

Limited Practice Legal Professionals: A Look at Three Models



Concerns about access to justice throughout the country have caused some jurisdictions to explore means by which they can provide the public with affordable and easily accessible legal services. In this section, we look at three models, both new and long-standing, developed in Utah, Washington, and Arizona. As stated by the authors of the following articles:

The alarming number of people navigating the legal system without representation contributes to the perception that the legal system is stacked against a person who cannot afford an attorney. The Utah Supreme Court and the Utah State Bar are dedicated to addressing barriers to legal representation through innovative projects designed to improve access to the courts. One of those projects is the creation of a new profession: Licensed Paralegal Practitioner.

“We have a duty to ensure that the public can access affordable

legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.” The intent of the Limited License Legal Technician rule is to provide well-trained and regulated legal service providers who can provide legal services to a significant segment of the consuming public at a price that they can afford. (Quoted material from Washington Supreme Court Chief Justice Susan Owens in Supreme Court of Washington Order No. 25700-A-1005, In the Matter of the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians [June 2012])

In response to ever-increasing caseloads of self-represented litigants struggling to navigate the court system at all levels, the Arizona Supreme Court established its Certified Legal Document Preparers program. Arizona’s program began for reasons common to courts around the country: self-represented litigants, unfamiliar with court rules, forms,

procedures, and practices, were guessing their way through what can be a complicated and hurried system.

The Supreme Court of Utah approved final rules to create and regulate Licensed Paralegal Practitioners as part of the practice of law effective November 1, 2018—thereby joining Washington (which adopted its Limited License Legal Technician rule in 2012) in establishing a license to practice law outside of a traditional law degree in designated practice areas and within a limited scope of practice. Arizona’s Certified Legal Document Preparer program, defined by Arizona Supreme Court Rule 31 as a limited form of the practice of law as authorized within the Certified Legal Document Preparer guidelines, was established in 2003. The following articles describe the development, educational requirements, and authorized scope of practice for these three limited practice legal professional programs.

Utah's Licensed Paralegal Practitioners: Addressing Barriers to Legal Representation

BY Catherine J. Dupont

■ This article is derived from the author's article "Licensed Paralegal Practitioners" in the May/June 2018 issue (Vol. 31, No. 3) of the *Utah Bar Journal*, with permission from the Utah State Bar.

The Utah Supreme Court and the Utah State Bar created the Licensed Paralegal Practitioner (LPP) profession to address barriers to legal representation evidenced by the growing number of people navigating the legal system without representation. The idea to create a market-based solution for the unmet needs of litigants started with a task force created by the Utah Supreme Court in May 2015 to study the increasing number of citizens requiring legal assistance but unable to afford it, as well as emerging programs in other states authorizing the provision of specific legal assistance in areas currently restricted to licensed lawyers. (This was one of many approaches to meeting unmet needs in the state; the Supreme Court and the Bar have been working on several projects in this area—for instance, the recent launch of an online dispute resolution pilot program in small claims court.) Based upon its study, the Supreme Court Task Force to Examine Limited Legal Licensing recommended in its November 2015 report that the Supreme Court create a subset of legal services that could be provided by a licensed

paralegal practitioner in three distinct areas—areas that the Task Force found to have the greatest demand and the highest concentration of self-representation.

The Task Force's recommendations were approved by the Supreme Court and then assigned to the LPP Steering Committee,¹ which created working groups to develop educational criteria, licensing requirements, and rules of professional conduct. The working groups involved various stakeholders that could help with each group's specific task. The LPP Steering Committee's work was deliberative and subject to approval by the Utah Supreme Court.

The Task Force developed the rules governing the practice of Licensed Paralegal Practitioners and recommended them to the Supreme Court. The proposed rules were published to members of the State Bar and the public for comment, and after considering public comments, the Supreme Court approved the rules governing Licensed Paralegal Practitioners effective November 1, 2018. A local university plans to offer classes for LPPs through its continuing education program in the spring of 2019, and it is expected that the first LPPs will be licensed in the fall of 2019.

What Is the LPP Limited Scope of Practice?

