

Internal Draft Report of the Specially Licensed Legal Professional Working
Group of the District of Columbia Bar Global Legal Practice Committee

The views expressed in this internal draft report are those of a working group
of the Global Legal Practice Committee and not those of the entire Global
Legal Practice Committee, the D.C. Bar or its Board of Governors

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**Draft Report of the Specially Licensed Legal Professional Working Group of the
D.C. Bar Global Legal Practice Committee
July 2022**

I. Introduction and Executive Summary

The Specially Licensed Legal Professional working group (Subgroup 2) of the Global Legal Practice Committee proposes a Specially Licensed Legal Professional (SLLP) program to help fill the gap in legal services available to low- and moderate-income individuals in the District of Columbia. As proposed, SLLPs would be able to assist clients with specific tasks in family law, probate matters, and housing law in the D.C. Superior Court and in appeals related to public benefits determinations and unemployment matters in the Office of Administrative Hearings. They would assist clients to complete forms, interview clients, negotiate on behalf of clients, counsel and advocate on behalf of a client in mediated negotiations, communicate with other parties regarding relevant forms and matters, and explain possible legal rights, remedies, defenses, options, or strategies for routine matters in areas of law in which the SLLP is licensed.

At a minimum, SLLPs would be required to obtain an associate’s or bachelor’s degree and complete an institutionally recognized paralegal program with specialized practice area training, coursework in ethics and professionalism, training on client interviewing and service, and training on when to refer a case to an attorney. An SLLP would be required to obtain 1,920 hours of substantive law-related experience under the supervision of an attorney in good standing. Applicants with a juris doctor degree from an ABA-accredited law school would be exempt from the experiential requirements. There would also be an educational waiver for applicants who already have substantial practice-area experience. Testing would ensure subject-area knowledge and comprehension of ethics and professionalism. A character and fitness evaluation would also be required.

Regulation and discipline of SLLPs would be similar to that of D.C. Bar members and would require the revision of some D.C. Court of Appeals Rules Governing the Bar, including D.C. Court of Appeals Rule 46 – Admission; Rule II – Membership; Rule XI – Discipline; Rule XII; and the terminology section of the Rules of Professional Conduct. Revisions to the D.C. Bar bylaws may be required.¹ It is recommended that SLLPs would be “affiliates” -- not members -- of the D.C. Bar.

¹ The GLPC is aware that the Bar’s Regulations/Rules/Board Procedures Committee has reviewed the Bar’s bylaws and some of the D.C. Court of Appeals Rules Governing the Bar. Proposed revisions to the bylaws and a proposed D.C. Bar Membership Manual were approved by the Board on April 12, 2022. The GLPC will consult with the Regulations/Rules/Board Procedures Committee about potential rule revisions at an appropriate time in the future, assuming the SLLP proposal is approved.

II. Overview

The Global Legal Practice Committee was created in the fall of 2018 as a successor to the Global Legal Practice Task Force with the purpose of studying issues arising from the globalization in the practice of law that have a significant impact on law practice for members of the D.C. Bar and for the Bar as an organization. Among other issues, the committee studies, monitors and addresses issues arising from changing models for obtaining and delivering legal services in the United States and abroad, including alternative legal services providers and business structures, and multi-disciplinary practice. Such issues may also include regulatory innovations for the public protection of consumers of legal services and the legal profession overall. The committee consists of 11 active members of the D.C. Bar and two non-lawyer professionals.

The committee divided its work into two subgroups after studying a report by William D. Henderson that was commissioned by the State Bar of California in 2018.² The report described the legal profession as divided into two segments, one serving individuals and the other serving corporations. The committee's first subgroup studies the delivery of legal services to organizational clients and the second subgroup studies the delivery of legal services to individuals.

Subgroup 2 is focused on the delivery of legal services to individual consumers for whom accessing and affording legal services is difficult: low- and moderate-income individuals. The subgroup studied existing SLLP programs and believes that an SLLP program in the District of Columbia could increase accessibility to high-quality legal services in critical areas for low- and moderate-income residents at a lower cost than a market rate attorney. The subgroup uses the term "Specially Licensed Legal Professionals" (SLLPs) to describe these licensed paraprofessionals.

The subgroup initially focused on moderate-income individuals who do not qualify for free legal services but for whom market-rate legal services would not be affordable. However, the subgroup's study revealed that although low-income individuals do have some free legal help, it is inadequate to address all legal needs. There are several legal services and pro bono resources available to low-income individuals and families such as Neighborhood Legal Services, Bread for the City, and the D.C. Bar's Pro Bono Program. However, as the Legal Services Corporation's latest report indicates, low-income individuals seek assistance for only one out of four civil legal problems that impact them substantially and half of requests for legal services are turned away due to limited resources.³ Thus, the committee believes that the solutions proposed in this report would help many low-income individuals as well. For example, some legal services organizations have expressed interest in using SLLPs to handle routine matters at a lower cost than hiring an attorney.

² See William D. Henderson, *Legal Market Landscape Report*, STATE BAR OF CALIFORNIA I (July 2018), <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000022382.pdf>.

³ Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans*, April 2022, at <https://lsc-live.app.box.com/s/xl2v2uraitobbzrhwtjlgj0emp3myz>.

III. Questions and Issues Presented

The subgroup considered the following questions and issues in its study and research:

- The legal needs of the low- and moderate-income individual in the District of Columbia;
- The importance of legal assistance for individuals with legal problems;
- The existing legal resources for the low- and moderate-income individual in the District;
- The existing use of nonlawyers to provide legal assistance in the District, nationally and abroad, including what kinds of legal assistance are being provided and whether they meet current needs;
- Whether consumers would use licensed nonlawyers to provide some kinds of legal work;
- Of the existing SLLP models, which are working and why; which are not working (or did not work) and why; and what models would be appropriate for the District of Columbia;
- The educational, experiential, admission and licensing requirements for an SLLP program;
- Support for or opposition to an SLLP program from potential stakeholders, such as Bar members, the courts, regulators, legal services providers, and others and;
- The potential pool of individuals that might pursue an SLLP license in the District, if implemented.

The subgroup also considered other alternatives to addressing the “justice gap” for local residents, including bridging the “information gap” between attorneys and the public through education and outreach, technological solutions such as online legal providers, online dispute resolution forums, and alternative business structures (ABS). The subgroup ultimately agreed to focus its study on the issue of Specially Licensed Legal Professionals, although it believes that these other alternatives may be worth exploring in the future.

A. The Legal Needs of the Moderate-Income Population in the District of Columbia

Approximately 122,600 (18%) of District of Columbia residents⁴ are moderate-income, with incomes are between 200 and 400% of the federal poverty guidelines. A family of four in the moderate-income group has a household income between \$53,000 and \$106,000.⁵ This income is lower than the actual cost of living in the District, which for a family of four with two working adults and two children ranges from \$107,744 to \$123,975.⁶

Many moderate-income individuals are not able to obtain legal assistance because they do not qualify for free legal service programs but cannot afford a private attorney. Legal service programs have income qualification requirements that do not reach moderate-income residents. Moreover, even those programs that are intended to serve low-income residents lack the resources to serve everyone who qualifies.⁷ Market rates for attorneys in private practice in the District generally exceed \$300 per hour, which is unaffordable to most moderate-income residents. As a result, moderate-income individuals often forego legal assistance. By doing so, they risk falling into poverty, especially in cases that have “serious collateral consequences” like displacement, family-related issues, economic consequences, or health issues.⁸

Although there is no direct data on the unmet legal needs for moderate-income individuals in the District, a proxy for the need is the number of pro se litigants in the District’s courts, in which “an overwhelming majority of litigants in domestic violence, landlord tenant, paternity and support, divorce, custody, and probate cases were self-represented.”⁹ In 2017, the Court of Appeals had a “pro se participation at the time of filing ranging from 50% to 90% depending on the case type,” and pro se participation in Superior Court

⁴ Kaiser Family Foundation, Distribution of Total Population by Federal Poverty Level (2019), <https://www.kff.org/other/state-indicator/distribution-by-fpl/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D#notes>.

⁵ Department of Health and Human Services, Annual Update of the HHS Poverty Guidelines, 86 Fed. Reg. 7732, <https://www.federalregister.gov/documents/2021/02/01/2021-01969/annual-update-of-the-hhs-poverty-guidelines>. (Federal poverty guidelines are intended to be used for statistical purposes and are uniform across the 48 contiguous states and the District of Columbia without accounting for higher-cost living areas).

⁶ See MIT Living Wage Calculation for District of Columbia, <https://livingwage.mit.edu/states/11>. The figure of \$107,744 is based on an hourly wage of \$25.90 annualized at 2,080 hours per year. This figure has increased by \$32,198.40 since November 2019 when the subgroup started its research. It does not account for prepared meals, restaurant meals, leisure time, or savings and investments as noted in the accompanying technical documentation at <https://livingwage.mit.edu/resources/Living-Wage-Users-Guide-Technical-Documentation-2021-05-21.pdf>. See also the Economic Policy Institute’s Family Budget Calculator, <https://www.epi.org/resources/budget/>.

⁷ The Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans* (2017), <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

⁸ The District of Columbia Access to Justice Commission, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* (2019), https://dcaccesstojustice.org/assets/pdf/Delivering_Justice_2019.pdf. See also Kathryn Alfisi, *Above the Guidelines*, Washington Lawyer (September 2013). District of Columbia Courts, FY2020 Budget Justification, <https://www.dccourts.gov/about/organizational-performance/annual-reports>. The DC Consortium of Legal Services Providers, Faith Mullen J.D., and Enrique Pumar Ph.D., *The Community Listening Project* (April 2016).

⁹ Strategic Plan of the District of Columbia Courts, “Open to All, Trusted by All, Justice for All” 2018-2022, <https://www.dccourts.gov/about/organizational-performance>, at 31.

and in the D.C. Office of Administrative Hearings also are extremely high.¹⁰ District of Columbia residents surveyed in the Community Listening Project identified their most serious legal problems as “housing, employment, neighborhood concerns, immigration, and debt.”¹¹ A 2013 estimate claimed that approximately only 40% of moderate-income individuals can obtain legal representation.¹²

Some options and resources exist for moderate-income individuals and families who cannot afford a market-rate attorney, including: self-help materials and guidance from the courts; information from lawhelp.org; information from the D.C. Bar Pro Bono Center; and access to reduced-rate attorneys through DC Refers, the D.C. Affordable Law Firm, the D.C. Tenants’ Rights Center, and Legal Counsel for the Elderly. DC Refers is a non-profit organization that connects people with attorneys who provide services on a sliding-scale hourly rate of \$75 to \$150. The D.C. Tenants’ Rights Center represents tenants at a rate of \$96.60 per hour. The D.C. Affordable Law Firm serves moderate-income clients in the areas of family, immigration, housing, and estate planning and probate for an initial consultation fee of \$100 and an hourly rate of \$75. District residents aged 60 or older may obtain free legal advice, assistance, and referrals from Legal Counsel for the Elderly.

