

Agenda

Paralegal Practitioner Steering Subcommittee

August 18, 2016
12:00pm

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

Welcome and approval of minutes	Tab 1	Judge Kate Toomey
Admissions and Administration Subcommittee		Judge Royal Hansen Mr. Robert Rice
Education Subcommittee		Dean Robert Adler Dean Allison Belnap
Ethics and Discipline Subcommittee	Tab 2	Judge Kate Toomey
Executive Subcommittee	Tab 3	Justice Deno Himonas
Other Business		

Members

Justice Deno G. Himonas, Chair
Dean Robert W. Adler
John Baldwin
Dean Allison Belnap
Adam Caldwell
Mary Jane Ciccarello
Dr. Thomas Clarke
Terry Conaway
Sue Crismon
James Dean
Julie Emery
Judge Royal Hansen
Dixie Jackson
James S. Jardine
Scott Jensen
Steven Johnson
Comm. Kim Luhn
Ellen Maycock

Daniel O'Bannion
Robert Rice
Monte Sleight
Judge Kate A. Toomey
Senator Stephen Urquhart
Elizabeth Wright

Staff

James N. Ishida
Jody Gonzales

Meeting Schedule

October 20, 2016
December 15, 2016
February 16, 2017

Tab 1

**PARALEGAL PRACTITIONER
STEERING COMMITTEE
MEETING**

**Minutes
Thursday, June 16, 2016
Executive Dining Room
Matheson Courthouse
Salt Lake City, Utah**

Judge Royal Hansen, Presiding

ATTENDEES:

Justice Deno Himonas, Chair (by phone)
Dean Robert W. Adler
Allison Belnap (by phone)
Mary Jane Ciccarello
Terry Conaway
Sue Crismon
James Dean
Julie Emery
Judge Royal Hansen, vice chair
Dixie Jackson

STAFF:

Tim Shea
Jody Gonzales

GUESTS:

Amy Cordono

ATTENDEES:

Jim Jardine
Steven Johnson
Comm. Kim Luhn
Ellen Maycock
Daniel O'Bannion
Rob Rice
Monte Sleight
Judge Kate Toomey
Elizabeth Wright

EXCUSED:

John Baldwin
Adam Caldwell
Thomas Clarke
Scott Jensen
Senator Stephen Urquhart

1. WELCOME AND APPROVAL OF MINUTES: (Judge Royal Hansen)

Judge Hansen welcomed everyone to the meeting, and he mentioned that a few committee members were unable to attend. Justice Himonas planned to attend by phone, and Ms. Allison Belnap had already joined by phone. A guest, Ms. Amy Cordono, was welcomed to the meeting. Judge Hansen asked everyone to introduce themselves.

Mr. Shea mentioned that Mr. James Ishida has been appointed as the new Appellate Court Administrator. Mr. Shea provided background information of his work experience. A start date has not been confirmed yet. Mr. Ishida will staff the Paralegal Practitioner Steering Committee.

Motion: Judge Toomey moved to approve the April 21 committee minutes. The motion was seconded, and it passed unanimously.

2. SUBCOMMITTEE UPDATES:

Admissions and Administration Subcommittee:

Mr. Rice highlighted the following relative to the Admissions and Administration Subcommittee's work: 1) several meetings were held by the subcommittee; 2) several rules were drafted and revised to identify policy issues relative to the admittance and administration process

of the paralegal practitioner; 3) coordination of efforts by all subcommittees was done by referring to the subcommittee reports; 4) request further discussion on the use of the NALA and NALS examinations relative to becoming a paralegal practitioner; and 5) consideration of the process and timing of admitting lawyers is taking place when drafting and revising the appropriate rules to allow, procedurally, for them to occur around the same time.

Issues being considered by several subcommittees: 1) establishment of grand-parenting waivers and equivalencies for current paralegals, and 2) experience requirement of an existing paralegal prior to taking the licensing exam to become a paralegal practitioner.