Rule 14-802 ("Authorization to Practice Law") of the Rules Governing the Utah State Bar creates an exception to the authorization to practice law for an LPP. The exception permits an LPP to assist a client only in the practice areas for which the LPP is licensed. The rule limits an LPP's possible practice areas to

- specific family-law matters, such as temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support;
- landlord-tenant matters, such as forcible entry and detainer and unlawful entry and detainer; and
- debt-collection matters in which the dollar amount at issue does not exceed the statutory limit for small claims cases (\$11,000).

Rule 14-802 also enumerates permissible actions for LPPs within the practice areas. Under this rule, an LPP may

- enter into a contractual relationship with a natural person (LPPs cannot represent corporations);
- interview a client to determine the client's needs and goals;

- assist a client with completing forms that are created by a Judicial Council Forms Committee and then approved by the Judicial Council,² and obtaining documents to support those forms (forms can include pleadings);
- review documents of another party and explain those documents to a client;
- inform, counsel, assist, and advocate for a client in a mediated negotiation;
- complete a settlement agreement, sign the form, and serve the written settlement agreement;
- communicate with another party or the party’s representative regarding the relevant forms and matters; and
- explain to a client the court’s order and how it affects the client’s rights and obligations.¹⁰

It is important to note that an LPP may not appear in court, may not conduct discovery, and may not charge contingent fees. LPPs may, however, own their own firms, own a noncontrolling equity interest in a firm with attorneys, and use the courts’ e-filing systems. Pro hac vice admissions and reciprocal licensing will not be available, at least for the time being. LPPs will be required to have trust accounts and will have the obligation to provide pro bono services.¹¹

What Is the Required Training for an LPP?

Rule 15-703 (“Qualifications for Licensure as a Licensed Paralegal

Practitioner”) of the Rules Governing Licensed Paralegal Practitioners (RGLPP) establishes the education and training requirements for an LPP. An LPP applicant must have either

- a degree in law from an ABA-accredited law school;
- an associate degree in paralegal studies from an accredited school;
- a bachelor’s degree in paralegal studies from an accredited school; or
- a paralegal certificate—or 15 hours of paralegal studies from an accredited school—in addition to a bachelor’s degree in any subject from an accredited school.

In addition to those degree requirements, an LPP applicant is required to

- complete 1,500 hours of substantive law-related experience within the three years prior to the application, which must include
 - 500 hours of substantive law-related experience in family law if the applicant seeks to be licensed in that area; or
 - 100 hours of substantive law-related experience in debt collection or forcible entry and detainer if the applicant seeks to be licensed in those areas;

• pass a professional ethics examination; and

- pass a Licensed Paralegal Practitioner Examination for each practice area in which the applicant seeks to practice.¹²

However, there is also a provision in RGLPP 15-705 allowing the Bar to waive some of the minimum education requirements for the limited time of three years from the date the Bar initially begins to accept LPP licensure applications. These waivers may be granted if an applicant demonstrates that he or she has completed 7 years of full-time substantive law-related experience as a paralegal within the previous 10 years.

Who Will Administer This New Profession?

LPPs will be officers of the court and will practice law. Pursuant to authority delegated from the Utah Supreme Court, the Utah State Bar will administer all aspects of the new profession, including admissions, license renewal, and compliance with continuing legal education requirements. Bar assistance programs, such as fee arbitration and Lawyers Helping Lawyers (Utah’s lawyer assistance program for those facing substance use disorders or mental health issues), will be available to LPPs.

Are LPPs Subject to Ethical Standards and Discipline?

Yes. The Utah Supreme Court has adopted Licensed Paralegal Practitioner Rules of Professional Conduct, which provide ethical obligations for LPPs and establish Rules of LPP Discipline and Disability as

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well as standards for imposing discipline similar to those that govern attorneys. The Utah State Bar Office of Professional Conduct will investigate and, if necessary, prosecute complaints against LPPs, and the rules make LPPs subject to potential discipline.

Is There a Market for LPPs?

