

**ISSUES COMMITTEE
SUBCOMMITTEE TO STUDY REGULATORY CHANGE**

North Carolina State Bar

Zoom Conference Call

July 27, 2021

2:00pm to 4:00pm

Ethics Act Statement

It is the duty of Committee members to avoid conflicts of interest and appearances of conflicts of interest in performing the duties as a member of the Committee to Study Regulatory Change and the North Carolina State Bar. Any member of the Committee who is aware of any personal conflicts or appearances thereof with respect to the matters before this Committee should disclose those at the meeting.

Agenda

- I. Welcome
- II. Approval of June 23, 2021 Minutes
- III. Update: Regulatory Change in Other Jurisdictions
 - a. Florida
 - b. Washington
- IV. Recap of July 2021 State Bar Quarterly Meeting
- V. Discussion and Development of Recommendation(s)
 - a. Liberalization of the Unauthorized Practice of Law
 - i. Statutory overview; potential amendments
 - b. Alternative Business Structures
 - c. Fee Sharing with Nonlawyers
 - d. Alternative Admission to the Bar
- VI. Discussion of Additional Ideas from the Issues Committee
 - a. Utilizing law students and/or law school clinics to provide needed services
 - b. Pursuing change to General Rules of Practice to require judges to allow withdrawal
- VII. Adjourn

**Minutes of the Meeting of the Subcommittee to Study Regulatory Change
June 23, 2021**

The Issues Committee's Subcommittee to Study Regulatory Change met by Zoom videoconference on June 23, 2021. Mark Henriques, the chair of the subcommittee, presided. The following members of the subcommittee were present: A. Todd Brown; Ashley Campbell; Warren Hodges; Jeff Kelly; S.M. Kernodle-Hodges; Joshua Malcolm; Dewitt "Mac" McCarley; Alicia Mitchell-Mercer; Stephen Robertson; Camille Stell. The following State Bar officers were also present: State Bar President Barbara Christy; State Bar Past President Colon Willoughby; and State Bar Vice President Marci Armstrong. The following guests were also present: Mary Irvine, Executive Director of NC IOLTA. The following members of the staff were in attendance: Alice Neece Mine, executive director; and Brian Oten, ethics counsel and director of special programs. Mr. Oten prepared these minutes.

At approximately 2:00pm, Mr. Henriques called the meeting to order. He advised the members of the subcommittee of their responsibilities under the State Government Ethics Act. No conflicts or potential conflicts of interest were noted.

The first order of business was the review and approval of the minutes from the subcommittee's prior meeting on May 26, 2021. Upon motion duly made and seconded, those minutes were approved.

Mr. Henriques then focused the subcommittee's discussion on the consensus previously expressed by the subcommittee to recommend the State Bar's continued pursuit and potential creation of a limited license for nonlawyers. At Mr. Henriques's request, Mr. Oten explained the contents of the meeting agenda, noting the summary of regulatory change ideas (as previously requested by the subcommittee) and the comparison chart of active limited license programs in the United States. Mr. Henriques stated his intention to report the subcommittee's recommendation to continue exploration of a limited license to the Issues Committee at the July 2021 meeting.

Mr. Henriques then opened the matter up to the subcommittee for discussion. Mr. McCarley expressed the desire for the recommendation to articulate why the subcommittee reached this conclusion in favor of a limited license, and to identify a few key characteristics of the recommended license (including whether the license would be limited to certain areas of practice, whether the license would need to be supervised by an lawyer, etc.). Mr. Willoughby agreed, noting the importance of tying the discussion on areas of practice for the limited license to areas of need as determined in the various reports studied by the subcommittee. Mr. Hodges suggested the subcommittee be prepared to respond to the idea that the subcommittee's recommendation may be assigned to a new group of individuals to carry out the recommendation. Ms. Campbell stated her agreement with the recommendation for a limited license, noting the clear evidence that the legal profession is not meeting the needs of the public, that the failure to meet those needs should be unacceptable to lawyers, and that lawyers need to provide leadership in these efforts to create more opportunities for members of the public to obtain the legal services they require. The subcommittee expressed their agreement with Ms. Campbell.

Mr. Henriques then asked the subcommittee if the limited license should be restricted to certain areas. The subcommittee agreed that it should. The subcommittee discussed the issue of limiting the scope of the license not just to a particular practice area, but to specific tasks within that practice area. Using family law as an example, the subcommittee discussed the potential problems in permitting license holders to practice all family law matters, as well as the concerns with making the license so restricted as to render it ineffective. The subcommittee agreed that the authorization to practice in a particular area of law likely would need to have some restrictions, but that subject matter experts from each practice area would need to weigh in (perhaps through working groups) when determining what tasks within a practice area would be appropriate for the limited license and what tasks must be included in the limited license to address the unmet legal needs experienced by the public.

The subcommittee also briefly discussed whether holders of a limited license should be required to be supervised by lawyers. The subcommittee generally agreed that requiring supervision of a lawyer would render the limited license less effective.

Mr. Henriques next asked the subcommittee for feedback on what areas of law the license should be permitted to practice, understanding that the license would likely be limited to certain tasks within the practice area as determined by a subsequent working group of subject matter experts. The subcommittee looked to the Legal Needs Assessment, recently published by the Equal Access to Justice Commission, for guidance on what areas of law are most needed by the public; any recommendation that the limited license be authorized to practice in a particular practice area would be based on the findings of the Legal Needs Assessment. Mr. Henriques then asked subcommittee members to vote on whether the different areas of law identified in the Legal Needs Assessment should be included in the scope of the proposed limited license. The areas of law discussed and voted upon, including the results of the vote, are as follows:

- Family law – should be included in the limited license (unanimous)
- Landlord/tenant – should be included in the limited license (unanimous)
- Housing/homeowner issues – should be included in the limited license (split vote; 11-1)
- Immigration – should be included in the limited license (split vote; 8-5)
 - The subcommittee questioned whether immigration matters should be included, as well as whether the limited license would actually authorize practice in this area of federal law. The subcommittee’s vote in favor of inclusion remains, but a subsequent working group should explore this issue further.
- Elder law – should be included in the limited license (split vote; 8-3)
- Healthcare – should be included in the limited license (split vote; 9-2)
- Income maintenance – should be included in the limited license (split vote; 9-3)
- Consumer rights – should be included in the limited license (split vote; 8-4)
- Employment legal services – should be included in the limited license (split vote; 7-5)
- Civil rights/discrimination – should not be included in the limited license (even split; 6-6)
- Veteran/military benefits – should be included in the limited license (split vote; 9-3)

The subcommittee discussed whether the recommendation should include all of the practice areas listed above or whether the recommendation should be limited to the top areas of legal need. Some subcommittee members explained their votes against the inclusion of certain practice areas were

based upon the concern that such a broad scope for the limited license, at least at the outset of the proposal/program, might receive significant pushback. Mr. Henriques clarified that the subcommittees' votes reflected a recommendation that the area of law should be considered for inclusion in the limited license, but that subsequent working groups tasked with exploring implementation of the license in a particular practice area may conclude that the area of law was not a good fit for the limited license role.

The subcommittee next discussed whether there should be an expiration date associated with the limited license (e.g., a "pilot program" for the limited license) as opposed to making the limited license a presumably permanent change to legal services in North Carolina. After discussion, the subcommittee agreed that an expiration/pilot program approach would be problematic in terms of generating interest in the license and affording sufficient time for administrative and educational structures to accommodate the new license. The subcommittee agreed that the limited license should not have a fixed expiration date.

Mr. Henriques then asked Mr. Oten to inform the subcommittee about any statutory concerns or considerations in pursuing the limited license for nonlawyers. Mr. Oten explained that the primary statutory amendment needed to permit the limited license was an amendment to N.C. Gen. Stat. 84-4, which states that only licensed lawyers are permitted to engage in the practice of law. Mr. Oten explained that the definition of the practice of law did not need to be amended to permit a limited license, but that holders of the limited license needed to be added to lawyers as those authorized to provide legal services. Mr. Oten also noted various statutory considerations that would need to be further explored, including incorporating limited license holders into the disciplinary jurisdiction of the State Bar and general governance of the State Bar Council. Mr. Oten also stated that the issue of who/what entity issues the license could have significant implications on the State Bar, primarily by turning the State Bar into an occupational licensing board should the State Bar be tasked with issuing the limited license. Mr. Oten explained that the State Bar currently is not an occupational licensing board because the Board of Law Examiners licenses lawyers, and that additional discussion was needed as to whether the BOLE should be involved in issuing the proposed limited license.

Mr. Henriques then turned the subcommittee's discussion to court navigators and document preparers. Mr. Oten reviewed the concepts of both ideas/initiatives, and the subcommittee generally agreed that document preparation would likely be incorporated into the limited license proposal. Mr. Oten noted that Arizona's document preparer program preceded their legal paraprofessional program, and that while the document preparer program remained in place, there was substantial overlap between the two programs. The subcommittee discussed whether it was worth exploring a stand-alone document preparer program, with Mr. Kelly noting the statutory authorization for certain online document preparation activity. The subcommittee agreed to continue discussing the idea at a later meeting.

The subcommittee also discussed court navigators. Mr. Oten noted that the program (if modeled after the program in New York City) would not require a statutory amendment because court navigators did not practice law, but would require authorization and funding (for training and/or payment) from the court system. The subcommittee recognized that a court navigator program would not be something the State Bar could implement, but that a recommendation to explore

creating such a program could be valuable. The subcommittee discussed various self-help initiatives in the state. Mr. Willoughby spoke to the positive impact a court navigator program could have on the administration of justice. Ms. Mitchell-Mercer commented on the value of having a physical person in the courthouse to speak with, if not sit with a litigant during a pro se proceeding. The subcommittee generally expressed their agreement with recommending to the court system the creation of a court navigator program. Mr. Henriques then asked subcommittee members to vote on whether to recommend the creation of a court navigator program. The subcommittee voted unanimously in favor of the recommendation.

There being no further business to come before the subcommittee, the meeting was adjourned at approximately 4:00pm.

Brian Oten, Subcommittee Staff Counsel

Florida Joins States in Testing Law Firm Ownership Models (1)

By Sam Skolnik

June 29, 2021, 3:44 PM; Updated: June 29, 2021, 5:40 PM

- Florida panel pushing reforms to stem access to justice gap
 - Florida experiment would be modeled after Utah program
-

Florida plans to test new law firm ownership models, boosting competition among a handful of states that are racing to make legal systems more cost efficient and accessible to consumers.

Florida's test, which is still in the early stages of development, would "eliminate the current restriction that limits a lawyer's ability to decide with whom the lawyer associates," a report from a Florida Supreme Court committee said. Firms, however, wouldn't be required to offer non-lawyers an equity interest.

The Law Practice Innovation Laboratory Program, as the Florida committee calls the effort, was approved "in concept only," the report said. The committee needs to set up details of how the experiment will work, and it's unclear from the report when that will be.

The move adds national momentum to the push to enact regulatory reforms that promote access to justice and technological and business innovations to the long-stodgy legal industry. Utah, British Columbia, and Ontario are currently operating their own regulatory tests, and California is weighing a similar program.

Several other states, such as New York, Illinois, and North Carolina, are debating regulatory reforms that could include experiments.

“States cannot afford a wait-and-see approach, and we appreciate Florida taking action now,” said Zack DeMeola of the Institute for the Advancement of the American Legal System. The institute, founded in 2006 at the University of Denver, advocates changes designed to fix legal system flaws.

The Florida Supreme Court in late 2019 requested the creation of the Special Committee to Improve the Delivery of Legal Services. The committee said Florida’s test—similar to what other states call a regulatory sandbox—would in many ways model itself after Utah’s program.

That Utah sandbox—the first of its type in the country—has approved almost 30 participants so far, ranging from Rocket Lawyer, a company of more than 250 employees, to much smaller operations like Xira Connect, a software-based platform that links legal consumers with Utah attorneys and state-licensed paralegal practitioners.

Like Utah, the Florida Lab would collect data on non-traditional legal services providers as the program goes forward to determine which types of models work—and to make sure each company is safe for legal consumers to use.

The committee, however, said its test would let non-lawyers have only non-controlling equity interests in firms. That is similar to a rule in Washington, D.C. The Florida Lab also would mandate that non-lawyers in new entities “actively support the work of the law firm.”

Florida’s changes “are more modest than what we believe is needed to fully address the current crisis in access to legal services,” said DeMeola who is director of legal education and the legal profession at the Denver-based institute.

Still, he added, “We are encouraged by the Committee’s emphasis on the critical need for change, the recognition that states must be open to new ideas, and the recommendation of a Utah-style regulatory sandbox for data-driven policy making.”

California also is at the early stages of setting up a possible new regulatory sandbox, while Arizona went a step further in its reform efforts by getting rid of its Ethics Rule 5.4, which used to prevent legal services operations in that state from being owned or co-owned by nonlawyers.

(New information from the Florida report has been added to this story version, which also now includes a new quote at the bottom of the

story.)

