

Agenda

Paralegal Practitioner Steering Committee

June 16, 2016
12:00 to 1:30 p.m.

Scott M. Matheson Courthouse
450 South State Street, Salt Lake City
Executive Dining Room
Courthouse Café, West Entrance

Welcome and approval of minutes	Tab 1	Deno Himonas
Admissions and Administration Subcommittee		Royal Hansen Robert Rice
Education Subcommittee	Tab 2	Robert Adler Allison Belnap
Ethics and Discipline Subcommittee		Kate Toomey James Jardine
Executive Subcommittee	Tab 3	Deno Himonas Royal Hansen
Assignments		Deno Himonas

Committee Webpage: <http://www.utcourts.gov/utc/limited-legal/>

Meeting Schedule: Meetings start at noon in the executive dining room of the Matheson Courthouse.

August 18, 2016

December 15, 2016

October 20, 2016

February 16, 2017

Tab 1

**PARALEGAL PRACTITIONER
STEERING COMMITTEE
MEETING**

**Minutes
Thursday, April 21, 2016
Executive Dining Room
Matheson Courthouse
Salt Lake City, Utah**

JUSTICE DENO HIMONAS, Presiding

ATTENDEES:

Justice Deno Himonas, Chair
Dean Robert W. Adler
Allison Belnap (by phone)
Adam Caldwell (by phone)
Mary Jane Ciccarello
Thomas Clarke (by phone)
Terry Conaway
Sue Crismon
James Dean
Julie Emery
Dixie Jackson

STAFF:

Tim Shea
Jody Gonzales

ATTENDEES:

Jim Jardine
Scott Jensen
Steven Johnson
Daniel O'Bannion
Monte Sleight
Judge Kate Toomey
Elizabeth Wright

EXCUSED:

John Baldwin
Judge Royal Hansen
Comm. Kim Luhn
Ellen Maycock
Rob Rice

GUESTS:

Jacqueline Morrison

1. WELCOME AND APPROVAL OF MINUTES: (Justice Deno Himonas)

Justice Himonas welcomed everyone to the meeting. He mentioned that a few committee members were unable to attend.

He reported that Mr. Shea has announced his upcoming retirement, effective June 30. Justice Himonas recognized Mr. Shea for all the work he has done on behalf of the state court system.

Presentations relative to the Paralegal Practitioner role have been scheduled with the following:

1) Executive Committee of the Family Law Section, 2) Paralegal Committee, 3) Family Law Section, and 4) Utah State Bar's Annual Conference.

Motion: Judge Toomey moved to approve the February 18 committee minutes. Mr. Johnson seconded the motion, and it passed unanimously.

2. SUBCOMMITTEE UPDATES:

Admissions and Administration Subcommittee:

Ms. Wright highlighted the following relative to the Admissions and Administration Subcommittee's work: 1) the first meeting was held; 2) future meetings will be held on the fourth Tuesday of every month; 3) assignments were broken down into these areas: a) application, b) character and fitness, c) exam, and d) licensure; 4) development of a separate body of admission rules; 5) subcommittee outline to be prepared at the next meeting; 6) determination of a board to govern the program or members of the bar commissioners to be considered at a future meeting.

The following questions were asked: 1) will they be admitted as members of the Utah State Bar or licensed in another manner, 2) will they be considered officers of the court, and 3) what is the paralegal practitioner's legal status and how will they be treated.

It was noted that the paralegal practitioner would be licensed, but not licensed to be admitted to practice law.

Discussion took place.

Education Subcommittee:

Dean Adler highlighted the following relative to the Education Subcommittee's work: 1) the subcommittee has held one meeting, 2) establishment of learning objectives rather than a prescriptive curriculum was recommended, 3) each subcommittee member to develop a list of learning objectives of a paralegal practitioner for compilation by Mr. Shea, 4) reviewed the three paralegal associations currently providing examination and certification programs, 5) minimum requirement of an associate's degree in paralegal studies from an ABA-approved program was discussed, 6) review of current paralegal studies curriculum, 7) the advantages of paralegal programs and the advantages of law schools were discussed, 8) licensing exam to incorporate professional responsibilities upon completion of the paralegal programs, 9) consideration of the benchmark for selecting the paralegal professional of with completion of an ABA-approved paralegal program or pre-determined certification requirements, and 10) consideration of grandfathering requirements for current paralegals interested in becoming a paralegal practitioner.