Yes. Utah undeniably has a need for more accessible legal representation. In 2017, the Utah State Bar asked a market research firm to interview members of the public about why individuals do or do not hire lawyers. The results of the survey indicate that people are often interested in self-representation with some support from a legal practitioner. The limited scope of legal services provided by an LPP is one viable way to enable this approach. It's also clear that there is a strong interest among paralegals in pursuing this licensing option. The Utah Supreme Court's LPP Steering Committee sent an inquiry to all licensed paralegals in early 2018 inquiring about their potential interest in the LPP program, and more than 200 paralegals expressed an interest in being licensed as an LPP. The majority were interested in establishing an LPP practice within a law firm, while about a third were interested in starting an independent LPP firm.

What Are the Next Steps?

There is still more work to be done to prepare for the arrival of LPPs in the market. The Court created a Forms Committee to examine the multitude of forms used in the courts. The Forms Committee has the herculean task of updating court forms, creating new forms, and eliminating obsolete forms. This effort will benefit all legal practitioners in the state and is especially important for LPPs, whose practice is limited to the use of forms approved by the Judicial Council. With that in mind, the Forms Committee is focusing first on updating and developing forms in the areas of family law, debt collection, and unlawful and forcible entry and detainer. The Court also requested that its advisory committees for the rules of evidence and civil procedure prepare amendments to the rules as necessary to incorporate the practice of LPPs. The Utah Bar is also preparing for the licensing of LPPs by engaging a professional test development company to create the licensing tests and assisting institutions of higher education with curriculum development.

Some have asked if the creation of the LPP license is a field of dreams. If we create it, will they come? We are convinced that the answer is yes. We believe that the Utah LPP

program is a promising solution to a growing need in our state and that it will fill a gap in the services available to our citizens.

Notes

1. The LPP Steering Committee's composition is broad, including judges from the trial and appellate courts, practitioners in each of the substantive law areas in which an LPP may practice, paralegals, representatives of colleges and universities with legal studies programs, the dean of the University of Utah law school, a representative from Brigham Young University Law School, a former state senator, a consumer protection representative, Utah State Bar staff, and several public members.
2. Utah's Judicial Council is the policy-making body for the judiciary; it has the constitutional authority to adopt uniform rules for the administration of all court levels.



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Paralegal Practitioners Steering Committee.

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Washington's Limited License Legal Technicians: A Continuing Evolution

BY Stephen R. Crossland

In June 2012, the Washington Supreme Court adopted Admission to Practice Rule 28, Limited Practice Rule for Limited License Legal Technicians, authorizing a new license to practice law within a limited scope—a rule that has its philosophical roots in the issues of access to justice and consumer protection. Washington thus became the first state to adopt a rule authorizing limited practice legal professionals to deliver legal services that are authorized and regulated by the state Supreme Court.¹ This article gives an overview of the Limited License Legal Technicians (LLLT) program, discusses some enhancements made to the program along the way, and sets forth next steps for the future evolution of the program.

Regulation and Scope of Practice

LLLTs are regulated by the Washington Supreme Court. The Washington State Bar Association administers the admission and licensing of LLLTs on behalf of the Washington Supreme Court. Although the license initially met with opposition from lawyers and the Board of Governors, the governing body of the Washington State Bar Association, in 2016 the Board of Governors made LLLTs members of the State Bar Association and provided a seat for LLLTs on the

Board of Governors. Several local bars, county bars, and volunteer bar associations have readily admitted LLLTs to their ranks as well.

LLLTs are currently licensed to assist people in family-law matters, such as divorce and child-custody matters, by consulting with and advising clients, supporting clients in navigating the legal system, helping them with court scheduling, and completing and filing required court documents. They are subject to the LLLT Rules of Professional Conduct.

LLLT Licensure Requirements

In order to become licensed as an LLLT, a candidate must fulfill three key requirements: education, examination, and experience. The education requirements are as follows:

- an associate degree or higher in any subject
- the LLLT core curriculum, consisting of 45 credits of legal studies courses that must be taken at a school with an ABA-approved or LLLT Board-approved paralegal program
- the LLLT practice curriculum (currently the Family Law Curriculum), which provides detailed knowledge of the specific practice area and for which certain additional

prerequisite courses must be completed

LLLT candidates must pass three examinations for licensure: the Paralegal Core Competency Exam; the LLLT Practice Area Examination, which tests knowledge of the specific practice area; and the LLLT Professional Responsibility Examination, which tests knowledge of LLLT ethics. The two LLLT exams are administered by the Washington State Bar Association.