Feedback was sought from the steering committee as to whether it would be a good idea to make a request to the Honors College of the Eccles School of Business to create a capstone course, practice lab, or some type of senior project to conduct market research on behalf of the steering committee.

Discussion took place.

Areas to consider with regard to market research: 1) what would the research look like, 2) how would the paralegal practitioners access this group, and 3) how to market to the consumers.

The steering committee was in agreement to making such a request for market research. Clarification as to whether it would be appropriate would be discussed with Mr. Brent Johnson, general counsel for the courts.

Education Subcommittee:

Dean Adler highlighted the following relative to the Education Subcommittee's work:

1) members of the subcommittee were charged with drafting the learning outcomes of a paralegal practitioner, 2) generic learning outcomes were developed, 3) development of substance area specific competencies, 3) development of steps to ensure the learning outcomes and competencies have been met by the licensed paralegal practitioner, and 4) consideration of the NALA and NALS paralegal study programs and examinations.

LPP Course focus to include: 1) general rules of professional responsibility and ethics, 2) separate substantive courses and exams in the appropriate three practice areas, and 3) separate exam for the professional ethics.

The education and exam components for the JD applicants is a separate issue that will need to be addressed after the education and exam components for regular licensed paralegal practitioner applicants have been outlined.

Discussion took place throughout.

Ethics and Discipline Subcommittee:

Judge Toomey highlighted the following relative to the Ethics and Discipline Subcommittee's work: 1) a line edit of the appropriate rules has begun; 2) identifying policy issues as appropriate; 3) consideration of a pro bono requirement similar to what is required of attorneys, 4) touched on the matter of reciprocal licensure, determining there was no need to address the matter further at this time; and 5) defining the practice of law with proposed revisions to Rule 14-802 – Authorization to practice law.

The question as to how to handle applicants that would include disbarred or disciplined attorneys will need to be addressed by the Ethics and Discipline Subcommittee.

Tim raised the issue of privilege and confidentiality where the client would be encouraged to provide full disclosure of the case to the paralegal practitioner so that the paralegal practitioner would be able to determine how much of the case can be handled by the licensed paralegal practitioner and what would need to be handled by an attorney.

Discussion took place throughout.

Executive Subcommittee:

Judge Hansen highlighted the following relative to the Executive Subcommittee's work:

- Outreach efforts relative to the work being addressed by the paralegal practitioner steering committee continues.
- Change of a preliminary position regarding the paralegal practitioner representing a client in non-mediated negotiations – Rule 14-802. Anyone can represent a client in mediation negotiations. It is preferable to allow the paralegal professional to represent the client even in non-mediated negotiations, but the negotiation would be limited to matters raised in the forms.
- Preliminary discussion of ABA Resolution 105.
- The matter of equity ownership of firms would be addressed further by the Ethics and Discipline Subcommittee. To aid in addressing the matter further, the steering committee agreed that the paralegal practitioner should have no supervisory responsibility and no controlling equity interest.

Ms. Cordono, provided feedback on the role of the paralegal practitioner, from the viewpoint of an attorney. Judge Hansen noted that feedback is being received from other CLE groups to help the Subcommittee as they look at the role of the licensed paralegal practitioner. She was thanked for her feedback.

Mr. Shea noted that there was consensus that paralegal practitioners should be considered officers of the court.

Discussion took place throughout the update.

3. ASSIGNMENTS

Next meeting will be August 18.

4. ADJOURN

The meeting was adjourned.

Tab 2

RULES OF PROFESSIONAL CONDUCT AND DISCIPLINE SUBCOMMITTEE JULY 7, 2016 SUMMARY

Present: Kate Toomey, James Jardine, Dixie Jackson, Steven Johnson, Kim Luhn, Daniel O'Bannon

Excused: Mary Jane Ciccarello, Elizabeth Wright

I. SUBCOMMITTEE MEETING SCHEDULE

First Thursday of the month unless otherwise agreed; meetings ordinarily will be held at noon in the Court of Appeals Conference Room.

