Licensed Paralegal Practitioner Committee

AGENDA

June 15, 2021
12:00 p.m.–1:30 p.m.
Via Zoom

Action—Approval of draft meeting minutes May 18, 2021	Tab 1	Justice Deno Himonas
Discussion—Update from Angela Allen on current casework and projects		Angela Allen
Action—Update from LPP Innovation Subcommittee, proposed addition of education credit/experience hour language to 15-703	Tab 2	Judge Amber Mettler, Jackie Morrison, Scotti Hill, Carolynn Clark
Discussion—Update on LPP cut score, proposed amendments to LPP testing Rules 15-710, 15-711, and 15-713.	Tab 3	Scotti Hill
Discussion—Update on proposed amendment to Rule 14-802, LPPs sitting at defense table	Tab 4	Elizabeth Wright, Scotti Hill
Discussion—Update from the Bar		Elizabeth Wright, Scotti Hill, Matthew Page
Discussion—Update on rural outreach		Steve Johnson
Discussion—Update on outreach efforts		Julie Emery, Monte Sleight
Discussion—Old business/new business		Scotti Hill

Committee Webpage

2021 Meeting Schedule:

July 20, 2021	September 21, 2021	November 16, 2021
August 17, 2021	October 19, 2021	December 21, 2021

Tab 1

Licensed Paralegal Practitioner Committee

Meeting Minutes DRAFT
May 18, 2021
Zoom Meeting
12:00 p.m. – 1:30 p.m.

Justice Deno Himonas, presiding

Attendees:
Justice Deno Himonas, Co-Chair
Judge Amber Mettler, Co-Chair
Matthew Page
Jackie Morrison
Elizabeth Wright
Monte Sleight
Angela Allen
Steve Johnson

Staff:
Scotti Hill, Utah State Bar
Marina Kelaidis, Recording Secretary

Excused:
Heather Farnsworth
Julie Emery

Guests:
Carolynn Clark, S.J. Quinney College of Law
Anna Carpenter, S.J. Quinney College of Law

1. **Action—Welcome and approval of the draft meeting minutes:** (Judge Mettler)

   Justice Himonas welcomed everyone to the meeting and asked for approval of the minutes.

   Elizabeth Wright moved to approve the April 20, 2021 minutes. Justice Himonas seconded the motion, and it passed unanimously.

2. **Discussion—Update from Angela Allen on current casework and projects:** (Angela Allen)

   Ms. Allen reported she has received a few calls following a recent KUTV article in which she focused on illuminating the difficulties associated with virtual hearings for pro se parties. She also reported she and Scotti Hill recently had an opportunity to speak with Kim Paulding at the Utah Bar Foundation to discuss how LPPs can assist pro se parties in areas such as Mediation.

   Ms. Allen also reported the LPPs have excellent communication among one another such that they are able to ask each other questions and offer referrals. Overall, Ms. Allen reported the LPPs are very smart and capable professionals and the communication has

been very positive. Ms. Allen proposed organizing a Zoom meeting with all of the LPPs and Ms. Hill soon.

3. Discussion—Update on evaluation project: (Professor Anna Carpenter)

Professor Carpenter reported they are actively working on drafting the four sets of surveys aimed at gathering data on LPP program quality and views about the LPP program. The target demographics for these surveys are lawyers, paralegals, current LPPs, and clients. Professor Carpenter reported they intend to gather data using these surveys from demographics outside of Utah as well. They are aiming to have a couple of survey drafts to present and gather feedback on at the next Committee meeting.

4. Discussion—Update from LPP Innovation Subcommittee: (Judge Mettler, Jackie Morrison, Scotti Hill, Carolynn Clark)

Ms. Hill reported Monte Sleight drafted a proposed amendment to Rule 15-703 that would allow an LPP candidate to use law-related academic credits as experience hours, so long as the course is offered by an approved law school or program and it is a substantive legal course offered pursuant to a particular practice area or a paralegal studies degree. If the course is a general education credit or an elective course, the applicant can lobby the Admissions Committee for review of the course to be accepted as experience hours. Ms. Hill reported the Subcommittee is continuing to work on this proposed rule change and hopes to have a draft for the Committee to review at the next meeting.

5. Discussion and Action—Review and approve amendments to LPP Rules: (Scotti Hill)

Rule 15-710:
Administration of the licensed paralegal practitioner examination(s):

Justice Himonas recommended adding “licensed” to any reference to a “paralegal practitioner” throughout each of the rules. Steve Johnson recommended reviewing and amending the paragraph numbering throughout each of the rules to ensure accuracy.

Rule 15-711:
Grading and passing the licensed paralegal practitioner examination:
and
Rule 15-713:
Ethics Exam:

Justice Himonas asked the Committee to consider the passing score in paragraph (d) of Rule 15-711 as well as paragraph (a) of Rule 17-713, and asked how this score was determined. Ms. Hill reported the passing score was calculated by Ergometrics.

Rule 15-701:

Definitions:

No further changes.

Justice Himonas moved to approve the proposed changes to Rule 15-701. Steve Johnson seconded the motion and it passed unanimously.

Rule 15-705:
Limited time waiver:

No further changes.

Justice Himonas moved to approve the proposed changes to Rule 15-705. Steve Johnson seconded the motion and it passed unanimously.

Rule 15-703:
Qualifications for Licensure as a Licensed Legal Practitioner:

No further changes.

Justice Himonas moved to approve the proposed changes to Rule 15-703. Steve Johnson seconded the motion and it passed unanimously.

6. Discussion—Update from the Bar: (Elizabeth Wright, Scotti Hill, Matthew Page).

Elizabeth Wright reported there were 42 comments received on the proposed changes to Rule 14-802. The vast majority of comments opposed the proposed changes. Of the opposing comments, most communicated a concern regarding the aptitude of the LPP to sit at counsel table and participate in court proceedings. Ms. Wright proposed including an explanation of the scope of the rule to address some of these concerns if the rules changes are adopted by the Supreme Court.

Ms. Hill reported four applicants passed the March 2021iteration of the LPP exam. All four candidates will not be formally admitted until they complete the National Certification requirement. Ms. Hill also reported the Admissions Committee has admitted four additional applicants for the August 2021 exam. In addition, Ms. Hill reported Utah Valley University recently contacted her with the number of enrollments for the upcoming semester of LPP courses and there is a large number of students registered.

Matthew Page reported he has been working on a draft press release regarding the name change. Once the draft is approved by the Committee and the Court, Mr. Page proposed for the press release to be published by the Court.

7. Discussion—Update on rural outreach: (Steve Johnson)

Mr. Johnson reported he has not received any further communication from Professor McIff and Snow College. Ms. Allen reported she has also reached out to Professor McIff and has not received a response either.

8. Discussion—Update on outreach efforts: (Julie Emery, Monte Sleight)

Mr. Sleight reported enrollments are up at Salt Lake Community College for the upcoming paralegal courses. In addition, they have received a lot of questions from new students regarding the LPP program.

9. Discussion—Old business/new business:

Nothing new to report.

10. Adjournment and next meeting:

The meeting adjourned at 12:40 p.m. The next meeting will be held on June 15, 2021 from 12:00p.m.–1:30p.m. via Zoom.