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Documents

[Florida sandbox final report](#)

Related Articles

[Law Firm Deregulation Programs Gain Speed in Utah, Arizona \(1\)](#) May 25, 2021, 1:45 PM

[N.Y., Others Mull Moves to Allow Companies to Co-Own Law Firms](#) Nov. 23, 2020, 4:45 PM

[Florida Newest State Aiming to Boost Access to Legal Services](#) May 26, 2020, 4:50 AM

Topics

state banking legislation
cyberlaw legislation
access to justice
regulatory sandboxes
regulatory process reform
alternative legal services
legal operations

**FINAL REPORT OF THE
SPECIAL COMMITTEE TO IMPROVE THE DELIVERY OF LEGAL SERVICES**

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June 28, 2021

I. Introduction

On November 6, 2019, the Supreme Court of Florida (the Court) sent a letter to John Stewart, then president of The Florida Bar, requesting that a study be conducted “into whether and how the rules governing the practice of law in Florida may be revised to improve the delivery of legal services to Florida’s consumers and to assure Florida lawyers play a proper and prominent role in the provision of these services.” (A copy of the referenced is attached in Appendix A.) The Court requested that the study address:

Lawyer Advertising

Referral Fees

Fee Splitting

Entity Regulation

Regulation of Online Service Providers

Regulation of Nonlawyer Providers of Limited Legal Services

Additional Topics Consistent with the Subject of the Study

Pursuant to the Court’s directive, the Special Committee to Improve the Delivery of Legal Services (the Committee) was appointed. The composition of the Committee is diverse in practice area, firm size, geography, gender and ethnicity and includes a member of the public considered an expert in artificial intelligence and other areas of technology. Because of the variety of issues involved, the Committee divided into subcommittees as follows:

Review of Rule 4-5.4 Professional Independence of a Lawyer and accompanying ethics opinions

Review of pertinent advertising rules as found in Chapter 4-7 of the Rules Regulating The Florida Bar

Review of Rule 4-7.17 relating to payment of referral to persons other than lawyers (including related rules and ethics opinions)

Review of Lawyer Referral services including Rule 4-7.22 (For Profit) and Chapter 8 (Not-for-Profit) and related rules and ethics opinions

Review of regulatory framework including entity regulation, regulatory sandbox and related concepts

Member and public engagement and data collection and review

Review of Advanced Florida Registered Paralegal Proposal

The Committee met a total of 16 times. The subcommittees met a total of 45 times with some subcommittees meeting more often than others.

The Committee reviewed hundreds of pages of reports¹ and had discussions with the following individuals who have studied the issues before the Committee:

Justice Deno Himonas, Utah Supreme Court (the Committee heard from Justice Himonas two times)

Andrew Arruda, member of the California Task Force on Access Through Innovation of Legal Services

Crispin Passmore, Passmore Consulting, United Kingdom (the Committee heard from Crispin Passmore two times)

Vice Chief Justice Ann A. Scott Timmer, Arizona Supreme Court

John Lund, Chair of the Utah Office of Legal Services Innovation, past-president of the Utah Bar

In addition, the subcommittee studying public engagement and data collection had a conversation with Lawrence Alexander, Chair of the Access to Justice Service Innovation Lab of the Law Society of British Columbia. Mr. Alexander's presentation was made available to the Committee.

The input from these individuals was invaluable. They were able to provide insight into the thoughts and work of their committees/jurisdictions, interactions with their courts, and with members of their bars.

The Committee also heard from Mark Gold, a member of The Florida Bar, and reviewed the results from the 2021 Florida Bar Member Survey and the Florida Bar Survey of Florida Registered Paralegals.

II. The Court's Constitutional Authority

As the work of the Committee includes studying the provision of legal services by those not admitted to the practice of law, the Committee considered the ability of the Court to regulate such services. The questions addressed were the Court's regulatory authority in such instances. The Court has dealt with these issues on several occasions although the approach has varied. The Committee concluded that because the Court has the exclusive jurisdiction to admit persons to the practice of law, the Court can admit/authorize anyone to practice law and, once admitted, can regulate their conduct.

As noted in the Court's November 6, 2019 letter, Article V, section 15 of the Florida Constitution gives "[t]he supreme court . . . exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." Even though the Florida Constitution gives the Court this exclusive jurisdiction, the Constitution does not dictate how the Court must regulate the admission of persons to the practice of law or how the Court may discipline persons admitted. While most individuals are admitted via The Florida Bar examination, that is not the sole process.²

¹ The reports can be found under Background Materials on the Committee's webpage on The Florida Bar's website at <https://www.floridabar.org/about/cmtes/cmtes-me/special-committee-to-improve-the-delivery-of-legal-services/>. The agendas and minutes can be found at that link as well.

² See Rules of the Supreme Court Relating to Admission to the Bar

For example, chapter 17 of the Rules Regulating The Florida Bar admits out-of-state lawyers to the practice of law for the limited purpose of acting as in-house counsel for a corporation located in Florida. Those lawyers may be admitted without having to successfully complete The Florida Bar examination. There are many other examples where through the Rules Regulating The Florida Bar, the Court has admitted individuals to the practice of law.³ Although the rules do not speak in terms of admission, that is what the rules are doing – admitting someone to practice law in Florida by authorizing the practice in one or more areas.

In addition to the rules that admit/authorize an individual to practice law, case law has also authorized the practice of law. The Court can either authorize anyone to engage in an activity or can authorize only specific individuals to engage in an activity. For example, the Court has authorized anyone to complete a legal form with information provided by the individual who will be using the form in a court proceeding.⁴ However, only certain individuals not admitted to the practice of law may draft and file a complaint for residential eviction for nonpayment of rent.⁵ Similarly, case law authorizes a real estate licensee to prepare the documents necessary to bring together the buyer and seller including the contract for sale.⁶ Alternatively, anyone who is not a real estate licensee who prepares a contract for sale is not admitted to the practice of law for that purpose and can be prosecuted for the unlicensed practice of law.⁷

Once someone is admitted or authorized to practice law in Florida, the Court can regulate that practice. This extends to anyone admitted to practice. As held by the Court, in addition to acting in a judicial capacity, the Court also “acts in its administrative capacity as chief policy maker, regulating the administration of the court system and supervising *all persons* who are engaged in rendering legal advice to members of the general public.”⁸ Part of this grant of constitutional authority and supervision is the authority to establish rules, regulations, and the parameters of practice that, if violated, will result in discipline.

There are many examples of the Court establishing rules, regulations, and parameters under which a person may practice law, the most obvious being the Rules of Professional Conduct.⁹ For example, Chapter 17, which governs the admission of out-of-state lawyers to act as in-house counsel to Florida corporations, limits permissible activities to giving advice and providing services only to the corporation.¹⁰ The lawyer is

³ Chapter 11 – Certified Legal Intern Program
Chapter 12 – Emeritus Lawyer Rule
Chapter 16 – Foreign Legal Consultants
Chapter 18 – Military Legal Assistance Counsel
Chapter 21 – Military Spouse
Rule 4-5.5 – Multijurisdictional Practice of Law

⁴ *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978); R. Regulating Fla. Bar 10-2.2.

⁵ *The Fla. Bar re: Advisory Opinion Nonlawyer Preparation of Landlord Uncontested Evictions*, 605 So. 2d 868 (Fla. 1992), *clarified*, 627 So. 2d 485 (Fla. 1993).

⁶ *Keyes Co. v. Dade County Bar Association*, 46 So. 2d 605 (Fla. 1950).

⁷ *The Florida Bar v. Arango*, 461 So. 2d 932 (Fla. 1984).

⁸ *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978) (emphasis supplied).

⁹ R. Regulating Fla. Bar; Cp. 4 Rules of Professional Conduct.

¹⁰ R. Regulating Fla. Bar 17-1.3(a).

not considered a member of The Florida Bar; however, the lawyer may be subject to discipline or sanctions if the lawyer engages in unethical conduct or provides services other than those allowed by the rule.¹¹

Case law also provides examples of when the Court has regulated the conduct of individuals authorized or admitted to the practice of law. For example, in a case involving an out-of-state lawyer who was authorized through Federal statutes and regulations to practice tax law in Florida, the Court regulated how he could practice, including how he could advertise his services in Florida.¹² The Court has also established guidelines under which an interstate law firm may practice law in Florida, thereby regulating the conduct of all lawyers who are part of the firm.¹³

In sum, what the rules and case law show is that once an individual is admitted to the practice of law in Florida, the Court can regulate that individual's activities as they relate to the practice of law. After reviewing the case law and rules, the Committee concluded that the Court's constitutional authority to regulate the admission of persons to the practice of law and the discipline of persons who are admitted allows the Court to admit or authorize anyone to the practice of law and, once admitted, regulate the admittee's conduct.

III. Summary of Committee's Findings and Recommendations

Introduction

In 2014, the American Bar Association (ABA) commissioned a study on the future of legal services in the United States. The report begins with several observations which are still relevant today.

Access to affordable legal services is critical in a society that depends on the rule of law. Yet legal services are growing more expensive, time-consuming, and complex, making them increasingly out of reach for most Americans. Many who need legal advice cannot afford to hire a lawyer and are forced to either represent themselves or avoid accessing the legal system altogether. Even those who can afford a lawyer often do not use one because they do not recognize that their problems have a legal dimension or because they prefer less expensive alternatives. For those whose legal problems require use of the courts but who cannot afford a lawyer, the persistent and deepening underfunding of the court systems further aggravates the access to justice crisis, as court programs designed to assist these individuals are being cut or not implemented in the first place.

At the same time, technology, globalization, and other forces continue to transform how, why, and by whom legal services are accessed and delivered. Familiar and traditional practice structures are giving way in a marketplace that continues to evolve. New providers are emerging, online and offline, to offer a range of services in dramatically different ways. The legal profession, as the steward of the justice

¹¹ R. Regulating Fla. Bar 17-1.6.

¹² *The Florida Bar v. Kaiser*, 397 So. 2d 1132 (Fla. 1981).

¹³ *The Florida Bar v. Savitt*, 363 So. 2d 559 (Fla. 1978).

system, has reached an inflection point. Without significant change, the profession cannot ensure that the justice system serves everyone and that the rule of law is preserved. Innovation, and even unconventional thinking, is required. The justice system is overdue for fresh thinking about formidable challenges. The legal profession's efforts to address those challenges have been hindered by resistance to technological changes and other innovations. Now is the time to rethink how the courts and the profession serve the public. The profession must continue to seek adequate funding for core functions of the justice system. The courts must be modernized to ensure easier access. The profession must leverage technology and other innovations to meet the public's legal needs, especially for the underserved. The profession must embrace the idea that, in many circumstances, people other than lawyers can and do help to improve how legal services are delivered and accessed.¹⁴

Since the ABA report was issued in 2016, the legal marketplace has continued to evolve with little changes being made to how legal services are delivered in the United States. This started to change in 2019 and 2020 when various jurisdictions began studying how legal services are delivered and whether the delivery of legal services could, and should, change to provide greater access. Utah and Arizona led this charge with California, Illinois and New York close behind. Florida joined these jurisdictions in 2020 when the Court requested this study. The work of these jurisdictions, as well as reforms in other countries, helped guide the Committee. While the reforms may have been the starting point, the Committee reviewed the studies considering Florida's rules and legal marketplace. The recommendations in this report take all of this into account.

While the report contains several recommendations, the Committee is not recommending any rule changes at this time. Instead, the Committee took final action on certain items and voted to approve other items in concept.

Final Action Taken:

1. The Committee voted to recommend to The Florida Bar that The Florida Bar promote a better understanding of Rule 4-1.2(c) of the Rules Regulating The Florida Bar. This rule allows lawyers to limit the scope of their representation and provide unbundled legal services. As noted in the comment to the rule, “[a] limited representation may be appropriate because the client has limited objectives for the representation” or because the client may wish to “exclude actions that the client thinks are too costly . . . or which the client regards as financially impractical.”¹⁵ Although this option is available to both the lawyer and the client, it is being underutilized. Providing education in this area will help lawyers understand the rule. With better understanding, the rule may be utilized more with clients reaping the benefits.
2. The Committee voted that the Court should establish a regulatory sandbox where the recommendations approved in concept may be tested and appropriate data

¹⁴ American Bar Association Report on the Future of Legal Services in the United States, American Bar Association Commission on the Future of Legal Services (2016) at pgs. 8 – 9 *available at* https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf

¹⁵ R. Regulating Fla. Bar 4-1.2(c).

collected. The regulatory sandbox will be referred to in this report as the Law Practice Innovation Laboratory Program or the Lab. Although the Committee voted that the Lab be established, the format was approved in concept only. The Lab is discussed in more detail in section IV of this report.

3. The Committee agreed with the subcommittee report that Chapter 8 - Lawyer Referral Rule should not be amended.

4. The Committee agreed with the subcommittee report that rule 4-7.17 - Payment for Advertising and Promotion and rule 4-7.22 - Referrals, Directories and Pooled Advertising should not be amended at this time. Should changes be made to rule 4-5.4 and the advertising rules, these rules may have to be revisited.