II. REVISING THE RULES

The group continued making line-by-line revisions to the Rules and accompanying Comments through Rule 1.7.

III. QUESTIONS

The group identified questions to pose to the executive committee: 1) Will LPPs be able to enter contingency fee agreements? 2) Will LHL and other attorney assistance programs be available to LPPs?

RULES OF PROFESSIONAL CONDUCT AND DISCIPLINE SUBCOMMITTEE AUGUST 4, 2016 SUMMARY

Present: Kate Toomey, Dixie Jackson, Steven Johnson, Kim Luhn, Daniel O'Bannon, Elizabeth Wright

Excused: Jim Jardine

I. SUBCOMMITTEE MEETING SCHEDULE

First Thursday of the month unless otherwise agreed; meetings ordinarily will be held at noon in the Court of Appeals Conference Room. The group agreed that it would extend the length of its meetings in an effort to ensure that it will have enough time to complete its work by February 2017.

II. REVISING THE RULES

The group continued making line-by-line revisions to the Rules. Specifically, it revised Rules 1.8 through 1.18, along with the accompanying Comments.

III. QUESTION

The group identified the following question to pose to the executive committee or to the committee as a whole: LPPs will be authorized to use court-approved forms in domestic relations matters. Does this include helping a minor petition for a protective order?

IV. ASSIGNMENT

Commissioner Luhn will review the attorney lien statute to better inform a decision about how to treat the references to liens in the Rules.

V. OTHER DISCUSSION

Mr. O'Bannon asked whether the RLDD for LPPs will 1) be a stand-alone set of rules; 2) incorporate into the existing rules the phrase LPP; or 3) be some hybrid of the two. The group decided it would be easier to discuss with concrete examples, but for purposes of facilitating discussion, Mr. O'Bannon will proceed with a draft taking the form of a hybrid.

Judge Toomey notified the group of Mary Jane Ciccarello's resignation from the Committee and the Subcommittee.

Tab 3

**PARALEGAL PRACTITIONER
EXECUTIVE SUBCOMMITTEE
MEETING**

Minutes

**Thursday, July 21, 2016 10:00am
Judicial Council Conference Room
Matheson Courthouse
Salt Lake City, Utah**

JUSTICE DENO HIMONAS, Presiding

ATTENDEES:

Justice Deno Himonas, Chair
Dean Robert W. Adler
Assistant Dean Allison Belnap
Dr. Thomas Clarke
Judge Kate A. Toomey
Elizabeth Wright
James Ishida

DRAFT

EXCUSED:

Judge Royal I. Hanson, Vice Chair
James S. Jardine
Robert O. Rice

I. 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.

Minutes of the last meeting were unavailable and will be presented at the next meeting for approval.

II. SUBCOMMITTEE REPORTS

A. Ethics and Discipline Subcommittee (Toomey)

Judge Toomey reported that her subcommittee met on July 7, and had made good progress in parsing through the requirements under the Rules of Professional Conduct. The subcommittee, however, concluded that it needed to refer to the Executive Subcommittee or another appropriate committee the following questions: (1) whether licensed paralegal practitioners (“LPPs”) will be permitted to charge contingency fees, and (2) whether the Utah State Bar would be willing to provide assistance to LPPs to the same degree that they provide to attorneys.

Justice Himonas commented that it was never envisioned that LPPs would be able to charge contingency fees, and he wondered how that would work in a business model centered on completing forms. He emphasized that he is not opposed to LPPs earning a living, but he questioned the viability of such an arrangement in these circumstances. A member asked what matters would lend themselves to charging a contingency fee, and Judge Toomey responded that one area could be in debt collection. Several members noted that Washington State had not yet adopted the practice for its Limited Licensed Legal Technicians (“LTTTs”), and Justice Himonas observed that it may be problematic to address contingency fees at this point.

The subcommittee agreed that dealing with contingency-fee arrangements now would be premature. Judge Toomey thanked the subcommittee for its guidance.