Despite these resources, the high numbers of unrepresented litigants indicate that more resources are needed for moderate-income residents. It is also possible that preconceived perceptions of attorneys and the associated costs prevent people from seeking out legal assistance. Some litigants may also prefer to represent themselves in court but nonetheless would benefit from the assistance of a trained legal professional for advice or assistance with drafting.

B. The Importance of Legal Assistance

Data shows that legal representation can have positive outcomes on cases,¹³ because pro se litigants are more likely to “present pleadings and submissions that are of poor quality and lack the knowledge and skills required to litigate their cases” thereby putting their claims at risk.¹⁴ Legal representation can also

¹⁰ The District of Columbia Access to Justice Commission, *supra*, at 17. Pro Se participation in Superior Court in 2017 included 97% of plaintiffs in small estate matters in the Probate Division; 88% of petitioners and 95% of respondents in the Domestic Violence Division; 88% of plaintiffs and 93% of respondents in divorce / custody / miscellaneous cases in Family Court; 97% of respondents in paternity and child support cases in Family Court; 88% of designated respondents in the Landlord and Tenant Branch of the Civil Division, in contrast to the 95% of plaintiffs who were represented; and 75% of plaintiffs in Housing Conditions cases in the Civil Division. In the Office of Administrative Hearings, there are reportedly a high number of unrepresented litigants: 88% of student discipline appeals; 86% in appeals related to public benefits determinations; and 91% in disputes concerning unemployment compensation benefits.

¹¹ The DC Consortium of Legal Services Providers, et al, *supra*, at 6.

¹² Kathryn Alfisi, *Above the Guidelines*, Washington Lawyer (September 2013).

¹³ District of Columbia Access to Justice Commission, *supra*, at 15.

¹⁴ The District of Columbia Access to Justice Commission, *supra*, at 14. See also ABA Standing Committee on Legal Aid and Indigent Defendants, Directory of Law Governing Appointment of Counsel in State Civil Proceedings, Introduction,

improve court efficiency and increase public trust and confidence in the justice system.¹⁵ In its Strategic Plan, the District of Columbia Courts have prioritized “Access to Justice for All” as a goal and recognize that they must eliminate barriers such as the lack of legal representation.”¹⁶

C. The Use of Nonlawyers to Provide Legal Assistance

To meet the needs for legal representation and assistance, some states use nonlawyers to provide some limited legal services. Arizona, California, and Nevada current license “Legal Document Preparers” to assist clients with legal forms, prohibit those Legal Document Preparers from selecting forms for clients.

At least fifteen states and the District of Columbia use legal navigators to assist self-represented litigants with physical navigation around the courthouse. Georgetown Law School’s Justice Lab performed a study of 23 programs and found that navigator programs help self-represented litigants in ways besides physical navigation.¹⁷ Depending on the program, navigators may also provide referrals, legal and procedural information, assist with forms, provide language assistance, and accompany self-represented litigants to court appearances. Generally, programs have been found to have a positive effect not only on individual cases but by building public trust in court systems. D.C. Superior Court has utilized navigators since October 2018 to enhance the Court’s goal of access to justice for all. Details of the navigator program are described in Section IV. B. of this report.¹⁸

Legal Document Preparer and navigator programs have assisted many people who cannot afford an attorney. However, self-represented litigants must largely rely on their own understanding and application of the law when using those services. SLLPs who are properly trained to provide a wider scope of services could help people in a more meaningful and substantive way.

More recently several jurisdictions have implemented SLLP programs as another tier of a legal service provider. Washington State began admitting Limited License Legal Technicians (LLLTs) in 2015¹⁹ and Utah began admitting Licensed Paralegal Practitioners (LPPs) in late 2019. Arizona also implemented a

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_judges_manual_prefatory_info.pdf.

¹⁵ District of Columbia Access to Justice Commission, *supra*, at 14.

¹⁶ Strategic Plan of the District of Columbia Courts, “Open to All, Trusted by All, Justice for All” 2018-2022, <https://www.dccourts.gov/about/organizational-performance>.

¹⁷ Mary E. McClymont, Justice Lab of Georgetown Law School, Nonlawyer Navigators in State Courts: An Emerging Consensus (June 2019).

¹⁸ D.C. Courts, Court Navigator Program, Annual Report: October 1, 2018 – September 30, 2019.

¹⁹ The Washington Supreme Court voted to sunset the LLLT program in 2020. See Section IV.B. and Section V. D. of this report.

Legal Paraprofessional (LP) program in 2020 and Minnesota began its pilot program in March 2021. Ontario, Canada passed legislation in 2007 to accredit and regulate paralegals.

In general, SLLPs receive legal training in specific legal areas and are permitted to draft forms, offer legal advice, and/or accompany clients to depositions and court. Practice areas include those with high numbers of pro-se litigants such as family law, landlord-tenant law, and debt collection matters. Like attorneys, SLLPs may practice in a variety of settings such as in a private firm, a nonprofit, or a legal aid organization.

D. General Requirements and Considerations for SLLP Programs

Licensing requirements in jurisdictions that have authorized paraprofessional programs typically include specialized legal training, substantive law-related experience, substantive bar-like exams in each area of law in which the paraprofessional is seeking licensure, an ethics examination, and a character and fitness evaluation. However, programs must balance consumer protection with program viability. If the prerequisites are too onerous or time-consuming then potential SLLPs may opt not to pursue licensure and the program may not become self-sustaining.

Another consideration is whether to implement a full program with a robust regulatory structure and educational, testing and experiential requirements that would allow SLLPs to work without attorney supervision, or a pilot program that may face less resistance, be less expensive to implement, and provide an opportunity to collect data quickly about the effectiveness of training and using paraprofessionals to address unmet legal needs. However, the temporary nature of a pilot program also means that the prerequisites must be less demanding to encourage candidates to participate and become qualified to practice. Additionally, because paraprofessionals in a pilot program would not be licensed, the responsibility of supervision would be on attorneys, who would need to volunteer to take on this role.

E. Effectiveness and Criticisms of SLLP Programs

Because SLLP programs are still relatively new in the United States, limited empirical data on their effectiveness exist. As the nation's oldest SLLP program, Washington State's LLLT program is the most tested. The Washington LLLT Board confirms that the program is serving its function by providing limited legal services to a large number of people who would otherwise not receive legal assistance, including people of color and low- and moderate-income individuals.²⁰ In addition, Thomas Clarke and Rebecca Sandefur prepared an academic study on Washington State's LLLT program in 2017 that found that the LLLTs were effective in assisting clients.²¹ A follow-up study was planned by the National Center

²⁰ LLLT Board Report to Washington Supreme Court (April 21, 2021), https://www.wsba.org/docs/default-source/about-wsba/lllt-board-report-to-court-04212021.pdf?sfvrsn=c59a14f1_0.

²¹ Thomas M. Clarke, National Center for State Courts, and Rebecca L. Sandefur, American Bar Foundation, Preliminary Evaluation of the Washington State Limited License Legal Technician Program (March 2017).

for State Courts but was canceled when the LLLT program was sunsetted by the Washington Supreme Court in June 2020.²² Despite the positive reports on the LLLT program, the Washington Supreme Court sunsetted the program citing the low number of practitioners that the program had attracted to date and the high cost of the program to the Washington State Bar.²³

A potential benefit of an SLLP program is that SLLPs could serve clients who otherwise would not engage an attorney at all. SLLPs could also work with attorneys on more routine matters therefore freeing up attorneys to take more complex cases, and still lowering the costs of representation for those who retain attorneys that employ SLLPs. Attendees at a GLPC-organized roundtable with D.C. stakeholders (further described in Section IV) supported the idea of an SLLP program for the District in practice areas with low rates of attorney representation. Forty-six percent of the 202 respondents to a GLPC survey to D.C. Bar solo and small firm practitioners would be in support of an SLLP program.

Generally, criticism of SLLP programs comes from attorneys who believe that their livelihoods would be threatened or that consumers would be confused about the permissible scope of legal work by an SLLP compared to an attorney. Of the respondents to the GLPC survey who did not support an SLLP program, most gave as reasons for their position that only lawyers are competent to practice law, and the potential for consumer confusion.²⁴ (The committee recommends training SLLPs on when to refer cases that exceed the permissible scope of practice to attorneys.) Some also question whether SLLPs would be able to charge affordable rates in a high-cost of living area like the District, where clients already struggle to pay attorneys' low bono rates of \$75 per hour.²⁵

²² See Bill Neukom, Andrea Jarmon and Mark Hutcheson, *The state Supreme Court has failed Washingtonians who need affordable legal services*, The Seattle Times, July 2, 2020, <https://www.seattletimes.com/opinion/the-state-supreme-court-has-failed-washingtonians-who-need-affordable-legal-services/>.

²³ See Section Vin this report.

²⁴ The committee is unaware of any studies in the United States that indicate SLLPs have a higher rate of complaints or disciplinary sanctions compared to attorneys; but the limited number of SLLP programs and the short time the programs have been active have not allowed for significant data collection.

Data from Ontario indicates that although paralegals may be slightly more likely to have complaints filed against them, the 2015 Annual Report of the Law Society of Ontario states that between 2009 and 2015, “the number of paralegals licensed by the Law Society increased by 280%, but the number of paralegals who received a complaint only increased by 66%.” See Law Society of Ontario, Annual Report (2015), Key Trends, <https://web.archive.org/web/20160620144205/http://www.annualreport.lsuc.on.ca/2015/en/key-trends/>.

In Ontario, a total of 41,600 practicing lawyers and paralegals provided legal services in 2019. Of the 41,600 providers, lawyers are approximately 91% (37,900) and paralegals are approximately 9% (3,700). Of the 4,379 complaints referred to its Professional Regulation Division, 77% were against attorneys, 12% against paralegals, and 11% against non-licenseses and lawyer / paralegal applicants. 117 matters were completed before the Law Society Tribunal's Hearing Division of which 68% (80) were against attorneys and 32% (37) against paralegals Annual Report (2019), <https://lawsocietyontario.azureedge.net/media/lso/media/annualreport/documents/annual-report-2019-en.pdf>.

²⁵ John Murph, *The Justice Gap & the Rise of Nonlawyer Legal Providers*, Washington Lawyer (September 2019), 22, <https://washingtonlawyer.dcb.org/september2019/index.php#/p/22>.

IV. Study Research and Methodology

A. Overview of Study

The subgroup employed several methodologies in its study of SLLPs, including study of written materials, conversations with regulators from other states, hosting a roundtable, conducting surveys, and conversations with experts on the topic.

The subgroup met on a monthly to semi-monthly basis and held 18 subgroup meetings and two full committee meetings between December 2018 and August 2021.²⁶ In its initial meetings, the subgroup studied models that could increase the quality and quantity of legal services to low- and moderate-income residents of D.C. These models included bridging the “information gap” between attorneys and the public through outreach and education; technological solutions like online legal providers and online dispute resolution forums; and alternative business structures (ABS)²⁷ as a means of filling the legal services gap for low- and moderate-income D.C. residents. The subgroup ultimately focused on SLLPs as the most practical and attainable approach to provide in-person help for unrepresented litigants of low- and moderate-income in the District of Columbia. The subgroup did not reject the alternative models and believes that they warrant further study. The subgroup chose to focus on SLLPs because the subgroup believed that it was the best use of existing resources and could be implemented the short-run.