Approved in Concept:

1. Rule 4-5.4, Fee Splitting and Law Firm Ownership

Rule 4-5.4 prohibits a lawyer from sharing legal fees with a nonlawyer and prohibits a lawyer from forming “a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.”¹⁶ Florida first adopted a rule prohibiting fee sharing and entering into a partnership with a nonlawyer in 1955. Florida's current rule is based on the American Bar Association (ABA) Model Rule which was promulgated in 1969.¹⁷ For over a decade, the ABA and several states, including Florida, debated whether the rule should be relaxed.¹⁸ Until recently, the answer has been no.¹⁹ Now, states are taking a fresh look at the rule and its prohibitions and are making changes.

The change is being driven in part to increase innovation in how legal services are provided with the hope of addressing unmet legal needs in the United States. Although the United States has one of the highest concentrations of lawyers in the world, the United States “ranks just 109 out of 128 countries in access to justice and affordability of civil legal services, below Zambia, Nicaragua, and Afghanistan. Two-thirds of American adults reported having a civil legal problem in [2019 – 2020], but only one-third of those received any help. . . Small businesses have significant legal issues as well, and yet 60% of small business owners who have at least one such issue– which they describe as one of the ‘greatest threats to their business’ – do not have a lawyer to assist them.”²⁰ Unfortunately, “[l]egal aid and pro bono alone

¹⁶ R. Regulating Fla. Bar 4-5.4,

¹⁷ Alternative Law Business Structures ABA Issue Paper (April 5, 2011) available at http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/abs_issues_paper.authcheckdam.pdf

¹⁸ Ann Marie Puente, *Modern Complexity Demands New Ways of Working: The Future of the Lawyer-Nonlawyer Partnership*, 95 Fla. B. J. 34 (May/June 2021) available at <https://www.floridabar.org/the-florida-bar-journal/new-ways-of-working-the-future-of-the-lawyer-nonlawyer-partnership/>

¹⁹ *Id.*

²⁰ Jason Solomon, Deborah Rhode & Annie Wanless, *How Reforming Rule 5.4 Would Benefit Lawyers and Consumers, Promote Innovation, and Increase Access to Justice*, Stanford Center on the Legal Profession, April 2020 at 1, available at https://www-cdn.law.stanford.edu/wp-content/uploads/2020/04/Rule_5.4_Whitepaper_-_Final.pdf

cannot solve the problem. Providing even one hour of attorney time to everyone in the United States with a legal problem would cost around \$40 billion, but total expenditures on legal aid . . . are just 3.5% of that amount. Providing one hour of pro bono per justice problem would require over 200 hours of pro bono work per attorney per year, but the average pro bono hours worked per attorney is only 42.8.”²¹ Jurisdictions are now realizing that changes to how lawyers may form firms to practice law can help solve the problem.

While “the environment in which legal services are provided has been rapidly changing,”²² “law firms suffer from a lack of innovation in marketing, finance systems, project management, and more” because law firms cannot offer equity to nonlawyers.²³ This prohibition is seen as “a major contributing factor to America’s access to justice problem” because “prohibiting investment from non-lawyers leaves law firms strapped for capital [and] . . . makes it harder for law firms to keep up with modern innovations in business practices. Firms cannot form cost-effective multidisciplinary practices with other service providers, and few have incentive to invest in technology and business processes. Consumers today expect seamless, integrated services, and Rule 5.4 prevents lawyers from meeting the needs of their clientele.”²⁴ The prohibition also impedes a lawyer’s ability to practice law. Instead of using the skills learned in law school and focusing on the practice of law, “[t]he ban on nonlawyer ownership means lawyers — who receive no training on how best to manage a business during their three years in law school — are expected to run businesses” spending “only 2.5 hours of billable time per 8 hour work day.”²⁵ “Many jurisdictions and entities have recognized that changing the prohibition on non-lawyer ownership may create strong, more stable law firms, as well as free up lawyers to focus more on legal practice” which they are trained to do.²⁶

“Jurisdictions [outside of the United States] that have eliminated regulations similar to Rule [4-5.4] . . . demonstrate that involvement of non-lawyers fuels innovation without compromising legal services. . . . [C]omparative research finds no evidence that [alternative business] models result in adverse effects on consumers. Rather, they allow for increased choice and competition, improved services to consumers, reduced prices, and increased innovation in the provision of legal services.”²⁷ Perhaps most telling of the success of relaxing or eliminating the prohibitions

²¹ *Id.*

²² *See* Court Letter at Appendix A.

²³ Solomon, *supra* note 20 at 5.

²⁴ *Id.* at 2 & 3.

²⁵ *Id.* at p. 5.

²⁶ *Id.* at 8.

²⁷ *Id.*

against nonlawyer ownership and fee sharing is the fact that “[t]o date, no jurisdiction that eliminated its prohibition . . . has reinstated it.”²⁸

It is against this environment and research that Arizona and Utah amended their rules in 2020 to eliminate the prohibitions of rule 4-5.4. Arizona eliminated their rule in its entirety.²⁹ Utah took a different approach by creating a regulatory sandbox where relaxation or elimination of the prohibition can be tested in a controlled environment.³⁰ The Committee is suggesting that Florida take the route taken by Utah and has unanimously voted to approve in concept the following recommendations of the subcommittee studying rule 4-5.4:

Amend Rule 4-5.4 to permit nonlawyers to have a non-controlling equity interest in law firms with restrictions.

The approved concept, similar to the Washington D.C. rule, allows for nonlawyers to have a non-controlling equity interest in a law firm with restrictions. Specifically, the work of the nonlawyer must actively support the work of the law firm. For example, a nurse who analyzes medical records for a personal injury firm could have a non-controlling equity interest in the law firm. The lawyers in the firm must retain a controlling interest in the firm (e.g., the aggregate nonlawyer equity interest should be less than 50%). The lawyers would remain responsible for the actions of the nonlawyers, and the nonlawyers must agree to comply with the Rules of Professional Conduct. Additional amendments to the rule make it clear that none of the recommended changes would impact the lawyer’s ethical obligation to exercise independent professional judgment.

Nothing in the rule or concept would *require* a law firm to offer an equity interest to any nonlawyers. To the contrary, if implemented, the Committee’s approved concept would operate to eliminate the current restriction that limits a lawyer’s ability to decide with whom the lawyer associates.

The Special Committee explicitly voted that professional rules should not be amended to permit passive ownership of law firms.

Passive ownership would allow outside investors with no relationship to the law firm or the practice of law to have an ownership interest in a law firm. Although the subcommittee felt that there could be some benefit to consumers if passive ownership were allowed, the subcommittee was concerned with the risk of conflicts of interest and a possible impact on the lawyer’s independent professional judgment. While passive ownership could allow for more ambitious ventures between law firms and technology companies, the other changes being proposed regarding fee splitting may also achieve the same goals but with fewer risks. If passive ownership were to be explored, it should

²⁸ *Id.*

²⁹ *In the Matter of Restyle and Amend Rules 31, 41, 42 (Various ERs from 1.0 to 5.7), 46-51, 54-58, 60 and 75 – 76*, Case No. R-20-0034 (AZ. Aug. 27, 2020) available at <https://www-media.floridabar.org/uploads/2020/08/AZ-order-amending-ad-rules.pdf>

³⁰ Utah Supreme Court Standing Order No. 15 (2020), *amended*, (April 30, 2021) available at <https://www-media.floridabar.org/uploads/2021/06/Utah-Supreme-Court-Amended-Order-15-re-Sandbox.pdf>

be done in the context of the proposed Law Practice Innovation Laboratory Program so that safeguards can be put in place and data collected.

Within the Law Practice Innovation Laboratory Program eliminate the restriction on fee sharing with nonlawyers under Rule 4-5.4.

The subcommittee concluded that there are benefits to allowing fee sharing with nonlawyers. The benefits include opening up new ways that lawyers can work with technology companies or other nonlawyer companies and individuals to provide more innovative ways to deliver services, and in some cases, provide consumers with more information useful to the selection of legal counsel. An innovation that is hindered by the current rule could include an arrangement between a technology company and law firm to streamline referrals, the engagement process, or case flow for situations where the client wants extra help. By not allowing a revenue share between others and the law firm, these types of relationships are inhibited.

The subcommittee considered several different approaches to allow fee splitting while protecting the core values of the legal profession. One would be to retain the idea of registered online providers pending before the Court as the Chapter 23 amendment to the Rules Regulating the Florida Bar but eliminate restrictions on how the fee is calculated.³¹ Similarly, a distinction can be made between a true referral service and one that makes referrals ancillary to providing a product or service to consumers, such as forms preparation. Another approach is to only eliminate some restrictions on how a fee is calculated, not all. For example, fee sharing could be allowed on a per engagement basis but not on the value of a potential case. Also considered was whether to maintain the current restrictions on some types of cases but not others.

Rather than attempting to determine the best approach in a vacuum, perhaps the best approach is to eliminate or modify the fee sharing restrictions, but only as part of a pilot program or Law Practice Innovation Laboratory Program. This would allow the Court and The Florida Bar the flexibility to respond to issues and concerns that arise during the pilot program and to collect data around these types of relationships. A pilot or lab program also permits the drafting of a final regulatory scheme based on empirical data rather than anecdotal observations and conjecture.

Depending on the approach taken, other rules may have to be amended including,, but not necessarily limited to Rule 4-7.17 on referral fees and Rule 4-7.22 regarding referral services. Specific rule language was not approved.

Amend the rules to allow for not-for-profit law firms.

Also approved in concept is amending the rules to permit not-for-profit legal service providers to organize as a corporation and to permit nonlawyers to serve on the not-for-

³¹ *In Re: Amendments to Rules Regulating The Florida Bar – Chapter 23 Registered Online Service Provider Program*, SC19-2077 (Dec. 2019). On November 3, 2020, the Court entered an order deferring consideration of this petition until after the Court receives the Committee's final report. Other than the discussion noted here, the Committee did not discuss Chapter 23 or take any action on Chapter 23. Whether the petition needs consideration and action will depend on how the Court views the recommendations made in this report.

profit legal service provider's board of directors. This conforms the rules to current practice. The amendments include a definition of a not-for-profit law firm.

Not-for-profit law firms play a vital role in Florida's legal landscape as the only place for low income people to receive civil legal assistance. Adopting a rule change to explicitly authorize their charitable corporate structure and incorporate the federal requirements for nonlawyer eligible client board members³² is essential to validate the already existing network of Florida legal aid providers, many of which have operated since the Rules of Professional Conduct were adapted from the prior canons. The omission of legal aid organizations as "law firms" for purposes of the Rules of Professional Conduct can be explained as an oversight, as there is no public policy reason or benefit from exclusion. A study done in 2017 showed that on a nationwide basis, 77% of persons with legal problems do not receive legal help³³ and 86% of the civil legal needs of low-income individuals receive inadequate legal help or no legal help at all.³⁴ The Special Committee's amendments pertaining to legal service non-profits would fuel innovation within these entities to provide an even broader scope to underserved communities and populations.

All of the aforementioned changes approved in concept are included in Appendix B. Although some of the changes are in rule amendment format, they were approved in concept only and have not been vetted by The Florida Bar's rule making process. As noted, the recommendations anticipate that should the recommendation to establish a Law Practice Innovation Laboratory Program be adopted by the Court, all or part of the recommended changes would be placed in the Lab for implementation and study.

One possibility the subcommittee studying fee sharing discussed is the concept of an entity that includes both lawyers and nonlawyers and provides both legal and nonlegal services to its clients. The arrangement could involve direct or indirect fee sharing. An example might be a single business organization that offers both legal services and accounting services or a non-profit legal provider that also provides social work, therapeutic services, or job coaching to its low-income clients. An additional possibility the subcommittee discussed is the ability of nonlawyers to provide certain legal services within the operation of a law firm.

The subcommittee believes that the Lab could consider (1) entities that offer both legal and non-legal services, whether owned entirely by lawyers or not and (2) entities that allow nonlawyers to provide certain legal services. As with other recommendations made by the Committee, the subcommittee is not proposing a rule change. Rather, the subcommittee is recommending that the scope of the Lab not be limited to certain types of entities and that each entity applying to the Lab be evaluated on its individual merits. The Committee agrees with this approach.

³² 45 C.F.R. § 1607.2(c) (2019).

³³ World Justice Project, Global Insights on Access to Justice, 2018, *available at*, <https://worldjusticeproject.org/news/global-insights-access-justice>

³⁴ The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans, Legal Services Corporation (June 2017) *available at* <https://worldjusticeproject.org/news/global-insights-access-justice>

2. Lawyer Advertising

As requested by the Court, the Committee reviewed Florida's advertising rules. Although the advertising rules are continually amended, the last major revision of the advertising rules was in 2013.³⁵ Much has changed during the past eight years. Consumers access legal services differently, relying heavily on websites, social media, and peer reviews. The Association for Professional Responsibility Lawyers (APRL), a national association of lawyers who are immersed in lawyer ethics rules and professional responsibility issues, recognized this in 2015 when it recommended that the ABA model rules on advertising be amended and streamlined. As noted in the report:

The realities of on-line and other forms of electronic media advertising reflect the advent of ecommerce, competition, and changes in market forces. . . . The legal profession today is an integral part of the Internet-based economy, and advertising regulations should enable lawyers to effectively use new on-line marketing tools and other innovations to inform the public. The sharp increase in mobile technology and Internet marketing options have resulted in borderless forms of marketing and advertising. Virtual law practice and web-based delivery of legal services, as well as the public's increased reliance on and use of the Internet and mobile technology, mandate a reexamination of how the legal profession views lawyer advertising and what can or should be effectively regulated.