Tab 2

Proposed addition to Rule 15-701. Definitions

(ff) **"Substantive Legal Course"** means a course offered for academic credit by an Approved Law School, an Accredited School, or an Accredited Program. Any course by an Approved Law School is a Substantive Legal Course. Any non-general education course required as part of a Paralegal Studies Degree or Certificate by an Approved School of an Approved Program, including required electives, is a Substantive Legal Course. Internship or externship opportunities are excluded from this definition but may be submitted as "Substantive Law-Related Experience," pursuant to 15-701(ee).

Proposed amendment to Rule 15-703. Qualifications for Licensure as a Licensed Paralegal Practitioner

(a) Requirements of Licensed Paralegal Practitioner Applicants. The burden of proof is on the Applicant to establish by clear and convincing evidence that she or he:
  (1) has paid the prescribed application fees;
  (2) Is at least 21 years old;
  (3) has;
    (A) graduated with a First Professional Degree in law from an Approved Law School; or
    (B) graduated with an Associate's Degree in paralegal studies from an Accredited School or Accredited Program; or
    (C) graduated with an Bachelor's Degree in paralegal studies from an Accredited School or Accredited Program; or
    (D) graduated with a Master's Degree in legal studies or equivalent that is offered through and Approved Law School; or
    (E) obtained either the Certified Paralegal (CP or CLA) credential from the National Association of Legal Assistants (NALA); the Professional Paralegal (PP) credential from the National Association of Legal Professionals (NALS); or the Registered Paralegal (RP) credential from the National Federation of Paralegal Associations (NFPA).
  (4) If the applicant does not have a First Professional Degree from an Approved Law School, the applicant must have 1500 hours of Substantive Law-Related Experience within the last 3 years, including 500 hours of substantive Law-Related Experience in temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change if the Applicant is to be licensed in that area, or 100 hours of Substantive Law-Related Experience in forcible entry and detainer or debt collection if the Applicant is to be licensed in those areas.
  (5) has successfully passed the Licensed Paralegal Practitioner Examination;
    (A) an applicant may submit a transcript from an Approved Law School, an Accredited School or an Accredited Program and receive credit towards the hours of Substantive Law-Related Experience under the following conditions:
      (i) The Applicant must specifically designate on the transcript the Substantive Legal Courses for which the Applicant wishes to receive credit. Applicants must also note the credits as either semester-based or quarter-

based which must be reflected somewhere on the transcript or other documentation;
(ii) Applicants may apply and receive a maximum of 750 of total credit hours applied toward the Substantive Law-Related Experience requirement within five years of course completion;
(iii) Applicants who wish the credit to apply towards the Substantive Law-Related Experience in any one of the designated of the various practice areas, must specifically request as such and must demonstrate that the course covers the specific area of practice;
(iv) The Applicant, upon request, must provide the course description, syllabus or other course materials prepared or created by the Approved Law School, Accredited School or Accredited Program;.
(v) The Applicant will only receive credit for those courses that, in the view of the LPP Admissions Ccommittee, meet the definition of a Substantive Legal Course, as enumerated in 15-701.
(vi) Applicants will receive credit for Substantive Legal Courses under the following formula:

a. If the courses are offered at an institution that works on the common semester model Applicants will receive Thirty (30) Substantive Law-Related Experience Hours for each credit hour of the course.
b. If the courses are offered at an institution that works on the common quarter model, Applicants will receive Twenty (20) Substantive Law-Related Experience Hours for each credit hour of the course.
c. If the courses are offered using any other formula, the Applicant will submit documentation of the actual hours of actual classroom instruction along with the Program or Schools anticipated hours of out-of-classroom work associated with the course. The committee will then make a determination of how many Substantive Law-Related Experience Hours to grant the Applicant based on a rough equivalency to the semester or quarter models referenced.

(5)(6) has successfully passed the Licensed Paralegal Practitioner Examination(s) for the practice area(s) in which the applicant seeks licensure;
(6)(7) is of good moral character and satisfies the requirements of Rule 15-708;
(7)(8) has a proven record of ethical, civil and professional behavior; and
(8)(9) complies with the provisions of Rule 15-716 concerning licensing and enrollment fess.

(b) If the Applicant has not graduated with a First Professional Degree in law from an approved Law school, the Applicant must:
    (1) have taken a specialized course of instruction approved by the Board in professional ethics for Licensed Paralegal Practitioners; and
    (2) have taken a specialized course of instruction approved by the Board in each specialty area in which the Applicant seeks to be licenses.

(c) An Individual who has been disbarred or suspended in any jurisdiction may not apply for licensure as a Paralegal Practitioner.

Tab 3

Update on proposed amendments to LPP testing Rules 15-710, 15-711, and 15-713.

- On March 14, 2018, the Bar contracted with test development company Ergometrics for the design and administration of the LPP licensing examination.
- At that time, the parties agreed on the general structure of the examination, which would consist of a mandatory multiple-choice ethics examination, and a three-part examination specific to the area(s) of practice selected by the applicant. For each area of practice, the three-part examination includes: a multiple-choice section, an essay section, and a practical section.
- The Bar's contract with Ergometrics called for the creation of the LPP examination questions, the scheduling of test-development focus calls during each administration of the LPP examination and accompanying Angoff rating meetings to assess the difficulty of the examination questions.
- Ergometrics uses the "Angoff" rating, a scoring methodology utilized by various educational entities for assessing minimal passing standards. An Angoff rating establishes the lowest cutoff score a minimally qualified applicant is likely to achieve on an examination. The Angoff rating is determined by selected experts who assess the difficulty of an examination question.
- Each panel spends the first portion of every Angoff meeting discussing the concept of a minimally competent candidate. A minimally competent incumbent is someone that has the minimum skills to perform the job. This person gets the job done, but just barely. The work isn't perfect, but consistent with other incumbents performing similar work. A minimally competent incumbent can provide: 1) work in compliance with policies, procedures, and law, 2) provide correct basic information to potential clients, 3) and accomplish necessary work within department systems.
- The following information is provided to inform setting the cut score for each subject area that best identifies those candidates with the minimum skills needed to perform the job, and hence, move forward in the licensing process. Based on the recommendations from the Angoff meetings, the SMEs recommended a cut score for each subject area of the LPP examination.
- Following this discussion, the SMEs reviews each item and rate the probability of success of a minimally competent candidate answering each item correctly. Angoff ratings were calculated according to the following formula:
    - Item Probability = Sum (rater probability estimate)/# raters
    - Test Probability = Sum (Item Probability)/# items

The chart below demonstrates subject matter Angoff ratings for each administration of the LPP exam. While the LPP examination is held twice yearly—in March and August respectively—this data set reflects the following:

- The Utah State Bar commenced the LPP examination in August 2019.

- The March 2021 examination was cancelled due to the Covid-19 pandemic, and thus the only examination held in 2020 was held in August.
- The August 2021 examination has yet to be added to the data set.
- The grand average of the Angoff ratings is then calculated to assist the Utah State Bar in establishing a standard cut score.

While the Utah State Bar has relied on Ergometrics for their expertise and testing methodology, ultimately the Utah State Bar has discretion in setting a cut score for the LPP exams depending on its organizational and personnel needs. In the discussions preceding the first LPP examination in August 2019, Ergometrics and the Utah State Bar mutually established a uniform cut score for each of the examination practice areas—69.5%. This decision was motivated by two factors: to create examination uniformity to avoid different cut scores in each practice area and because 69.5% is roughly the "grand average" of all applicable sections.