Resources for initial research on the need in the District of Columbia included:

- The Kaiser Family Foundation and the U.S. Census Bureau for demographic information (2017, 2018, 2019),
- The Access to Justice Report (2019),
- The D.C. Courts 2018-2022 strategic plan in order to assess the importance of bridging the justice gap and initiatives undertaken by the courts,
- The Legal Services Corporation’s Justice Gap June 2017 report,

²⁶ Subgroup 2 met on: May 10, October 11 and November 14, 2019; January 21, February 19, March 31, May 5, June 18, July 22, September 2, October 8, November 4 and December 9, 2020; January 13, February 18, June 11, July 8 and July 21, 2021. Beginning with the meeting on 3/31/2020, all subsequent meetings were held remotely via Zoom.

The full GLPC met on: December 6, 2018, and April 18, 2019. On September 22, 2021, Subgroup 1 presented its proposal to the full GLPC; on September 29, 2021, Subgroup 2 presented its proposal to the full GLPC. Both GLPC meetings in 2021 were held remotely via Zoom.

²⁷ Alternative business structures, or “ABS”, refers to legal service business models that differ from the traditional law partnership model.

- The National Center for State Court’s Landscape of Civil Litigation in State Courts report (2015), and
- The Conference of Chief Judges Resolution 2 *Urging Consideration of Regulatory Innovations Regarding the Delivery of Legal Services* (2020).
- The Institute for the Advancement of the American Legal System (IAALS), Unlocking Legal Regulation project.²⁸ The project’s Regulation Knowledge Center serves as a resource with up-to-date information and news from jurisdictions in the United States and other countries. IAALS also hosts speaker series with experts on regulatory issues. On April 7, 2022, IAALS launched its Allied Legal Professionals project with the purpose of assisting jurisdictions in the study and best practices of adopting SLLP-type programs. The GLPC is monitoring the Allied Legal Professionals project (although it was launched after the GLPC concluded the study phase of its proposal).²⁹

The subgroup also studied additional reports and materials about the nation-wide legal services gap.

B. Conversations with SLLP Regulators

The subgroup and staff spoke with regulators in Arizona, Minnesota, Utah, and Washington State about SLLP program development, prerequisites, regulation, and challenges.³⁰

Washington State has the longest-running program -- spanning back to 2015. The program suffered because a relatively low number of individuals completed the program to become licensed (58).³¹ Some members of the state bar further criticized the program for not being fiscally self-sustaining, incurring an operating loss of \$1.5 million with the state bar, and lack of empirical evidence that the LLLT program has led to a significant increase in providing legal services to low- and moderate-income individuals.³²

²⁸ <https://iaals.du.edu/projects/unlocking-legal-regulation>.

²⁹ See <https://iaals.du.edu/projects/allied-legal-professionals>.

³⁰ The subgroup spoke with Scotti Hill, Associate General Counsel and LPP Administrator of the Utah State Bar, on March 9, 2020; Jean McElroy, Chief Regulatory Counsel of the Washington State Bar Association, on March 12, 2020; Dave Byers, Administrative Director of the Arizona Courts, and Lynda Shely, an ethics and professional responsibility attorney who served as a contributor to the Arizona Supreme Court’s Task Force on the Delivery of Legal Services on March 20, 2020; and Associate Justice Paul Thissen, co-chair of the Implementation Committee of Minnesota’s Legal Paraprofessional Pilot Program, and Kimberly Larson, Deputy Director of the Minnesota Judicial Branch’s Court Services Division, on February 8, 2021. GLPC Subgroup 1 co-leader, Kenneth West, is a licensed attorney in Ontario and attended Subgroup 2’s March 31, 2020, meeting as a guest speaker to provide an overview of and answer questions about Ontario’s paralegal program.

³¹ There are 58 licensed LLLTs in Washington State Bar’s Legal Directory as of September 15, 2021, including three inactive members, one suspended member, and three members who voluntarily resigned. See https://www.mywsba.org/PersonifyEbusiness/LegalDirectory.aspx?ShowSearchResults=TRUE&LicenseType=LLLT&SortExpression=Member_Status%20ASC.

³² See footnote 26. Dan Bridges, Treasurer’s Note: The Cost of LLLTs, NW Lawyer (September 2019).

Proponents of the program are aware of these criticisms but argue that the cost to an individual bar member is relatively small for the value that the program brings in and by analogy is less than the creation of new licenses in the medical field.³³ Proponents also attribute low number of licensees to high barriers to entry to the program: a costly educational requirement and 3,000 hours of experience required for licensure. Others have pointed out that there is no empirical evidence to show that the LLLT program led to a decrease in lawyers' business.

Regulators from Arizona and Utah indicated that the Washington State experience made them carefully consider the educational and experiential requirements in their respective programs to ensure a robust program that nonetheless would be accessible by potential candidates. Subgroup 2 carefully considered those requirements as well.

The subgroup also spoke with individuals with expertise on the subject of nonlawyers who provide legal assistance, including James Sandman, President Emeritus of the Legal Services Corporation and former D.C. Bar President, and Dr. Jasmine Hedge, Research Associate in the Strategic Management Division of the District of Columbia Courts. We spoke to Dr. Hedge about the D.C. Courts' Navigator Program which provides three types of navigation in the courthouses: (1) physical navigation (where to go within the courthouse); (2) process navigation (what forms are needed, where to write on a form but not what to write, and assistance for people with disabilities or speakers of different languages); and (3) service navigation (connecting people with internal and external services such as the resource center, daycare, or nonprofit and legal service organizations). Users of navigator services report satisfaction with the services, especially in comparison to those who did not use navigator services. However, given the vast number of people who still do not receive legal services, the justice gap persists. The successes of the navigator program and high satisfaction of its users are indicators that paraprofessionals could help to further bridge the justice gap, especially if permitted to provide a wider scope of services than those navigators provide.

C. Roundtable of District of Columbia Potential Stakeholders

³³ See NW Lawyer, Inbox, 20/20 Vision: Beyond the Pink Collar and The Actual Cost of LLLTs: 'A Cup of Coffee or Two Per WSBA Member Per Year' (October 2019) available at http://nwlawyer.wsba.org/nwlawyer/oct_2019/MobilePagedReplica.action?pm=1&folio=5#pg7.

Some proponents of SLLP programs analogize the creation of SLLPs in the legal profession to that of the creation of Nurse Practitioners and Physician Assistants in the medical profession. Extensive training and testing are required for a medical license, but requirements for licensure of Nurse Practitioners and Physician Assistants are less extensive than that for doctors, and NPs and PAs can serve more patients and assist doctors with less complicated cases.

The GLPC organized and hosted a virtual roundtable with District of Columbia stakeholders on October 23, 2020. Former D.C. Bar President James Sandman moderated; and Nancy Drane, Executive Director of the D.C. Access to Justice Commission and Sheldon Krantz, Chair and Director of the DC Affordable Law Firm presented about the need for legal assistance among low- and moderate-income communities in the District. The committee invited members of different organizations and the judiciary to get a broad perspective of the views on SLLP programs. Representatives from legal services and access to justice groups, low bono legal services and law firms, pro bono legal services, law schools, paralegal education and certification programs and associations, disciplinary and admissions entities, D.C. Bar committees, and representatives from Arizona and Utah SLLP programs were invited and participated.³⁴ The attendees

³⁴ Attendees from the following stakeholder groups included:

Law Schools:

William M. Treanor, Executive Vice President and Dean of the Law Center, Georgetown University Law Center; Renée McDonald Hutchins, Dean, UDC David A. Clarke School of Law; Donald Tobin, Dean, University of Maryland Francis King Carey School of Law; Laurie Kohn, Associate Dean, George Washington University Law School; Ronald Weich, Dean, University of Baltimore School of Law; Robert Dinerstein, Acting Dean, American University Washington College of Law;

Legal Services and Access to Justice:

Nancy Drane, Executive Director, D.C. Access to Justice Commission; Kirra L. Jarrett, Chief Executive Officer, D.C. Bar Foundation; David W. Ogden, President, D.C. Bar Foundation; Karen Newton Cole, Co-Chair, D.C. Consortium of Legal Service Providers; Stephen Dudek, Attorney Advisor, Office of the Tenant Advocate;

Pro Bono Legal Services:

Erica Dominitz, Chair, D.C. Bar Pro Bono Committee; Ron Flagg, Chair, D.C. Bar Pro Bono Task Force; Rebecca Troth (D.C. Bar staff), Executive Director, D.C. Bar Pro Bono Center; Lise Adams (D.C. Bar staff), Assistant Director, D.C. Bar Pro Bono Center; Darryl Maxwell, (D.C. Bar staff) Assistant Director, D.C. Bar Pro Bono Center;

Low Bono Legal Services:

Marc Borbely, Founder and Senior Attorney, D.C. Tenants' Rights Center; Sheldon Krantz, Chair and Director, DC Affordable Law Firm; Gabrielle Mulnick Majewski, Executive Director, DC Affordable Law Firm; Andrea Ferster, Board member, DC Refers; Nancy Lopez, Board member, DC Refers;

Disciplinary and Admissions:

Matthew G. Kaiser, Chair, Board on Professional Responsibility; James T. Phalen, Executive Attorney, Board on Professional Responsibility; Elizabeth Greenidge, Vice-Chair, D.C. Court of Appeals Committee on Admissions; Stephen Juge, Member, D.C. Court of Appeals Committee on Admissions;

Paralegal Certification Programs:

Chad Smith, Director of Legal Programs, Catholic University of America; Toni Marsh, Program Director, George Washington University;

Paralegal Associations:

Alana D. Stanley, President / Director, National Capital Area Paralegal Association;

D.C. Bar Committees:

Yaida Ford, Vice-Chair, D.C. Bar Rules of Professional Conduct Review Committee; Nakia L. Matthews, D.C. Bar Legal Ethics staff counsel and staff liaison to the Rules of Professional Conduct Review Committee;

D.C. Bar:

Geoffrey Klineberg, D.C. Bar President; Chad Sarchio, D.C. Bar President-Elect; Darrin Sobin (D.C. Bar staff), Chief Programs Officer; Erum Mirza (D.C. Bar staff), General Counsel;

supported the concept of an SLLP program, especially for areas with low rates of attorney representation like housing and family law. Stakeholders advised that training should include paralegal education paired with specialized practice area training, ethics and professionalism, an unauthorized practice of law course, training on client interviewing, and supervised “hands-on” training.

D. Surveys in the District of Columbia

The subgroup and Bar staff developed and distributed three surveys to stakeholders in the District of Columbia.