Elizabeth Wright was asked whether the Utah State Bar would be willing to allow LPPs to use bar programs such as “Lawyers Helping Lawyers.”¹ Ms. Wright indicated that she didn’t see a problem with LPPs who wanted to take advantage of such programs. Ms. Wright noted that paralegals, who are already members of the bar, are already using services such as *Lawyers Helping Lawyers*. Ms. Wright said that she would confirm whether LPPs could use such services. The subcommittee expressed its support for providing as much help as possible to LPPs, and it asked Ms. Wright to confirm with the Bar whether such services would be made available to LPPs. Ms. Wright agreed to consult with Bar leadership and report back to the subcommittee.

B. Admissions and Administration Subcommittee (Wright)

Ms. Wright reported that her subcommittee was working through the lawyer admission rules, however, she noted that the subcommittee needed to await further direction from other subcommittees before it could proceed with drafting rules on admissions. For example, Ms. Wright noted that her subcommittee could not draft an admissions rule on the necessary prerequisites until the Education Subcommittee developed rules on what tests will be administrated and what the educational requirements will be.

Ms. Wright also reported that her subcommittee will be addressing whether paralegals who don’t meet certain educational requirements but who have substantial practical experience will be grandparented as LPPs.

One member asked whether the subcommittee favored a liberal approach to grandparenting LPPs. Ms. Wright responded that the subcommittee favored admitting as many paralegals as possible under the grandparent provision. But she said that the subcommittee is having a difficult time defining relevant legal experience. For example, Ms. Wright described

¹The Utah *Lawyers Helping Lawyers* program provides confidential assistance to any member of the bar whose professional performance is or may be impaired due to mental illness, emotional distress, substance abuse, or any other disabling condition.

the situation of a paralegal who had been working for 20 years in the profession, had done some family law, but had mainly worked in the bankruptcy area. How much of the twenty years, Ms. Wright asked, would count as relevant legal experience for this paralegal seeking to practice in family law? A member asked whether this paralegal would still have to pass the subject-matter competency tests, and Ms. Wright agreed that such experience would not waive any requirement to pass competency tests, but instead would only excuse him or her from the educational requirements.

Justice Himonas shared that the Supreme Court wanted to strike a careful balance between ensuring that the public is protected from unqualified paralegal practitioners and not wanting to erect barriers to obviously qualified paralegals from becoming LPPs.

Dean Adler said that the Education Subcommittee is deferring consideration of grandparenting requirements until it completes its other work. He noted that his subcommittee and the admissions subcommittee were experiencing similar challenges in defining who would be good candidates to grandparent into the practice.

Ms. Wright reported that the subcommittee would continue its work on the grandparenting issue.

C. Education Subcommittee (Adler)

Dean Adler reported that the Education Subcommittee had met earlier in the week, and it had made great progress. The subcommittee, Dean Adler noted, was moving towards the goal of broadening the pool of eligible paralegal practitioners. Dean Adler then relayed the following tentative recommendations that his subcommittee had agreed upon:

1. The curriculum for LPP training will refer to an established set of learning objectives and core competencies rather than a prescriptive curriculum.
2. Prospective LPPs may satisfy the educational requirements by having at least one of the following degrees:
 - a) An associate's degree in paralegal studies from a regionally or nationally accredited school;
 - b) A bachelor's degree in paralegal studies from a regionally or nationally accredited school;
 - c) A bachelor's degree in any field from a regionally or nationally accredited school, plus a paralegal certificate or 15 credit hours of paralegal studies/paralegal training; or
 - d) A juris doctor from an ABA accredited law school.

3. LPPs must pass either the NALA or NALS certification examination. Prospective LPPs who have a JD from an ABA-accredited law school are exempt from this requirement.
4. In order to sit for the LPP licensing exam(s), LPPs must have 1500 hours of experience as a paralegal under the supervision of a licensed attorney or an existing LPP. Internship hours gained through a paralegal studies program count toward this requirement. The 1500 hours also must have been completed within the last three years prior to the application for licensure. For prospective LPPs who have a JD from an ABA-accredited law school, law school internships, clinical programs, and clerkships can be counted toward this requirement.
5. Following passage of the NALA or NALS exam, LPPs must take three credit hours in professional ethics and five credit hours of specialized instruction in each specialty area in which the applicant seeks to be licensed (currently family law, debt collection, and landlord/tenant).