A realignment of the balance between the core values of professional responsibility and effective lawyer advertising designed to communicate accurate information about the availability of legal services for consumers in the twenty-first century is essential. . . . [T]he overarching goals are two-fold: (1) establishing a uniform and simplified rule that prohibits false and misleading advertisements; and (2) ensuring that consumers have access to accurate information about legal services while not being deceived by members of the Bar.³⁶

The APLR's conclusion was that the public and the profession are best served "by having a single rule that prohibits false and misleading communications about a lawyer or the lawyer's services."³⁷

Taking the lead from APRL, the American Bar Association adopted Resolution 101 in 2018, which reduced the number of model advertising rules and focused on preventing advertisements that are unfair, deceptive, or misleading.³⁸

This is also the approach that Arizona took in 2019 when the Arizona Task Force on the Delivery of Legal Services recommended that their advertising rules be amended and

³⁵ *In re: Amendments to the Rules Regulating The Florida Bar – Subchapter 4-7, Lawyer Advertising Rules*, 108 So. 3d 609 (Fla. 2013).

³⁶ Association of Professional Responsibility Lawyers 2015 report of the Regulation of Lawyer Advertising Committee, p. 5 available at <https://www-media.floridabar.org/uploads/2021/06/aprl-advertising-report-6-22-15-final.pdf>

³⁷ *Id* at p. 3.

³⁸ American Bar Association Resolution 101 (Aug. 2018) available at <https://www-media.floridabar.org/uploads/2021/06/ABA-Resolution-101-Lawyer-Advertising.pdf>

simplified.³⁹ On August 27, 2020, the Supreme Court of Arizona adopted the amendments.⁴⁰

Following the example of APRL, ABA, and the Supreme Court of Arizona, the Committee unanimously voted to approve amendments to the advertising rules in concept. These amendments would streamline the advertising rules, make the language of the rules more succinct, and eliminate any processes or requirements that are no longer as appropriate or necessary as they may have been in the past.

In streamlining the language of the advertising rules and making them more succinct, the amendments approved in concept simplify prohibited advertisement to deceptive and misleading advertisements. A substantial amount of language contained in the body of the rules is moved to the comment section of the rules. The language which has been moved to the comment sections mainly consist of examples that helped illustrate the content of each respective rule. The comments are guides to interpretation and can be used as guidance to determine if discipline is warranted.⁴¹

Among the other notable changes are deletions to outdated requirements in the rules, for example, the use of celebrities in advertisements; deletions to language regarding presumptively valid content in advertisements; and deletions to required content in advertisements. The Committee believes that these sections of the rules are no longer necessary based on the more streamlined definition of prohibited advertisements in addition to modern views on lawyer advertising and lawyer advertising rules. The amendments also propose language which would be required in advertisements for lawyers with virtual offices.

One process and requirement that would be eliminated if the rules are proposed and adopted is removing the requirement of pre-authorization and approval of an advertisement by The Florida Bar. Instead, a lawyer may voluntarily submit their advertisement to The Florida Bar for review. Upon review and approval, the lawyer/law firm will be provided with a “safe harbor” and not be subject to discipline. A lawyer who does not voluntarily submit her or his advertisement for review and produces a deceptive and misleading advertisement will be subject to discipline by The Florida Bar.

The history of discipline regarding advertising violations supports the recommendations to streamline the rules and remove the pre-authorization and approval process. For fiscal year 2019-2020, The Florida Bar reviewed 4,089 new advertisements and 1,056 revisions for a total of 5,145 advertisements reviewed. During that same period, there were 12 cases regarding lawyer advertising, which can include cases closed, and pending that fiscal year and no cases where discipline was imposed. Over the past 10 years, the bar has imposed discipline in only 10 cases involving advertising.

³⁹ Arizona Task Force on the Delivery of Legal Services, (Oct. 2019) 21- 28 *available at* <https://www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf?ver=2019-10-07-084849-750>

⁴⁰ *In the Matter of Rule 42 Rules of the Supreme Court*, Case No. R-20-0030 (AZ Aug. 27, 2020) *available at* <https://www-media.floridabar.org/uploads/2020/08/AZ-order-amending-ad-rules.pdf>

⁴¹ Chapter 4. Rules of Professional Conduct Preamble: A Lawyer’s Responsibilities.

The revisions approved in concept are included in Appendix C. Although the revisions are in rule amendment format, they were approved in concept only and have not been reviewed by The Florida Bar's rule making process.

3. Regulation of Nonlawyer Providers of Limited Legal Services

In 2020, Rebecca L. Sandefur, a professor at the Arizona State University School of Social and Family Dynamics and Faculty Fellow of the American Bar Foundation, published an article titled, "Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms."⁴² The article started with several observations, beginning with the crisis in access to civil justice in the United States.

"The crisis in access to civil justice in the United States is well-established. Recently, the World Justice Project compared access to justice in nations across the globe based on surveys of ordinary people's experiences with civil justice problems. This study highlighted the United States' poor performance. Americans experience an enormous number of civil justice problems, many affecting basic needs in core areas of life: fully two-thirds of surveyed American adults reported having a justice problem in the past two years. Of those reporting justice problems, only one third received any help, despite the fact that their problems caused hardships such as illness, economic adversity, or damage to important relationships for 45% of those who had them. Most of the time people navigate these problems and their sequelae without help, much less help from a lawyer."⁴³

The article concludes that "[o]ne small change in the typical regulation of the practice of law could put a meaningful dent in this massive and to-date intractable problem: allowing people and things that are not lawyers to give legal advice. Expanding sources of legal advice is part of a broader approach to access to justice, which recognizes that achieving justice is not the same as receiving a specific type of service, such as the services of a lawyer. Rather, achieving justice means realizing substantively just solutions to situations and conflicts that are endemic to contemporary life."⁴⁴

In Florida, as in most United States jurisdictions, a consumer's options for obtaining legal advice and services are mostly limited to lawyers. There are some areas of the law where individuals other than lawyers can provide legal advice and services.⁴⁵ However, for the most part, the consumer's choice is restricted by court rules and prohibitions against the unlicensed practice of law.

⁴² Rebecca L. Sandefur, *Legal Advice from Nonlawyers: Consumer Demand, Provider Quality, and Public Harms*, 16 *Stan. J. C.R. & C.L.* 283 (2020) available at <https://www-media.floridabar.org/uploads/2021/02/Sandefur-article-Legal-Advice-from-Nonlawyers.pdf>

⁴³ *Id* at 284.

⁴⁴ *Id* at 284 – 285.

⁴⁵ *Id* at 289.

In 2012, Washington became the first state to license nonlawyers to provide limited legal services.⁴⁶ ⁴⁷ Since then, other states have adopted programs and rules allowing nonlawyers to provide some legal services and more are studying the issue.

In 2018, Utah adopted rules establishing a licensing program for Limited Paralegal Professionals allowing the provision of legal services in certain circumstances.⁴⁸ More recently, in 2020, the Utah Supreme Court approved the establishment of a regulatory sandbox, housed in the Office of Legal Services Innovation, to allow traditional and nontraditional legal services providers to provide legal services.⁴⁹ This can include a nonlawyer providing legal services.

New York has allowed nonlawyers to act as court navigators since 2014.⁵⁰ In late 2020, the New York Working Group on Regulatory Innovation recommended that the navigator program be expanded and that social workers be permitted to provide limited legal services and advocacy.⁵¹ Those recommendations are pending.

In August 2020, the Supreme Court of Arizona adopted licensing rules for nonlawyers, called legal paraprofessionals. Licensed paraprofessionals may provide limited legal services, including going to court with clients.⁵² The rule became effective January 1, 2021. California⁵³, Illinois⁵⁴, and New Mexico⁵⁵ are studying limited licensing. Changes in those jurisdictions have not yet been implemented.

Although the rules and programs vary, all share the characteristic of allowing nonlawyers to provide legal services under a regulatory system monitored by the court or a body established by the court. The Committee is recommending that Florida explore this option by approving a pilot program allowing Florida Registered Paralegals to provide limited legal services in specific areas and within a law office.

⁴⁶ *In the Matter of Adoption of New APR 28-Limited Practice Rule for Limited License Legal Technicians*, Case No. 25700-A-1005 (Wash. June 15, 2012) available at https://www.abajournal.com/files/2012_court_order_LLLTs.pdf

⁴⁷ On June 5, 2020 the Supreme Court of the State of Washington sunset the LLLT program finding that the overall cost of the program and the small number of LLLTs was not an effective way to address the issue of the unmet legal needs of individuals who could not hire a lawyer. June 5, 2020 letter from The Supreme Court of the State of Washington available at https://www.abajournal.com/files/Stephens_LLLT_letter.pdf. The Committee believes that their proposal does not have the issues that lead to the sun setting of Washington's program.

⁴⁸ See www.utcourts.gov/legal/llp

⁴⁹ Utah Supreme Court Standing Order No. 15, *supra* note 30.

⁵⁰ See www.mycourts.gov/courts/nyc/housing/rap.shtml

⁵¹ New York Commission to Reimagine the Future of New York's Courts, Report and Recommendations of the Working Group on Regulatory Innovation, Dec. 3, 2020 available at https://www-media.floridabar.org/uploads/2021/02/New-York-RegulatoryInnovation_Final_12.2.20.pdf

⁵² *In the Matter of Restyle and Amend Rules*, *supra* note 29.

⁵³ *State Bar of California Task Force on Access Through Innovation of Legal Services* (March 6, 2020) available at <http://www.calbar.ca.gov/Portals/0/documents/publicComment/ATILS-Final-Report.pdf>

⁵⁴ *Chicago Bar Foundation Task Force Report Ensuring Access to Justice for All* (Sept. 28, 2020) available at <http://chicagobarfoundation.org/pdf/advocacy/task-force-report.pdf>

⁵⁵ *Innovation to Address the Access to Justice Gap, Report of the New Mexico Supreme Court of the Ad Hoc Licensed Legal Technicians Workgroup*, (Dec. 2019) available at <https://www-media.floridabar.org/uploads/2021/06/New-Mexico-Report-to-Supreme-Court-Ad-Hoc-Licensed-Legal-Technicians-Workgroup.pdf>

Specifically, the Committee unanimously voted to approve in concept a Limited Assistance Paralegal Pilot Program (the pilot program) to allow qualified Florida Registered Paralegals (FRP) to provide certain limited services to some clients of a law firm or legal aid organization.⁵⁶ Rule amendments were not discussed and are not being proposed. Rather, the Committee is recommending that a pilot program be tested in the Lab.

The Limited Assistance Paralegal Pilot Program would allow a qualified Florida Registered Paralegal to assist a client in preparing and filing legal forms, provide some information to the client regarding their legal matter, and provide ministerial assistance in court proceedings. All the services must be provided in a law office and are limited to specified areas of the law.

The Committee discussed two settings where the pilot program may take place: the Law Practice Innovation Laboratory Program or the office of a legal aid organization.⁵⁷ Putting the pilot program in the Lab would allow any law firm or authorized business entity accepted into the Lab to apply to the Lab to allow the FRP to provide the limited services to clients. As with all other entities in the Lab, the Lab would establish an application and review process and criteria for reporting results and data.

A Florida Registered Paralegal working in the pilot program would be able to provide assistance to a limited representation client, a term defined in the outline as “a person who agrees in writing to receive authorized services from a paralegal providing services as part of the pilot program and acting under the authority of a supervising lawyer.” The authorized services may only involve certain areas of the law. The areas of the law are areas where litigants are often self-represented and where access may be limited. The areas encompass suggestions made by the Family Law and Real Property and Probate Sections of The Florida Bar when the sections, at the request of the Board of Governors of The Florida Bar, reviewed a rule being considered by the Services Options Committee of the Florida Commission on Access to Civil Justice. Ultimately, a rule amendment was not proposed. While the definitional language in the outline incorporates the suggestions made by the Family Law and Real Property, Probate and Trust Law Sections of The Florida Bar, those sections have not been consulted on the language in the outline and have not given input regarding the pilot program.

The responsibilities of the supervising lawyer are also spelled out in the outline. The supervising lawyer must ensure that the Florida Registered Paralegal is aware of the lawyer’s responsibilities and provide guidance to the paralegal. The supervising lawyer remains professionally responsible for the services provided. Moreover, the services performed by the FRP supplement, merge with, and become the lawyer’s work product.

⁵⁶ The Florida Bar’s Florida Registered Paralegal Program is set forth in Chapter 20 of the Rules Regulating The Florida Bar.

⁵⁷ Although not fully vetted by the subcommittee, it was mentioned at a Committee meeting that clerks of court with a self-help assistance program may also be able to use the Limited Assistance Paralegal Pilot Program to provide services. As this was not fully explored, no recommendation is being made to include the clerks of court at this time. However, this should not preclude a clerk from applying to the Lab if the pilot program is put in the Lab.

