristers, solicitors, and legal executives can perform all reserved activities except for notarial activities).[75]

The front-line regulators generally align with authorized persons roles (e.g. the Bar Standards Board (BSB) regulates the activities of barristers and the SRA regulates the activities of solicitors). There is certainly overlap, particularly when individuals are working within regulated entities (e.g. it is common for conveyancers, legal executives, and barristers to work in entities regulated by the SRA and almost all notaries are also solicitors).

The front-line regulators are required to promote the regulatory objectives.[76] Pre-LSA, the front-line regulators were, like our bar associations, the trade associations for their associated groups. Post-LSA, they are required to separate any advocacy work from regulatory work.[77]

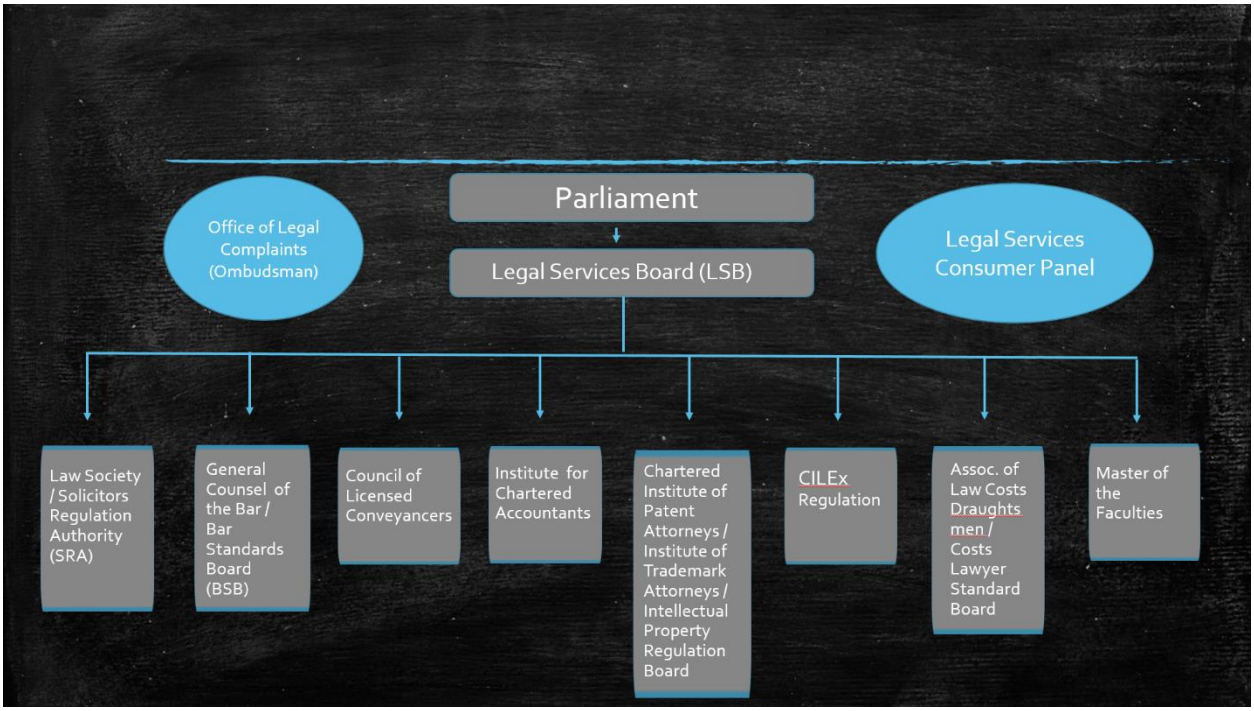
[73] A costs lawyer is a specialist in the law governing the allocation of costs in the U.K. legal system. Unlike the American system, under British law, prevailing parties in litigation are routinely allowed to collect their "costs" (including attorneys' fees) from losing parties. Also, clients may seek an assessment of their legal bills from a court, which is authorized to adjust the bill.

[74] *See* Legal Services Act, c.29, sch. 5, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019).

[75] *Id.*, sch. 4, Part 1, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019).

[76] *Id.*, Part 4, § 28, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019).

[77] *Id.*, Part 4, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019). The system is somewhat complex. Under the current approach, the designated regulators under the LSB are the traditional representative organizations for the legal role (i.e. the Law Society, the General Counsel of the Bar, the Association of Law Costs Draughtsmen). Under the LSA, those organizations are required to put the regulatory function beyond the representative function, leading to the creation of the current operating regulators (i.e., the Solicitors Regulation Authority, the Bar Standards Board, and the Costs Lawyer Standard Board). One of the bigger criticisms of the LSA reforms is that this approach does not go far enough to separate the regulatory function from the representative/advocacy function and the LSB is assessing changes to make that separation more complete.



The LSA authorizes and regulates non-lawyer owned legal service entities that are called Alternative Business Structures (ABSs) (discussed in detail below).

What Does This Actually Look Like: The Solicitors Regulation Authority

The Solicitors Regulation Authority is the largest regulator of legal services in the U.K., regulating solicitors and ABSs. The SRA describes its regulatory approach as follows:

> The outcomes-focused approach to regulation means that our goal is to ensure that legal services providers deliver positive outcomes for consumers of legal services and the public, in line with the intent of the LSA regulatory objectives. This is in contrast to our historical rules-based approach: we no longer focus on prescribing how those we regulate provide services, but instead focus on the outcomes for the public and consumers that result from their activities.[78]

The SRA establishes specific regulatory outcomes to measure its progress toward the LSA's regulatory objectives.

- Outcome 1: The public interest is protected by ensuring that legal services are delivered ethically and the public have confidence in the legal system.
- Outcome 2: The market for legal services is competitive and diverse, and operates in the interests of consumers.

[78] SOLICITORS REGULATION AUTHORITY, *SRA Risk Framework* (Mar. 2014), http://docplayer.net/45754930-Sra-regulatory-risk-framework-march-2014.html (last visited June 13, 2019).

- Outcome 3: Consumers can access the services they need, receive a proper service and are treated fairly.
- Outcome 4: Regulation is effective, efficient and meets the principles of better regulation.[79]

The SRA outlines ten principles for regulated individuals and entities, including upholding the rule of law and the proper administration of justice, not allowing your lawyer independence to be compromised, acting in the best interests of the client, running a legal business in a way that encourages equality of opportunity and diversity, and protecting clients' money and assets.[80]

The SRA issues a Code of Conduct, which contains professional standards for people and entities under its jurisdiction. These are not "rules" but rather guidance of "indicative behaviours" that the SRA would expect to see to achieve objectives (e.g. to ensure Outcome 3, solicitors should explain the scope of their representation to their client, provide (in writing) a description of all involved parties, and explain any fee arrangements).[81]

The SRA also issues specific rules in certain areas: accounts rules, authorization and practicing requirements, client protection (insurance and compensation fund), discipline and costs recovery, and specialist services.[82]

Day-to-day regulatory activity at the SRA is guided by identified risks to the regulatory objectives and outcomes. Identification and prioritization of risks enables proportionate and responsive regulation.

[79] *Id.*
[80] SOLICITORS REGULATION AUTHORITY, *SRA Handbook: SRA Principles* (Dec. 6, 2018), https://www.sra.org.uk/solicitors/handbook/handbookprinciples/content.page (last visited Aug. 13, 2019).
[81] *See* SOLICITORS REGULATION AUTHORITY, *SRA Handbook: Code of Conduct*, https://www.sra.org.uk/solicitors/handbook/code/content.page (last visited Aug. 13, 2019).
[82] *See* SOLICITORS REGULATION AUTHORITY, *How we regulate*, http://www.sra.org.uk/consumers/sra-regulate/sra-regulate.page (last visited Aug. 13, 2019).