Questions were asked relative to the recommendation by the task force of using the NALA exam and certification program.

Discussion took place.

Ethics and Discipline Subcommittee:

Judge Toomey highlighted the following relative to the Ethics and Discipline Subcommittee's work: 1) the subcommittee has met twice; 2) established a monthly meeting schedule; 3) assignments have been made; 4) development of standalone rules for the new role of the paralegal practitioner will take place; 5) rules of lawyer discipline, standards for imposing lawyer discipline, and lawyer sanctions will be reviewed; 6) IOLTA rules will be reviewed; 7) the need of trust accounts by the paralegal practitioner will be reviewed; 8) the standards of professionalism and civility will be reviewed—with development of something more specific to the paralegal practitioner role; 9) will the

paralegal practitioner be able to be an owner of a law firm; 10) will the paralegal professional be admitted pro hac vice in Utah; and 11) will the paralegal practitioner be expected to provide pro bono services.

Discussion took place.

Executive Subcommittee:

Justice Himonas highlighted the following relative to the Executive Subcommittee's work: 1) they have met once, 2) program evaluation goals were developed, and 3) issues not resolved by the task force were reviewed.

Issues not resolved by the task force that were discussed by the Executive Subcommittee included the following: 1) should a paralegal practitioner be required to sign or otherwise acknowledge a form prepared but not filed by the paralegal practitioner, 2) should a paralegal practitioner be authorized to represent a client in non-mediated negotiations, 3) should a paralegal practitioner be authorized to accept service on behalf of a client, 4) should guardianship of a minor be an authorized practice area, 5) should "debt collection" include small claims, and 6) what are the initial sources of money to get the program started until there are enough dues to run on its own and how long might that be.

Other areas of discussion included the following: 1) is there consideration to whether the paralegal practitioner will be able to handle social security or bankruptcy matters, 2) licensure requirements for handling social security, bankruptcy, or immigration matters will be discussed with Judge Shelby at a future event, and 3) management of court forms clarification was provided.

Discussion took place.

3. ASSIGNMENTS

Justice Himonas asked each subcommittee to prepare a list of the following for discussion at the next meeting: 1) items where action has been taken and seeking approval of a positive recommendation, 2) items which are split and seek guidance from the committee, and 3) and be prepared to present alternatives for the recommendations. This will allow for adoption of recommended resolutions.

4. ADJOURN

The meeting was adjourned.

Tab 2

EDUCATION SUBCOMMITTEE SUMMARY

(1) MARCH 22, 2016

Subcommittee meeting schedule: 12:30 to 2:00 on the third Tuesday of each month.

Advanced curriculum. Recommend establishing learning objectives rather than a prescriptive curriculum. Defer discussion of assessment measures. **Assignment:** Each member will consider what should be the learning objectives of a paralegal practitioner and send his or her list to Tim, who will compile them.

Paralegal Associations. NALA (National Association of Legal Assistants). NFPA (National Federation of Paralegal Associations). NALS (“the association for legal professionals”). All three offer certification examinations. Discussion but no decision on which to allow to qualify for the advanced certification recommended by the task force. (The task force recommended the NALA certificate, but did not consider the others.)

The qualifications to sit for the NALA certificate are:

- Bachelor’s or associate’s degree in paralegal studies;
- Bachelor’s degree in any field with a certificate in paralegal studies; or
- Minimum of 7 years of experience as a paralegal.

The task force recommended a minimum requirement of an associate’s degree in paralegal studies from an ABA-approved program. The subcommittee discussed and rejected replacing that with the NALA prerequisites. NALA does not require paralegal studies in an ABA-approved program.

Estimate of partially qualified candidates. **Assignment:** Terry and Monte will research what data is available from which we might estimate the number of people who have already meet the minimum requirements of an associate’s degree in paralegal studies or a NALA certificate. And whether we can estimate the NALA pass-rate among Utah candidates.

Current paralegal studies curriculum. Schools should be free to develop their preferred curriculum to qualify for ABA approval. Discussion but no decision on whether classes in the paralegal studies program should qualify for the advanced curriculum if they otherwise meet the learning objectives. **Assignment:** Terry and Monte will prepare a summary of the programs in their respective schools.