1. Paralegal Students and Alumni

Following up on a suggestion from the roundtable, the GLPC surveyed people who might be interested in SLLP-type work to determine what education and experience commitments they would be willing to undertake to become licensed SLLPs. The GLPC also used the opportunity to seek other opinions about SLLP programs from these persons. On March 10, 2021, the GLPC distributed an online survey to 128 students and alumni of two paralegal programs in the District of Columbia provided by the Metropolitan School of Professional Studies of Catholic University and the Paralegal Studies program of the College of Professional Studies of George Washington University. The survey received a total of 17 responses: 13 responses from current paralegal students and four responses from paralegal school alumni.³⁵

Of the 17 respondents:

- Most expressed interest in an SLLP program, even as part of a limited-time pilot program, and said they would focus on clients from low- and moderate-income populations.

D.C. Bar Global Legal Practice Committee:

Charles “Rick” Talisman, Chair; Amy L. Neuhardt, Vice Chair and Co-Leader of GLPC Specially Licensed Legal Professional Working Group; Hon. Gregory Mize, Co-Leader, GLPC Specially Licensed Legal Professional Working Group; Clinton Neil McGrath; Francis “Doc” Dong; Ken West; Allison Lefrak; Tom Mason; Gary Shaw; Kathleen Clark; Adam Landy; Carla Freudenburg (D.C. Bar staff), Director, Regulation Counsel and staff liaison to the GLPC; Adriana Goss-Santos (D.C. Bar staff), senior staff attorney and staff liaison to the GLPC;

Other States’ Programs:

Scotti Hill, Associate General Counsel, LPP Administrator, Utah State Bar; Mark Wilson, Director, Certification and Licensing Division, Arizona Supreme Court, Administrative Office of the Courts;

Other Nonprofit:

Ann Wilcox, Member, National Lawyers Guild Housing Committee and DC Affairs Community Steering Committee; and others.

³⁵ The survey would need at least 45 respondents to have a 90% confidence level and 10% margin of error. However, the subgroup did find the responses useful and have reported them here in general terms.

- Most already had completed a four-year college degree and had performed legal research, non-legal research, and organized documents and exhibits as part of their job duties.
- A majority thought that SLLPs should be able to do some tasks without attorney supervision such as: assist a client with completing approved forms and obtaining documents to support those forms; interview a client to determine the client's needs and goals; explain to a client court orders and how those orders affect the client's rights and obligations; review documents from another party and explain those documents to a client; negotiate on behalf of a client, communicate with another party or the party's representative regarding the relevant forms and matters; inform, counsel, assist and advocate for a client in a mediated negotiation; and provide advice, opinions, or recommendations about possible legal rights, remedies, defenses, options, or strategies for routine matters in areas of law in which the SLLP is licensed.
- Only a minority of respondents thought that permitted tasks should extend to appearing before a court or tribunal, completing a settlement agreement, drafting and filing legal documents, and entering into a contractual relationship with a natural person.
- Most respondents would charge a flat fee of \$100 or less for a simple task, such as completing and filing a legal form. Most respondents would charge a flat fee of \$201 to \$250 to do a more complex task, such as negotiating a settlement.
- Preferred practice areas included family matters, civil litigation, and domestic violence.
- Most respondents would commit to completing a four-year degree, a paralegal program, ethics and professionalism courses, and licensing exams, if required for licensure.

2. D.C. Bar Solo and Small Firm Practitioners

The second online survey was launched on March 29, 2021, to 12,689 active D.C. Bar members who self-identified as solo or small firm practitioners in the Washington, D.C. metropolitan area. The committee thought it was important to obtain the viewpoints of solo and small firm attorneys because their practices might be impacted by an SLLP program; or they may have perceptions about whether and how their practices could be affected – either positively or negatively. Solo and small firm practitioners have also provided considerable feedback in other states that have proposed SLLP programs.

Of the 202 respondents³⁶:

³⁶ The number of respondents yielded a margin of error of six to seven percent and a confidence level of 95%.

- Approximately 70% were solo practitioners, 29% were in firms of two to nine attorneys, and less than 2% were in firms with 10 to 19 attorneys.
- Almost 60% of the 202 respondents did not use paralegals. About 22% stated that they do not use paralegals for financial reasons whereas 37% said that they do not have a use for a paralegal. Of the 40% of the respondents who did use paralegals, about half employed paralegals and about half used paralegals on a contract basis.
- 46% of the respondents would be in support of an SLLP program.
- Of those in support of an SLLP program, most thought that SLLPs should be able to practice on housing issues, matters related to public benefits, unemployment insurance, and probate.
- A majority of those in support thought that SLLPs should always be required to practice with a licensed attorney. Only 20% thought that SLLPs should be able to form their own practices and 11% were unsure.
- Most of those in support agreed that traditional education should be combined with paralegal training, including a four-year degree and completion of a paralegal certificate.
- Respondents who supported an SLLP program also thought that SLLPs should be bound to the same ethics rules and disciplinary process as lawyers and could provide some legal services to underserved consumers who could not afford typical attorney's fees. A minority agreed that working with or employing an SLLP could help their practice grow.
- We asked survey takers their thoughts on the minimum amount of attorney supervision that would adequately prepare an SLLP to eventually handle certain legal tasks without attorney supervision. About 58% thought that it would depend on the complexity of the legal work, whereas 27% thought that six to 12 months would be adequate, 14% thought that 13 months to 24 months would be sufficient, and only 1% thought that more than 24 months should be required.
- More than half of the survey respondents thought that attorney-supervised experience and training should be waived for candidates with a certain number of years of experience. 26% did not think a waiver should be offered. Almost 18% were unsure; some because they thought it should depend on the area and scope of practice and its complexity, some thought that training could be waived but not attorney supervision, and some others felt they needed to know more details about a program before answering.
- 54% did not support an SLLP program. Of those who would not be in support of an SLLP program, 83% said that they thought only lawyers were competent to practice law, 77% thought that consumers would be confused about what an SLLP could and could not do, and 34% were concerned that SLLPs would take business away from them.

3. District of Columbia Residents

The subgroup launched a third survey to District of Columbia residents on April 5, 2021. Contracting with an outside agency to design and distribute the survey was cost-prohibitive for the Bar and so the survey was developed in-house. Distribution to residents was attempted by establishing introductions and connections with points of contact in the District and sending the survey to ANC chairpersons, chiefs of staff and counsels of D.C. Councilmembers, the Mayor’s Office of Community Affairs, and the “aging-in-place” villages for further distribution to constituents and residents. The survey produced only 36 complete responses, with 27 respondents from higher-income wards three and six, and 27 respondents who were aged 60 and older.³⁷

In the absence of a meaningful response to the public survey, the subgroup reviewed results of a survey of the public conducted by the Arizona Supreme Court Task Force on the Delivery of Legal Services in 2020 at a reported cost of \$18,000 to \$20,000. The survey organized the results by rural areas and Arizona’s two most populous counties – Maricopa and Pima.³⁸ On a scale from 1(low) to 5 (high), respondents in Maricopa and Pima counties scored 3.9 and 4.1 respectively to the questions that: 1) there were legal issues that could be handled by a nonlawyer; and 2) it was time for Arizona to have an SLLP-type program.

4. Informal Polling at the National Capital Area Paralegal Association Education Conference

D.C. Bar staff liaisons to the GLPC presented on the general topic of SLLPs at the 2021 National Capital Area Paralegal Association Education (NCAPA) Conference. At the end of the presentation, an informal poll was taken of the 20 attendees.

- 19 of the 20 attendees said that they would be interested in participating in a limited SLLP pilot program and would be willing to acquire additional training, experience, or licensing in order to work as an SLLP.
- Respondents thought that the following areas of law could benefit most from the participation of SLLPs:
 - Family matters, including conservatorship (15 of the 20 attendees)
 - Housing (15/20)

³⁷ The responses indicate that most respondents were most likely members of the Palisades Villages and not a representation of the District’s population. The number of responses were too low from which to extrapolate data.

³⁸ Arizona Supreme Court Task Force on the Delivery of Legal Services, State of Arizona Public Opinion Survey (January 24, 2020), <https://www.azcourts.gov/Portals/215/Documents/Opinion%20Poll%20Results.pdf?ver=2020-03-06-113334-443>.

- Public benefits determinations, such as social security, disability, SSI, and Medicaid benefit cases (12/20)
 - Domestic violence (11/20)
 - Contract disputes or collection matters (8/20)
 - Education law / student discipline (4/20)
- 16 of the 20 attendees also thought that SLLPs should be able to work solo although 16 of the 20 attendees also stated that they would be interested in an SLLP program even if they were required to work with an attorney.
- The most common reasons for being interested in becoming an SLLP were:
 - Helping people who cannot afford to pay typical attorney rates (17 of the 20 attendees) 85%
 - It sounds interesting (12/20) 60%
 - Acknowledgment of an official credential, like a license (11/20) 55%
 - More autonomy (7/20) 35%
 - Solo practice (5/20) 25%
 - Good alternative to becoming an attorney (5/20) 25%.

5. The Council for Court Excellence Chief Judge Candidate Forum; and Informal Discussions with the D.C. Disciplinary Office, the Committee on the Unauthorized Practice of Law, and the Committee on Admissions

a. Council for Court Excellence (CCE) Chief Judge Candidate Forum:

On June 9, 2020, the Council for Court Excellence and D.C. Bar held a virtual “Meet the Next Chief Judge” forum to introduce three judicial candidates for Chief Judge of the D.C. Superior Court following the announcement of Chief Judge Morin’s retirement.³⁹ Superior Court Judges Anita Josey-Herring, Milton Lee Jr., and Lynn Leibovitz discussed their vision and priorities for the future of the court.

The judges were asked their views on non-traditional representative models, including the use of nonlawyers to assist unrepresented litigants.⁴⁰ The judges supported a range of options, including

³⁹ Jeremy Conrad, Superior Court Chief Judge Candidates Discuss Current Crises in Virtual Forum (June 10, 2020), at <https://www.dcbbar.org/news-events/news/superior-court-chief-judge-candidates-discuss-curr>.

⁴⁰ The GLPC pre-submitted the following question: “What are your views on non-traditional representation models or alternative legal practice structures as innovative means for the delivery of legal services to clients in Superior Court. For example, some jurisdictions are exploring things like allowing non-lawyers (like limited license professionals or recent law school graduates) to assist pro se litigants in limited subject matter areas, or allowing alternative business structures (law firms with non-lawyer partners and/or investors) and multi-disciplinary practices (firms that deliver both legal and non-legal professional services) to provide services. Would any of these be innovations you’d support in Superior Court, and why?”. (<https://dcbbar.freestonelms.com/viewer/daZTRe44gTJnF47tWHRhVTZSHgk83QLGxLLCNgp5J6SsE> at 37:43).

innovations that would make the court work more effectively, including the use of trained nonlawyers to assist unrepresented litigants under the guidance of a licensed attorney (short of giving legal advice); new models that might increase access to justice with an emphasis on civil Gideon and full representation; and increased outreach and community efforts to increase access to justice.