The experience requirement for licensure consists of 3,000 hours of substantive law-related work experience as a paralegal or legal assistant supervised by a lawyer, which must be acquired no more than three years prior to or 40 months after passing the LLLT Practice Area Examination.

The Education Program

The education component of the license is taught through both the community colleges and one local law school. The first two years of the core classes are taught by instructors at the various community colleges (the Washington community college system has 32 community and technical colleges distributed geographically throughout the state), and the practice area classes are taught through

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the University of Washington Law School with instructors from the University of Washington Law School and Gonzaga Law School. The law school practice area classes are streamed live from the law school two nights a week throughout each quarter.

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Another advantage of the license is that the cost of the education for most LLLTs is less than \$15,000, whereas the cost of law school education in most cases is in excess of \$100,000 to \$150,000. The cost of law school is a barrier to allowing young lawyers to deliver legal services at a price that many of the consuming public can afford in either urban or rural markets.

Enhancements to the License

We have learned some things along the way and have made some adjustments to the program to make it more effective. Initially LLLTs could not appear in court, could not negotiate on behalf of a client, and could not communicate with the representative of an opposing party. The Supreme Court recently amended APR 28 to authorize LLLTs to perform these actions.

It is our expectation that the LLLT, the client, and the Court will benefit greatly from these enhancements. Certainly, it will be helpful for a client who is in court with documents that have been prepared by the LLLT for the LLLT to be present to answer questions the court may have regarding the documents or process. In addition, it will be helpful to have an experienced LLLT in the courtroom to give moral support to a client who is encountering the environment for the first time.

Current Status, Initiatives, and New Practice Areas

As of the writing of this article, 39 LLLTs have become licensed since the program launched in January

2014 with the first series of Family Law classes. Twenty-four of these LLLTs own independent LLLT firms, 10 work in law firms, 1 jointly owns a firm with an attorney, and 1 works for a legal service provider and as a courthouse facilitator as well as owning her own firm. Twenty-eight candidates have completed the practice area curriculum and are preparing for the licensing exam; a further 21 candidates have applied for the practice area curriculum. Seventy-two examinees have taken the licensing exam since the launch of the program in 2014, with an overall pass rate of 54%.

The Limited License Legal Technician Board is in the process of encouraging more community colleges to offer the core classes, which would greatly increase the number of LLLTs in the program. The Board, in conjunction with the Communication Department of the Washington State Bar Association, is also in the process of communicating with community colleges and high schools to expand knowledge of the LLLT program, as well as communicating with the public to expand knowledge of LLLT services. The Board is also in the process of developing a survey

to gather empirical data to give it guidance for furthering the license.¹¹

The Board is considering additional practice areas beyond family law for future consideration by the Court. In fact, members of the public have asked whether the LLLT license could be applied to a number of additional practice areas. Presently the Board is considering a practice area termed “consumer, money, and debt law.” Members of the public have also expressed great interest in applying the license to the areas of landlord-tenant law, bankruptcy law, and immigration law, among others. We have learned that it¹² takes about a year or more to properly and thoroughly vet a proposed practice area. The process, which was followed for the initial family-law area when the LLLT program was developed, involves inviting experts in the proposed practice area to determine the broad scope of services that a lawyer can provide in the practice area. The next

step is to determine how to limit the scope of services to remove areas of practice that are perilous or extremely complicated. The most important consideration is to determine whether the proposed limited scope of services will assist in meeting the need for access to justice in that particular practice area.¹³

The Success of the LLLT Program

The acceptance of the LLLT program by the consuming public in Washington has quite predictably been enthusiastic, generating much positive feedback from clients about their experiences with LLLTs helping them navigate the court system and complete documents in sensitive family-law situations. There has also been great interest in Washington’s LLLT program outside the state. We have given presentations about the rule in more than 20 states and in more than half of the Canadian provinces. We are

excited that other states are either considering or in the process of implementing a similar rule. The access to justice problem is pervasive, and jurisdictions are clearly interested in finding effective ways of meeting the serious unmet needs of the public by exploring alternative legal delivery methods such as Washington’s LLLT program.¹⁴

Note

1. An article by this author about the development, adoption, and implementation of the rule appeared in the June 2014 issue of the Bar Examiner; see Stephen R. Crossland, “The Evolution of Washington’s Limited License Legal Technicians,” 83(2) The Bar Examiner (June 2014).