Subject Area	2019 Angoff Rating	2020 Angoff Rating	2021 Angoff Rating
Family Law	71.67	70.58	70.27
Debt Collection	67.40	68.13	68.01
Ethics	69.50	67.95	66.89
Landlord/ Tenant	--	69.37	69.45
Grand Average			69.02

Note: No Angoff information is provided for the 2019 Landlord/ Tenant exam because there were no candidates for the administration.

Tab 4

Update on proposed amendment to Rule 14-802, LPPs sitting at defense table.

Pursuant to Rule 11-103(5), "Upon the expiration of the comment period, the Administrative Office of the Courts shall compile all of the written comment received and forward it to the appropriate committee chair. The chair shall convene a meeting of the committee for the purpose of reviewing the public comment and discussing and voting upon appropriate modifications to the rules. If after receiving public comment, a committee makes substantial modifications to the proposed rule, the committee shall submit the rule to the Supreme Court to be approved for public comment. If approved by the Supreme Court, the committee shall submit the modified rule to the Administrative Office of the Courts for re-publication and further public comment."

Summary of proposed Rule change:

The LPP Steering Committee has requested a change to Rule 14-802 (Authorization to Practice of Law) to allow LPPs to sit at the counsel table during proceedings to advise and confer with clients and answer questions from the court if needed.

LPPs currently serve clients by filling out forms and collecting and filing necessary documents. However, once pleadings and documents are submitted, the client must go it alone during a proceeding. Under the current Rule, if a client is asked about the documents or why information is or is not included, the client cannot confer with his or her LPP to answer the questions.

Proposed changes add a section (L) under 14-802(c)(1) state that an LLP can sit "with the client at the counsel table during a proceeding to advise and confer with a client and to answer questions from the court."

Summary of comments by category

A) *The proposed amendment exceeds an LPP's current training and will harm the public*

- Approximately 16 of these comments intuit that the amendment will result in LPPs engaging in oral advocacy, noting the relative legal complexity of litigation hearings compared to an LPP's current training. For instance, Comment 11 argues that such hearings are too complex for LPPs to handle and come too soon after the creation of the LPP program, while Comment 13 notes an LPP's less rigorous training compared to lawyers, and Comment 20 claims, incorrectly, that an LPP can be designated as such based on a "6-month certificate."
- While the Committee envisioned the amendment as a natural extension of the authority already granted to LPPs—allowing LPPs to answer questions from the court on the forms, pleadings, or motions the LPP has already assisted the clients with—many comments highlight the difficulty in restricting this approach to mere question and answer exchanges.
    - Comment 24 notes that while the amendment has good intent, it may prove challenging in practice. The Family Law Executive Committee also opposed the

amendment as written, noting it "goes too far when permitting the LPP to address the court by responding to questions and providing advice while sitting at defense counsel table." Comment 30 adds, "the most common 'question from the court' to a lawyer is to address an area of law…," while Comment 31 states "answering questions seems harmless, but anyone who has been to court, sees how answers to questions can easily become advocacy."

- Still others argue that the proposed language is an unnecessary expansion of an LPP's "practice of law." Comments 7 and 31 argue that the modification "blurs" or "goes beyond" the boundaries of practicing law. Comment 8 asks, "So what is the point of going to law school anymore, if you want to practice law in the areas that LLPs can do work in? The boundaries for on lawyers are being pushed too far."
- Other comments argue that this expansion may cause harm for clients. Comment 10 contemplates whether clients will be able to detect the difference between an LPP and an attorney, while Comment 14 predicts that mistakes made by LPPs will force clients to pay an attorney to "fix" an LPP's mistake. As a result, Comment 18 argues that the amendment will disproportionately disadvantage clients of modest means.
- Lastly, Comment 28 takes issue with family law commissioners not being consulted prior to this amendment and argues that the amendment will pressure LPPs to make court appearances, a move that is seemingly unwelcomed by paralegals who would otherwise want to become LPPs and for a current LPP who is strongly opposed to appearing in court.

B) *The amendment dilutes the value of a law degree and constitutes false pretenses by the Bar*

- Various comments express frustration at the expanding scope of an LPP's practice, worrying that continual expansion will undermine the value of a law degree. Comment 4 states, "I support the LPP program….but don't want to see a law degree become watered down," while Comment 6 asks, "who is proposing this and why do they want to do away with attorneys?"
- Others provide alternate suggestions for addressing the access to justice crisis without the involvement of an LPP, "instead of using LPPs, why not do away with the Bar Exam, and have JDs represent people with supervision from seasoned lawyers for 6 months after they finish law school (about the same time that is now spent studying for and taking the exam and then waiting for results)?"
- Numerous comments express frustration with the Utah State Bar for expanding the LPP's scope of practice beyond assistance to pro se clients, leveling accusations of dishonesty. For instance, Comment 6 states, "they said don't worry, LPP will only help with limited paperwork and won't go to court," while Comment 23 notes, "this is not a good idea and it flies directly against what was promised when the LPP program was presented," and Comment 28, "inviting LPPs to sit at counsel table is a fundamental paradigm shift away from the original intent and letter of Utah's LPP program, which was to give pro se

litigants more robust options while representing themselves in court proceedings." Comment 29 adds, "We were told this "new" proposal wouldn't happen and that LLPs would have a very limited role," while Comment 37 alleges that oral advocacy is what the Bar has envisioned for LPPs all along and that the Bar has been actively lying to its members.

Please see the list of comments in full below.

Comment #1

Jeff Rifleman

March 30, 2021 at 8:12 am

This amendment should be stricken. The purpose of the LLP is not to be a legal representative before the court. The rules allow the LLP to aid in the drafting of documents and to appear in a confidential mediation – but not to practice law before the court. This amendment would drastically change the nature of the LLP's role and enter into the realm of litigation – which the LLP is not trained to do. This is a justification of the concerns held by many attorneys that the LLP program was not what has been presented and this latest proposed amendment is 'the camel's nose in the tent'. The LLP should not be allowed to give legal advise at the counsel table.

Comment #2

Francisco E

April 4, 2021 at 6:57 pm

Just so you know, the medical profession is fighting an identical fight on all fronts – its doctors vs private equity corporate executives, who want to replace physicians everywhere with NPs and PAs of less training. The NPs themselves aren't the enemy, their professional association, the AANP, is the enemy. The way that is best for patients is PAs and NPs receiving supervision until such point as the physician determines the supervision can be loosened – but the way legislators and CEOs see it is – fire the physicians, the potential lawsuits from NP malpractice are peanuts compared to the potential profits from firing all the physicians. Would you like a copilot to independently determine that he is competent to fly an A340 jet on his own terms? I think you would want the captain to make that determination. Ultimately we all lose if NPs get independent practice everywhere, as we will all become patients one day. Come fight this fight with us – and read Patients at Risk, by Niran al-Agba, to see the details (note I gain no royalty from sharing this book).

Comment #3

Tom

March 30, 2021 at 8:15 am

This is insane. The rules allowing non-lawyers to practice law render the 3 years of law school, the untold hours of trial practice, the bar exam and the studying for the bar exam, and the years of practice to become a licensed lawyer meaningless. Contrary to the opinion of the elite in the bar, there is not a shortage of lawyers in Utah. There's only an unwillingness among a populace that has been exposed to discounts in most consumer activities to expect a discount on legal services. The opportunity cost of law school and the early years of practice drive the rates of lawyers but don't be misled, there is always a lawyer that is willing to undercut another's fee. Allowing nonlawyers to practice law won't provide access to justice, it will merely put a veneer on the process where litigants who have been misled to think that a paralegal is a cheaper alternative to a lawyer are put into the cross-hairs of a litigant represented by a lawyer.