The SRA uses a Regulatory Risk Index that groups risks into 4 categories:[83]

1. Firm viability risks (Risks arising from the viability of the firm and the way it is structured)
2. Firm operational risks (Risks arising from a firm's internal processes, people and systems)
3. Firm impact risks (Risk that firm or individual undertakes an action or omits to take action that impacts negatively on meeting the regulatory outcomes)
4. Market risks (Risks arising from or affecting the operation of the legal services market)[84]

The SRA assesses these risks by impact (potential harm caused) and probability (likelihood of harm occurring), and categorizes risks along individual, firm, theme, and market.[85] Risk informs the regulator's decisions on admission, governance, monitoring, enforcement, and soft regulatory interventions (education, etc.). Using this approach enables interventions to be proactive and flexible, including:

1. instituting controls on how a firm or individual practices;
2. issuing a warning about future conduct;

[83] According to Crispin Passmore, former Executive Director of Supervision and Education of the SRA, the SRA is moving away from the Regulatory Risk Index and focusing more of its approach on proactive and thematic risk assessments.

[84] SOLICITORS REGULATION AUTHORITY, *SRA Risk Framework* (Mar. 21, 2014), https://www.sra.org.uk/risk/risk-framework.page (last visited June 13, 2019).

[85] *See id*.

3. closing a firm with immediate effect or imposing a disciplinary sanction, such as a fine;
4. informing the market about undesirable trends and risks;
5. adapting regulatory policy to minimize recurrence of an issue; and
6. setting qualification standards and ongoing competency requirements.[86]

Alternative Business Structures

The LSA permitted participation in legal service providers by those who are not qualified lawyers: entities with lay ownership, management, or investment are designated ABSs under the Act.[87]

Multiple regulators are approved to regulate ABSs, including the SRA, the BSB, the Council of Licensed Conveyancers, the Institute for Chartered Accountants, and the Intellectual Property Regulation Board.

An ABS is either (1) a firm where a "non-authorized person" is a manager of the firm or has an ownership-type interest in the firm or (2) a firm where "another body" is a manager of the firm or has an ownership-type interest in the firm and at least 10 percent of the "body" is controlled by non-lawyers.[88]

ABSs may offer non-legal services alongside legal services.[89] ABSs are regulated as entities and each authorized person within the entity is independently regulated and subject to discipline. The ABS must always have at least one manager who is an authorized person under the LSA.[90] Regardless of ownership structure, control over the right to practice law must remain

[86] *Id.*

[87] Legal Services Act 2007, c.29, Part 5, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019). *See also* Stephen Mayson, *Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework* (University College London Centre for Ethics & Law, Working Paper LSR-0, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-0_assessment_1903_v2.pdf. Note: the LSA also permitted Legal Disciplinary Practices (LDP), through which different categories of authorized persons can enter into partnerships (e.g. barristers and solicitors working together).

[88] Legal Services Act 2007, c.29, Part 5, § 72, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019); *see also* THE LAW SOCIETY, *Alternative Business Structures* (May 21, 2018), https://www.lawsociety.org.uk/support-services/advice/practice-notes/alternative-business-structures/ (last visited Aug. 13, 2019).

[89] *See* Legal Services Act, 2007, c.29, Part 5, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019). Note that the ability to offer non-legal services alongside legal services differentiates this structure from those permitted in Washington, D.C. under its Rule 5.4(b), which permits lawyers to enter into business with non-lawyers (including non-lawyer owners or managers) but the sole purpose of the business must be providing legal services. *See* WASHINGTON, D.C. BAR, *Rules of Professional Conduct, Rule 5.4: Professional Independence of a Lawyer*, https://www.dcbar.org/bar-resources/legal-ethics/amended-rules/rule5-04.cfm (last visited Aug. 13, 2019).

[90] Legal Services Act, 2007, c.29, Part 5, § 72, https://www.legislation.gov.uk/ukpga/2007/29 (last visited Aug. 13, 2019).

in the hands of licensed legal professionals: designated authorized role holders.[91] The SRA requires ABSs to have both legal and financial compliance officers.[92] These roles are responsible for ensuring that the entity and all of its interest holders, managers, and employees comply both with the terms of its license and with regulations applicable to its activities (reserved and potentially non-reserved depending on the terms of the license).[93] If an entity, or those within it, violate the terms of the license or the rules of professional conduct, the compliance officer has a duty to correct and report to the regulator.

In keeping with the regulatory focus on opening the market and enabling competition, the bar to entry, at least within the SRA process, is relatively low. An applicant must outline which reserved activities the entity plans to offer, provide professional indemnity insurance information, and identify firm structure details (including authorized role holders) and incorporation details if applicable.[94] To grant a license, the SRA needs to be satisfied that, for example, the proposed ABS will comply with professional indemnity insurance and compensation fund requirements, appropriate compliance officers have been appointed, the authorized role holders are approved, and the lawyer-manager is qualified. The SRA may refuse to grant the license if it is not satisfied that these requirements have been shown, or if the applicant has been misleading or inaccurate, or if it feels that the ABS is "against the public interest or inconsistent with the regulatory objectives" set out in the LSA.[95] The SRA may also grant a license subject to any conditions it deems necessary.[96]

Impact of the LSA

There has been some debate about the impact of the LSA on the legal services market in the U.K. and on access to justice in particular.[97] A paper produced by a workgroup chaired by Professor Stephen Mayson had this to say on the impact of the LSA:

> The LSA's reforms have gone some way in beginning to address the pressing issues of the time – independence of regulation, poor complaints handling, anti-competitive restrictions and the need for greater focus on the consumer.

[91] SOLICITORS REGULATION AUTHORITY, *SRA Authorisation Rules 2011, Rule 8.5*, https://www.sra.org.uk/solicitors/handbook/authorisationrules/content.page (last visited Aug. 13, 2019).
[92] *Id*.
[93] *Id.*
[94] SOLICITORS REGULATION AUTHORITY, *New Firm Applications* (Sep. 29, 2017), http://www.sra.org.uk/solicitors/firm-based-authorisation/authorisation-recognition.page (last visited Aug. 13, 2019).
[95] THE LAW SOCIETY, *Alternative Business Structures* (May 21, 2018), https://www.lawsociety.org.uk/support-services/advice/practice-notes/alternative-business-structures/ (last visited Aug. 13, 2019).
[96] *Id.*
[97] It should be noted that as the reforms were implemented the Government dramatically reduced funding for legal aid across the U.K. and the world faced the global market downturn. *See* Dominic Gilbert, *Legal Aid Advice Network "Decimated" by Funding Cuts*, BBC NEWS (Dec. 10, 2018), https://www.bbc.com/news/uk-46357169 (last visited Aug. 13, 2019).

> Regulatory reform since then has been wide ranging. Regulators have increasingly simplified and focused their processes and removed barriers to market entry, enabling innovation among new and existing providers, improving consumer choice and competition.[98]

In the area of non-lawyer ownership (i.e., ABSs), the market has seen increased innovation in legal services offerings but change is unsurprisingly more incremental than revolutionary. As of February 2019, it appears that regulators have licensed over 800 entities as ABSs.[99] Most entities seeking ABS licenses are existing legal services businesses converting their license; one-fifth are new entrants.[100] Lawyer-ownership remains the dominant form with three-fifths of ABSs having less than 50 percent non-lawyer ownership.[101] Approximately one-fifth of ABSs are fully owned by non-lawyers and approximately one-fifth are fully owned by lawyers with some proportion of non-lawyer managers.[102] A 2014 report by the SRA sought to understand how firms changed upon gaining an ABS license. Most often, firms changed either their structure or their management under the new regulatory offering.[103] Twenty-seven percent changed the way the business was financed. The SRA found that investment was most often sought for entry into technology, to change the services offered, and for marketing.[104] A 2018 report by the LSB found that ABSs were three times as likely as traditionally organized entities to use technology, and ABSs, as well as newer and larger providers, have higher levels of service innovation.[105]

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[98] *Legislative Options Beyond the Legal Services Act 2007*, https://stephenmayson.files.wordpress.com/2016/07/legislative-options-beyond-the-legal-services-act-2007.pdf (last visited Aug 13, 2019).

[99] The SRA maintains a list of all registered ABSs at https://www.sra.org.uk/solicitors/firm-based-authorisation/abs/abs-search.page. This is likely a small percentage of all the legal firms in the United Kingdom. In 2015, for example, there were approximately 10,300 solicitors firms in the U.K. *See* Mari Sako, *Big Bang or drop in the ocean?: The Authorized Revolution in legal services in England and Wales*, THOMSON REUTERS FORUM MAGAZINE (Oct. 8, 2015), https://blogs.thomsonreuters.com/answerson/abs-ldp-drop-ocean-england-wales/ (last visited Aug. 13, 2019).