Which schools should offer the advanced courses? The advantages of paralegal programs and the advantages of law schools were discussed. A blended approach may be the most beneficial to students.

Experience requirement. Recommend 1500 hours experience as a paralegal under the supervision of a lawyer or licensed paralegal practitioner. Experience must be within 2 years before licensure. Intern experience qualifies (in or out of school?).

(2) MAY 17, 2016

The NALA and NALS examinations appear similar. The NFPA examination appears substantially less rigorous. For the time being, we are inclined to include only the NALA and NALS examination as qualifying a candidate to be a paralegal professional.

Both NALA and NALS offer alternatives to graduation from an ABA approved program as qualifying to sit for the exam. A candidate who has not graduated from an ABA program must present information about the candidate's program. The association will consider the information and decide whether to qualify the candidate to sit for the exam. We can use the associations' screening to expand the paralegal practitioner education opportunities without significant work to review non-ABA approved programs.

A Bachelor's Degree and an Associate of Applied Science Degree appear to require more rigorous courses than an Associate's Degree, but an Associate's Degree should be the minimum required for a paralegal practitioner. If the more rigorous courses better prepare a candidate for the further requirements, students can pursue those degrees.

The minimum education requirements to qualify for the advanced courses then become: an associate or higher degree (NALA and NALS recognize lesser education requirements when coupled with experience, but these would not qualify a candidate to be a paralegal practitioner.); a paralegal certificate; and successful completion of the NALA or NALS exam.

There appear to be several people who have met some or all of these minimum requirements. Between 2012 and 2015 there have been 150 SLCC paralegal graduates. NALA has certified 210 Utahns.

There should be no expiration date for a NALA or NALS certificate, but the candidate should be required to have maintained the certificate. Which raises the question: going forward, should a paralegal practitioner have to maintain the NALA or NALS certificate? To what extent will the licensing requirements and the certificate requirements overlap?

The Washington LLLT program requires 15 credit hours or 112 clock hours of instruction in a topic area. We need to estimate how many hours are needed for each of the advanced courses.

Core competencies (We might look to NALA's ACP exams in the relevant topic areas as part of developing core competencies.)

- Included in qualification for and preparation for the NALA or NALS certification exam
 - Reading and analytical skills
 - Writing skills, research skills
 - General knowledge of the legal system and legal terminology

- Knowledge of the court system, relevant administrative tribunals, and relevant procedures
- Included in advanced courses
 - Legal ethics generally
 - Rules governing the unauthorized practice of law and the role of the paralegal practitioner
- Included in advanced courses
 - Client intake and interviewing
 - Providing appropriate information to clients
 - Family law or debt collection law or landlord/tenant law

The advanced courses in each of the topic areas might teach the skills for intake, interviewing, and providing information to the client in that area. To be licensed in a topic area, the candidate should complete the advanced course for that area, but the advanced ethics course should be required only once.

If the observation is correct that the path to becoming a paralegal practitioner includes too many exams, the one to eliminate is the exam showing successful completion of the advanced course work. The Bar's licensing exam should cover all core competencies.

When we reach consensus on the minimum education requirements, then we can decide whether there should be a grandparent clause, how long someone should be able to qualify for it, what should be required to qualify, and what requirements should be waived because of it.

Assignments. **Terry, Jackie, and Tim** will research whether the NALA or NALS certification does in fact verify that a candidate's education includes the core competencies of reading and analytical skills, writing skills, research skills, general knowledge of the legal system and legal terminology, and knowledge of the court system, relevant administrative tribunals, and relevant procedures.

Scott and Adam will draft core competencies for family law. **James** will draft core competencies for landlord/tenant. **Allison** volunteered to revise the drafts into a form suitable for academic instruction.

(3) JUNE 21, 2016

Tab 3

EXECUTIVE SUBCOMMITTEE SUMMARY

(1) MARCH 17, 2016

(a) SUBCOMMITTEE MEETING SCHEDULE

10:00 to 12:00 on the third Thursday of May, July, September, November, and January.

(b) SUBCOMMITTEE REPORTS

Admissions and Administration

- Recommend amending current Bar rules to accommodate paralegal practitioners rather than create a separate body of rules.
- Organize into four workgroups: applications; character and fitness; licensing examination; and licensing.
- Administration of paralegal practitioners should be under the Bar Commission rather than the Paralegal Division.