Perhaps, the topic of most discussion was the scope of permissible activities. The Committee sought to strike a balance between protecting the public and allowing activities that would assist a limited representation client and provide greater access. The list of permissible activities strikes this balance. While some of the activities expand services a nonlawyer is authorized to provide, thereby making an exception to the unlicensed practice of law or authorizing the practice of law, many of the activities are currently permitted.

In brief, the activities the Committee approved in concept are:

Selection, Completion, and Filing Forms.

A paralegal in the pilot program may assist a limited representation client in selecting a form (including conducting intake to obtain relevant information), completing the form, and filing and serving the form. Assisting an individual in selecting a form is the unlicensed practice of law.⁵⁸ The pilot program expands existing case law by allowing this activity. The remaining activities are authorized and not the unlicensed practice of law.⁵⁹

Providing Information.

A paralegal in the pilot program may give general information about the form, the court process, and legal rights, procedures or options. Giving general information is not the unlicensed practice of law.⁶⁰ However, there may be instances where the information would be more specific and constitute giving legal advice which would be the unlicensed practice of law.⁶¹ This provision could expand the unlicensed practice of law depending on the information given.

Assistance with Court Proceedings.

A paralegal in the pilot program may accompany a limited representation client to court appearances to provide administrative support and reassurance. The support is limited to ministerial matters such as assisting with scheduling court proceedings. These activities are not an expansion of what a paralegal is now authorized to do as the activities are not the practice of law.

Even though most of the permissible activities are not the unlicensed practice of law and do not expand existing case law, the pilot program itself does expand the concept of reliance found in unlicensed practice of law case law. Generally, it constitutes the unlicensed practice of law for a nonlawyer to put themselves in a position where an individual is relying on them to properly complete a legal form.⁶² When discussing the preparation of legal forms, the Court is assuming that the nonlawyer is merely providing a secretarial service and the individual is responsible for the choices and selections they

⁵⁸ *The Florida Bar v. Glueck*, 985 So. 2d 1052 (Fla. 2008).

⁵⁹ R. Regulating Fla. Bar 10-2.2(a).

⁶⁰ *In re Joint Petition Raymond, James and Associates, Inc.*, 215 So. 2d 613 (Fla. 1968); R. Regulating Fla. Bar 10-2.2(a).

⁶¹ *Id.*

⁶² *Brumbaugh*, 355 So. 2d 1186 (Fla. 1978).

make as they are representing themselves. As the pilot program allows the Florida Registered Paralegal to do more than act as a secretarial service, the pilot program places the paralegal in a position of being relied upon, thereby creating an exception to this general concept. However, as the services are taking place in a law office and under the supervision of a lawyer, the chance of public harm is lessened and is outweighed by the increased access the pilot program can provide.

Again, the Committee is not recommending a rule change and is instead recommending a pilot program to be included in the Law Practice Innovation Laboratory Program so that the concept may be tested. A recent survey of Florida Registered Paralegals supports this recommendation. The survey asked two substantive questions:

1) If you were allowed to have more responsibility and provide services to clients including helping the client fill out forms and explaining how the court process works, would you want to do that?

Over two-fifths (45%) of those responding were in favor of being allowed to have more responsibility and provide the additional services to clients. One-quarter (25%) were either neutral or need additional information before providing an opinion.

2) If you were allowed to have responsibility and provide services to clients including helping the client fill out forms and explaining how the court process works, do you believe that it would help people who are unable to obtain legal services solve their legal problems?

In response, over one-third (37%) said that the ability to provide more services would help people obtain legal services; however, 45% are either not sure or need more information before providing an opinion.⁶³

The Committee believes that taking the approach of a pilot program allows the gathering of more information and data on whether these services lead to positive outcomes. Studies have shown that “[w]hen American consumers have the choice of using an authorized nonlawyer provider, many do so.”⁶⁴ The Committee’s recommendation allows Florida consumers to have this choice in a controlled environment where data can be collected and changes to protect the public can more easily be made. An outline of the pilot program is included in Appendix D.

IV. Law Practice Innovation Laboratory Program

In 2021, The Florida Bar conducted a member survey.⁶⁵ The Committee requested that the survey include questions relating to nonlawyer ownership and fee sharing with nonlawyers. A majority of lawyers responding did not feel that eliminating or relaxing the rule prohibiting fee sharing would increase business development opportunities for lawyers (53%), did not feel that technology companies who match clients with lawyers

⁶³ See Results of the Delivery of Legal Services Survey – Florida Registered Paralegals available at <https://www-media.floridabar.org/uploads/2021/06/Results-of-the-Delivery-of-Legal-Services-Survey-Florida-Registered-Paralegals.pdf>

⁶⁴ Sandefur, *supra* note 43 at 289.

⁶⁵ See <https://www-media.floridabar.org/uploads/2021/02/2021-Florida-Bar-Member-Survey-Final-2-17-21.pdf>

should be permitted to retain a portion of the fee paid by the consumer (65%), did not feel that nonlawyers who supports a legal practice should be permitted to have an ownership interest in the practice (81%), and did not approve of passive ownership of law firms by nonlawyers (84%).⁶⁶ In other words, most lawyers responding did not want to see any change. Unfortunately, the reality is that the current rules are not addressing “the challenges facing Florida lawyers, and the difficulties that many Floridians encounter in securing legal services.”⁶⁷ This fear of change is likely more fear of the unknown – how will relaxing the rules on firm ownership, fee splitting, and nonlawyer practice affect the practice of law. While this is understandable, it is no reason to keep the status quo when the status quo is not working.

Understanding the fear of the unknown and the reluctance to change, most of the recommendations the Committee is making are changes in concept only with the changes taking place in the controlled environment of the Law Practice Innovation Lab Program (the Lab). The Lab concept is not new. It has been utilized in the United Kingdom for several years⁶⁸ and is now being utilized in Utah⁶⁹, Ontario⁷⁰, and British Columbia⁷¹. The Committee looked at the different approaches being taken elsewhere and voted that the model being used in Utah would best fit Florida’s needs and rules.

A Lab, or regulatory sandbox, is a mechanism whereby the Court, or a body appointed by the Court, permits entities that may be different from a traditional law firm to offer new and innovative methods, ideas, and types of legal services without a wholesale amendment of the rules. The Utah model, known as a regulatory sandbox, is under the direction of the Office of Legal Services Innovation, an office established by and under the control of the Supreme Court of Utah to evaluate, recommend, and monitor entities that wish to try new approaches to practicing law.⁷² “A regulatory sandbox is a policy tool through which new models or services can be offered and tested to assess marketability and impact and inform future policy-making. . . . In the sandbox, regulations can be relaxed, data gathered, and policy improved. . . . [T]he legal regulatory Sandbox creates a limited and controlled space outside of the traditional rules governing legal practice [and] is open to legal business models and services that would not have been

⁶⁶ *Id.* questions 60 – 63.

⁶⁷ See Court Letter at Appendix A.

⁶⁸ See Report prepared by Crispin Passmore available at <https://www-media.floridabar.org/uploads/2020/12/2020-10-01-Passmore-Consulting-submission-to-Florida-working-group.pdf>

⁶⁹ Narrowing the Access-to-Justice Gap by Reimagining Regulation Report and Recommendations from the Utah Work Group on Regulatory Reform (Aug. 2019) available at <https://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf>; Utah Supreme Court Standing Order No. 15, *supra* note 30. See also The Office of Legal Services Innovation, an office of the Utah Supreme Court at <https://utahinnovationoffice.org/>

⁷⁰ Law Society of Ontario Approves Regulatory Sandbox for Legal Tech, The Canadian Bar Association (April 22, 2021) available at <https://www.nationalmagazine.ca/en-ca/articles/legal-market/regulatory/2021/law-society-of-ontario-approves-regulatory-sandbox>

⁷¹ See Innovation in the British Columbia Justice Sector presentation by Lawrence Alexander available at <https://www-media.floridabar.org/uploads/2020/12/Larry-Alexander-Presentation.pdf>

⁷² Utah Supreme Court Standing Order No. 15, *supra* note 30.

permitted under the traditional rules of professional conduct and unauthorized practice of law doctrine.”⁷³

As of April 30, 2021, the Office of Legal Services Innovation had received 47 applications to the Sandbox. From those, the Supreme Court of Utah authorized 26 entities to provide services. “Services provided range across legal needs, including family law, end of life planning, and small-business needs. Entities include those with new business structures, including nonlawyer ownership and investment and joint ventures between lawyers and nonlawyers. Several entities have been authorized to use nonlawyer human or software providers of legal advice and assistance. . . . To date, the Office has not observed evidence of consumer harm in the services being provided by the Sandbox.”⁷⁴

The Committee is recommending that Florida adopt a Law Practice Innovation Lab Program very similar to the approach taken in Utah. The advantage to taking this approach is that the concepts recommended by the Committee can be tested in a controlled environment where data can be collected, and public harm can be assessed and prevented.

Just as in Utah, the Committee is recommending that the Lab be under the direction of a Commission established and supervised by the Court. The regulatory objective and authority would be delegated to The Florida Bar for budgetary and staffing purposes much in the way lawyer discipline is structured. The Commission will designate a supervisory body that will evaluate applications and make recommendations regarding approval. The Commission will also have the ability to selectively modify current rules or regulations to see how much and what kinds of innovation might be possible within the legal services market. It is recommended that the initial phase of the Lab be 3 years.

To be considered for acceptance into the Lab, the organization or individual proposing the new venture must detail exactly what the new offering is; how they expect it to benefit the public; what risks or harms they expect might arise; how they will deploy and measure this offering; and which rules or regulations need to be modified in order for this offering to be allowed. While in the Lab, the participant must collect and provide requested data to the supervisory body. The data may vary by organization and services offered. The supervisory body and Commission will regularly report to the Court.

Participants in the Lab will be regulated by the supervisory body, the Commission and ultimately the Court. At any time, a regulated entity may be removed if the data shows that unacceptable levels of consumer harm are occurring. If consumer harm is not taking place and the other requirements imposed on the regulated entity are met within the designated period, the entity will be granted a license by the Court and can continue

⁷³ The Office of Legal Services Innovation, an office of the Utah Supreme Court at <https://utahinnovationoffice.org/>

⁷⁴ <https://utahinnovationoffice.org/wp-content/uploads/2021/05/Sandbox-Extension-PR-4-21.pdf>; See also Sandbox Public Report through March 2021 at <https://www-media.floridabar.org/uploads/2021/05/Sandbox-Public-Report-through-March-2020.pdf>

offering the approved services outside of the Lab under the guidelines established by the Commission and the supervisory body. If study shows that amendments to the rules would be beneficial to the practice of law, the Commission may recommend that changes be made.

As noted earlier, the Committee is recommending that the initial phase of the Lab be 3 years. At the end of the 3 year period, the Commission will recommend to the Court whether to permanently establish the Commission as a standing Supreme Court Commission or whether to sunset the Commission. To encourage innovation and participation in the Lab, those who have been licensed and exited the Lab will be allowed to continue offering the approved services under the regulation of the supervisory body after the Lab is formally concluded, provided there is a continued showing of low consumer harm. In other words, the regulated entity will be licensed and allowed to offer its services after the 3-year period unless there is evidence of harm to the consumer. Allowing the venture to continue is necessary to encourage innovators to apply to the Lab. Organizations and individuals will not invest the capital necessary to ensure that the venture is a success if the venture will automatically be terminated after 3 years. It is the opinion of the Committee that the Lab will be successful and will be made a permanent Commission by the Court at the conclusion of the initial 3 year period.

There are primarily two areas of the Committee's recommendations where the Lab will allow for innovation and provide valuable data: (1) the conceptual changes to rule 4-5.4 and; (2) the Limited Assistance Paralegal Pilot Program. One change to rule 4-5.4 approved in concept would allow a nonlawyer to have an ownership interest in a law firm under certain circumstances and conditions. Imagine a law firm practicing in the area of consumer debt which employs a debt counselor to work with clients on the non-legal aspects of reducing debt. The law firm could apply to the Lab for approval for the debt counselor to have an ownership interest in the firm. After evaluation, the Commission could recommend approval with conditions and for a certain time period. If all conditions are met during that time period, the firm would exit the Lab with the debt counselor having an ownership interest. This ownership interest would remain in place unless there is later evidence of consumer harm or the law firm decides to discontinue the relationship.

If the same law firm wishes to have one of the Florida Registered Paralegals employed by the firm assist clients with selecting, completing and filing forms in defending a debt collection matter, the law firm could apply to the Lab to have the Florida Registered Paralegal authorized to provide the services outlined in the Limited Assistance Paralegal Pilot Program proposal. The supervisory body would evaluate and make a recommendation. If recommended for approval and approved by the Commission, the Florida Registered Paralegal would be able to provide the service with conditions and for a certain period of time which would continue unless there is later evidence of consumer harm or the law firm decides it no longer wants to participate in the Lab.

In both scenarios, the law firm would have to provide data to the supervisory body and Commission while the activity is taking place in the Lab and possibly for a period of time after. In both examples, the data could include whether more clients are served by the

firm; whether the firm is able to provide the services at a reduced fee; and whether the services or ownership interest benefit the clients. In both examples, if there is evidence of unacceptable levels of consumer harm, participation in the Lab would be terminated.