[100] *See* LEGAL SERVICES BOARD, *Evaluation: ABS and investment in legal services 2011/12-2016/17 – Main Report* 4 (June 2017), https://research.legalservicesboard.org.uk/wp-content/media/Investment-research-2017-Report-Main-report.pdf (last visited Aug. 13, 2019).

[101] *Id.*

[102] *Id.*

[103] SOLICITORS REGULATION AUTHORITY, *Research on alternative business structures (ABSs): Findings from surveys with ABSs and applicants that withdrew from the licensing process* 17 (May 2014), https://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page (last visited Aug. 13, 2019).

[104] *Id.*

[105] LEGAL SERVICES BOARD, *Research Summary: Technology and Innovation in Legal Services* (Nov. 2018), https://research.legalservicesboard.org.uk/wp-content/media/Innovation-survey-2018-web-FINAL.pdf (last visited Aug. 13, 2019).

The market continues to develop. LegalZoom has received an ABS license and has started purchasing solicitors firms in the U.K.[106] Each of the Big Four accounting firms has an ABS license.[107] Most importantly, there is little to no evidence of ABS-specific consumer harm.[108]

The SRA will be rolling out relatively significant changes in the form of new "Standards and Regulations (STARS)" in the coming months. Those changes are targeted at increasing liberalization of the market and increasing the efficiency of the regulatory response. Perhaps the most significant change is that solicitors will now be permitted to offer non-reserved legal activities out of unregulated businesses (i.e., a solicitor may now be employed by Tesco or a bank to offer non-reserved services like will writing).[109]

Challenges of the LSA

In December 2016, the Competition and Markets Authority (CMA) released a report reviewing the legal services market post-LSA.[110] Professor Stephen Mayson's reviews of the impact of the LSA are also illuminating to understand how the reforms of the LSA may have fallen short in opening the market.[111]

1. **Retention of traditional roles/activities:** As noted above, although the LSA sought to implement an objectives- and risk-based regulatory system, it also relied upon traditional legal roles and their associated activities as regulatory hooks. Both the CMA report and Professor Mayson's work identify this continued reliance on traditional activities/roles as a proxy for regulatory strategy/intervention as problematic and limiting to the impact of the reforms. Authorized persons and reserved activities were essentially "grandfathered" or lobbied into the LSA (an "accident of history" or result of

[106] John Hyde, *LegalZoom Enters Market with ABS License*, THE LAW SOCIETY GAZETTE (Jan. 7, 2015), https://www.lawgazette.co.uk/practice/legalzoom-enters-market-with-abs-licence/5045879.article (last visited Aug. 13, 2019).
[107] *See* Joseph Evans, *Deloitte Becomes the Last of the Big Four to get ABS License for Legal Services*, THE AMERICAN LAWYER (June 22, 2018), https://www.law.com/americanlawyer/2018/06/22/deloitte-becomes-last-of-big-four-to-get-abs-license-for-legal-services/ (last visited Aug. 13, 2019).
[108] *See* COMPETITION AND MARKETS AUTHORITY, Legal Services Market Study: Final Report (December 15, 2016), https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf (last visited Aug. 13, 2019). *See also* Judith K. Morrow, *UK Alternative Business Structures for Legal Practice: Emerging Market and Lessons for the US*, 47 Geo. J. Int'l L. 665, 668 (2016).
[109] Crispin Passmore, *Look to the STARs*, Passmore Consulting (Mar. 20, 2019), https://www.passmoreconsulting.co.uk/look-to-the-stars (last visited Aug. 13, 2019).
[110] *See id*.
[111] *See* Stephen Mayson, *The Legal Services Act 2007: Ten Years On, and "Mind the Gaps"* (June 2017), https://stephenmayson.files.wordpress.com/2017/06/mayson-2017-legal-services-act-10-years-on1.pdf (last visited Aug. 13, 2019).

political bargaining) and do not reflect a true assessment of risk.[112] The CMA report recommended that "[A]n optimal regulatory framework should not try to regulate all legal activities uniformly, but should have a targeted approach, where different activities are regulated differently according to the risk(s) they pose rather than regulating on the basis of the professional title of the provider undertaking it."[113]

2. **Gold-plating of regulation vs. regulatory gap:** Some regulators regulate all activities of authorized persons (including non-reserved activities) while, at the same time, unreserved activities of unauthorized persons are not regulated at all (i.e., a solicitor who drafts a bad will can be subject to regulatory control but a shopkeeper who drafts a bad will is beyond legal regulatory authority because will writing is not a reserved activity). This causes excessive costs to be imposed on authorized persons, leaves possible high-risk activities beyond regulatory scope, and is very confusing to the consumer.[114]
3. **No prioritization among regulatory objectives:** The regulatory objectives set out in the LSA are listed without any indication of how the LSB or the front-line regulators are to prioritize them or weigh them in the event of a conflict between objectives.[115]
4. **Continuing challenges around consumer information gap, pricing challenges (level and transparency), and access to justice:**[116] "[C]onsumers generally lack the experience and information they need to find their way around the legal services sector and to engage confidently with providers. Consumers find it hard to make informed choices because there is very little transparency about price, service and quality—for example, research conducted by the Legal Services Board (LSB) found that only 17% of legal services providers publish their prices online. This lack of transparency

[112] *See Legislative Options Beyond the Legal Services Act 2007*, https://stephenmayson.files.wordpress.com/2016/07/legislative-options-beyond-the-legal-services-act-2007.pdf (last visited Aug. 13, 2019).

[113] *See* COMPETITION AND MARKETS AUTHORITY, *Legal services market study: Final report* 201 (Dec. 15, 2016), https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf (last visited Aug. 13, 2019).

[114] *See* Stephen Mayson, *Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework* 11 (University College London Centre for Ethics & Law, Working Paper LSR-0, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-0_assessment_1903_v2.pdf (last visited Aug. 13, 2019).

[115] Stephen Mayson, *Independent Review of Legal Services Regulation: The Rationale for Legal Services Regulation* 9 (University College London Centre for Ethics & Law, Working Paper LSR-1, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-1_rationale_1903_v2.pdf (last visited Aug. 13, 2019).

[116] SOLICITORS REGULATION AUTHORITY, *Price transparency* (Nov. 2018), https://www.sra.org.uk/solicitors/resources/transparency/transparency-price-service.page (last visited Aug. 13, 2019).

weakens competition between providers and means that some consumers do not obtain legal advice when they would benefit from it."[117]

5. **Incomplete separation of regulatory and representative activities**: The separation of regulatory and representative activities, as required by the LSA, is incomplete and gives rise to tension.[118]

Keeping in mind that the reforms are still relatively new (ABSs began being licensed in early 2012),[119] the most appropriate conclusion appears to be that, while the LSA initiated much needed reforms to the regulatory process and began the process of opening up the legal services market, significant challenges remain and require continued focus.

[117] *See* COMPETITION AND MARKETS AUTHORITY, Legal Services Market Study: Final Report 4 (Dec. 15, 2016), https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf (last visited Aug. 13, 2019).

[118] *See* Stephen Mayson, *Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework* 12 (University College London Centre for Ethics & Law, Working Paper LSR-0, 2019), https://www.ucl.ac.uk/ethics-law/sites/ethics-law/files/irlsr_wp_lsr-0_assessment_1903_v2.pdf (last visited Aug. 13, 2019).

[119] *See* THE LAW SOCIETY, *Setting up an ABS* (Oct. 31, 2012), https://www.lawsociety.org.uk/support-services/advice/articles/setting-up-an-abs/ (last visited Aug. 13, 2019).

APPENDIX D

REGULATOR: DETAILED PROPOSAL

Our suggested proposal for the Phase 1 regulatory structure and approach is outlined below. Although we have put a great deal of thought into this proposal, we stress that this is just a proposal. Our model assumes that the Phase 1 period will be one of research and development regarding the regulator's structure and framework and that both will likely change with increased data from the regulatory sandbox market and other inputs.

Framework (Phase 1)

The Court will operate the regulator as a task force of the Court. The Court should outline regulatory objectives for the regulator. We propose a single core objective:

To ensure consumers access to a well-developed, high-quality, innovative, and competitive market for legal services.