During open questions from attendees, a member of the GLPC asked how the judges would make the Superior Court more accessible to pro se litigants.⁴¹ Responses included partnerships between the court and other organizations to assist pro se litigants; innovations beyond mandated pro bono service and collaborations with the D.C. Bar, the Pro Bono Center, and other groups to examine innovative ways to assist people, including the use of limited scope representation; and increased use of lawyers and navigators, and increased efforts to connect people in need with lawyers.

b. Call with D.C. Office of Disciplinary Council and D.C Board on Professional Responsibility

On April 28, 2022, leadership of the GLPC and Subgroup 2 had an informal Zoom call with Hamilton P. “Phil” Fox III, Disciplinary Counsel, Office of Disciplinary Council (ODC), and James “Jim” T. Phalen, Executive Attorney, D.C. Board on Professional Responsibility (BPR), about the GLPC’s proposal for an SLLP program. As proposed licensed “affiliates” of the D.C. Bar, the Rules of Professional Conduct would be applicable to SLLPs and the services they provide to the same extent as the rules are applicable to lawyers. SLLPs would also be included as a class of practitioners in Rule XI⁴² that are subject to the disciplinary jurisdiction of the Board on Professional Responsibility and the D.C. Court of Appeals.

c. Discussions with the Committee on the Unauthorized Practice of Law and the Committee on Admissions

Leadership of the GLPC attended a virtual meeting of the D.C. Court of Appeals Committee on the Unauthorized Practice of Law on May 12, 2022. The GLPC presented a summary of its proposal and answered questions from the UPL Committee.

On May 17, 2022, leadership of the GLPC had an informal Zoom call with leadership of the D.C. Court of Appeals Committee on Admissions. The GLPC presented a summary of its proposal to the COA representatives and answered questions.

⁴¹ The GLPC asked: “D.C. Superior Court has high rates of pro se litigants – with as high as 80 to 97% of litigants in proceeding without counsel in some areas of the court. How will you address this challenge? What reforms – outside of simply securing more lawyers – would you recommend to make Superior Court more easily accessible to the thousands of litigants who do not have lawyers?”.

(<https://dcbbar.freestonelms.com/viewer/daZTRe44gTJnF47tWHrhVTZSHgk83QLGxLLCNgp5J6SsE> at 1:04:40).

⁴² D.C. Court of Appeals Rules Governing the Bar, Rule XI. Disciplinary Proceedings, at <https://www.dcbbar.org/about/who-we-are/rules-and-bylaws/rules-governing-the-district-of-columbia-bar/rule-xi-disciplinary-proceedings>.

V. SLLPs in Other Jurisdictions

Several jurisdictions in the U.S. and Canada have implemented SLLP programs.⁴³

A. Arizona

Legal Paraprofessionals (LPs) in Arizona may assist clients in family law cases, civil cases of limited jurisdiction, limited jurisdiction criminal cases where no jail time is involved, and state administrative law cases where permitted by the agency.

There are several paths to satisfy the educational requirements, ranging from obtaining a Juris Doctor to an associate-level degree in any subject plus a certificate in paralegal studies. Candidates without a law degree must also have area-specific coursework, a minimum of 120 hours of experiential learning under the supervision of an attorney, and a course in professional responsibility. Those who have an associate-level degree must have one year of substantive law-related experience in the area of law in which they wish to practice. Candidates with substantial experience may obtain an educational waiver. Applicants must take and pass substantive area-specific tests for each area of law in which they want to become licensed; take and pass a core exam on legal terminology, substantive law, and the ethical code; and complete a character and fitness evaluation. They must also complete the state bar's course on professionalism. An LP may assist with drafting, signing, and filing legal documents; provide advice, opinions, or recommendations about possible legal rights, remedies, defenses, options or strategies; appear before a court or tribunal; and negotiate on behalf of a client. LPs are required to inform clients in writing

⁴³ Nonlawyers are used in other capacities throughout the United States. Legal navigators are used in several jurisdictions, including the District of Columbia, to assist self-represented litigants navigate the courthouse and to find legal resources. However, they are generally prohibited from providing advice or assisting with legal forms. Legal document preparers are used in Arizona, California, Nevada, Washington state and may assist self-represented litigants prepare and file legal documents.

Nonlawyers are also used by some federal agencies and courts, including the IRS, immigration courts, the Patent and Trademark Office (PTO), bankruptcy courts, and tribal courts. Certified public accountants and enrolled agents may represent taxpayers before the IRS. Nonattorney, accredited representatives may represent immigrants before the immigration courts, Board of Immigration Appeals, and the Department of Homeland Security. Nonlawyers who possess a degree in a technical or scientific field and pass the patent bar exam can become a patent agent with the PTO. Bankruptcy Court allows nonlawyers to prepare forms on behalf of a debtor but not provide legal advice. The Social Security Administration permits non-attorney representatives who possess certain qualifications and pass an examination to represent clients.

that they are not an attorney and of the limits of their scope of practice.⁴⁴ The Arizona LP program was implemented in 2021. Ten LPs have been licensed as of January 31, 2022, all in the area of family law.⁴⁵

Prior to licensure, LP applicants must take and pass a core exam and area-specific examinations for each area of law in which they seek licensure.⁴⁶ These tests were developed by “a professional test development company and validated by legal subject matter experts in Arizona law including academic and judicial panels.”⁴⁷ As of February 2, 2022, the Arizona Supreme Court’s Certification and Licensing Division had published results for five rounds of testing from June, August, September, November, and December 2021.⁴⁸ Passage rates for the core exam, which has been administered since June 2021, have been between 9% and 33% for first-time test takers and between 25% and 75% for repeat test takers. In total, 30 people have passed the core exam and average exam scores have been between 64.9% and 72.8%.

The subject matter test for family law also started in June 2021 and passage rates have ranged between 16.7% and 60% for first-time test takers and between 33% and 100% for repeat takers. Examinations for civil law and criminal law began in September 2021. Of the 15 people who took the civil law exam, four have passed. Of the three people who took the criminal law exam, one has passed.

B. Minnesota

In March 2021, the Minnesota Supreme Court began its two-year Legal Paraprofessional Pilot Project.⁴⁹ The program relies on supervisory attorneys to oversee paralegals who may prepare and file certain documents and provide advice and appear in court in certain housing court disputes and some family law

⁴⁴ See ARIZONA CODE OF JUDICIAL ADMINISTRATION, Part 7: Administrative Office of the Courts, Chapter 2: Certification and Licensing Programs, Section 7-210: Legal Paraprofessional, J. Code of Conduct at <https://www.azcourts.gov/Portals/0/Resources/7-210%20New%2001-2021.pdf?ver=K-GZ1RSnlhV5aY6416VfvA%3d%3d>.

⁴⁵ Arizona Supreme Court Licensed Paraprofessional Directory (as of January 31, 2022) at https://www.azcourts.gov/Portals/0/LP%20Program/Directory/LP%20Master%20Directory_3.pdf?ver=SrcwMp9onWutFy9Ykqatg0Q%3d%3d.

⁴⁶ Arizona Code of Judicial Administration (ACJA) §7-210.

⁴⁷ Arizona Supreme Court Administrative Office of the Courts Certification and Licensing Division, Legal Paraprofessional License Examination Study Guide (August 2021) at <https://www.azcourts.gov/Portals/0/LP%20Exam%20Study%20Guide%20August%2020211.pdf?ver=2021-08-03-192219-533>.

⁴⁸ Arizona Supreme Court Legal Paraprofessional Exam Results at <https://www.azcourts.gov/Licensing-Regulation/Legal-Paraprofessional-Program/Legal-Paraprofessional-Exam/Exam-Results>.

⁴⁹ Minnesota Supreme Court Order Implementing Legal Paraprofessional Pilot Project, No. ADM19-8002, September 29, 2020. The order established a two-year pilot that “unless extended by further order of this court, the pilot project shall end and the Supervised Practice Rules that govern the pilot project shall expire on March 31, 2023.” The Minnesota Supreme Court issued an order on April 1, 2022, extending the project until March 31, 2024. See Minnesota Order Establishing Public Hearing and Promulgating Amendments to Rules Governing Legal Paraprofessional Pilot Project, No. ADM19-8002 (Minn. filed Apr. 1, 2022).

cases. Paralegals with only a high school diploma must have five years of substantive experience, and all candidates must have either certified paralegal credentials, proof of continuing legal education credits, or have obtained a paralegal studies degree or certificate or J.D. in the past two years. The pilot project’s implementation committee is charged with certification and responding to consumer complaints.

Favorable results were published in an interim report of December 2021 from the standing committee for the pilot project.⁵⁰ There had been no complaints to date from clients. As of the date of the report, 13 applications had been received and accepted. As part of the project evaluation, the committee surveyed legal paraprofessionals, supervising attorneys, and judicial officers in October 2021 – 10 months after the pilot project had started. Legal paraprofessionals expressed satisfaction with the pilot project and as of October had represented clients in a total of 17 cases, about half of whom would otherwise have been unrepresented. A little more than half of were charged for services while the others represented clients pro bono or through a legal aid office. Because the program is new it is not yet known whether it could provide paraprofessionals with a financially sustainable practice in the future. Legal paraprofessionals also reported that they would like more training in courtroom advocacy and practices and would like the program to expand into other areas.

The eight supervising attorneys who responded to the survey were generally satisfied with the program and the work of legal paraprofessionals, although some expressed uncertainty about the appropriate amount of supervision that was required of them. Surveys were also distributed to judicial officers of cases that had a connection with a legal paraprofessional, although most reported that they had not yet had a legal paraprofessional appear in their courtroom. The two judicial officers who did encounter a legal paraprofessional in the courtroom, reported that they “displayed appropriate decorum ... and knew the applicable court rules.”⁵¹ However, one of those judicial officers preferred utilizing court resources to support new attorneys over the goals of the Legal Paraprofessional Pilot Project.

Pursuant to the Order Implementing Legal Paraprofessional Pilot Project⁵², the standing committee made six recommendations, including ones that which would expand the permissible scope of the program. Other recommendations would allow legal paraprofessionals to provide services in landlord-tenant cases in more areas of Minnesota, prepare and file documents that were not initially contemplated in the appendix of the supervised practice rules, provide advice to and appear on behalf of clients who seek an order for protection or harassment restraining order, and to extend the pilot program an additional year – until March 31, 2024. Following a public comment period, the Minnesota Supreme Court issued an order on April 1, 2022, extending the project until March 31, 2024, and implementing recommendations to

⁵⁰ STANDING COMMITTEE FOR LEGAL PARAPROFESSIONAL PILOT PROJECT, INTERIM REPORT AND RECOMMENDATIONS TO THE MINNESOTA SUPREME COURT (December 27, 2021), <https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Administrative-Interim-Report-and-Recommendations-from-the-Standing-Committee-for-LPPP.pdf>.

⁵¹ Id. at 7.