The outline for the Lab approved in concept by the Committee is attached in Appendix E. Although the outline is somewhat extensive, it only sets forth the core of the program with certain details yet to be determined. The outline goes as far as it can until the Court provides some direction on the recommendations approved in concept by the Committee. Once that direction is received, the outline can be finalized and the Lab put in place.

V. Conclusion

An important objective of The Florida Bar's 2019-2022 strategic plan is to "strive for equal access to and availability of legal services" in part by evaluating "new and innovative potential solutions to address the gap in legal services for under-served Florida citizens."⁷⁵ Many Floridians are facing significant difficulties in securing needed legal services. Protection of the public has been of paramount importance in all of the Committee's recommendations, but that protection must be weighed against the current harm the public faces in receiving no legal services. The Committee also believes that rule changes need to be made. However, those changes should not occur based upon conjecture nor should needed changes be rejected based upon fear of the unknown. The Committee, through extensive research and study, finds that data driven decision making through the regulatory framework of the Law Practice Innovation Laboratory Program strikes the proper balance between these competing needs. For the reasons set forth in this Final Report, the Committee respectfully requests that the Court direct the Committee to prepare and deliver to the Court, within 6 months of the Court's direction, a fully developed Law Practice Innovation Laboratory Program for the Court's consideration as to whether the same should be created as Commission of the Florida Supreme Court. The Committee's recommendations are a necessary step toward meeting the Court's request for the study which can be attained by continuing the vital work the Committee started.

⁷⁵The Florida Bar 2019-2022 Strategic Plan available at <https://www.floridabar.org/about/stratplan/2019-2022-strategic-plan/>

TABLE OF APPENDICES

Appendix A	Letter from Court requesting study
Appendix B	Amendments to Rule 4-5.4 approved in concept
Appendix C	Amendments to advertising rules approved in concept
Appendix D	Outline of Paralegal Pilot Program approved in concept
Appendix E	Outline of Law Practice Innovation Laboratory Program approved in concept

APPENDIX A



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
RICKY POLSTON
JORGE LABARGA
C. ALAN LAWSON
BARBARA LAGOA
ROBERT J. LUCK
CARLOS G. MUÑIZ
JUSTICES

JOHN A. TOMASINO
CLERK OF COURT

SILVESTER DAWSON
MARSHAL

November 6, 2019

Mr. John M. Stewart
President
The Florida Bar
651 E Jefferson Street
Tallahassee, Florida 32399

Dear President Stewart:

Thank you for your letter of September 27, 2019, concerning a potential study of issues related to the regulation of the legal profession in Florida. In your letter you suggest a “study into whether and how the rules governing the practice of law in Florida may be revised to improve the delivery of legal services to Florida’s consumers and to assure Florida lawyers play a proper and prominent role in the provision of these services.”

As discussed in your letter, the environment in which legal services are provided has been rapidly changing. In view of that changing environment, the challenges facing Florida lawyers, and the difficulties that many Floridians encounter in securing legal services, the Court agrees that The Florida Bar should conduct a study of the rules governing the practice of law to ensure that our regulation meets the needs of Floridians for legal services while also protecting against misconduct and maintaining the strength of Florida’s legal profession.

As you have suggested, the topics that should be addressed in this study include the following: lawyer advertising; referral fees; fee splitting; entity

Mr. John M. Stewart
November 6, 2019
Page Two

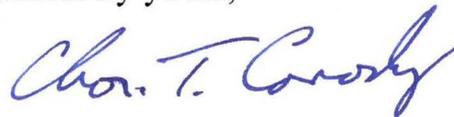
regulation; regulation of online service providers; and regulation of nonlawyer providers of limited legal services. Additional topics consistent with the subject of the study may also be addressed.

The Court requests that this study be undertaken by a study group chaired and appointed by you. The work of the study group should begin by January 2020 and should be completed by July 1, 2021. Quarterly reports of the study group's work should be submitted to the Court and to the Board of Governors of The Florida Bar. A final report, including recommendations for any rule changes or other actions, should be submitted no later than July 1, 2021, to the Board of Governors and the Court.

In fulfilling the Court's responsibility under Article V, section 15 of the Florida Constitution "to regulate . . . the discipline of persons admitted" "to the practice of law," we are committed to ensuring a strong and vibrant Bar to meet the legal needs of the people of Florida and to enforcing appropriate ethical standards for Florida lawyers. The foundation of our efforts in this arena is the recognition that The Florida Bar exists to serve the people of our state. We believe that the study we are asking the Bar to undertake can assist us in carrying out this important constitutional responsibility.

The Court is grateful to you for your leadership in this important initiative. We look forward to receiving updates on the work of the study group as well as the final report that will result from the study group's labors.

Sincerely yours,



Charles T. Canady

CTC/jo

**APPENDIX
B**

RULE 4-5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) Sharing Fees with Nonlawyers. A lawyer or law firm shall not may share legal fees with a nonlawyer, ~~except that:~~

~~(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to 1 or more specified persons;~~

~~—— (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;~~

~~—— (3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, in accordance with the provisions of rule 4-1.17, pay to the estate or other legally authorized representative of that lawyer the agreed upon purchase price;~~

~~—— (4) bonuses may be paid to nonlawyer employees for work performed, and may be based on their extraordinary efforts on a particular case or over a specified time period. Bonus payments shall not be based on cases or clients brought to the lawyer or law firm by the actions of the nonlawyer. A lawyer shall not provide a bonus payment that is calculated as a percentage of legal fees received by the lawyer or law firm; and~~

~~—— (5) a lawyer may share court-awarded fees with a nonprofit, pro bono legal services organization that employed, retained, or recommended employment of the lawyer in the matter.~~

[If the nonlawyer is a qualifying provider (as defined elsewhere in these rules) that is primarily engaged in the business of operating a lawyer referral network or service or otherwise being compensated in exchange for referring potential clients to lawyers, the fee may not be calculated as a percentage of the fee received by a lawyer; calculated as a percentage of the client's recovery in the matter; based on the perceived value of the case referred to or accepted by a participating lawyer; a flat charge that differs based on the perceived value of the case referred to or accepted by

*a participating lawyer; a flat charge per case accepted by a participating lawyer; or a flat charge per case accepted by a participating lawyer that differs based on the type of matter.*¹

(b) Qualified Pension Plans. A lawyer or law firm may include nonlawyer employees in a qualified pension, profit-sharing, or retirement plan, even though the lawyer's or law firm's contribution to the plan is based in whole or in part on a profit-sharing arrangement.

(c) Partnership Ownership Interest with Nonlawyer. ~~A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.~~ A lawyer may practice law in a partnership or other form of authorized business entity in which an ownership interest is held by an individual nonlawyer who performs professional services that assist the entity in providing legal services to clients, but only if:

(1) the partnership or authorized business entity has as its sole purpose providing legal services to clients;

(2) all persons having an ownership interest in the partnership or authorized business entity agrees to abide by these Rules of Professional Conduct;

(3) the lawyers who have an ownership interest or managerial authority in the partnership or authorized business entity agree to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 4-5.1;

(4) the aggregate ownership interests of all nonlawyer participants are a minority interest in the partnership or authorized business entity; and

(5) the above conditions are confirmed in writing.

¹ Possible alternatives: (1) leave ethics opinion framework in place and restrict permissible fee sharing among lawyers and qualified providers (keep italicized text); (2) remove all restrictions on fee sharing with qualified providers (*delete italicized text*); (3) retain some restrictions on fee sharing with qualified providers, while eliminating others (e.g., *deleting blue, italicized text*); or (4) distinguish between non-lawyers who operate a business whose primary purpose is to serve as a lawyer referral network or service (e.g., typical qualified provider) versus one that does not (e.g., LegalZoom, Willing.com) and retain restrictions on the former, but not the latter (add *purple italicized text*). Depending on outcome of analysis, conforming changes may be needed to other rules restricting certain payments of marketing fees.

(d) Exercise of Independent Professional Judgment. A lawyer shall will not permit a person who recommends, employs, or pays the lawyer to render legal services for another, a nonlawyer who the lawyer is sharing a fee with, or a nonlawyer who has an ownership interest in the law firm to direct or regulate the lawyer's professional judgment in rendering such legal services.

~~(e) Nonlawyer Ownership or Management of Authorized Business Entity. A lawyer may practice with a not-for-profit business entity authorized to practice law. For purposes of this rule and applicable to not-for-profit business entities only, the business entity may be formed as a corporation and a nonlawyer may be a corporate director or officer of the authorized business entity. However, a nonlawyer owner, corporate director, or corporate officer does not have the right to direct or control the professional judgment of a lawyer working with the not-for-profit business entity.~~

(e) Nonlawyer Governance of Not-for-Profit Authorized Business Entity.

(1) Generally. A lawyer may practice with a not-for-profit business entity authorized to practice law.

(2) Definition of not-for-profit business entity. A not-for-profit business entity is an organization providing pro and low bono legal services operating as a tax-exempt public charity authorized by section 501(c)(3) of the Internal Revenue Code with the purpose of providing legal services to clients within 400% of the Federal Poverty level as defined by the United States Code of Federal Regulations. The lawyer's compensation by the not-for-profit business entity cannot be tied, directly or indirectly, to the client's ability to pay.

(3) Form of authorized business entity. For purposes of this rule and applicable to not-for-profit business entities only, the business entity may be formed as a corporation and a nonlawyer may be a member of the board of directors of the authorized business entity. However, a nonlawyer board member does not have the right to direct or control the professional judgment of a lawyer working with the not-for-profit business entity.

(4) Obligations of authorized business entity. The not-for-profit business entity must:

(i) ensure that confidential information is inaccessible to board members of the not-for-profit business entity who are not engaged in legal services representation;

(ii) ensure that any communications which the lawyer intends to be kept protected under attorney-client privilege meet existing prerequisites for such privilege;

(iii) inform the client that all communications within the not-for-profit business entity may not fall under attorney-client privilege; and

(iv) ensure that all nonlawyers assisting the lawyer in providing legal services abide by the ethical standards governing the lawyer.

Comment

~~The provisions of this rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. One of the core values of the legal profession is that the lawyer's professional independence of judgment must be protected. The simple act of sharing a legal fee with a nonlawyer does not lead to the conclusion that the lawyer's professional independence of judgment will be compromised.~~ Where someone other than the client shares a fee with a lawyer, pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in subdivision (d), such arrangements should not and may not interfere with the lawyer's professional judgment.

[CONFORM TO FINAL TEXT IN SUBPART (a) Although sharing of fees with a nonlawyer does not in and of itself compromise the lawyer's independence of professional judgment, when the fee is being shared with a qualifying provider as defined elsewhere in this chapter, certain safeguards are necessary due to the nature of the relationship between the lawyer and qualifying provider. These safeguards are

set forth in the rule and are intended to prevent the lawyer's independence of professional judgment from being influenced by the fee sharing arrangement.]

~~This rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also rule 4-1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent). The prohibition against sharing legal fees with nonlawyer employees is not intended to prohibit profit-sharing arrangements that are part of a qualified pension, profit-sharing, or retirement plan. Compensation plans, as opposed to retirement plans, may not be based on legal fees.~~

Similarly, a lawyer's independence of professional judgment is not compromised simply by a nonlawyer having an ownership interest in the law firm or authorized business entity. This rule allows a nonlawyer to have an ownership interest as long as the requirements of the rule are met and makes clear that a nonlawyer who has an ownership interest in an entity is not permitted to direct or regulate the lawyer's professional judgment in rendering legal services.

A nonlawyer may only have an ownership interest in a law firm or authorized business entity if the sole purpose of the firm or entity is to provide legal services to clients. The entity may only practice law and the nonlawyer must be assisting the lawyer in the practice of law. Therefore, the rule does not permit a lawyer to open an office with a doctor to provide legal and medical services. Only a law firm engaged exclusively in the practice of law is allowed.

While the sole purpose of the entity must be the practice of law, the activity the nonlawyer is engaging in does not in and of itself have to involve the practice of law. For example, a personal injury law firm may have a doctor on staff to assist in the analysis of medical records. A patent law office may have a patent agent on staff to work on patent matters. Many real estate practices employ paralegals to handle real estate closings. A family law practice may employ financial advisors and counselors to assist in matters involving the dissolution of marriage. A practice that provides legal services in the area of governmental affairs may have a nonlawyer lobbyist employed

at the firm. Most large offices have a nonlawyer office manager who is in charge of the daily operation of the office from the business side. All of these individuals are performing professional services that assist the entity in providing legal services to clients and under this rule may have an ownership interest in the entity. Nonlawyers are limited to a minority ownership interest. If there is more than one nonlawyer owner, all of the combined ownership interests of the nonlawyers must equal a minority ownership interest.

Subdivision (e) provides that if the law firm or authorized business entity is a not-for-profit entity, the entity may practice law in the form of a corporation. This creates an exception to the authorized forms of business entities set forth in rule 4-8.6 for purposes of not-for-profit firms only.