LPP candidates must provide a certificate of completion for each course, but no graduation examinations will be required from those programs because competency will be judged by uniform state licensing exams. Each course will include simulation or equivalent training on the specific kinds of tasks and services LPPs will provide in each specialty area. The subcommittee also recommends that, within each five credit hour course, three credit hours be dedicated to substantive instruction and two credit hours be dedicated to experiential learning. Prospective LPPs with a JD from an ABA-accredited law school will be exempt from this requirement, but they will be advised that these courses are highly recommended for passing the LPP exam(s).

6. All LPPs must pass a separate exam on professional ethics.
7. All LPPs must also pass the Utah LPP qualification exam in each specialty in which they seek to be licensed, and their practice will be limited to those specialty areas in which they have passed the exam and been licensed to practice.

Dean Adler said that the subcommittee was concerned that the 3,000 hours of experience as required by Washington State for licensing LTTTs is too high and it favored a lower threshold of 1,500 hours. Dr. Clarke voiced his approval of the lower standard, but noted that Washington State did not require that any of the 3,000 hours be devoted to a specialty area of practice. That, Dr. Clarke suggested, was not necessarily a good thing.

A member wondered if it made sense to devote some of the 1,500-hour requirement to the relevant area of practice. Another member proposed that perhaps at least 1/3 of the requirement, or 500 hours, must be devoted to the relevant practice area. Dean Adler agreed that

those were reasonable proposals and said he would take the suggestions back to the subcommittee for further consideration.

Next, Dean Adler reported that the subcommittee was still working on (1) the statement of learning objectives and core competencies, (2) where the LPP training programs would be located, and (3) what, if any, grandparenting accommodations should be extended to existing paralegals.

Finally, Dean Adler identified a major problem that the subcommittee encountered – what court-approved forms are within the permissible scope of LPP practice? He explained that the subcommittee had developed general learning and competency standards, and that Dean Belnap was in charged of working on the three practice areas to determine what substantive knowledge would be required. Since the subcommittee had assumed that the required substantive knowledge would be defined by the applicable court forms, Dean Adler explained the subcommittee had used the forms as a guide for what substantive knowledge would be required in each practice area.

But Dean Belnap pointed out that the current court forms were not helpful in defining the knowledge and experience necessary to complete the forms. Justice Himonas interjected that the accuracy and organization of court forms were well-understood problems, and he acknowledged that currently there is no organized process for reviewing, revising, and creating court-approved forms. But he suggested that the LPP project may provide a helpful impetus for formalizing the way court forms are reviewed and revised, and he pledged to bring the matter before the Supreme Court.

In the meantime, Dean Adler proposed that the subcommittee would develop a list of forms that are presumptively appropriate for LPPs for the full committee's consideration. Justice Himonas agreed with that approach and said it would be helpful for LPPs to know which court forms are appropriate for their use.

III. REPORT BY DR. CLARKE

Dr. Clarke reported on the activities of the Washington State Supreme Court on its LTTT program.

Paralegal Educational Training. He mentioned that Washington State is considering extending the grandfather period to admit more paralegals into the LTTT program. Part of the problem, Dr. Clarke noted, is at the law school level. The average class size is 18-20 students, but the schools report they are still losing money. A law school dean indicated that they need class sizes closer to 30 students per session to break even. But Dr. Clarke observed that it is not clear that the Washington law school programs can support 30 students. The Washington State Bar indicated that it would have preferred the LTTT training take place at the community college level.