⁵² See Minnesota Supreme Court, Order Implementing Legal Paraprofessional Pilot Project, No. ADM 19-8002 at 3.

include establishment of child support in the scope of practice, permitting representation in landlord-tenant cases in courts that do not have an “established Housing Court or dedicated calendar for housing disputes”, and clarifying language as to the documents that an LP can prepare and file.⁵³ The Court also set a public hearing to consider parties in support of or opposition to two other recommendations.⁵⁴

C. Utah

Utah permits Licensed Paralegal Practitioners (LPPs) to represent clients in the areas of family law, landlord-tenant disputes, and certain consumer debt matters. Since the Utah State Bar started testing and licensing applicants in 2019, Utah has licensed 18 LPPs.⁵⁵ LPP candidates must obtain either a J.D., an associate’s or bachelor’s degree in paralegal studies, or a bachelor’s degree in any field plus a paralegal certificate. Applicants without a J.D. must complete 1,500 hours of substantive law-related experience. Educational waivers were available to applicants with substantive experience⁵⁶. Subject area exams, an ethics exam, and character and fitness evaluations are required.

The permissible scope of practice includes entering into a contractual relationship with a natural person; interviewing a client; assisting a client with completing approved forms; explaining another party’s documents to a client; informing, counseling, and advocating for a client in a mediated negotiation; completing, signing, and serving a settlement agreement; communicating with another party regarding relevant forms and matters; and explaining a court order to a client and how it affects their rights and obligations.

Utah LPPs must provide written notice that they are not an attorney and that they can only practice in the areas in which they are licensed.⁵⁷ Additionally, an LPP “shall conspicuously display in the licensed paralegal practitioner’s office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width that contains a statement that the licensed paralegal practitioner is not a lawyer licensed to provide legal services without limitation.”⁵⁸ An LPP may not appear in court and may not charge contingency fees. All aspects of the program are administered by

⁵³ See Order Establishing Public Hearing and Promulgating Amendments to Rules Governing Legal Paraprofessional Pilot Project, No. ADM19-8002 (Minn. filed Apr. 1, 2022).

⁵⁴ Id.

⁵⁵ See <https://www.licensedlawyer.org/Find-a-Lawyer/Licensed-Paralegal-Practitioners>.

⁵⁶ See Rules Governing Licensed Paralegal Practitioners, URGLPP 15-0705, at <https://www.utcourts.gov/utc/rules-approved/category/rules-governing-licensed-paralegal-practitioners/>, permitting for a limited time waiver of educational requirements for candidates who had substantive law experience. The waiver expired on May 1, 2021.

⁵⁷ Utah Code of Judicial Administration Rule 13-1.05, Rule 1.5 (f)(4) at <https://www.utcourts.gov/rules/view.php?type=ucja&rule=13-1.05>.

⁵⁸ Utah Code of Judicial Administration Rule 13-1.02, Rule 1.2 (e) Licensed paralegal practitioner notice to be displayed., at <https://www.utcourts.gov/rules/view.php?type=ucja&rule=13-1.02>.

the Utah State Bar by one full-time employee. A major cost for the program has included the development of the exam software at approximately \$35,000.

D. Washington State

Washington State began licensing Limited License Legal Technicians (LLLTs) in 2015 for family law matters. Requirements for LLLT licensure included a minimum of an associate degree and core education requirements from an approved program; the passing of a paralegal exam, a practice area examination, and a professional responsibility exam; and substantive law experience.⁵⁹ In June 2020, the Washington State Supreme Court voted to sunset its program citing high overall costs and lack of interest. As of February 1, 2022, there were 68 active LLLTs listed on the Washington State’s legal directory.⁶⁰

Washington State’s program was criticized for its high cost to the bar and inability to become self-sufficient.⁶¹ However, some think the program could be sustainable if the educational costs and experiential requirements were less rigorous so more people could become licensed.⁶² Another criticism of the Washington State program is that LLLTs typically charge between \$100 to \$150 per hour, which may not be affordable to many people.⁶³

Licensed LLLTs are permitted to continue to practice and prospective LLLTs will have until July 31, 2022, to qualify for a license. In April 2021, the LLLT Board sent a report to the court asking for reconsideration of its decision to sunset the program, countering the argument that there was a lack of interest. The program is administered from the Washington State Bar by the equivalent of about 1.3 full-

⁵⁹ See The Supreme Court of Washington, Order No. 25700-A-1336 (filed January 8, 2021), https://wsba.org/docs/default-source/legal-community/committees/court-rules/25700-a-1336.pdf?sfvrsn=a72a0af1_0. The requirement to obtain 3,000 hours of substantive law-related experience was reduced to 1,500 hours in July 2020 when the Washington Supreme Court voted to sunset the program in order to allow candidates who were already in the pipeline to complete the prerequisites before July 31, 2022.

⁶⁰ See <https://www.mywsba.org/PersonifyEbusiness/LegalDirectory.aspx?ShowSearchResults=TRUE&LicenseType=LLLT>. There were also six inactive, one suspended, and three voluntarily resigned LLLTs listed on the Washington State Bar’s LLLT Legal Directory.

⁶¹ Dan Bridges, Treasurer’s Note: The Cost of LLLTs, NW Lawyer (September 2019).

⁶² LLLT Board, Response to Treasurer’s Note: The Actual Cost of LLLTs: ‘A Cup of Coffee or Two Per WSBA Member Per Year’, NW Lawyer (October 2019).

⁶³ Genie Harrison, *Paraprofessionals Won’t Fix the Access to Justice Problem*, Bloomberg Law (June 9, 2021), <https://news.bloomberglaw.com/business-and-practice/paraprofessionals-wont-fix-the-access-to-justice-problem>.

time employees.⁶⁴ Overall costs for administering the program are between \$200,000 to \$250,000 per year.⁶⁵

E. Canada: Ontario

“Licensed paralegals” have been allowed to practice in Ontario since 2007. Like attorneys, they are overseen by the Law Society of Ontario⁶⁶ and may work on small claims, provincial offenses before the Ontario Court of Justice, summary convictions, and administrative proceedings. Ontario completed a five-year review of the program in 2012, finding that “[c]onsumer protection has been balanced with maintaining access to justice and the public interest has thereby been protected.” A survey related to the study also found that 74% of clients were satisfied with the service that they received, and 68% thought that the service was a “good value.”⁶⁷ Data from Ontario indicates that although paralegals may be slightly more likely to have complaints filed against them, the 2015 Annual Report of the Law Society of Ontario states that between 2009 and 2015, “the number of paralegals licensed by the Law Society increased by 280%, but the number of paralegals who received a complaint only increased by 66%.”⁶⁸ The Legal Society of Ontario’s 2019 annual report states that it regulated 9,470 paralegals, of which approximately 3,700 were providing legal services.⁶⁹

F. Proposals and Studies in Other Jurisdictions in the United States

Several other jurisdictions are in various stages of study or proposal of programs to license nonlawyers to provide limited legal services. As of the writing of this report:

⁶⁴ The subgroup spoke with Jean McElroy, former Chief Regulatory Counsel of the Washington State Bar on March 12, 2020. Ms. McElroy told the subgroup that it takes the equivalent of 1.3 FTEs to run the program. There was no single full-time employee dedicated to the program, but was a “patchwork” of existing employees’ time.

⁶⁵ The WSBA’s FY 2019 Budget Narrative indicates that the LLLT program had expenses of \$241,191 (1.55 FTEs) and did not project any revenue, for a loss of \$241,141. Since the program has sunsetted, the program has increased its revenues and decreased expenses for smaller losses; however, this may be in part due to winding down operations for the program. See Washington State Bar Association, WSBA Budget for the Fiscal Year Ended September 30, 2019, Approved by the Board of Governors September 27, 2018 and Amended November 19, 2018, at [https://www.wsba.org/docs/default-source/about-wsba/finance/fy-2019-budget-\(11-19-18\)-amended.pdf?sfvrsn=c44700f1_2](https://www.wsba.org/docs/default-source/about-wsba/finance/fy-2019-budget-(11-19-18)-amended.pdf?sfvrsn=c44700f1_2).

⁶⁶ FAQs, L. SOC’Y OF ONTARIO, <https://lso.ca/becoming-licensed/paralegal-licensing-process/faqs>.

⁶⁷ Report to the Attorney General of Ontario, Pursuant to Section 63.1 of the Law Society Act, THE L. SOC’Y OF UPPER CAN. 3 (2012).

⁶⁸ See n. 24, supra.

⁶⁹ Law Society of Ontario, Annual Report (2019), at <https://lawsocietyontario.azureedge.net/media/lso/media/annualreport/documents/annual-report-2019-en.pdf>.

- The State Bar of California formed a Paraprofessional Program Working Group in January 2020. In September 2021, the working group released its recommendations for a 110-day comment period. Under the proposal, licensed paraprofessionals would be permitted to represent clients in court (excluding jury trials) in cases related to family law, housing, consumer debt, employment / income maintenance and collateral criminal matters. The report received approximately 1,200 comments, with approximately 73% of commenters opposed to the recommendations.⁷⁰ After receiving the comments, the working group revised its proposal, including restricting licensed paraprofessionals from having an ownership stake in law firms and restricting the practice areas in their proposal.⁷¹ In May 2022, the State Bar's Board of Trustees accepted those amendments. The Board will further develop a proposal for submission to the California Supreme Court and then the state legislature for review and approval.⁷² However, there have been recent amendments to the Bar's annual licensing-fee bill that, if passed, would limit the Bar's ability to implement a paraprofessional program.⁷³
- In May 2019, the Michigan Supreme Court appointed its Justice For All Task Force to develop a strategic plan to ensure access to justice for Michigan residents. In its December 2020 report, the Task Force recommended that the court create a commission to carry on its work and made several recommendations, including looking at allowing nonlawyer practitioners in areas with high numbers of self-represented litigants.
- In January 2021, the North Carolina Justice for All Project (NCJ4AP) submitted a proposal to the North Carolina Bar Association and the North Carolina Supreme Court proposing that paraprofessionals be licensed to provide services in areas of law with high numbers of self-represented clients.
- The Florida Bar Association's Special Committee to Improve the Delivery of Legal Services approved several concepts in January 2021, which included a Limited Assistance

⁷⁰ Cheryl Miller, What Lawyers and the Public Said About the State Bar's Paraprofessional Proposal, The Recorder, January 20, 2022 at <https://www.law.com/therecorder/2022/01/20/what-lawyers-and-the-public-said-about-the-state-bars-paraprofessional-proposal/>.

⁷¹ Cheryl Miller, California State Bar Committee Abandons Proposal for Nonlawyers to Own Law Firms, Law.com, April 21, 2022 at https://www.law.com/legaltechnews/2022/04/21/state-bar-committee-abandons-proposal-for-nonlawyers-to-own-law-firms-397-57809/?kw=California%20State%20Bar%20Committee%20Abandons%20Proposal%20for%20Nonlawyers%20to%20Own%20Law%20Firms&utm_source=email&utm_medium=enl&utm_campaign=afternoonupdate&utm_content=20220421&utm_term=ltm.

⁷² The State Bar of California Office of Communications, State Bar Board of Trustees Accepts Amended Paraprofessional Recommendations, State Bar of California News Releases, May 20, 2022 at <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-board-of-trustees-accepts-amended-paraprofessional-recommendations>.

⁷³ Cheryl Miller, California Lawmakers Approve Bill Throttling Paraprofessional, Regulatory Sandbox Proposals, Law.com, June 21, 2022, at <https://www.law.com/legaltechnews/2022/06/21/lawmakers-approve-bill-throttling-paraprofessional-regulatory-sandbox-proposals-397-59482/?kw=California>.