**APPENDIX
C**

NOTE

**THE BOARD OF GOVERNORS AND THE BOARD REVIEW
COMMITTEE ON PROFESSIONAL ETHICS HAVE APPROVED
AMENDMENTS TO THE ADVERTISING RULES**

**THOSE AMENDMENTS ARE NOT REFLECTED IN THE REDLINED
OR CLEAN VERSION OF THE RULES INCLUDED IN THIS APPENDIX
AS THE AMENDMENTS HAVE NOT BEEN APPROVED BY THE COURT**

RULE 4-7.11 APPLICATION OF RULES

Commented [HL1]: No changes were made to this rule.

(a) Type of Media. Unless otherwise indicated, this subchapter applies to all forms of communication in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media. The terms “advertising” and “advertisement” as used in chapter 4-7 refer to all forms of communication seeking legal employment, both written and spoken.

(b) Lawyers. This subchapter applies to lawyers, whether or not admitted to practice in Florida or other jurisdictions, who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents. The term “lawyer” as used in subchapter 4-7 includes 1 or more lawyers or a law firm. This rule does not permit the unlicensed practice of law or advertising that the lawyer provides legal services that the lawyer is not authorized to provide in Florida.

(c) Referral Sources. This subchapter applies to communications made to referral sources about legal services.

Comment

Websites

Websites are subject to the general lawyer advertising requirements in this subchapter and are treated the same as other advertising media. Websites of multistate firms present specific regulatory concerns. Subchapter 4-7 applies to portions of a multistate firm that directly relate to the provision of legal services by a member of the firm who is a member of The Florida Bar. Additionally, subchapter 4-7 applies to portions of a multistate firm’s website that relate to the provision of legal services in Florida, e.g., where a multistate firm has offices in Florida and discusses the provision of legal services in those Florida offices. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services by lawyers who are not admitted to The Florida Bar and who do not provide legal services in Florida. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services in jurisdictions other than Florida.

Lawyers Admitted in Other Jurisdictions

Subchapter 4-7 does not apply to any advertisement broadcast or disseminated in another jurisdiction in which a Florida Bar member is admitted to practice if the advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not broadcast or disseminated within the state of Florida or targeted at Florida residents. Subchapter 4-7 does not apply to such advertisements appearing in national media if the disclaimer “cases not accepted in Florida” is plainly noted in the advertisement. Subchapter 4-7 also does not apply to a website advertisement that does not offer the services of a Florida Bar member, a lawyer located in Florida, or a lawyer offering to provide legal services in Florida.

Subchapter 4-7 applies to advertisements by lawyers admitted to practice law in jurisdictions other than Florida who have established a regular and/or permanent presence in Florida for the practice of law as authorized by other law and who solicit or advertise for legal employment in Florida or who target solicitations or advertisements for legal employment at Florida residents.

For example, in the areas of immigration, patent, and tax, a lawyer from another jurisdiction may establish a regular or permanent presence in Florida to practice only that specific federal practice as authorized by federal law. Such a lawyer must comply with this subchapter for all advertisements disseminated in Florida or that target Florida residents for legal employment. Such a lawyer must include in all advertisements that the lawyer is “Not a Member of The Florida Bar” or “Admitted in [jurisdiction where admitted] Only” or the lawyer’s limited area of practice, such as “practice limited to [area of practice] law.” See *Fla. Bar v. Kaiser*, 397 So. 2d 1132 (Fla. 1981).

A lawyer from another jurisdiction is not authorized to establish a regular or permanent presence in Florida to practice law in an area in which that lawyer is not authorized to practice or to advertise for legal services the lawyer is not authorized to provide in Florida. For example, although a lawyer from another state may petition a court to permit admission pro hac vice on a specific Florida case, no law authorizes a pro hac vice practice on a general or permanent basis in the state of Florida. A lawyer cannot advertise for Florida cases within the state of Florida or target advertisements to Florida residents, because such an advertisement in and of itself constitutes the unlicensed practice of law.

A lawyer from another jurisdiction may be authorized to provide Florida residents legal services in another jurisdiction. For example, if a class action suit is pending in another state, a lawyer from another jurisdiction may represent Florida residents in the litigation. Any such advertisements disseminated within the state of Florida or targeting Florida residents must comply with this subchapter.

RULE 4-7.12 REQUIRED CONTENT

(a) Name and Office Location. All advertisements for legal employment must include:

~~(1) the name of at least 1 lawyer, the law firm, the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory if the advertisement is for the lawyer directory, responsible for the content of the advertisement; and~~

~~(2) the city, town, or county of 1 or more bona fide office locations of the lawyer who will perform the services advertised.~~

(b) Referrals. If the case or matter will be referred to another lawyer or law firm, the advertisement must include a statement to this effect.

Commented [HL2]: The requirements of (a)(1) and (2), (b) (c) and (d) have been moved to the comment language of new 4-7.2 which prevents misleading and deceptive advertising. Grammatical changes made where necessary but intent of rule remains.

(c) Languages Used in Advertising. Any words or statements required by this subchapter to appear in an advertisement must appear in the same language in which the advertisement appears. If more than 1 language is used in an advertisement, any words or statements required by this subchapter must appear in each language used in the advertisement.

(d) Legibility. Any information required by these rules to appear in an advertisement must be reasonably prominent and clearly legible if written, or intelligible if spoken.

Comment

Name of Lawyer or Lawyer Referral Service

All advertisements are required to contain the name of at least 1 lawyer who is responsible for the content of the advertisement. For purposes of this rule, including the name of the law firm is sufficient. A lawyer referral service, qualifying provider or lawyer directory must include its actual legal name or a registered fictitious name in all advertisements in order to comply with this requirement.

Geographic Location

For the purposes of this rule, a bona fide office is defined as a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.

An office in which there is little or no full-time staff, the lawyer is not present on a regular and continuing basis, and where a substantial portion of the necessary legal services will not be provided, is not a bona fide office for purposes of this rule. An advertisement cannot state or imply that a lawyer has offices in a location where the lawyer has no bona fide office. However, an advertisement may state that a lawyer is "available for consultation" or "available by appointment" or has a "satellite" office at a location where the lawyer does not have a bona fide office, if the statement is true.

Referrals to Other Lawyers

If the advertising lawyer knows at the time the advertisement is disseminated that the lawyer intends to refer some cases generated from an advertisement to another lawyer, the advertisement must state that fact. An example of an appropriate disclaimer is as follows: "Your case may be referred to another lawyer."

Language of Advertisement

Any information required by these rules to appear in an advertisement must appear in all languages used in the advertisement. If a specific disclaimer is required in order to avoid the advertisement misleading the viewer, the disclaimer must be made in the same language that the statement requiring the disclaimer appears.

RULE 4-7.13 DECEPTIVE AND INHERENTLY MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or inherently misleading advertising. An advertisement is deceptive or misleading if it:

~~(a) Deceptive and Inherently Misleading Advertisements.~~ An advertisement is deceptive or inherently misleading if it:

(1 ~~a~~) contains a material statement that is factually or legally inaccurate;

(2 ~~b~~) omits information that is necessary to prevent the information supplied from being misleading; or

(3 ~~c~~) implies the existence of a material nonexistent fact.

(4 ~~d~~) is subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context; or

(5 ~~e~~) is literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(6 ~~f~~) is unduly manipulative or intrusive, or

(7 ~~g~~) cannot be objectively verified.

~~(b) Examples of Deceptive and Inherently Misleading Advertisements.~~ Deceptive or inherently misleading advertisements include, but are not limited to advertisements that contain:

(1 ~~1~~) statements or information that can reasonably be interpreted by a prospective client as a prediction or guaranty of success or specific results;

(2 ~~2~~) references to past results unless the information is objectively verifiable, subject to rule 4-7.14;

(3 ~~3~~) comparisons of lawyers or statements, words or phrases that characterize a lawyer's or law firm's skills, experience, reputation or record, unless such characterization is objectively verifiable;

(4 ~~4~~) references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of the advertisement;

(5 ~~5~~) a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm. The following notice, prominently displayed would resolve the erroneous impression: "Not an employee or member of law firm";

(6 ~~6~~) a dramatization of an actual or fictitious event unless the dramatization contains the following prominently displayed notice: "DRAMATIZATION. NOT AN

Commented [HL3]: (d), (e) and (g) are moved from 4-7.14. (f) is moved from 4-7.15.

Commented [HL4]: The language of (b) is moved to the comment as it gives examples.

Commented [HL5]: This language is removed in its entirety and not included in new rule or comment language.

ACTUAL EVENT.” When an advertisement includes an actor purporting to be engaged in a particular profession or occupation, the advertisement must include the following prominently displayed notice: “ACTOR. NOT ACTUAL [. . . .]”;

~~(7) statements, trade names, telephone numbers, Internet addresses, images, sounds, videos or dramatizations that state or imply that the lawyer will engage in conduct or tactics that are prohibited by the Rules of Professional Conduct or any law or court rule;~~

~~(8) a testimonial:~~

~~(A) regarding matters on which the person making the testimonial is unqualified to evaluate;~~

~~(B) that is not the actual experience of the person making the testimonial;~~

~~(C) that is not representative of what clients of that lawyer or law firm generally experience;~~

~~(D) that has been written or drafted by the lawyer;~~

~~(E) in exchange for which the person making the testimonial has been given something of value; or~~

~~(F) that does not include the disclaimer that the prospective client may not obtain the same or similar results;~~

~~(9) a statement or implication that The Florida Bar has approved an advertisement of a lawyer, except a statement that the lawyer is licensed to practice in Florida or has been certified pursuant to chapter 6, Rules Regulating the Florida Bar; or~~

~~(10) a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person’s name in reference to a current, former or retired judicial, executive, or legislative branch official currently engaged in the practice of law. For example, a former judge may not state “Judge Doe (retired)” or “Judge Doe, former circuit judge.” She may state “Jane Doe, Florida Bar member, former circuit judge” or “Jane Doe, retired circuit judge....”~~

Comment

A lawyer may not engage in deceptive or misleading advertising. The examples of deceptive or misleading advertising contained in this rule and this comment are illustrative and not exhaustive. An advertisement may be considered deceptive or

Commented [HL6]: New introductory paragraph added.

misleading even if it does not fall within one of the examples given in this rule or comment.

Material Omissions

An advertisement may be considered to contain a material omission if the advertisement does not state the name of at least 1 lawyer in the advertising firm or the name of the law firm and the city, town or county of 1 or more bona fide office location of the lawyer who will perform the services advertised, or if practicing virtually a statement that the lawyer is practicing virtually. Failure to include the name of the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory if the advertisement is for the lawyer directory is also a material omission. If the case or matter will be referred to another lawyer or law firm, the failure to disclose this in the advertisement is a material omission.

Commented [HL7]: Language regarding name of lawyer, location of firm, and referral moved from 4-7.12 Language about virtual office added.

~~An example of a material omission is stating~~ Stating “over 20 years’ experience” when the experience is the combined experience of all lawyers in the advertising firm. Another example is a lawyer who states “over 20 years’ experience” when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other nonlawyer position.

Implied Existence of Nonexistent Fact

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the lawyer has just begun practicing law. Such a statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

Predictions of Success

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include: “I will save your home,” “I can save your home,” “I will get you money for your injuries,” and “Come to me to get acquitted of the charges pending against you.”

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client’s rights, protect the client’s assets, or protect the client’s family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer

will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “strive,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “My goal is to achieve the best possible result in your case,” is permissible. Similarly, the statement, “If you’ve been injured through no fault of your own, I am dedicated to recovering damages on your behalf,” is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, “I will get you acquitted of the pending charges,” would violate the rule as it promises a specific legal result. In contrast, the statement, “I will pursue an acquittal of your pending charges,” does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: “When the government takes your property through its eminent domain power, the government must provide you with compensation for your property.”

Past Results

~~The prohibitions in subdivisions (b)(1) and (b)(2) of this~~ This rule preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts, if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client’s actual damages, is also misleading. The information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a lawyer has obtained acquittals in all charges in 4 criminal defense cases. On the other hand, general statements such as, “I have successfully represented clients,” or “I have won numerous appellate cases,” may or may not be sufficiently objectively verifiable. For example, a lawyer may interpret the words “successful” or “won” in a manner different from the average prospective client. In a criminal law context, the lawyer may interpret the word “successful” to mean a conviction to a lesser charge or a lower sentence than recommended by the prosecutor, while the average prospective client likely would interpret the words “successful” or “won” to mean an acquittal.

Rule 4-1.6(a), Rules Regulating the Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client's informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must have the affected client's informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client's informed consent.

Comparisons

~~The prohibition against comparisons~~ Advertisements that contain comparisons that cannot be factually substantiated are prohibited as deceptive or misleading. Comparisons that cannot be factually substantiated would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," or "one of the best," in a field of law.

On the other hand, statements that the law firm is the largest in a specified geographic area, or is the only firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

Characterization of Skills, Experience, Reputation or Record

~~The rule prohibits statements that characterize skills, experience, reputation, or record that are not objectively verifiable.~~ Statements that characterize skills, experience, reputation, or record that are not objectively verifiable are prohibited as deceptive and misleading. Statements of a character trait or attribute are not statements that characterize skills, experience, or record. For example, a statement that a lawyer is aggressive, intelligent, creative, honest, or trustworthy is a statement of a lawyer's personal attribute, but does not characterize the lawyer's skills, experience, reputation, or record. These statements are permissible.