As discussed above, this objective purposely focuses the regulatory authority on the consumer market for legal services. The Court should also outline regulatory principles for the regulator. We propose five regulatory principles:

1. **Regulation should be based on the evaluation of risk to the consumer.** Regulatory intervention should be proportionate and responsive to the actual risks posed to the consumers of legal services.
2. **Risk to the consumer should be evaluated relative to the current legal services options available.** Risk should not be evaluated as against the idea of perfect legal representation provided by a lawyer but rather as against the reality of the current market options. For example, if 80 percent of consumers have no access to any legal help in the particular area at issue, then the evaluation of risk is as against no legal help at all.
3. **Regulation should establish probabilistic thresholds for acceptable levels of harm.** The risk-based approach does not seek to eliminate all risk or harm in the legal services market. Rather, it uses risk data to better identify and apply regulatory resources over time and across the market. A probability threshold is a tool by which the regulator identifies and directs regulatory intervention. In assessing risks, the regulator looks at the probability of a risk occurring and the magnitude of the impact should the risk occur. Based on this assessment, the regulator determines acceptable levels of risk in certain areas of legal service. Resources should be focused on areas in which there is both high probability of harm and significant impact on the consumer or the market. The thresholds in these areas will be lower than other areas. When the evidence of consumer harm crosses the established threshold, regulatory

action is triggered.[120] Example: Under traditional regulatory approaches, the very possibility that a non-lawyer who interprets a legal document (a lease, summons, or employment contract, for example) might make an error that an attentive lawyer would not make has been taken to justify prohibiting all non-lawyers from providing any interpretation. However, if the risk is actually such that an error is made only 10% of the time, then a risk-based approach would recommend allowing non-lawyer advisors to offer aid (particularly if the alternative is not getting an interpretation from an attentive lawyer but rather proceeding on the basis of the consumer's own, potentially flawed interpretation). If a particular service or software is actually found to have an error rate exceeding 10%, then regulatory action (suspension, investigation, etc.) would be taken against that entity or person.

4. **Regulation should be empirically-driven.** Regulatory approach and actions will be supported by data. Participants in the market will submit data to the regulator throughout the process.
5. **Regulation should be guided by a market-based approach.** The current regulatory system has prevented the development of a well-functioning market for legal services. This proposal depends on the regulatory system permitting the market to develop and function without excessive interference.

Regulator Structure

In Phase 1, the regulator will operate relatively leanly given that it will be overseeing a small marketplace (the regulatory sandbox); however, staffing needs to be sufficient to ensure that the regulator is successful from the start. The regulator must be able to respond to applicants, questions, and demands quickly and efficiently and be able to adequately monitor and assess the market's development and respond appropriately and strategically.

We preliminarily envision an executive committee or senior staff made up of a Director, a Senior Economist, and, perhaps, a Senior Technologist. It is not necessary that these individuals be lawyers. The Director will be the face of the entity, responsible for strategy, development, budget, and reporting to the Court. The Senior Economist will be responsible for developing the quantitative analytical tools used by the regulator. The Senior Technologist will be responsible both for reviewing, assessing, and explaining the technological aspects of any proposed products or services as well as offering technological expertise on a strategic level (i.e., where regulatory resources should be targeted). The support staff would need to cover

[120] The "probability threshold" approach is not unfamiliar in the legal world. Indeed, it arguably guides First Amendment constitutional law doctrine. *See* Jonathan S. Masur, *Probability Thresholds*, 92 IOWA L. REV. 1293, 1297 (2007).

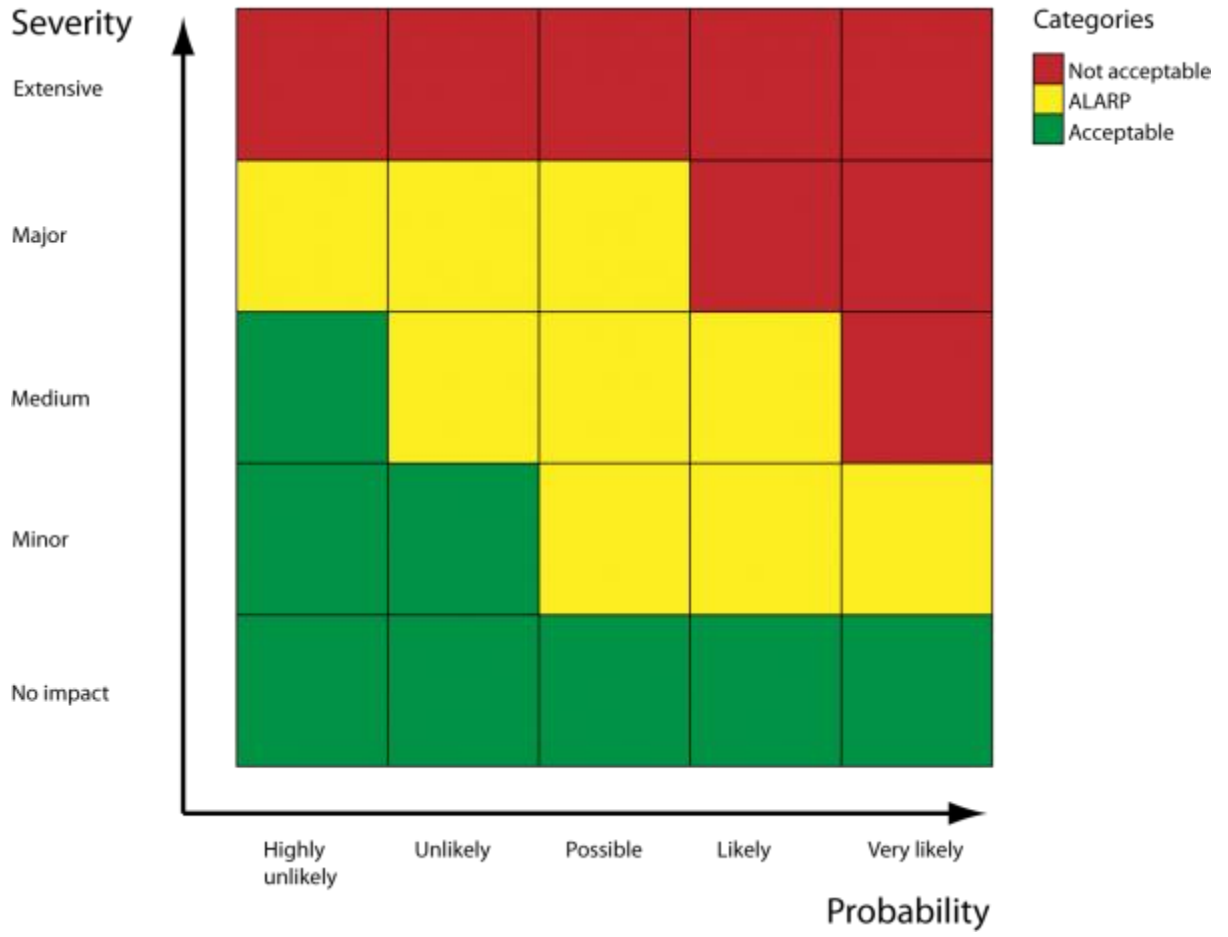
the following functions: operations, development, and communications. Finally, we envision creating a Board of Advisors made up of both legal and non-legal leaders, including particularly leaders in technology and academics well-versed in regulatory theory.

We propose that the regulator be funded primarily from fees collected from market participants. At the outset, however, we propose seeking grants for the establishment and support of the Phase 1 regulator.

Regulatory Approach

It is the regulator's job to develop a system that, applying the regulatory principles, works to achieve the regulatory objective. Identifying, quantifying, understanding, and responding to risk of consumer harm using an empirical approach is prioritized in our regulatory principles. There are two major aspects to this: (1) assessing risk of consumer harm in the market as a whole (both now and over time); and (2) assessing risk of consumer harm in a particular applicant's legal service offering.

We foresee the regulator using a risk matrix as its primary tool for identifying and understanding risk. A risk matrix is essentially a framework used to evaluate and prioritize risk based on the likelihood of occurrence and the severity of the impact. It is one of the most widespread tools used for risk evaluation. A simple example follows:



Developing the risk matrix should be the first task for the regulator in assessing the legal services market, and it should be revised and updated market-wide on an ongoing basis. The risk matrix also guides the regulator's approach to individual regulated entities throughout the regulatory process.