Paralegal Pilot Program; and in December 2021 the Florida Bar’s Board of Governors approved a narrower version of the program which would permit registered paralegals working for a particular legal aid organization to provide services in landlord-tenant and debt collection matters.⁷⁴ However, in March 2022, the Florida Supreme Court issued a letter to the committee advising that they would not be adopting the most of its proposals but asked that the committee resubmit a report with new proposals by December 30, 2022.

- The Chicago Bar Foundation and Chicago Bar Association’s joint Task Force on the Sustainable Practice of Law and Innovation proposed a Licensed Paralegal model to provide assistance with routine matters in family law, evictions, and small consumer debt matters under the supervision of an attorney.
- In December 2019, the New Mexico Supreme Court’s Ad Hoc Licensed Legal Technician’s Workgroup released its Innovation to Address the Access to Justice Gap report recommending implementation of a court navigator program and suggested undertaking further study of an SLLP program by monitoring programs in other jurisdictions.⁷⁵
- In December 2020, the New York State Unified Court System’s Commission to Reimagine the Future of New York’s Courts recommended a program to license social workers to provide limited legal services to their clients.⁷⁶
- The Oregon State Bar’s Futures Task Force released an extensive report in June 2017 recommending licensing paraprofessionals to assist the growing number of self-represented litigants there by assisting with forms, providing information and advice, negotiating with another party, and provide emotional and administrative support to a client in court, although they would not be able to represent clients in proceedings or depositions.⁷⁷ In November 2021, the Paraprofessional Licensing Implementation Committee issued a report to the Board of Governors proposing that licensed paraprofessionals be able to provide services in the areas of family law and landlord / tenant

⁷⁴ Gary Blankenship, Board Rejects Special Committee’s ‘Legal Lab’ Recommendation, Florida Bar News, December 7, 2021 at <https://www.floridabar.org/the-florida-bar-news/board-rejects-special-committees-legal-lab-recommendation/>.

⁷⁵ State of New Mexico Innovation to Address the Access to Justice Gap, Report to the New Mexico Supreme Court of the Ad Hoc Licensed Legal Technicians Workgroup (December 2019), <https://cms.nmcourts.gov/uploads/files/News/Report%20to%20Supreme%20Court-Ad%20Hoc%20Licensed%20Legal%20Technicians%20Workgroup.pdf>.

⁷⁶ Regulatory Innovation Working Group of the Commission to Reimagine the Future of New York’s Courts, Report and Recommendations of the Working Group on Regulatory Innovation (December 2020), https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf.

⁷⁷ Oregon State Bar Futures Task Force, Reports and Recommendations of the Regulatory Committee and Innovations Committee (June 2017), https://iaals.du.edu/sites/default/files/documents/publications/or_futures_tf_reports.pdf.

matters. After a public comment period, the Board of Governors accepted the committee's report in April 2022.

- In April 2022, the New Hampshire legislature introduced a bill that would introduce a paraprofessional pilot program.⁷⁸ If the bill is enacted, it would permit paraprofessionals who work under the supervision of a licensed attorney to provide legal services to individuals whose household income is at or below 300% of the Federal Poverty Guidelines. The pilot program would run from January 1, 2023, to January 1, 2025.

VI. Proposed SLLP Program for the District of Columbia

The committee carefully balanced the legal assistance needs of the public, consumer protection, stakeholder and Bar member feedback, impact on regulators and the requirements of SLLP licensure. Its goal was to propose SLLP qualifications to ensure that SLLPs would be capable of delivering high-quality service. However, the experience in Washington State was a cautionary tale not to make the qualifications so onerous and cost-prohibitive that prospective SLLPs would not pursue that career path. The proposed educational, experiential, and regulatory recommendations below were formed with this in mind.

The subgroup also discussed a pilot SLLP program as an alternative option to a standing SLLP program. Upon further contemplation of a pilot program, it is now thought to be inadvisable because prospective SLLPs may not undertake the expense and time to become licensed with the prospect of a definitive sunset date if they know the program may expire later. In contrast, a standing program would give potential candidates a sense of security in taking steps towards licensure. Even with minimal licensing requirements for a pilot program, potential SLLPs who want an assurance of permanency before investing time and money may prefer to wait for a standing program before taking steps to licensure. Some potential candidates may decline to become SLLPs at all. Although a pilot program could operate simultaneously while the study of a standing program continues, the subgroup strongly felt that this would delay the ultimate success of an SLLP program.

Even with the less restrictive qualifications outlined below, estimating the number of licensed SLLPs is a challenging task. However, based on Utah and Arizona's experience a reasonable expectation would be between six to ten admissions per year in the first few years of the program.

A. Practice Areas

The committee carefully reviewed its research and outreach to determine which practice areas in the District of Columbia had high levels of self-represented litigants and where SLLPs could make the most positive impact. The committee proposes a staged implementation of the practice areas below, starting

⁷⁸ H.B. 1343, 2022, Reg. Sess. (N.H.), at <https://legiscan.com/NH/text/HB1343/2022>.

with landlord-tenant law. As data is collected in certain areas, SLLP practice could be expanded into additional areas:

- Housing matters involving security deposit returns, repairs and housing conditions, tenant petitions in administrative hearings, rent control issues, and nonpayment evictions with potential housing code defense;
- Family law matters including divorce / custody and paternity and child support;
- Estate planning and estate administration in probate matters; and
- Practice in Office of Administrative Hearings involving unemployment claims and appeals related to public benefits determinations.

B. Educational Requirements

Minimum educational requirements would be one of three paths.

The first path to satisfy the educational prerequisites would be completion of a Juris Doctor from an ABA-accredited law school.

The second path would be completion of either a two-year associate degree or four-year bachelor degree in any subject, plus completion of an ABA-approved or regionally-accredited paralegal program⁷⁹ that includes specialized practice area training, a course in ethics and professionalism, training on client interviewing and service, and training on when to refer a case to an attorney.

The third path would require completion of an associate's degree or bachelor's degree in Paralegal Education, plus a course in ethics and professionalism, training on client interviewing and service, and training on when to refer a case to an attorney.

The requirement of an associate's or bachelor's degree makes the path to licensure as an SLLP more accessible to individuals. The additional educational requirements ensure that an SLLP would be well-prepared to provide limited legal services to clients.

The training in specialized practice areas for SLLP candidates who do not have a J.D. would ensure that SLLPs understand legal concepts and theories in their chosen area of practice. The committee agreed that skills in client interviewing and service were integral to the service that an SLLP would provide. Additionally, training on when to refer a case to an attorney would not only ensure that SLLPs understood the boundaries of their practice but would also protect clients.

The committee proposes an educational waiver for applicants who in the past 10 years have seven years of full-time substantive experience in their chosen practice area. The committee understands that there might be very knowledgeable and experienced paralegals for whom the waiver could apply.

C. Experiential Requirements

In addition to legal education, substantive law-related experience provides SLLPs with the day-to-day practical legal training that cannot be covered in a classroom. The committee calculated that 1,920 hours (the equivalent of one year) of substantive law-related experience under the supervision of an attorney in each area in which the SLLP seeks to practice should be adequate to provide practical experience while still being attainable by an SLLP. This requirement is similar to the requirements in Arizona and Utah. The committee recommends that the experiential requirement can be fulfilled concurrently with the educational requirements, thus providing an option to fulfil the program requirements more quickly and making the SLLP program more accessible to individuals. Applicants with a J.D. from an ABA-accredited law school would be exempt from the experiential requirements.⁸⁰ The supervising attorney must be a member in good standing of the D.C. Bar and would be subject to the responsibilities of supervisory lawyers in Rule of Professional Conduct 5.1.

D. Testing and CLEs

Testing would ensure that applicants had a baseline of competency in the practice area in which they would like to provide limited legal services. Although the testing could be conducted in a manner similar to the bar exam taken by attorneys, it would be specific to each practice area in which the prospective SLLP is proposing to practice. Like attorneys, SLLP candidates would be required to take an ethics exam and undergo a character and fitness evaluation.

Some jurisdictions, including Arizona and Utah, require SLLPs to complete annual continuing legal education credits (CLE). Those jurisdictions also require attorneys licensed there to complete annual or biennial CLE credits. As such, the committee proposes that SLLPs complete CLE hours consistent with the requirements for D.C. Bar members (if any) and the Rules of Professional Conduct related to competence. At this time, the D.C. Bar does not have an annual CLE requirement for its members, but Rule of Professional Conduct 1.1, comment [6] requires that lawyers “keep abreast of changes in the law and its practice and engage in continuing study and education as may be necessary to maintain competence.” Therefore, although an SLLP may not be required to earn annual CLE credits, they should complete additional education necessary to remain competent. They would also be required to complete

⁸⁰ ABA Standard 303 requires that students satisfactorily complete six academic credit hours of experiential coursework to earn a J.D. See American Bar Association, 2020-2021 Standards and Rules of Procedure for Approval of Law Schools, https://www.americanbar.org/groups/legal_education/resources/standards/.

the D.C. Bar's Mandatory Course on the D.C. Rules of Professional Conduct and D.C. Practice within 12 months of licensure.

E. Scope of Practice

The committee took great care in determining a proposed scope of practice which would fill the gap of unmet legal needs of low- and moderate-income District of Columbia residents and minimize potential consumer confusion.

The committee proposes that SLLPs should be able to assist a client with completing approved forms and obtaining documents to support those clients. However, to provide clients with meaningful support, the role of SLLPs must go beyond providing mere ministerial assistance such as filling out forms without the ability to explain their content. This requires the ability of an SLLP to interview a client to determine the client's needs and goals.

SLLPs should be able to negotiate on behalf of their clients and communicate with other parties or their representatives regarding relevant forms and matters.

Upon completion of the proposed educational, experiential, and testing requirements, SLLPs would be positioned to understand the legal issues and possible remedies for their clients. Therefore, SLLPs should be able to inform, counsel, assist, and advocate for a client in a mediated negotiation.

SLLPs should also be able to explain possible legal rights, remedies, defenses, options, or strategies for routine matters in areas of law in which the SLLP is licensed. Training on when to refer a case to an attorney further protects clients from an SLLP undertaking a matter that is beyond their scope.

The committee also recommends that SLLPs be required to disclose to the public and potential clients their status as licensed nonlawyers and their scope of practice.

VII. Potential Revisions to Rules to Govern SLLPs

The committee proposes that most rule changes would occur in D.C. Court of Appeals Rule 46-Admission, which has a model for SLLPs in existing Rule 46(f) that governs the admission, licensing and scope of practice for Special Legal Consultants (SLCs). This approach would eliminate the need for substantial revisions to all of the rules governing the D.C. Bar, although the addition of cross-references to Rule 46 in some other rules is recommended. Specific revisions to the text of Rule 46 are not proposed at this time. Existing Rule 46 is included at the end of this report for information only.