A member suggested that LPP training in Utah should be conducted by community colleges rather than by law schools. Other members agreed that Utah law schools are not contemplating any training programs for LPP students at this time. There was some discussion as to whether law schools or community colleges would be the more appropriate venue for training. Community colleges are hesitant to take on new programs, one member noted, but other members suggested that from an academic standpoint it makes a lot of sense for community colleges to take the lead on this.

Dr. Clarke offered that community colleges may be more amenable to taking on this role if there was more support offered, such as recruiting adjunct professors to teach the courses.

Finally, Dr. Clarke noted that Washington State is backing away from the requirement that the paralegal program be bar-certified because it was too constraining on the geographical distribution of the educational opportunities.

LTTT Business Model. Next, Dr. Clarke reported that 15 paralegals are currently certified as LTTTs and are practicing in their respective areas. The LTTTs are charging fees at approximately the same rates as regular paralegals, but their fees are significantly less than what a practicing attorney would charge. Dr. Clarke estimated that the average LTTT charges between \$75-130/hour, depending on the geographic area in which they are practicing. However, it is difficult to ascertain the precise fees for two reasons: (1) about half of the licensed LTTTs are working for law firms as regular salaried paralegals because they don't have enough business to sustain themselves as a full-time LTTT, and (2) some LTTTs are charging hourly rates, but most are charging by the specific task or piece of work. Dr. Clarke thought that the rates being charged are appropriate and agreed that there is a market for their services. However, he said the biggest problem facing LTTTs is that they can't make a living yet because there are not enough clients to sustain their practice. Dr. Clarke therefore concluded that this is a marketing problem.

In some Washington State counties, he said, the Bar is willing to help and give the LTTTs referral business. However, in other counties the Bar is much more antagonistic and is unwilling to support the LTTTs. Using Washington State as an example, Dr. Clarke opined that the biggest challenge facing Utah LPPs will be marketing and getting the word out on their services.

One member mentioned that the Utah State Bar is working on a portal for attorneys to advertise their services to the public, and he wondered whether the Bar would be willing to make that available to LPPs as well. Justice Himonas mentioned that the Utah Bar and bar leadership have enthusiastically supported the LPP program, and he was optimistic that the portal would be available to LPPs.

Dr. Clarke suggested that offering both marketing support and tech support (search engine optimization) would be helpful for LPPs. Dean Belnap added that there are two separate objectives in marketing: (1) marketing the profession itself, and (2) marketing the individuals. She suggested that marketing could be taught in the LPP training or education programs.

Discussion ensued as to other ways LPPs could advertise their services. This is also important, one member noted, because it is closely tied to access to justice concerns.

Scope of LTTT Practice. Dr. Clarke noted that LTTTs have been meticulous about the scope of their services, and about explaining what they can and cannot do for their clients. He mentioned that the clients generally seem satisfied with the services provided by the LTTTs.

Dr. Clarke also reported there are four areas regarding the scope of LTTT practice that Washington State is reconsidering and would like to amend:

- a) In divorce cases, Washington State restricted LTTTs from handling real estate and retirement matters, deeming them too complicated. But Dr. Clarke noted that real estate and retirement issues comprise a healthy portion of divorce cases, which limits the effective of an LTTT practicing in this areas. Justice Himonas indicated that Utah is not planning on restricting LPPs from practicing in those areas.
- b) LTTTs should be able to appear in court with their clients, not to represent them, but to assist them in answering questions of fact.
- c) LTTTs should be able to talk to opposing party and attorney, when appropriate.
- d) LTTTs should be able to offer services on elder law, a collection of issues such as conservatorship and probate matters.

Finally, Dr. Clarke discussed evaluating the LPP program based on three criteria: (1) appropriateness (will it help solve the problem?), (2) efficacy (are the LPPs doing things effectively?), and (3) sustainability (does the business model work and can it be sustained over time, and does the bench, bar, and public view the LPPs services as legitimate and necessary?). Dr. Clarke noted that the five goals of the LPP program match up well with the three criteria that he would use to evaluate the LPP program.

IV. ADJOURN

Justice Himonas thanked the members for a productive meeting, and the meeting was adjourned at 11:00am.