Stephen R. Crossland has served as chair of the Washington State Bar Association’s Limited License Legal Technician Board since 2012.

Arizona’s Certified Legal Document Preparers: A Long-Standing Program Fulfilling the Needs of Self-Represented Litigants

BY David Byers

In response to ever-increasing caseloads of self-represented litigants struggling to navigate the court system at all levels, the Arizona Supreme Court established a Certified Legal Document Preparer (CLDP) program in 2003

designed to authorize certified individuals and business entities to draft legal documents for self-represented litigants without the supervision of an attorney. Arizona’s program began for reasons common to courts around the

country. Self-represented litigants, unfamiliar with court rules, forms, procedures, and practices, were guessing their way through what can be a complicated and hurried system, often submitting inadequately prepared or inappropriate

documents that were then rejected for a variety of reasons. While the court system had a long tradition of paralegals and other legal support staff who were skilled at drafting documents, access to legal support staff was generally limited to those who could obtain the services of legal counsel. Given the increasing number of self-represented litigants and the decreasing use of trained legal professionals, an opportunity arose for individuals and business entities who could assist people in the document-drafting phase of their legal matters, greatly improving the chances for timely and efficient resolution of their cases.¹⁰

The CLDP program was established in Arizona's Code of Judicial Administration, with its parameters and regulations defined in § 7-208. The CLDP program is regulated by the Board of Certified Legal Document Preparers,¹¹ whose members are appointed by the Chief Justice of the Arizona Supreme Court. The Board grants both certification and renewal of certification, which involves background and fingerprint checks with additional background checks every two years; the Board also has the authority to investigate and prosecute actions and proceedings against CLDPs.¹²

What Are the CLDP Eligibility and Certification Requirements?

CLDP applicants must demonstrate their qualifications through minimum core competencies, including education, experience, and a

multiple-choice certification examination. The examination includes a test on legal terminology, client communication, data gathering, document preparation, ethical issues, and professional and administrative responsibilities pertaining to legal document preparation. The Code of Judicial Administration includes lists of qualifications to apply for certification, including citizenship or legal residency, good moral character, and related combinations of experience or education. Disbarred attorneys or applicants denied admission to practice law in Arizona must pass an additional review and approval process to be certified as document preparers.

Successful examinees complete an Initial Certification Application, which is presented to the Board of Certified Legal Document Preparers for a decision. Once certified, individuals must complete 10 hours of continuing education each year to maintain their certification. This ensures that CLDPs maintain competence in their field and are aware of changes in the profession and in the Arizona judicial system.¹³

Certification is granted for two years, with CLDPs having to renew their certification before June 30 of each odd-numbered year. The renewal process includes certifying compliance with the continuing education requirements, a renewal fee, and any additional information required by the Certification and Licensing Division of the Administrative Office of the Arizona Supreme Court.

What Are CLDPs Authorized to Do?

CLDPs are authorized to draft or complete forms and documents without the supervision of an attorney throughout Arizona's courts of limited and general jurisdiction as well as in the appellate courts. CLDPs may also draft or complete non-litigation documents such as wills, deeds, and mechanic's liens. CLDPs are not restricted from preparing any particular type of document; as a result, although many litigants use CLDP services for small claims cases, eviction matters, traffic cases, and family court cases, the services are potentially available in criminal, civil, tax, probate, juvenile, and other matters. CLDPs assist their customers primarily by preparing court documents, transaction documents, and estate planning documents.¹⁴ A CLDP's customers may include business organizations as well as natural persons. The court documents that CLDPs are permitted to prepare may include discovery documents to the extent that the CLDP is not crossing the line into providing legal advice.¹⁵

CLDPs are authorized to provide general legal information and general factual information about legal rights, procedures, and options—but may not provide specific legal advice, opinions, or recommendations regarding legal rights, remedies, defenses, or strategies. They may not assist an individual in court, may not negotiate on behalf of an individual, and may not act in a representative capacity. According

to the regulations, a CLDP individual or business entity preparing a document must identify the CLDP's name and certification number on the face of each such document.