Comment #4

Brooke

March 30, 2021 at 9:00 am

I support the LPP program and think it's help create some good changes. However, the more rules we change- I'm seeing the lines blur between LPPs and attorneys. I don't want to see a law degree become watered down. It almost seems easier to get an LPP, save all the money and time for law school, and still accomplish a large amount of the same tasks. Will LPPs be required to be certified in court preparation classes, trial advocacy, rules of evidence, etc.? Many attorneys don't even appear in court regularly. This seems to be a big jump. I'd love to learn what specific requirements LPPs need to accomplish before they can sit at counsel table.

Comment #5

Steve Nemelka

March 30, 2021 at 2:39 pm

It's a called a law degree. And oh yeah, they need to pass the bar exam as well. Google it.

Comment #6

jonathan p smith

March 30, 2021 at 10:37 am

Who is proposing this and why do they want to do away with attorneys? They said don't worry, lpp will only help with limited paperwork and won't go to court.

Comment #7

W. Andrew McCullough

March 30, 2021 at 10:46 am

I think sitting at counsel table and advising a client goes beyond the line of what is practicing law; and I oppose it. I realize there is little chance anyone cares what I think; but I have practiced law for 48 years, and I decided to say it anyway. thanks.

Comment #8

Floyd

March 30, 2021 at 11:36 am

So now we are allowing LPP's to be pseudo attorneys practicing before the Court? Such a change will enable them to basically advise clients on the law if they are allowed to "sit at the counsel table with a client" and "ADVISE and CONFER [i.e. per the dictionary: to recommend and offer suggestions about the best course of action; to have discussions; exchange opinions] and to ANSWER questions from the court." Why do we stop at this, why not allow them to argue before the court? Or maybe this new addition (i.e. "answer questions from the court") is intended for such to occur. So what is the point of going to law school anymore, if you want to practice law in the areas that LLPs can do work in? The boundaries for on lawyers are being pushed too far.

Comment #9

Steve Nemelka

March 30, 2021 at 2:33 pm

Totally agree with the comments above (except the one supporting this ridiculous rule and stating attorneys don't go to court much anyway). By definition this rule allows the unauthorized practice of law. The behind the curtain assistance and help at mediation is something much different than actually appearing before the court, making representations to the court and being competent. Practicing law is something attorneys do and something we attorneys spent a great deal of time and money trying to earn.

Please reimburse my law school loans along with paying fair compensation for the countless hours we will all spend dealing with these folks in court. God help the Commissioners and Judges as well. Or maybe another solution is to let LLPs take the bench a few times a week as well. Your goal to delegitimize our profession is almost complete…thank you. I'm going to start doing brain surgeries.

Comment #10

AB

March 30, 2021 at 8:01 pm

This is a dangerous proposition, especially for communities who won't understand the difference between an LLP and an attorney. Attorneys spend years in school to have the knowledge base to appropriately advise clients. Allowing a paralegal to "advise and confer" will certainly mislead vulnerable clients into thinking they are represented by an attorney. I've already seen that happen in court, where a client said "my attorney advised me…" and proceeded to explain how a paralegal had instructed her to ignore a court order, and we ended up in a contempt proceeding. It damages the credibility of attorneys and harms unknowing clients.

It unnecessarily crosses the boundary line into unauthorized practice of law. At that point: what separates an attorney from an LLP? The distinction to an uniformed client would be non-existent, when in reality, the difference is 7.5 years of education, the bar exam, and years of training.

Comment #11

Nic Mills

March 30, 2021 at 8:44 pm

I write to oppose this amendment. While I believe it has been inspired by noble goals, it is ultimately short-sighted and ill-advised. I will outline three of the many reasons I oppose the rule.

First, the quintessential and, arguably, most difficult aspect of practicing law is sitting at counsel table advising a client during a hearing. This is not to diminish the difficulties or importance of transactional work, research, or pre- and post-trial work. But the difficulties of providing impromptu legal advice during court are significant. LPPs abbreviated educational requirements (while admirable) are insufficient to prepare them to provide adequate representation to the LPPs clients. I believe that clients who have retained an LPP under this amendment may easily misapprehend the abilities and qualifications that they are being offered.

Second, I am concerned that this amendment encourages a "assembly line" approach to the practice of law instead of a "craftsman" approach to the law. I am concerned that well-intentioned, but misguided, websites have already depicted complex legal issues as simplistic "fill-in-the form" type of problems. In reality, the law is an incredibly complex and nuanced profession. This amendment further entrenches the growing view that many legal issues can be easily pushed through the "mill" and lawyers have been gouging people for years. In reality, finding a specialist in any field of law increases the chances of finding just and timely resolutions.

Finally, this amendment seems hasty. According to the Court's website, this program was conceived in May of 2015. One of the great benefits of the law is that decisions are made deliberately and based on experience. This amendment seems rushed to address problems without understanding if these actions will provide answers. Recently, the court adopted the "regulatory sandbox." It seems prudent to determine if that will have the desired results before advancing other ideas. I say this because of the complexities and long-term effects that legal mistakes can cause. While some potential solutions need to be rushed into effect as soon as possible; its important to remember that occasionally noble people create Edsels and geniuses design DeLoreans. In other words, patience can be a virtue and not acting can limit the damage more than action can at times.
Thanks for your consideration.

Comment #12

Benjamin Mills
March 31, 2021 at 9:37 am
I concur with this comment and many of the others opposing this rule change.

Comment #13

Donna
March 30, 2021 at 11:39 pm
Instead of using LPPs, why not do away with the Bar Exam, and have JDs represent people with supervision from seasoned lawyers for 6 months after they finish law school (about the same time that is now spent studying for and taking the exam and then waiting for results)? Or this could be an optional alternative route to licensure. This way the arcane Bar Exam is eliminated, poor people get some free or cheap help, new lawyers get some practical experience, and LPPs will not be advising people when they have less education than new lawyers. Nominal fees could be charged to the client, and the JD could pay the $500 or so to be supervised instead of paying for the exam.

Comment #14

Ryan Cottrell
March 31, 2021 at 8:07 am
This is a terrible idea.

How much will people have to spend on lawyers after paralegals mess something up?

Comment #15

Anna E. Carpenter
March 31, 2021 at 1:26 pm

I strongly support this rule change. Reams of research from the US, the UK, and other countries show that people with law training short of a JD and bar passage can provide effective legal services, including in-court services, for clients.
In addition, it is a bit absurd to object to LPPs answering questions from a judge while LPPs are already authorized to provide legal advice and services. The in-court setting is public, lawyers (including the judge) are present, and there is often a record of proceedings. The in-court setting has always struck me as the place where we should worry least about paraprofessional services, given the opportunities for "seeing" problems that might arise.

Comment #16

LL
April 2, 2021 at 10:13 am

"The in-court setting has always struck me as the place where we should worry least about paraprofessional services, given the opportunities for "seeing" problems that might arise."