We propose attention to 3 key risks:

1. Consumer achieves a poor legal result.
2. Consumer fails to exercise their legal rights because they did not know they possessed those rights.
3. Consumer purchases a legal service that is unnecessary or inappropriate for resolution of their legal issue.

Using the risk matrix, the regulator would consider likelihood and impact of each of the three key risks mentioned, as well as any other risks identified either in the market generally or as indicated for a particular participant or group of participants. For example, for an entity proposing to offer a software-enabled will drafting service (using perhaps machine learning enhanced guidance or advice or non-lawyer will experts answering questions), the regulator

would assess the likelihood that the consumer achieves a poor legal result (e.g. an unenforceable will or term) and the impact of that harm on the consumer (potentially significant, but rectifiable, in some cases).

The regulator should establish metrics by which those risks might be measured and identify the data regulated entities will be required to submit in order to assess risk on an ongoing basis. The regulated entities will be required to submit data on these in order to participate in the market. In the example above, the risk of a poor legal result can be measured through expert testing/auditing of the proposed product and through consumer satisfaction surveys. The regulator should consider what level of risk self-assessment should be required from applicants in addition to any key risks identified by the regulator.

Regulatory Process

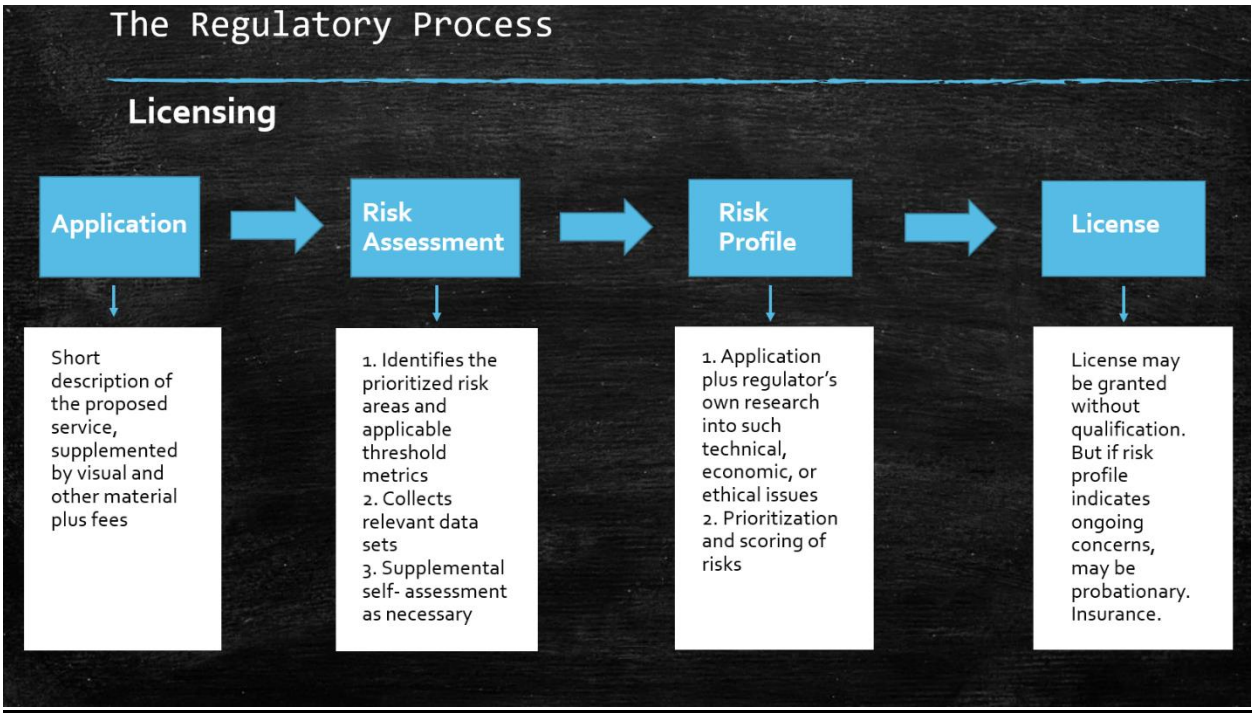
The key points of the regulatory process should be as follows: (1) licensing; (2) monitoring; and (3) enforcement. Each defines a key interaction between the regulator and the market participant.

Licensing

The licensing approach would be guided by the following analysis:

1. What is the specific nature of the risk(s) posed to the consumer by this service/product/business model?
2. Where does the proposed service/product/business model lie within the risk matrix?
3. Can the applicant provide sufficient evidence on the risk(s)?
4. What mechanisms might mitigate those risks and how? What are the costs and benefits of those mechanisms?

The visual below illustrates the proposed licensing process:



Applicant initiates process: The applicant describes the service/product/business model offered. The explanation should be simple and short. The applicant should submit supplemental materials (visuals, etc.) as necessary.

Risk Assessment: Based on the description provided in the initial application, supplemented as necessary with information requests to the applicant, the regulator initiates the risk assessment process.

1. The regulator assesses the applicant's proposal within the context of the risk matrix. Does the proposed service implicate one of the key risks, and what is the likelihood and impact of those risks being realized? The applicant must submit required data on these risks and any information on the mitigation of these risks and response to risk realization built into its model.
2. Self-assessment: the applicant will be expected to identify any risks to consumers not identified in the first step. These may be risks specific to the type of technology proposed, the business model, the area of law, or the consumer population targeted. For example, a blockchain platform for commercial smart contracting presents different concerns than a document completion tool used by self-represented litigants.
3. The regulator should develop a mechanism for sealed risk disclosures—to the extent that any necessary disclosures around technology or other risk mitigation processes should not be made public.

Fees: The applicant should submit licensing fees both at the outset of the licensing process and annually in order to maintain an active license. The fee regime will be developed to scale with the applicant's statewide revenues.

Regulator Response—Risk Profile: The regulator will then use the application and its own research into such technical, economic, or ethical issues as necessary to develop an overall risk profile of the proposed service/product/business model. A risk profile is not a list of potential risks with little or no differentiation between them. Instead, the risk profile should assess the identified risks both in relation to each other (which are the most probable, which present the greatest financial risk, etc.) and in relation to the legal services market overall. The risk profile will also guide the regulator in its regulatory approach going forward, i.e., how frequently to audit, what kind of ongoing monitoring or reporting to employ, and what kinds of enforcement tools need to be considered.

Regulator Response—Determination on Licensure: If, based on the risk profile, the regulator finds that significant risks have been identified, but it is not clear how the applicant plans to address and mitigate those risks, the regulator can impose probationary requirements on the applicant targeted to address those risks or refuse licensure.

Monitoring and Data Collection

Once an entity is licensed, the regulatory relationship moves on to the monitoring and data collection phase. The purpose of monitoring is continual improvement of the regulatory system with respect to the core objective. Monitoring enables the regulator to understand risks in the market and identify trends and to observe, measure, and adjust any regulatory initiatives to drive progress toward the core objective. Monitoring is not the regulator simply checking the box on a list of requirements.

In monitoring, the regulator can use several different tactics. The regulator should develop requirements such that regulated entities periodically and routinely provide data on the three key risks. The regulator should have the flexibility to reduce or eliminate specific reporting requirements if the data consistently show no harm to consumers. The regulator should also conduct unannounced testing or evaluation of a regulated entities' performance through, for example, "secret shopper" audits or expert audits of random samples of services or products.

The regulator should consider imposing an affirmative duty on regulated entities to monitor for and disclose any unforeseen impacts on consumers.

The regulator should also conduct consumer surveys across the market and consider how to engage with courts and other agencies to gather performance data.