Education

- Will first meet on March 22.
- Additional issue for the subcommittee: Should the advanced curriculum be accredited and if so by whom?

Ethics and Discipline

- Monthly meeting schedule.
- Organize into workgroups.
- Begin a comprehensive review of the Rules of Professional Conduct.
- Question: Should the current RPC be amended to accommodate paralegal practitioners? Or should there be a separate body of rules?
- Consider whether paralegal practitioners should maintain IOLTA accounts.

(c) PROGRAM EVALUATION

Goals

- Develop a cohort of professionals to provide specified legal services in specified practice areas.
- Improve consumer protection by replacing “black market” services.
- Improve the efficiency of the litigation process.
- Improve public confidence in the justice system.
- Involve stakeholders: public-clients, paralegals, lawyers, bar administration, legislature, judges, court commissioners, court staff, educators, insurance carriers.

(d) ISSUES NOT RESOLVED BY THE TASK FORCE

- Should a paralegal practitioner be required to sign or otherwise acknowledge a form prepared but not filed by the paralegal practitioner?
 - No. Not required for a document ghost-written by a lawyer. The paralegal practitioner has no control over what is actually filed.
- Should a paralegal practitioner be authorized to represent a client in non-mediated negotiations?
 - No, but we may be able to describe particular circumstances in which the paralegal practitioner could participate. Inquire of the lawyers on the committee: Under what circumstances would having a paralegal practitioner negotiating on behalf of a client be a benefit?
 - The task force recommended that the paralegal practitioner be authorized to communicate with another party or the party's representative.
- Should a paralegal practitioner be authorized to accept service on behalf of a client?
 - No, unless designated as an agent for acceptance of service; or
 - Yes, but must recognize when the document served goes beyond the scope of representation and what to tell the client.
 - E-filing a document satisfies the service requirement on represented parties. For paralegal practitioners to file documents in an electronic environment, they will have to be able to e-file.
- Should guardianship of a minor be an authorized practice area?
 - No
- Should "debt collection" include small claims?
 - No. Small claims is for the recovery of money damages, but currently there is no distinction among the causes of action.
 - Under current law and with the permission of the court, a paralegal practitioner could represent a client in court in small claims, provided there is no compensation.
- What are the initial sources of money to get the program started until there are enough dues to run on its own? How long might that be?
 - Need more research.

(2) MAY 19, 2016

- Should a paralegal practitioner be authorized to represent a client in non-mediated negotiations?
 - Taking into account the discussion at the previous meeting of the full committee, the subcommittee believes that a paralegal practitioner should be permitted to represent a client at a non-mediated

negotiation, but the session must be limited to matters raised in forms within the scope of the paralegal practitioner's authority. (Not necessarily drafted by the paralegal practitioner since s/he might have been engaged after the form was prepared.)

- The Admissions and Licensing Subcommittee has begun drafting rules, which will be separate from the rules governing lawyers.
- The Education Subcommittee shared the summary of its meetings.
 - The subcommittee believes that the NALA and NALS exams are sufficiently similar that both should qualify for that part of the education requirements.
 - The subcommittee continues to recommend an associate's degree as a minimum requirement, but is reconsidering whether the paralegal certificate must be from an ABA-approved program. NALA and NALS screen candidates who are not from ABA-approved programs to sit for their exams.
 - The subcommittee is considering 4 areas for advanced instruction: one course in ethics and the unauthorized practice of law; and a course in each of the three practice areas.
 - The subcommittee is drafting core competencies.
- The Ethics and Discipline Subcommittee shared the summary of its meetings.
 - The subcommittee has begun drafting Rules of Professional Conduct, which will be separate from the rules governing lawyers.
 - The subcommittee is planning a rule of professionalism and civility and rules of discipline and disability.
- The Executive Committee discussed the concept of allowing a paralegal practitioner to acquire equity ownership in a law firm. ABA Resolution 105 is opposed to this. The subcommittee discussed the possibility of permitting equity ownership but requiring that controlling ownership must be with lawyers.
- There was consensus that paralegal practitioners should be considered officers of the court. The standard for liability may need to be developed by caselaw.

(3) JULY 21, 2016