The in-court setting is where many attorneys 'hone' their craft. This skill is not to be taken lightly. Every appearance is critical to a client's case. I have seen many cases go out of control after the first in-court appearance due to novice, but well-intentioned, attorneys. Many attorneys from larger firms spend years as second chair, or assisting in the courtroom before having the opportunity to speak to the court in the in-court setting. This allows the second chair/assistant to participate as an aid to the seasoned attorney and learn the skill while under tutelage. Smaller firm attorneys have the daunting task to get up to speed when required to be in court, even with law school training in trial/courtroom litigation practice. This skill requires more than an education in 'transactional' law processes (ie interviewing and document preparation.) In-court presentation often requires forethought, quick thinkings, and strategy as interrelated issues that a trained LLP may not be proficient and unable to appropriately advise a client and or/represent legal theory/agrument/position to the court. (ie issues in divorce related to real estate, contracts, investment issues (401k divisions), etc.)

I foresee the future where the LLP will be charging as much as an attorney ($175 plus/hour) – and will not accomplish what was set out by this initiative- and will not provide a client the comprehensive service a trained attroney can provide from formal training.

The real solution is to educate potential litigants of the costs (money, time and emotion) incurred in the litigation process and encourage alternative dispute resolution. From court perspective, the court may increase the number of commissioners. It may increase the use of video-hearings. It may expand the court hours. It may expand the number of judges and

perhaps make ‘courts’ that cater to these essential areas.. (ie family court, collections, landlord tenant) that only hear these issues.

My $.02

From the Utah Bar website:

“What LPPs can do
··· LPPs can file court documents and serve as mediators, but they are prohibited from appearing in court, according to the Utah State Bar. An LPP can file forms, complete settlement negotiations, review court documents, and represent clients in mediation.”

Comment #17

T Wright
April 15, 2021 at 1:40 pm

Thank you for your comment. As a practicing LPP, I agree with you. Rule 14-802(c)(1) authorizes LPPs to practice law, in other areas other than just helping with and filing forms.

In addition to the forms-related representation, LPPs are authorized to interview clients to understand the client’s objectives and obtain facts relevant to achieving that objective; review documents of another party and explain them; inform, counsel, assist and advocate for a client in mediated negotiations; and explain a court order that affects the client’s rights and obligations.

Indeed, when the LPP client goes to court, if they do not hire an attorney for a one-time hearing/appearance, they are going it alone. An LPP still has to prepare them for that hearing, where they will self-represent. It makes sense that LPPs should be able to be present to answer questions and assist. This Rule proposal does not allow the LPP to orally advocate for the client. It allows the LPP to sit next to the client to assist the client with the self-representation and to answer any questions the Court may have that the client is unable to answer on their own.

Would lawyers rather a competent, experienced LPP be present to help answer questions? Or would they rather a pro se litigant be on the other side of their cases? Because the people who are hiring LPPs are not hiring attorneys. These clients would be going it alone if not for the LPP.

I hesitate to jump into defense mode here, but I would like to take this opportunity point out a few things.

It is continually interesting to me that some lawyers who trust their experienced paralegal staff to assist them with the practice of law, to assist them with high-level, complex legal issues and substantive legal work, and trust the paralegal to do that with competency and professionalism, suddenly don't trust those same experienced paralegals to assist the public with competency and professionalism in this capacity.

You cannot be an LPP with a six-month certificate as another comment suggests. Rule 15-703 outlines all of the qualifications for LPPs and they are extensive. In addition to the education requirements, there are experience-related qualifications. If you feel like inexperienced paralegals are going to infiltrate the program, I would encourage you to read the Rule.

If an LPP applicant is applying under Rule 15-705, there is a requirement of seven years of full-time substantive law-related experience as a Paralegal within the ten years preceding the application. In my own case, with ten+ years experience as a paralegal, and having worked as an in-court clerk before that, I don't think anyone can simply apply and make it through the LPP licensure process without extensive experience. I also understand how to handle court proceedings. I have been to trial many times, assisting and observing lawyers with that important work. I am sure I am not alone in this, as the LPPs who have obtained licensure so far are highly experienced paralegals, have been paralegals for many years, and have enough expertise to have trained newly licensed attorneys on multiple occasions in their respective firms.
The program is not easy to get in to, and it is not available to anyone who would like to just sort of sign on the line. Applications for LPP licensure are diligently screened by the committee, and there is a similar application process that is used for attorneys applying for the bar exam employed here: FBI background check, credit check, character and fitness tests, disclosing everything, specific courses through UVU (in addition to – not in lieu of – all of the other requirements), and successful completion of the Bar's LPP exams, which are extensive.

I think allowing an LPP to sit next to a client to assist in proceedings, to answer questions of the client and/or the Court, makes sense and would benefit all involved. Hearings would likely proceed in a more orderly fashion than if the pro se party were to go it alone. The Rule is proposed in the spirit of the original intention of the LPP program: to assist a very large percentage of the public who are in the stuck in the gap when it comes to access to justice.

Comment #18

JM
March 31, 2021 at 1:41 pm
This misguided attempt to provide access to justice will only exacerbate the problems it attempts to fix. It will harm litigants of modest means. There is an immense likelihood that LLPs will hold themselves out as "basically as good as a lawyer–but cheaper!" Persons of modest means will take the bait, and then find themselves represented by someone who 1)

doesn't understand the rules of evidence and procedure, 2) can't correctly interpret court orders or adequately address court questions, and 3) doesn't carry malpractice insurance.

The litigant (who, remember, didn't have enough money to hire a lawyer in the first place) is now poorer, and in a worse position in the litigation than they otherwise would have been. What are the rules when the paralegal wants to withdraw? What is the standard for malpractice?

But, what I find most egregious is that the entire LLP program targets areas of law that hurt the working poor: family law, custody, debt collection, landlord-tenant. The landlords will continue to hire actual lawyers. So will the collections agencies. In family law, it will be the economically disadvantaged that will end up with this "sort of but not really a lawyer" representation.

This will put courts in the position of either having to create different standards/procedures for parties based on their level of representation (Unethical? Sure. Unconstitutional? Probably.) Or acting as an investigator rather than an arbitrator to see justice done.

If we care about justice, we should oppose this amendment. There are many other ways to address the real issue of access to legal representation. But this isn't it.

Comment #19

Mark
March 31, 2021 at 7:12 pm

Is there a problem with people who need lawyers in civil matters but cannot afford one?

Comment #20

AB
April 14, 2021 at 3:21 pm

Consider the OCAP DIY divorces. I have had clients who spent thousands more undoing something they didn't understand than they would have in hiring an attorney in the first place. I believe this rule change will result in the same waste of time and money.

I'm also discouraged by the bait and switch. We were told LPPs would have limited abilities. Why is the Bar undermining the attorneys it is supposed to protect? Especially the small firms or solo practitioners that provide affordable legal services.

It's insulting that the years of education and training we've gone through is so easily replaced by a 6 month certificate.

Comment #21

Peter Vanderhooft
April 15, 2021 at 12:35 pm

I am an LPP and I support the amendment. I am not interested in practicing law before a judge and was glad that the program did specifically said that LPPs were not allowed to represent clients in court. That being said, I do see value in an LPP being able to sit with a client and provide advice to the client on how to best represent themselves.

One of my clients had a number of attorneys represent her who drafted documents that border on useless and left me in the position of having to reopen discovery so I could figure out what had been done in the case and fill in the gaps. I mostly target clients that are lower-income or in the recovery community and it has been my experience that these clients cannot afford a standard attorney rate and even when they do, they receive lackluster representation, possibly due to the perception that they are judgment proof and not worth the attorney's time to represent.