The regulator should use the data gathered to issue regular market reports and issue guidance to the public and regulated entities. The regulators in the U.K., the SRA in particular, provide strong examples of the reporting opportunities. The SRA issues regular reports on risk, regulatory activities, regulated population, consumer reports, and equality and diversity.[121] On risk, the SRA issues quarterly and annual reports that span across the market, as well as thematic reports (a report on risks in conveyancing, for example) and reports on key risks, risks in IT security, risks to improving access to legal services, etc.[122]

Enforcement

Enforcement is necessary where the activities of licensed entities are harming consumers. Ideally, the regulator will take action when evidence of consumer harm exceeds the applicable acceptable harm thresholds outlined in the risk matrix or individualized risk assessment. The regulator should strive to make the enforcement process as transparent, targeted, and responsive as possible.

The regulator should develop a process for enforcement: intake, investigation, and redress. Evidence of consumer harm can come before the regulator through multiple avenues:

1. Regulator finds evidence of consumer harm through the course of its monitoring, auditing, or testing of regulated entities.
2. Regulator finds evidence of consumer harm through its monitoring of the legal services market.
3. Consumer complaints.
4. Referrals from courts or other agencies.
5. Whistleblower reports.
6. Media or other public interest reports.

The regulator should develop a process by which members of the public can approach the regulator with complaints about legal service. The U.K. approach is informative on this issue. The LSA established a separate and independent entity, the Office of Legal Complaints (OLC) and its Legal Ombudsman to address the bulk of consumer complaints against legal service providers. Complaints around poor service are directed to the Ombudsman, which has the authority to identify issues and trends and refer those to the frontline regulators like the SRA.[123] The frontline regulators like the SRA accept complaints that directly implicate significant

[121] *See* SOLICITORS REGULATION AUTHORITY, *Research and reports* (July 2019), https://www.sra.org.uk/sra/how-we-work/reports.page (last visited Aug. 13, 2019).

[122] *See* SOLICITORS REGULATION AUTHORITY, *Risk publications*, https://www.sra.org.uk/risk/risk-resources.page (last visited Aug. 13, 2019).

[123] *See* SOLICITORS REGULATION AUTHORITY, *Providing information and intelligence to the SRA* (Jan. 20, 2015) https://www.sra.org.uk/consumers/problems/report-solicitor/providing-information.page (last visited Aug. 13, 2019). The Ombudsman requires the consumer to complain to the service provider directly before accessing the

consumer risk (financial wrongdoing, dishonesty, and discrimination for example). The SRA does not, however, advocate individual complaints against service providers. Rather, the SRA will accept the information and either (1) keep the information for future use if necessary ("no engagement at present"), (2) use the information to supervise a firm more closely, or (3) use the information in a formal investigation.[124] Thus, the structure for complaints enables the frontline regulator to retain its focus on risk at the firm and market level rather than dispensing resources on investigating and managing every individual consumer complaint.

The regulator should consider establishing a Legal Ombudsperson role or office to focus on consumer questions or complaints about poor legal service (issues such as poor communication, inefficient service, trouble following client direction, etc.). This role could be contained within the regulator, but requires proper structural independence and authority to address complaints, require remedial action, and issue clear guidelines on what kinds of information should be referred to the enforcement authority of the regulator.

If the regulator makes a finding of consumer harm that exceeds the applicable threshold, then penalties are triggered. The penalty system should be clear, simple, and driven by the core objective. The regulator should strive to address harm in the market without unnecessarily interfering with the market.

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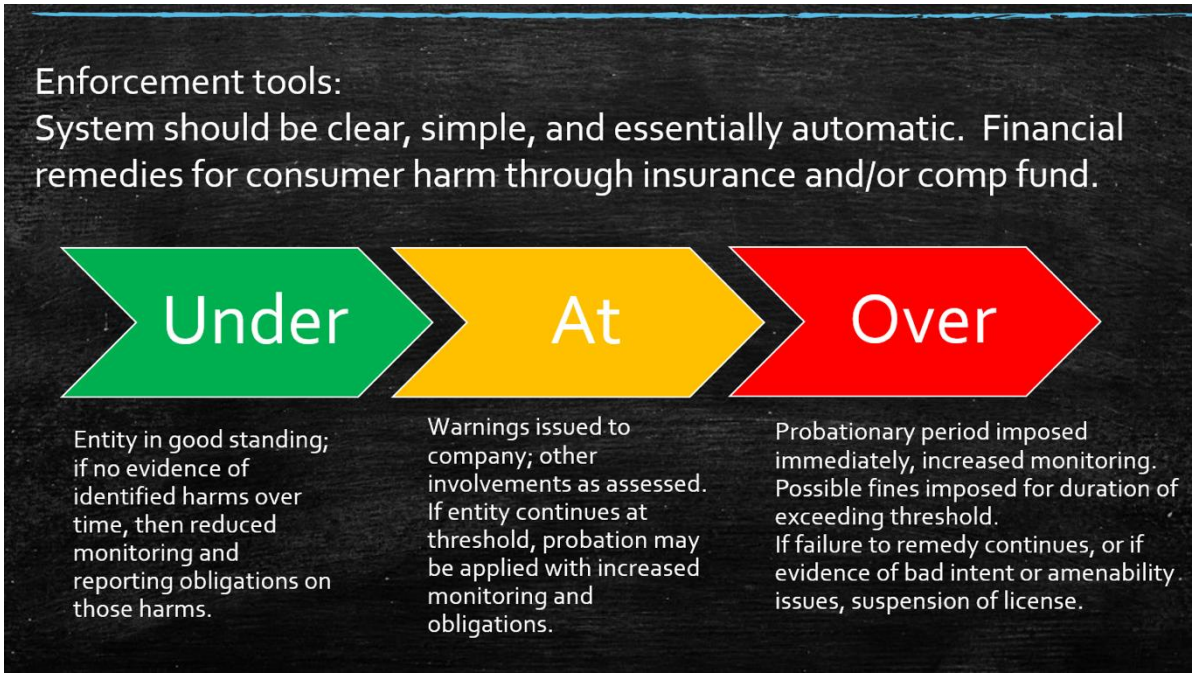
office. *See* SOLICITORS REGULATION AUTHORITY, *Reporting an individual or firm*, https://www.sra.org.uk/consumers/problems/report-solicitor.page (last visited Aug. 13, 2019); *see also* LEGAL OMBUDSMAN, *Helping the public*, https://www.legalombudsman.org.uk/helping-the-public/ (last visited Aug. 13, 2019). The Ombudsman has the power to require the legal services provider to take remedial actions such as return or reduce fees, pay compensation, apologize, and do additional work. *See* LEGAL OMBUDSMAN, *Helping the Public*, https://www.legalombudsman.org.uk/helping-the-public/#what-problems-we-resolve (last visited Aug. 13, 2019).

[124] *See* SOLICITORS REGULATION AUTHORITY, *Providing information and intelligence to the SRA* (Jan. 20, 2015), https://www.sra.org.uk/consumers/problems/report-solicitor/providing-information.page (last visited Aug. 13, 2019).



There should be a process to appeal enforcement decisions, both within the regulator and to the Supreme Court.

The regulator should make regular reports on enforcement data and actions to the Court.

Other Regulatory Duties

The regulator may have other duties that advance the core objective. These would obviously include its reporting duties to both the Court and the public. Reports would detail the overall state of the market, risks across the market, prioritized risk areas, and specific market sectors (by consumer, by area of law, etc.). The regulator may also have the authority to develop initiatives, including public information and education campaigns.

Regulatory Sandbox

This section presents an overview of regulatory sandboxes generally and insights into how our proposed regulatory sandbox could operate.