The committee also recommends revisions to the relevant D.C. Court of Appeals Rules Governing the Bar and the D.C. Bar Bylaws to encompass Specially Licensed Legal Professionals. Specific revisions to existing text are not being proposed at this time, but recommendations are made about where and how

revisions could occur in the Rules. The GLPC is aware that the Bar’s Regulations/Rules/Board Procedures Committee has reviewed the Bar’s bylaws and some of the D.C. Court of Appeals Rules Governing the Bar. Proposed revisions to the bylaws and a proposed D.C. Bar Membership Manual were approved by the Board on April 12, 2022. The GLPC will consult with the Regulations/Rules/Board Procedures Committee about potential rule revisions at an appropriate time in the future, assuming the SLLP proposal is approved.

A. D.C. Court of Appeals Rule 46 – Admission: Proposed New Subsection —Specially Licensed Legal Professionals

1. A New Subsection for SLLPs Would Be Modeled on Existing Rule 46(f) – Special Legal Consultants

The committee proposes a new subsection to Rule 46 that would include the admissions, education, testing, and licensing criteria; regulation; and scope of practice -- what is permitted and what is prohibited -- for SLLPs. The new subsection would be similar in purpose and scope as existing Rule 46(f) -- Special Legal Consultants (“SLCs”; called “foreign legal consultants” in most other jurisdictions) -- which sets out admission, education, and licensing requirements; regulation and the scope of practice for SLCs.

The new subsection for SLLPs would include requirements for the education, education waiver, experiential and supervisory requirements, testing, required test scores, deadlines for testing and license application, and the oath of admission.

2. SLLPs Would Be Subject to the D.C. Rules of Professional Conduct and Discipline by the Court

Like existing Rule 46(f)(7) that encompasses Special Legal Consultants, the new subsection would make an SLLP “subject to the D.C. Rules of Professional Conduct of this jurisdiction to the extent applicable to the legal services authorized under Rule 46(g)” and “subject to censure, suspension, or revocation of his or her license to practice as a [Specially Licensed Legal Professional] by the court . . .”

3. SLLPs Would Meet the Same Character and Fitness Eligibility Requirements as Attorneys

It is also recommended that the new subsection for SLLPs would incorporate by reference existing Rule 46 subsections (g) to (k), with revisions relevant to SLLPs. To avoid long waiting periods which might deter program applicants, the committee proposes that the evaluation be conducted simultaneously with an applicant’s experiential requirement. Existing subsections (g) through (k) cover character and fitness eligibility requirements, the process of a character and fitness hearing by the Committee on Admissions (if necessary), review of a Committee on Admissions report by the D.C. Court of Appeals, and admission

order. The oath of admission for SLCs is in existing subsection (f)(8)(B), and a similar oath of admission for SLLPs is recommended.

4. SLLPs Would Be Affiliates, Not Members of the D.C. Bar

The committee recommends that SLLPs -- like Special Legal Consultants -- be affiliates, not members of the D.C. Bar, and that a new subsection to Rule 46 would be added to that is modeled on existing Rule 46(f)(8)(A) - Affiliation with the District of Columbia Bar. Rule 46(f)(8)(A) states:

A Special Legal Consultant licensed under Rule 46(f) is not a member of the District of Columbia Bar, but a Special Legal Consultant is considered an affiliate of the Bar subject to the same conditions and requirements as are applicable to an active or inactive member of the Bar under the court's Rules Governing the Bar of the District of Columbia, insofar as such conditions and requirements may be consistent with the provisions of Rule 46(f).

As such, SLLPs would be regulated and subject to the same rules "as are applicable to an active or inactive member of the Bar under the Court's Rules Governing the Bar of the District of Columbia, insofar as such conditions and requirements may be consistent with the provisions of Rule 46 (f)."

B. D.C. Court of Appeals Rule 49 - Unauthorized Practice of Law

The committee recommends a new subsection to Rule 49 that would describe SLLPs as "affiliates" -- not "members" -- of the D.C. Bar and would provide cross-references to Rule 46 where the permissible scope of practice would be defined for SLLPs.

The committee also recommends a new subsection to Rule 49 that would set out the notice requirements for SLLPs in their business documents and other forms. An SLLP would be required to disclose their status as licensed nonlawyers and their scope of permissible practice.

C. D.C. Court of Appeals Rules Governing the Bar

1. Periodic Registration of SLLPs and Completion of the Mandatory Course for New Admittees.

The committee recommends that SLLPs would be required to register annually and complete the Mandatory Course on the District of Columbia Rules of Professional Conduct and District of Columbia Practice for new admittees to the D.C. Bar. Revisions are recommended to the relevant D.C. Court of Appeals Rules Governing the Bar, the D.C. Bar bylaws, or the D.C. Bar Membership Manual, as needed.

2. Rule X- (Appendix A) – Rules of Professional Conduct

Because the proposed new subsection of Rule 46 would make SLLPs subject to the D.C. Rules of Professional Conduct to the extent applicable to the legal services authorized under Rule 46, revisions to the Rules of Professional Conduct are not contemplated, with the exception of an addition to Rule of Professional Conduct: Rule 1.0 – Terminology: to include “Specially Licensed Legal Professional.” The definition would indicate that the Rules of Professional Conduct are applicable to SLLPs and the services they provide to the same extent as the rules are applicable to lawyers.

3. Rule XI- Discipline

Amend Rule XI, Section 1(a) to include SLLPs as a class of practitioners that are subject to the disciplinary jurisdiction of the Board on Professional Responsibility and the D.C. Court of Appeals. (Special Legal Consultants are already included in this section). Section 1(a) states:

Section 1. Jurisdiction

(a) *Persons subject to disciplinary jurisdiction.* All members of the District of Columbia Bar, all persons appearing or participating pro hac vice in any proceeding in accordance with Rule 49(c)(1) of the General Rules of this Court, all persons licensed by this Court Special Legal Consultants under Rule 46(c)(4), all new and visiting clinical professors providing services pursuant to Rule 48(c)(4), and all persons who have been suspended or disbarred by this Court are subject to the disciplinary jurisdiction of this Court and its Board on Professional Responsibility (hereinafter referred to as "the Board").

D. D.C. Bar Bylaws and D.C. Bar Membership Manual

1. Dues and Registration; Suspension and Reinstatement

As affiliates, it is recommended that SLLPs would pay the same Bar dues as SLCs, which is the active member rate. SLLPS would also be subject to the same suspension and reinstatement process for SLCs. The GLPC makes this recommendation based on the requirements in Section 3.03 - Special Legal Consultants Category in the D.C. Bar Membership Manual:

Special Legal Consultants licensed by the Court are not members of the Bar but are subject to the same conditions and requirements under the applicable Rules, Bylaws, and Membership Manual as Active members of the Bar.

The GLPC also recommends conforming revisions to any other relevant Bar bylaws and the Bar Membership Manual to encompass dues, registration, suspension and reinstatement of SLLPs.

E. D.C. Bar Services Accessible by SLLPs/Eligibility for Volunteer Service

As licensed, dues-paying individuals who can provide limited legal services to individuals in the District of Columbia and take fees for those services, it is recommended that SLLPs have access to many of the same services and programs offered to D.C. Bar members that assist them in their practices and ensure compliance with the Rules of Professional Conduct. These services would include the Lawyer Assistance Program; the Legal Ethics Program; and the Practice Management Advisory Service.

The committee recommends that SLLPs are able to access other Bar resources in the same way that nonlawyers and non-D.C. Bar members currently do: join Communities and access programming for a fee; and purchase and attend CLE classes. SLLPs would be eligible to apply for appointment to nonlawyer vacancies on the D.C. Bar committees that have nonlawyer positions, and nonlawyer positions on the Board of Governors. SLLPs would be able to provide pro bono service in their licensed area of practice.

F. Other Obligations of SLLPs: IOLTA, Attorney/Client Arbitration Board and Clients' Security Fund

Because SLLPs would take fees from their clients for legal services, SLLPs would be subject to the Rules of Professional Conduct governing IOLTA and operating accounts.

The committee recommends that SLLPs would be subject to the requirements of Rule XIII of the D.C. Court of Appeals that mandates arbitration of fee disputes through the Bar's Attorney/Client Arbitration Board (ACAB) if requested by a client or former client.

An SLLP would also be subject to a claim filed by a former client for payment by the D.C. Clients' Security Fund under Rule XII of the D.C. Court of Appeals.

The committee does not recommend revisions to Rule XIII and XII to include SLLPs. If the proposed revisions to Rule 46 described above (an SLLP is considered an affiliate of the Bar subject to the same conditions and requirements as are applicable to an active or inactive member of the Bar under the Court's Rules Governing the Bar of the District of Columbia), revisions would not be necessary.

G. Attorney/Client Privilege

Other jurisdictions extend application of the attorney/privilege to SLLPs to the same extent as it would apply to attorneys. In Arizona, "A communication between a legal paraprofessional and a client is privileged if it is made for the purpose of securing or giving legal advice, is made in confidence, and is

treated confidentially. This privilege is co-extensive with, and affords the same protection as, the attorney-client privilege.”⁸¹

In Washington state, “The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.”⁸²

In the District of Columbia Superior Court, “The admissibility of evidence and the competency and privileges of witnesses are governed by the principles of the common law as they may be interpreted by the courts in the light of reason and experience, except when a statute or these rules otherwise provide.”⁸³ The committee agrees that the attorney-client privilege should extend to SLLPs and that the same approach and analysis of attorney-client privilege should be applied to SLLPs in that analysis. However, the committee does not propose a specific rule change beyond what might be contained in an order from the D.C. Court of Appeals implementing an SLLP program.

VIII. Conclusion

A Specially Licensed Legal Professional (SLLP) program in the District of Columbia would help fill the gap in legal services available to low- and moderate-income individuals. SLLPs would be able to assist clients with specific tasks in the areas of most community need -- family law, probate matters, housing law, and appeals related to public benefits determinations and unemployment matters.

A robust proposal of education, experience, and testing would ensure basic competency for individuals who wish to pursue an SLLP license as a career path. Applicants with a J.D. and experienced paralegals would be exempt from some requirements.

Regulation and discipline of SLLPs would be similar to that of D.C. Bar members. SLLPs would be required to comply with the Rules of Professional Conduct and other Bar rules. They would be subject to discipline and revocation of their license for violation of the ethics rules. SLLPs would pay Bar dues as

⁸¹ See Ariz. R. Evid. 503 (Adopted August 27, 2020, effective January 25, 2021.) at [https://govt.westlaw.com/azrules/Document/N4E6473D06A0C11EB8D31AA79C4EA0F2B?viewType=FullText&originatio nContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/azrules/Document/N4E6473D06A0C11EB8D31AA79C4EA0F2B?viewType=FullText&originatio nContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

⁸² See also Admission and Practice Rules (APR) 28 LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS (K)(3): “The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.”

⁸³ See D.C. Superior Court Rules of Civil Procedure, Rule 43. Evidence, at <https://www.dccourts.gov/sites/default/files/2017-05/Civil%20Rule%2043.%20Evidence.pdf>.

affiliates of the Bar. They would have access to Bar resources and be eligible to participate in the volunteer work and leadership of the Bar.