This amendment is important because as the client's LPP, I need to know what happens in Court so that I can utilize that information going forward and draft an order on the hearing. Additionally, I appreciate the opportunity to be able to help my client best represent themselves in Court since it is very easy to let emotions get in the way of the requirements of law.

Comment #22

Rheane
April 21, 2021 at 1:46 pm

I support this rule change. LPP's are already meeting with and advising clients on legal issues, and they are already answering questions from the court through their clients. This rule is simply streamlining a process that is already, on a basic level, in effect. Many of the comments here suggest that the comment authors are interpreting the rule amendment to allow an LPP to argue a case in court. This is not what the amendment proposes; it proposes that the LPP can sit next to the client, be available for advice, and to answer questions from their client or the court.

LPP's have a limited license to practice law in the State of Utah. The comments that suggest that the LPP profession should be stricken are not timely. The time to comment, or oppose the change to rule 14-802, which was amended to allow for LPP's is over, and has been over for some time.

The education and experience-related requirements for an LPP can be found in rule 15-703. I encourage anyone who is interested in those qualifications to review that rule. The list of qualifications is extensive. Based upon some of the comments here, it is apparent that some

members of the Bar are misinformed regarding what an LPP can or can't do, and are perhaps not familiar enough with the extensive qualifications to become an LPP, to acknowledge that LPPs are qualified to assist the public in this capacity.

I encourage the committee to approve this rule amendment to allow an LPP to sit next to a client in court to advise, and to answer questions that the client (or the court) may have. This rule is simply furthering the average person's fair and equal access to justice, which is a lofty goal that all members of the Bar should have.

Comment #23

John
May 7, 2021 at 10:31 am

I agree with every comment that has been made against the proposed rule change. This is not a good idea and it flies directly against what was promised when the LPP program was presented.

Please let's remember that according to the research/reports that were used to support the "sandbox" and further "access to justice", that 70% of pro se litigants were pro se by choice, not because they lacked the funds.

There are very good modest means attorneys as well as very good pro bono resources if an individual can't afford help at counsel table. The line between who and how a litigant can be represented should not be blurred.

There is not a shortage of attorneys in Utah. I know many that have a very wide sliding scale for fees so as to help lower income individuals as well as help the attorney maintain a caseload.

This change is simply not needed and does more harm overall.

Comment #24

Brent Salazar-Hall
May 11, 2021 at 5:13 pm

As an attorney, I am not opposed to the concept contained in the proposed rule. There are cases I have personally seen with pro se litigants where basic assistance in court would be helpful. Court can be intimidating for many litigants. Issues such as determining gross monthly income from pay-stubs or order language review can be greatly assisted by an LPP. However, I am opposed to this rule as written due to the unintended consequences I anticipate it will create for courts, attorneys, LPPs, and parties as follows:

First. Concern for blurred role with court.
The rule as written authorizes LPPs to "answer questions from the court." I am concerned with the practical limits of this role. If the intent was for LPPs to assist a party with addressing a financial document, date of service, or completeness of necessary documents (divorce education, military service affidavit, or related documents) the rule makes sense. However, if a court's questions pertain to legal positions, approval of proposed stipulation terms, waivers of rights (such as approval of a 4-904 trial), proffers of party's statements, conceding legal points, or evidentiary objections (or lack thereof), I have grave concerns. The answers to those questions can have extreme and permanent effects on a party's case. The answering of such questions on behalf of a client is the essence of legal representation. It is not always easy to tell a judicial officer in open court "that's not my role" or that you were not prepared to answer those questions. It is also difficult to answer those questions without experience representing clients through all stages of case. It may also confuse clients as to what scope their LPP can assist with in court. A client may have been told that the LPP can take care of any court questions, which is not necessarily accurate. I believe these issues may place LPPs in an unfair position where a court may treat the LPP the same as counsel, holding them to the same standards to object to evidence or argue law and the waivers that occur if such objections are not properly made. The rule does not provide a bright line clearly delineating the boundary. Without clear direction, their is also little guidance for courts to determine what questions they may ask of an LPP. Some judicial officers may interpret this to mean all questions, and others may be more selective. The standards between courts may not be consistent, further confusing counsel, parties, and LPPs.

Second: Concern for blurred role in advocacy with counsel. The rule as written authorizes "sitting with the client at the counsel table during a proceeding to advise and confer with the client." While section (H) of the current rule allows for "advocating for a client in mediated negotiations," I notice that the proposed amendments do not authorize the LPP to negotiate with counsel outside of mediation. This will lead to confusion. Nearly every judicial officer requests (and sometimes requires) counsel to attempt to resolve the matter at court prior to the hearing. Many issues are often resolved in the conference rooms or hallways outside of the courtroom. An LPP is not allowed to represent their client in these matters. In practice, this will lead to much confusion. Imagine hiring an LPP to come to court with you. You appear and then find out you must negotiate with opposing counsel alone. You must then convey the deal to your hired LPP for advice, but return alone to opposing counsel for further negotiations. It's a game of legal telephone. I also do not believe all counsel will include the LPP in their negotiations, or allow them to negotiate on the party's behalf. In fact, I foresee many attorneys refusing to do so, as it is folly to negotiate with a representative that has no authority to represent their client in negotiations. Please note that I am not recommending to extend the rule to allow for negotiations with counsel outside of mediation. That is again the crux of legal representation as mentioned above for all of the same dangers. Mediation has built-in confidentiality measures to protect clients and LPPs. This is also an extremely needed necessity, as currently there is no LPP-client privilege or confidentiality. There is nothing to currently prevent an LPP from being deposed or subpoenaed regarding their

advice and communications with their client (outside of mediation). Utah's rules and litigation system are clearly designed with understanding of "counsel" in mind. LPPs being involved in advocacy blurs the lines. For example, are LPPs personally liable under Rule 11 sanctions? Can they sign discovery responses for clients? Can an LPP issue a subpoena to a third party? Are they sanction-able if the subpoenas are abused? While this Rule amendment admittedly does not specifically address these issues, it does add to blur a clear bright line between pleading assistance and advocacy.

Third: Concern for blurred line in expectations with public. The greatest concern in our profession should be for the public we serve. I agree with our Judiciary that access to justice is a most pressing concern. It is difficult for many to afford the services of a lawyer. It's my understanding that the LPP program was in part a program to alleviate this concern. However, greater access to justice should not come at the expense of due process or public misunderstanding. I would argue that while being unable to afford a lawyer less than ideal actually paying for an LPP that cannot do what you thought they could do is even worse, and may diminish the public's trust in the entire judiciary and legal system. Confusion is a critical issue. Bright line rules avoid confusion for the court, the LPPs, the attorneys, and the public. This proposed rule disrupts the bright line. I cannot support it in its current form and must urge the committee not to approve.

Comment #25

Karla Block

May 12, 2021 at 1:34 pm

I submit this comment on behalf of the Family Law Executive Committee (FLEC) members. The FLEC opposes the proposed rule change as it is currently written. The proposed rule change goes too far when permitting the LPP to address the court by responding to questions and providing advice while sitting at the court's table with a party. Over the limited time that the LPP program has existed the educational requirements have already been reduced and this causes additional concerns.