The regulatory sandbox is a policy structure that creates a controlled environment in which new consumer-centered innovations, which may be illegal under current regulations, can be piloted and evaluated. The goal is to allow regulators and aspiring innovators to develop new offerings that could benefit the public, validate them with the public, and understand how current regulations might need to be selectively or permanently relaxed to permit these and other innovations. Financial regulators have used regulatory sandboxes over the past decade to

encourage more public-oriented technology innovations that otherwise might have been inhibited or illegal under standard regulations.[125] In the legal domain, the U.K.'s SRA has also created a structure—the Innovation Space—that introduces a system of waivers of regulatory roles for organizations to pilot ideas that might benefit the public.[126]

The regulatory sandbox structure has been used most extensively in the financial services sector. This is an area with extensive and detailed regulations and a significant amount of technological development and innovation. While there are significant differences between financial services and legal services, there are insights to be drawn from regulatory sandbox operation in that sector. Below are some general characteristics of sandboxes:

1. **Testing out what innovations are possible.** The regulatory sandbox can allow the regulator to selectively loosen current rules to see how much and what kinds of new innovation might be possible in their sector.[127] Regulators and the industry see that new types of technology developments, with the rise of artificial intelligence, digital and mobile services, blockchain, and other technologies, may bring new benefit to the public. Guarantees of non-enforcement in the sandbox can allow companies to raise more capital for experimental new offerings that may not otherwise be funded because of regulatory uncertainty about how the rules would apply to these new models. The regulators can use the sandbox to understand how much innovation potential there is in the ecosystem, beyond mere speculation that emerging tech has promise in their market if regulations were changed.
2. **Tailored evaluation plans focused on risk.** The sandbox model puts the burden on companies to define how their services should be measured in regard to benefits, harms, and risks. They must propose not only what innovation is possible, but also how it can be assessed.
3. **Controlled experimentation.** The sandbox allows for regulators to run controlled tests as to what changes to regulation might be possible, both in terms of what rules apply and how regulation is carried out. They can install safeguards to protect the experiments from spilling over into the general market, and they can terminate individual experiments or the entire sandbox if the evidence indicates that unacceptable harms are emerging.

[125] *See supra* n.55.

[126] SOLICITORS REGULATION AUTHORITY, *Enabling innovation: Consultation on a new approach to waivers and developing the SRA Innovation Space* (Apr. 12, 2018), https://www.sra.org.uk/sra/consultations/enabling-innovation.page (last visited Aug. 13, 2019).

[127] The selective loosening or non-enforcement of different rules is less applicable in our proposed sandbox because, as noted, we have a good idea of what rules need to be revised or removed (unauthorized practice of law, corporate practice, and fee sharing rules). What we are less certain of is what risks might come to bear as a result of the loosening or non-enforcement of those rules (see point 2).

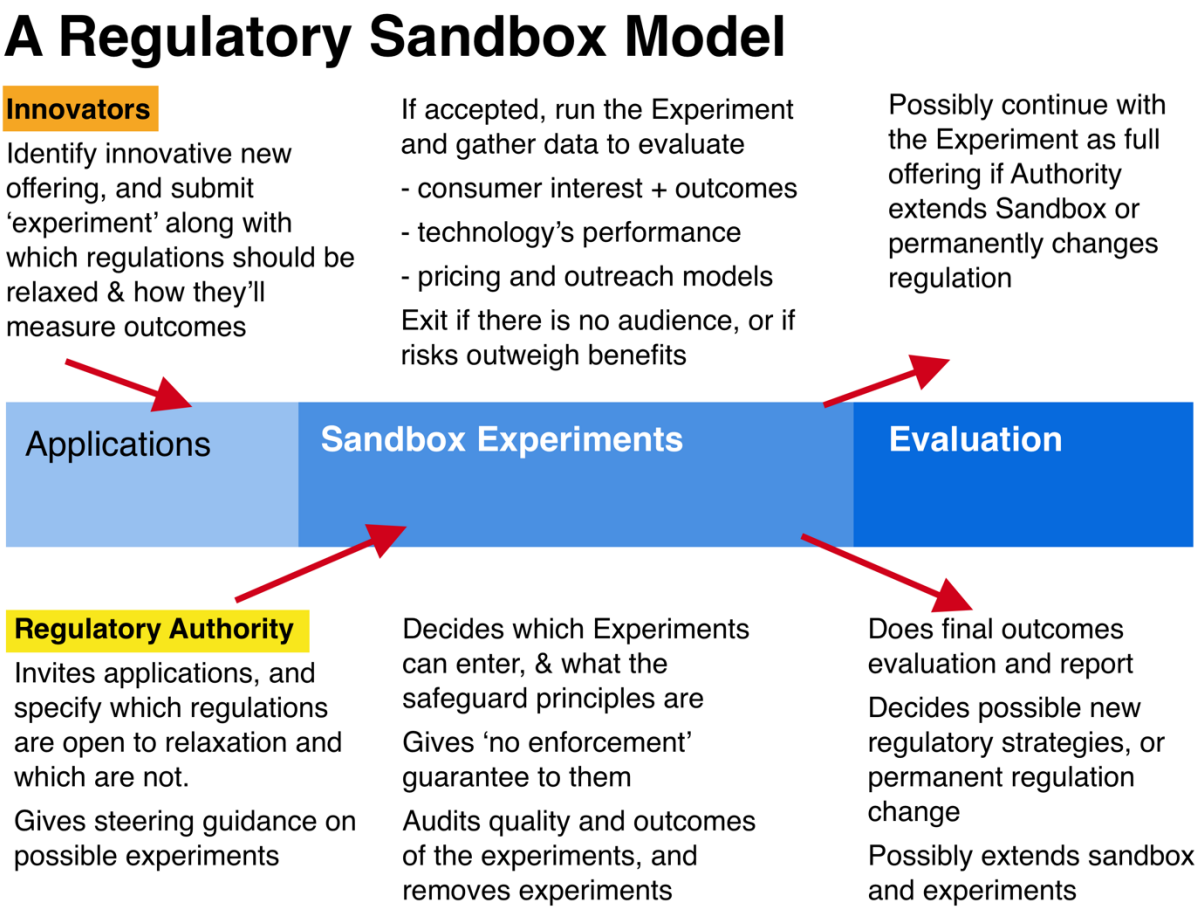
4. **New sources of data on what regulation works best.** The sandbox can be a new source of data-driven, evidence-backed policy-making. Because sandbox participants gather and share data about their offerings' performance (at least with the regulators, if not more publicly), the sandbox can help develop standards and metrics around data-driven regulation. It can incentivize more companies to evaluate their offerings through rigorous understanding of benefits and harms to the public, and it can help regulators develop protocols to conduct this kind of data-driven evaluation.

Points 2 and 4 will be key for our regulatory sandbox: identifying and assessing risk and developing data to inform the regulatory approach.

How Does A Regulatory Sandbox Work?

A regulator can create a sandbox to incentivize greater innovation and to gather more data-driven evidence on how offerings and regulations perform in regard to benefits or harms to the public. The essential steps of a regulatory sandbox are as follows:

1. **The regulator issues a call for applications.** This call defines the essential rules of the sandbox: which regulations are open to being relaxed or removed and which cannot be. It also can specify what kinds of innovations will be accepted into the sandbox, the types of data and evaluation metrics that must be prepared, the non-enforcement letters or other certifications that successful applicants will receive, and other safeguards or criteria for possible applicants. Typically, this call is for a "class" of applicants that are all accepted at the same time and run in parallel (though it could be a rolling application instead).
2. **Companies submit applications.** Any type of organization can propose a new offering to be included in a sandbox class. Applicants must detail exactly what the new offering is (e.g., what the technology is, what it intends to accomplish, and how it functions); how they expect it to benefit the public; what risks or harms they expect might arise; how they will deploy and measure this offering; and which rules or regulations need to be relaxed in order for this offering to be allowed.



3. **Start of the sandbox.** The regulator reviews the applications and accepts those that have demonstrated an innovative new offering, a strong assessment plan, and a strong potential for public benefit. The regulator invites these approved participants to enter the sandbox and establishes how the data-sharing, auditing, and evaluation will proceed. If the participants agree to these arrangements, they receive a letter of non-enforcement from the regulator that gives them permission to develop and launch the agreed-upon offering, within the confines of the sandbox, without being subject to the identified regulations.
4. **Sandbox runs and rolling evaluation begins.** A typical sandbox period could be six months to two years. The participant companies work on developing their offerings, putting them on the market, and collecting data on their performance. When applicants bring a new offering to the public, they must conspicuously disclose that it is part of the sandbox and refer consumers to the regulator where they can learn more about the offering and give feedback or complaints. The regulator observes the performance of the offering to see if the public uses it, if the intended benefits result, if any of

the expected or unexpected harms result, and what complaints consumers have. The regulator can suspend or cancel the non-enforcement letter at any time if the company is not performing according to the agreement, if its offering does not engage an audience, or if the offering results in harms above what the regulator has deemed acceptable.