It is noteworthy that under Arizona's certification system, the work that document preparers perform is a form of practicing law as defined by Arizona Supreme Court Rule 31, but it is authorized and limited within the CLDP guidelines. The primary concern is the protection of the public; CLDPs assisting self-represented parties must be mindful to provide competent legal assistance without crossing the line into the unauthorized practice of law, as defined in the guidelines. Oversight from the Supreme Court's Certification and Licensing Division provides for the public's protection, ensuring that document preparers are promptly providing a quality service without engaging in the unauthorized practice of law.

While states considering such a program might experience opposition from their state bar associations in the name of protecting the public and the legal process, the Arizona State Bar supported the proposal to create the CLDP program after the Administrative Office of the Courts brought the potential document preparers and the State Bar together to discuss the program, its limits, and its operation. Through open meetings to discuss and design the potential program, including public comment, Arizona found the public generally, and advocates for low- and middle-income individuals in

particular, to be in favor of this limited and regulated assistance for the self-represented.

Where Is Arizona's CLDP Program Now?

The CLDP program has seen few changes in its standards or the scope of allowable services since its inception. As of this writing, there are 686 active CLDP individuals or business entities serving Arizona's total population of approximately seven million residents. These CLDPs are spread throughout the state (and some CLDPs live in other states). Approximately 60% of Arizona's population is in central Arizona's Maricopa County (Phoenix and surrounding cities). Another approximately 14% of the population is in southern Arizona's Pima County (Tucson and surrounding cities). The residents of Arizona's 13 more rural counties often have a general lack of attorneys or few attorneys who practice in the resident's area of need. A CLDP can help fill this service gap, particularly when the CLDP can provide its services over the Internet, reducing or eliminating the resident's need to travel.

Although there have been complaints against CLDPs for the unauthorized practice of law (UPL), most of the complaints have been filed by lawyers and judges; relatively few UPL complaints are lodged by consumers of a document preparer's services. Complaints are submitted on a form provided by the Supreme Court's Certification and Licensing Division, which triggers

an initial review and, when warranted, further investigation and discipline. While the Certification and Licensing Division has found some instances of CLDPs overstepping the bounds of the services they are authorized to perform, the majority of CLDPs understand and respect their limitations as defined in § 7-208 of the Code of Judicial Administration. Most consumer complaints against document preparers, on the other hand, are similar to consumer complaints against lawyers: untimeliness, lack of professionalism, and incompetence.

What's Next?

The current CLDPs are one option along the spectrum of possible service providers. In addition to more lawyers offering unbundled or limited-scope representation (in which the lawyer handles only certain parts of a legal matter rather than handling every task from start to finish, thereby providing clients with a more affordable option for limited areas of advice and services they require), CLDPs may have an expanded role to play in offering support services to guide self-represented parties through the court system. After gaining years of experience, some CLDPs may have naturally evolved to offer specialized services that could be recognized in the Code. There may be a role, for instance, for expanded CLDP service in landlord-tenant matters, small-debt controversies, uncontested divorces, and other defined and limited situations where the CLDP is authorized to provide representation and assistance traditionally reserved to

licensed attorneys. Such a model may call for extensive examinations and demonstrations of competency not currently in place.

A Supreme Court Task Force on the Delivery of Legal Services began considering these possibilities in January 2019. After conducting  open meetings, taking public input, reviewing what other jurisdictions are doing, and proposing new ideas, the Task Force will present its findings and recommendations by October 1, 2019, to the Arizona Judicial Council, the decision-making body of the Supreme Court. Wherever the CLDP program goes in the future, the courts, bar associations, current document preparers, and the public will be able to voice their needs and vision for

an accessible, understandable, and more effective justice system. 

Note

1. Business entities (corporations, limited liability companies, partnerships, and sole proprietorships) certified as CLDPs must execute and submit a principal form designating a certified individual legal document preparer as a designated principal for the business entity. This designated principal is responsible for supervising all CLDPs, CLDP trainees, and staff working for the business.



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