Comment #26

Mitchell T Brooks

May 14, 2021 at 1:48 pm

I concur with the FLEC's position. I would add that this proposed rule change is not only reckless but asinine and, if passed, will only serve to harm the public.

Comment #27

Mitchell T Brooks

May 14, 2021 at 4:23 pm

I concur with the FLEC. I would add that the proposed rule change not only reckless but foolish and would, if passed, only harm the public.

Comment #28

Jim Hunnicutt

May 14, 2021 at 12:08 pm

Oppose. This rule change should be rejected because, among other things:

(1) Inviting LPPs to sit at counsel table is a fundamental paradigm shift away from the original intent and letter of Utah's LPP program, which was to give pro se litigants more robust options while representing themselves in court proceedings.

(2) The domestic commissioners with whom I've spoken about this are opposed and don't think it will help. The vast majority of LPPs are working in the family law field, rather than the other two fields of permitted practice (landlord-tenant and collections). It's concerning that stakeholders in the family law field (the Family Law Procedures Subcommittee, the Family Law Executive Committee, etc.) seem to have been omitted from the decision-making process. In particular, my understanding is that the domestic commissioners were not consulted even though the commissioners will be impacted by this rule change.

(3) The non-LPPs paralegals with whom I have spoken expressed that they are a lot less interested in becoming LPPs if there is going to be an expectation that they'll appear in court with clients — paralegals consciously chose to become paralegals rather than lawyers. One paralegal with whom I am close said she is rethinking whether she will continue with the application process at all.

(4) I spoke with one LPP who was quite opposed to this rule change because it will increase the pressure on her from her clients to appear in court and tangle with lawyers, something she does not want to do. Public speaking is a very stressful thing for most people, a fact often forgotten by lawyers and judges because we do it for a living. Adversarial public speaking is particularly stressful.

(5) I've been advised that part of the motivation behind this rule change was based on input from someone in Washington State, however, Washington State's Supreme Court has decided to
"sunset" their experimentation with LPPs. The Washington State Supreme Court has ordered that no new LLPs (called LLLTs in Washington State) will be admitted after July 2022 (i.e., so as not to harm those people who started the training programs already). In other words, I question whether we should be focused on following Washington.

https://www.abajournal.com/web/article/how-washingtons-limited-license-legal-technician-program-met-its-demise

(6) The qualification requirements for LPPs already have been watered down, in particular, the requirement for certification by a national-level organization (e.g., NALA) is being phased out. The education and certification requirements imposed on new applicants were a big part of the program's original appeal because they helped ensure that the clients would be receiving quality legal advice and assistance. Chipping away at the qualifications and restrictions on LLPs erodes confidence in the system. The LPP program remains experimental and nascent, we should give it some time before making any more changes.

(7) This rule change implies that judges and domestic commissioners don't already have the power to ask questions of anyone present at a hearing — they already have that authority. The key difference with this rule change is that it sends a strong message that LPPs not only should appear for hearings, but they should be expected to sit at counsel table with their clients and be ready to address the court. That is a fundamental shift from the original policy and paradigm of the program, and an unwelcome one.

Thank you for your time & consideration.

Comment #29

Thomas Morgan
May 14, 2021 at 12:55 pm

This rule change is a very slippery slope (and I hate that I have to make the slippery slope argument). What is next, LPP representing criminal clients or other "civil" clients?

We were told this "new" proposal wouldn't happen and that LLPs would have a very limited role. I guess once the camel's nose is in the tent…

I agree with all of the very thoughtful, justified, and reasoned responses describing why this is a bad rule.

Please do not implement this change. Thank you.

Comment #30

Jason Richards
May 14, 2021 at 1:01 pm

The proposed rule change goes too far in allowing non-lawyers to make legal arguments to the court. The most common "question from the court" to a lawyer is to address an area of law. It is beyond the scope of an LPP to answer such questions. This rule change be a

disservice to the legal community and to clients who rely on attorneys to know the law and to be able to address the court in applying the law to the facts of a given case. This proposed rule should be stricken.

Comment #31

Catherine
May 14, 2021 at 1:09 pm

This modification blurs the line from what is and is not the practice of law. Answering questions seems harmless, but anyone who has been to court, sees how answers to questions can easily become advocacy. This will create confusion for every aspect of the process, from the clients who and what are they paying to represent them, to the attorneys how are they supposed to respond to the LPP's and to the judges, who need to determine if the LPP's are acting as an attorney or just answering questions. Once the LPP's start answering questions they are acting as an attorney and practicing law even more. There has never been a clear answer on where is this request coming from, who is seeking to have LPP's provide more assistance? It is not from the Utah State Bar or the attorneys.

Comment #32

Sarah
May 14, 2021 at 1:12 pm

I disagree with the proposed rule change for the reasons outlined herein. The reduction of the educational requirements combined with an increase in responsibility is extremely troubling. This rule change harms the public.

Comment #33

Victoria Cramer
May 14, 2021 at 1:18 pm

Absolutely should not be happening! A back door into law practice without law school or a law degree! Oh yes, bar exam already has been cancelled!

Comment #34

Cathleen Gilbert
May 14, 2021 at 1:34 pm

I oppose the proposed Rule. I believe that this proposed solution while ostensibly cutting the cost of legal assistance, is the wrong remedy for increased access to justice.

Comment #35

Dean Collinwood
May 14, 2021 at 1:38 pm

This rule change should be soundly rejected. LLPs are not lawyers and should not be at counsel table. At first, it appeared that LLPs would have to undergo reasonable training. That has been significantly reduced, and yet, now, you want them to sit at counsel table? Many proposals lately (Sandbox etc.) have made it less likely that the legal profession will be able to keep its standing as an unusually skilled group of talented professionals. There is a sound reason we have a "bar" separating the well of the courtroom from the gallery; those who have the right to cross that bar must be law school graduates and pass the bar exam. As a former professor who worked for years with PhD candidates, I can say with certainty that a "candidate" does not have the skill of a full-fledged PhD. The same facts apply to LLPs, and until they have done what full-fledged lawyers have done, they do not deserve the right to act like or appear as lawyers in a courtroom. Like Physicians' Assistants, LLPs should only be allowed to work under the license of a lawyer, and they should never appear in court. The rules for LLPs should be made more rigorous, not relaxed as this rule would do. Please do not pass this proposed rule.

Comment #36

Kayla Quam
May 14, 2021 at 1:51 pm

Oppose. This rule change should be rejected because inviting LPPs to sit at counsel table is a fundamental shift away from the original intent and letter of Utah's LPP program, which was to give pro se litigants more robust options while representing themselves in court proceedings. This creates a slippery slope. At counsel table, notes with legal advice could be passed, answers or pointers could be whispered. The LPP's role becomes too blurred at that point.