5. **Sandbox ends and company and regulator (potentially) continue on.** Once the designated period of the sandbox finishes, the company can continue with its approved offering if it so wishes, with the non-enforcement authorization still intact. The regulator can take stock of the participants, offerings, and data, and it can use this information to shape another round of applications—perhaps changing the terms of the safeguards; the protocols for evaluation of risks, harms, and benefits; or what types of innovation it solicits. The regulator might also use the data from the completed experiments to permanently relax or change the regulations for the entire market. In this way, the sandbox can be a way to experiment with and validate different regulations. The regulator may also formalize the protocols it uses to measure harm and benefit, moving those protocols from the sandbox experiments to all company offerings in the market.

A sandbox cycle ideally will result in a class of consumer-centered innovations that demonstrate how new kinds of technologies and services can offer value to the public. It can inform regulators about what rules and protocols work best to evaluate both sandbox innovations as well as existing offerings in the market. It can also incentivize more companies to enter the market with offerings that can both serve consumers and secure investment for the company. It may also make clear which types of technologies may be harmful to the public, how better to predict and assess what kinds of harms and benefits a given potential offering may result in, and what the public does and does not want.

A Regulatory Sandbox for Legal Services

As of mid-2019, there has not been a regulatory sandbox for legal services. But there have been calls, including in the UK and in Australia, for legal regulators to create sandboxes similar to those used in financial services, to test regulatory reform for innovation and new business structures that promote broader access to justice.[128]

Our team held a workshop in April 2019 to explore the prospect of a legal regulatory sandbox in the U.S. Our goal was to understand whether there might be an appetite from law firms, legal technology companies, legal aid groups, foundations, and other organizations that might be entrants into a legal services regulatory sandbox. If a state was to issue a call for

[128] Neil Rose, *Law Society calls for "innovation sandbox"*, LEGAL FUTURES (Aug. 22, 2016), https://www.legalfutures.co.uk/latest-news/law-society-calls-innovation-sandbox (last visited Aug. 13, 2019).

sandbox applications and the possibility to relax legal professional rules, would there be interest from groups to enter this sandbox, with an innovative offering to test?

We held the workshop as an invite-only follow-up to the Stanford Future Law conference, which is a pre-eminent gathering of those interested in legal innovation. The conference organizers helped us reach out to many attendees who might be possible sandbox entrants, including leading legal technology companies, law firms with innovation groups, venture capital groups that are interested in the legal market, other large financial and professional services companies, legal aid groups, justice technology non-profits, and foundations interested in access to justice. We then supplemented this recruitment with invites to attorneys, entrepreneurs, and funders who might be interested in new models of legal services.

The workshop was a two-hour, hands-on event. We had approximately 30 participants, which we assembled into small teams to work on exploring what ideas participants had for innovation, what current rules and regulations they might ask to have relaxed, and what concrete innovation offerings they might be interested in submitting to a sandbox. This workshop design was meant to have participants:

1. Reflect on whether a sandbox was needed,
2. Identify what kinds of innovation potential it might unlock, and
3. Validate if they would participate in a sandbox if it were to launch, and under what conditions.

Our team documented the work, discussions, and debrief of the sandbox workshop.

Positive response to sandbox and new regulatory approach. The participants were overwhelmingly positive towards the prospect of a sandbox—confirming that controlled tests were needed to encourage innovation in legal services, allow more capital investment in new technology and service models that currently would face regulatory uncertainty, and drive more benefit to the public regarding access to justice. They welcomed a risk-based, empirical approach to regulation of the legal services market. It was not difficult for them to understand the concept, and the financial services sandbox models made it easy to see how analogous models could work in law.

Willingness to enter the sandbox with near-term or long-term innovations. Many of the participants, including start-ups, alternative service providers, and consumer/legal technology companies, said that they would seriously consider entering the sandbox if it was to launch. There were near-term innovation experiments that participants would be ready to apply for within the next year. This could include projects such as chatbots that provide help and referrals to the public or a new technology-based proof-of-service offering to record digital

forms of service. There were also more long-term innovations that would only be ready for application to the sandbox once given more time and investment. Those included automated dispute resolution tools to create contract-based or court-order judgments and community-based arbitrators to resolve disputes with staffing models that include more non-lawyers and judges.

Some of the particular points raised by participants that indicate some of the conditions, safeguards, and concerns that a legal services sandbox may need to address include the following:

1. **Expanding the sandbox from legal professional rules to other rules.** Many people mentioned the possibility for a sandbox to not just suspend professional rules of conduct, but also to possibly change court rules and civil procedure rules in order to allow new services to flourish.
2. **Absolute importance of post-sandbox approval.** The participants all agreed that a crucial condition of the sandbox is that participants could continue with their offering, provided risks of harm were demonstrably within appropriate levels, after the sandbox class formally concluded. They would not invest in a new innovation if they were given a non-enforcement guarantee that would expire at the end of the sandbox. They were fine with the possibility that the guarantee might be rescinded if their offering did not perform as intended or if it harmed the public.
3. **Concern over access to evaluation data.** Participants were very concerned about who would be able to access the data that they would gather and share with the regulator about the performance and effects of their innovative offerings. Many asserted that the data should not, by default, be "public data" or subject to total transparency. They said that the prospect of having their data about acquisition cost, pricing, staffing, sales, profit and other performance analytics being shared with others would deter them from entering the sandbox. This is closely-guarded competitive information, and even sharing it with a regulator would be considered a possible threat to business strategies. They would be more comfortable sharing outcome data—such as data about number of users and outcomes of users—particularly if other competitors must share these data with the regulator as well.
4. **Concern over failed testing at the sandbox stage.** One concern of possible sandbox entrants was that a failed offering may receive more public scrutiny if it occurs as part of the sandbox than if the company stayed in the regular marketplace and had the same product failure. They expressed concern that the data about this failure would be publicly available and the story of that failure might turn out to be a liability for the company. They could instead

develop the offering in the current regulatory scheme, not expose the innovation explicitly to the regulator, and then choose how much attention to draw to their offering.

5. **More states involved, more entrants.** Several participants mentioned that they would be more likely to devote resources to entering the sandbox if there were multiple states involved in it. This multistate involvement could be explicit in the form of states as members of the sandbox, or states could be "watchers" of the sandbox with potential to also extend non-enforcement guarantees or open their markets to successful sandbox experiments. Such involvement would encourage more entrants, particularly if states with larger legal markets were to be involved. That said, participants agreed that being vetted and legitimated by a regulator in one state would be worthwhile, in the expectation that it could positively influence their relationship with other states' regulators.

A focus on access. A final cluster of points that emerged from the workshop and subsequent conversations with interested parties was about the need to prioritize access to justice and equity in the sandbox design. Many reflected, after the workshop, that the sandbox most likely will lead to innovations, especially initially, that serve the middle and upper classes, who can afford unbundled legal service offerings. They questioned whether the sandbox could be designed to incentivize benefits to extend to people with less money to spend on services. Some specific ideas included:

1. **Obligation to distribute innovations to low-income communities.** As more offerings succeed in the sandbox, there might be obligations for the companies to give free licenses, software, or other access to people who cannot afford them.
2. **Matchmaking between technologists, legal aid, and social service groups.** Could a regulator, or associated group, help encourage more access-oriented entrants by bringing together experts with new technologies and business models with professionals who work closely with low-income communities? In this way, the regulator could help legal aid lawyers and social service providers better understand how they might harness emerging technologies and do "innovation" (when most of them do not have the resources to do this on their own). The regulator might also offer incentives and training to possible entrants who are focused on low-income consumers.
3. **Particular encouragements in the application call.** Participants also recommended that the regulator might specifically call for access-oriented innovations when it announces the sandbox. The regulator could identify promising uses of data, AI, staffing, and business models that the literature and experts have already identified for promoting access to justice.

Links for Data Reports and Websites:

https://utahinnovationoffice.org/

https://chicagobarfoundation.org/advocacy/issues/sustainable-practice-innovation/

https://iaals.du.edu/knowledge-center

https://redesigninglegal.org/

https://www.mncourts.gov/Help-Topics/Legal-Paraprofessional-Pilot-Project.aspx#:~:text=The%20Legal%20Paraprofessional%20Pilot%20Project,by%20a%20licensed%20Minnesota%20attorney

https://paraprofessional.osbar.org/