Comment #37

William Enoch Andrews
May 14, 2021 at 3:06 pm

I knew when the program was initially presented that this was their objective, to let unqualified people practice law and undercut attorneys, despite claiming differently. They lied. They presented things directly opposite from the truth, and did so knowingly with some claim of helping some part of society, many, if not all, of which have an entitlement mentality that they "have a right" to get things for free or greatly less than value. It is fundamentally

wrong and destructive. The whole program is bad, and was bad from the beginning. The proposed changes are even worse. The fundamental problem, however, is that those who proposed the program originally, and those who are proposing the changes, don't listen to anyone but themselves. Now they are doing exactly what they said would never happen (letting unqualified people advise, appear in court, and more). Therefore, they lied, period; and they lied knowingly because I knew this is what they wanted to do all along. Unfortunately they ignore facts, history, qualified professional legal advice, and financial impact. They patronizingly given us attorneys a "comment period" and then just do exactly what they want to do. They are trying to force on us who are actual lawyers whatever they want to do, no matter who opposes them and no matter the many important reasons why their program and ideas are bad and wrong. They are undermining what we do. They are cheapening what we do. They are letting people who don't want to pay for qualified legal advice from attorneys who have earned it We have earned a Bachelor's Degree, got good grades in that degree; did good on the LSAT, applied and got into law school, worked for 3 more years to graduate from law school, and then prepare and pass a State Bar Exam to become lawyers. We are qualified. We have earned it. Those who have qualified and earned the right to be lawyers not should not practice law because they don't know what they are doing, and worse, think they do. The client of such an unqualified person suffers because not only are they getting "advice" from a person who doesn't know what they are doing, but the opposing side who actually has a qualified, experienced attorney or attorneys advising them, has the obvious huge advantage in every case. The entitlement mentality person will therefore get what they paid for, namely extremely bad, unqualified representation; and lose; which is just one aspect of the real world impact of the foolish program and the worse proposed changes. The proposed changes should not be done, and the program should be eliminated immediately, it is bad and foolish in every way that it can be bad and foolish, despite claiming others.

Comment #38

William Enoch Andrews
May 14, 2021 at 3:08 pm

"… despite claiming otherwise."

Comment #39

William Enoch Andrews
May 14, 2021 at 4:10 pm

Another extremely important ability and skill that we attorneys have is the ability to "think like a lawyer". People who are not attorneys do not have ability and skill. Our clients benefit from our ability, and those people who are represented by people who are not lawyers are greatly lacking.

As lawyers, we have worked for years to learn how to analyze legal issues and facts. To apply the law to facts. To think analytically about our cases. To think of both sides of our cases, and the strengths and weaknesses of our cases and the law and facts to support our cases and that oppose our cases. To think of the strengths and weaknesses of the opposing side of cases, and the law and facts to support and oppose the opposing side.

We also have the ability to think of alternative arguments, and the strengths, facts, and law of them. To think of the risks and benefits of different strategies and alternative strategies. All the aforementioned and more are just some of the many advantages our clients have because of our knowledge, skill, training, and experience as attorneys.

Comment #40

Mitchell T Brooks
May 14, 2021 at 6:19 pm

I concur with the FLEC above. The proposed rule change is not only reckless but its foolish as well. If passed it is certain to harm the public.

Comment #41

TW
May 14, 2021 at 7:01 pm

I oppose the proposed rule changes.

These changes are not related or intended to oversee licensing issues. These changes are directly related to address societal problems, making them invalid acts that go beyond the scope of the licensing authority. Passing the bar means passing the physical bar of the court and sitting before the judge, which has been reserved for those who go to law school and pass the bar exam. This rule destroys the very meaning of passing the bar!

For the following reasons I oppose the proposed (and previous) rule changes:
Separation of Powers

Practicing law is a licensure that has been delegated to the Utah State Bar and Utah Supreme Court for the licensed practice of law. The judicial branch should not be using licensing to promote the Court's own public policy. This rule, and previous rule changes, continue to do away with the licensed practice of law.

Our society faces inequities throughout. The problem is that policies like the proposal of LPP and opening up of the practice of law (the sandbox) is beyond the scope of the Bar and Court. Issues of poverty, collections, bankruptcy, divorce, unpaid medical bills, and tenancy disputes are unfortunate realities, problems cited for changes being needed. The unilateral and

preemptive actions of the Court and Bar association (the rule changes), to address issues of poverty have not been voted on by any form of representative government, nor the Bar membership. Changes eliminating licensure requirements are not related to any specific case before the state's courts, but rather a general problem that is claimed to be occurring. These changes are not related or intended to oversee licensing issues. Since these changes are directly related to address societal problems, these acts are invalid and go beyond the scope of the licensing authority and beyond the scope of the judicial branch. It is naïve to assume that these societal issues can be fully addressed through the Court's and Bar's unilateral actions of changing licensure requirements for practicing law. These societal issues are best left to be addressed by our representative legislatures, not our Courts nor the Bar association.

"Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." Olmstead v. U.S., 277 U.S. 438, 479 (1928) (Brandeis dissenting)

The truth is many of these problems (listed above) end with our profession trying to resolve them, but they were not created by our profession. The profession's efforts would be better spent, and be more constitutionally sound and more representative of Bar membership, to focus on community education, promotion of economic opportunities, lobbying (Utah Bar), pro-bono services, low-bono services, and identifying the roots of these problems rather than trying to assume full responsibility for the problems the legal profession did not create.

The licensure of professions helps protect the public by ensuring those practicing law (or any other profession) meet certain qualifications including education, experience, and abiding by professional rules of conduct and ethics. Being in court as an attorney means constantly thinking about Civil
Procedure, Rules of Evidence, Constitutional issues, and specifics to the type of law related to the case. Surely this rule change will misinform and mislead many unsuspecting clients about their "representation" when they are unaware of all the different areas of law involved in a court proceeding and the knowledge and skill it takes to appreciate their application and intersection. Consensus has held that law school and passing a bar exam are required to show a requisite level of mastery of these topics to practice law. While the intent to open up the practice of law seems to promise lower legal fees for individuals, it does little to protect the same individuals from the very problems that led to consensus that lawyers should hold a license.

Passing the Bar without passing the Bar Exam

This rule change goes too far. This proposed rule destroys the physical meaning of passing the bar. This rule allows LPP's to pass the bar (act like an attorney would) without any of the requirements to actually "pass the bar." The Utah legislature gave the Utah Bar a statutory

(and likely fiduciary) duty to ensure licensing standards in the practice of law are upheld rather than redefined (even eliminating) the licensed practice of law. UCA §78A-9-103 The proposed rule change does not protect the public from the unlicensed practice of law, it does not instill the public with confidence that licensed attorney representation holds value, and it undermines and confuses what it means to practice law in Utah.

Censorship

Public comment has a great purpose to allow for open and lively debate. Surely the Court and the Judicial Council can appreciate how extremely intimidating it is for attorneys to openly make public comments on something that could subject them to ridicule within their own profession or worse the fear of disciplinary action if a comment is understood to be disrespectful rather than merely disagreeing with the proposed position. Most comments made on this rule can be dismissed outright as a self-serving attorney. Based on conversations with attorneys there has been a clear theme on all of the rule changes regarding opening up the practice of law either directly or implied which is: you are either with us or against us, but we will move forward regardless. These reports of challenging the propriety of opposing these rule changes should cause for pause, reassessment, and dialogue not pressing forward with changes regardless.

There have already been many changes made with respect to licensing requirements and what it means to practice law. If those changes have not had their intended effect, it would seem more prudent to preserve licensing standards and search for other alternatives. More outreach to the Bar membership on how to address these concerns would prove far more effective than redefining what it means to practice law every few years.

Comment #42

Lucas Adams
May 14, 2021 at 8:47 pm

I do not support this. I don’t believe you would want an unlicensed medical professional to perform surgery on you. “Litigation” Is the legal profession’s version of surgery. We want trained and licensed people performing it.