Descriptive statements characterizing skills, experience, reputation, or a record that are true and factually verified are permissible. For example, the statement "Our firm is the largest firm in this city that practices exclusively personal injury law," is permissible if true, because the statement is objectively verifiable. Similarly, the statement, "I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit," is permissible if the statement is true, because the statement is objectively verifiable.

Descriptive statements that are misleading are prohibited by this rule. Descriptive statements such as "the best," "second to none," or "the finest" will generally run afoul of this rule, as such statements are not objectively verifiable and are likely to mislead prospective clients as to the quality of the legal services offered.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "dedicated," "mission," and "philosophy." For example, the statement, "I am dedicated to excellence in my representation of my clients," is permissible as a goal.

Similarly, the statement, “My goal is to provide high quality legal services,” is permissible.

Areas of Practice

A lawyer may not advertise references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of advertisement. However, this rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

Commented [HL8]: From 4-7.13(b)(4).

Dramatizations

A re-creation or staging of an event must contain a prominently displayed disclaimer, “DRAMATIZATION. NOT AN ACTUAL EVENT.” For example, a re-creation of a car accident must contain the disclaimer. A re-enactment of lawyers visiting the reconstruction of an accident scene must contain the disclaimer.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer ~~under rule 4-7.15.~~

All required disclaimers must be in the same language or languages as the advertisement and be reasonably prominent and clearly legible if written or intelligible if spoken.

Commented [HL9]: From 4-7.12

Unduly Manipulative or Intrusive

Commented [HL10]: From the rule language of 4-7.15.
Language prohibiting voice or image of celebrity deleted.

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement that uses an image, sound, video or dramatization in a manner that is designed to solicit legal employment by appealing to a prospective client’s emotions rather than to a rational evaluation of a lawyer’s suitability to represent the prospective client is unduly manipulative or intrusive. An advertisement that uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesperson for the lawyer is also unduly manipulative or intrusive.

A lawyer also may not offer consumers an economic incentive to employ the lawyer or review the lawyer’s advertising. However, a lawyer is not prohibited from offering a discounted fee or special fee or cost structure as otherwise permitted by these rules and is not prohibited from offering free legal advice or information that might indirectly benefit a consumer economically.

Implying Lawyer Will Violate Rules of Conduct or Law

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in “combative and vicious tactics” that would violate the Rules of Professional Conduct. *Fla. Bar v. Pape*, 918 So. 2d 240 (Fla.2005).

Testimonials

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer’s firm regarding the quality of the lawyer’s services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

However, a testimonial regarding matters on which the person making the testimonial is unqualified to evaluate; is not the actual experience of the person making the testimonial; is not representative of what clients of that lawyer or law firm generally experience; that has been written or drafted by the lawyer; is in exchange for which the person making the testimonial has been given something of value; or that does not include the disclaimer that the prospective client may not obtain the same or similar results is deceptive and misleading.

Commented [HL11]: From 4-7.13(b)(8)

Florida Bar Approval of Ad or Lawyer

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar endorses a particular lawyer. Statements prohibited by this provision include, “This advertisement was approved by The Florida Bar.” A lawyer referral service also may not state that it is a “Florida Bar approved lawyer referral service,” unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating the Florida Bar. A qualifying provider also may not state that it is a “Florida Bar approved qualifying provider” or that its advertising is approved by The Florida Bar.

Judicial, Executive, and Legislative Titles

This rule prohibits use of a judicial, executive, or legislative branch title, unless accompanied by clear modifiers and placed subsequent to the person’s name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is inherently misleading in that it implies that the current or

former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Former Justice Doe, Retired Judge Smith, Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer's name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements and written communications, computer-accessed communications, letterhead, and business cards.

However, an accurate representation of one's judicial, executive, or legislative experience is permitted if the reference is subsequent to the lawyer's name and is clearly modified by terms such as "former" or "retired." For example, a former judge may state "Jane Doe, Florida Bar member, former circuit judge" or "Jane Doe, retired circuit judge."

As another example, a former state representative may not include "Representative Smith (former)" or "Representative Smith, retired" in an advertisement, letterhead, or business card. However, a former representative may state, "John Smith, Florida Bar member, former state representative."

Further, an accurate representation of one's judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed subsequent to the person's name. For example, the statement "John Jones was governor of the State of Florida from [. . . years of service . . .]" would be permissible.

Also, the rule governs attorney advertising. It does not apply to pleadings filed in a court. A practicing attorney who is a former or retired judge may not use the title in any form in a court pleading. A former or retired judge who uses that former or retired judge's previous title of "Judge" in a pleading could be sanctioned.

Awards, honors, and ratings

Commented [HL12]: Moved from comment language of 4-7.14

Awards, honors, and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation, or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors, and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

Claims of board certification, specialization or expertise

Commented [HL13]: Moved from comment language of 4-7.14

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in those fields, the lawyer is permitted to indicate that. A lawyer also may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as "certified" or "board certified" or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified in any area of practice.

A lawyer can only state or imply that the lawyer is "certified" in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may state that, but may not state that the lawyer is certified in personal injury.

The criteria set forth in the Florida Certification Plan is designed to establish a reasonable degree of objectivity and uniformity so that the use of the terms "specialization," "expertise," or other variations of those terms, conveys some meaningful information to the public and is not misleading. A lawyer who meets the criteria for certification in a particular field automatically qualifies to state that the lawyer is a specialist or expert in the area of certification. However, a lawyer making a claim of specialization or expertise is not required to be certified in the claimed field of specialization or expertise or to have met the specific criterion for certification if the lawyer can demonstrate that the lawyer has the education, training, experience, or substantial involvement in the area of practice commensurate with specialization or expertise.

A law firm claim of specialization or expertise may be based on 1 lawyer who is a member of or employed by the law firm either having the requisite board certification or being able to objectively verify the requisite qualifications enumerated in this rule. For purposes of this rule, a lawyer's "of counsel" relationship with a law firm is a sufficiently close relationship to permit a law firm to claim specialization or expertise based on the "of counsel" lawyer's board certification or qualifications only if the "of counsel" practices law solely through the law firm claiming specialization or expertise and provides substantial legal services through the firm as to allow the firm to reasonably rely on the "of counsel" qualifications in making the claim.

Fee and cost information

Every advertisement that contains information about the lawyer's fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer's advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter's outcome, the following statements are permissible: "No Fee if No Recovery, but Client is Responsible for Costs," "No Fee if No Recovery, Excludes Costs," "No Recovery, No Fee, but Client is Responsible for Costs" and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements "No Fees or Costs If No Recovery" and "No Recovery - No Fees or Costs" are permissible.

~~RULE 4-7.14 POTENTIALLY MISLEADING ADVERTISEMENTS~~

~~A lawyer may not engage in potentially misleading advertising.~~

~~**(a) Potentially Misleading Advertisements.** Potentially misleading advertisements include, but are not limited to:~~

~~(1) advertisements that are subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;~~

~~(2) advertisements that are literally accurate, but could reasonably mislead a prospective client regarding a material fact;~~

~~(3) references to a lawyer's membership in, or recognition by, an entity that purports to base the membership or recognition on a lawyer's ability or skill, unless the entity conferring the membership or recognition is generally recognized within the legal profession as being a bona fide organization that makes its selections based on objective and uniformly applied criteria, and that includes among its members or those recognized a reasonable cross-section of the legal community the entity purports to cover;~~

~~(4) a statement that a lawyer is board-certified or other variations of that term unless:~~

~~(A) the lawyer has been certified under the Florida Certification Plan as set forth in chapter 6, Rules Regulating The Florida Bar and the advertisement~~

Commented [HL14]: Moved from comment language of 4-7.14

Commented [HL15]: The rule language has been deleted and the comment language has been moved to the general rule prohibiting deceptive and misleading advertising.

includes the area of certification and that The Florida Bar is the certifying organization;

~~(B) the lawyer has been certified by an organization whose specialty certification program has been accredited by the American Bar Association or The Florida Bar as provided elsewhere in these rules. A lawyer certified by a specialty certification program accredited by the American Bar Association but not The Florida Bar must include the statement "Not Certified as a Specialist by The Florida Bar" in reference to the specialization or certification. All such advertisements must include the area of certification and the name of the certifying organization; or~~

~~(C) the lawyer has been certified by another state bar if the state bar program grants certification on the basis of standards reasonably comparable to the standards of the Florida Certification Plan set forth in chapter 6 of these rules and the advertisement includes the area of certification and the name of the certifying organization.~~

~~In the absence of the certification, a lawyer may communicate the fact that the lawyer limits his or her practice to 1 or more fields of law;~~

~~(5) a statement that the lawyer is a specialist or an expert in an area of practice, or other variations of those terms, unless the lawyer is certified under the Florida Certification Plan or an American Bar Association or Florida Bar accredited certification plan or the lawyer can objectively verify the claim based on the lawyer's education, training, experience, or substantial involvement in the area of practice in which specialization or expertise is claimed;~~

~~(6) a statement that a law firm specializes or has expertise in an area of practice, or other variations of those terms, unless the law firm can objectively verify the claim as to at least 1 of the lawyers who are members of or employed by the law firm as set forth in subdivision (a)(5) above, but if the law firm cannot objectively verify the claim for every lawyer employed by the firm, the advertisement must contain a reasonably prominent disclaimer that not all lawyers in the firm specialize or have expertise in the area of practice in which the firm claims specialization or expertise; or~~

~~(7) information about the lawyer's fee, including those that indicate no fee will be charged in the absence of a recovery, unless the advertisement discloses all fees and expenses for which the client might be liable and any other material information relating to the fee. A lawyer who advertises a specific fee or range of fees for a particular service must honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a shorter period; provided that, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees must be honored for no less than 1 year following publication.~~

(b) Clarifying Information. A lawyer may use an advertisement that would otherwise be potentially misleading if the advertisement contains information or statements that adequately clarify the potentially misleading issue.

Comment

Awards, honors, and ratings

Awards, honors, and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation, or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors, and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

Claims of board certification, specialization or expertise

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in those fields, the lawyer is permitted to indicate that. A lawyer also may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as "certified" or "board certified" or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified in any area of practice.

A lawyer can only state or imply that the lawyer is "certified" in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may state that, but may not state that the lawyer is certified in personal injury.

The criteria set forth in the Florida Certification Plan is designed to establish a reasonable degree of objectivity and uniformity so that the use of the terms “specialization,” “expertise,” or other variations of those terms, conveys some meaningful information to the public and is not misleading. A lawyer who meets the criteria for certification in a particular field automatically qualifies to state that the lawyer is a specialist or expert in the area of certification. However, a lawyer making a claim of specialization or expertise is not required to be certified in the claimed field of specialization or expertise or to have met the specific criterion for certification if the lawyer can demonstrate that the lawyer has the education, training, experience, or substantial involvement in the area of practice commensurate with specialization or expertise.

A law firm claim of specialization or expertise may be based on 1 lawyer who is a member of or employed by the law firm either having the requisite board certification or being able to objectively verify the requisite qualifications enumerated in this rule. For purposes of this rule, a lawyer’s “of counsel” relationship with a law firm is a sufficiently close relationship to permit a law firm to claim specialization or expertise based on the “of counsel” lawyer’s board certification or qualifications only if the “of counsel” practices law solely through the law firm claiming specialization or expertise and provides substantial legal services through the firm as to allow the firm to reasonably rely on the “of counsel” qualifications in making the claim.

Fee and cost information

Every advertisement that contains information about the lawyer’s fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer’s advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter’s outcome, the following statements are permissible: “No Fee if No Recovery, but Client is Responsible for Costs,” “No Fee if No Recovery, Excludes Costs,” “No Recovery, No Fee, but Client is Responsible for Costs” and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements “No Fees or Costs If No Recovery” and “No Recovery—No Fees or Costs” are permissible.

RULE 4-7.15 UNDULY MANIPULATIVE OR INTRUSIVE ADVERTISEMENTS

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement is unduly manipulative if it:

Commented [HL16]: Introductory language, (a), (b) and (d) are moved to the comment of the rule prohibiting deceptive and misleading advertising.

~~(a) uses an image, sound, video or dramatization in a manner that is designed to solicit legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client;~~

~~(b) uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesperson for the lawyer;~~

~~(c) contains the voice or image of a celebrity, except that a lawyer may use the voice or image of a local announcer, disc jockey or radio personality who regularly records advertisements so long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm; or~~

~~(d) offers consumers an economic incentive to employ the lawyer or review the lawyer's advertising; provided that this rule does not prohibit a lawyer from offering a discounted fee or special fee or cost structure as otherwise permitted by these rules and does not prohibit the lawyer from offering free legal advice or information that might indirectly benefit a consumer economically.~~

Commented [HL17]: This language is deleted in its entirety.

Comment

Commented [HL18]: The comment language is deleted and not moved to other comment language.

Unduly Manipulative Sounds and Images

Illustrations that are informational and not misleading are permissible. As examples, a graphic rendering of the scales of justice to indicate that the advertising lawyer practices law, a picture of the lawyer, or a map of the office location are permissible illustrations.

An illustration that provides specific information that is directly related to a particular type of legal claim is permissible. For example, a photograph of an actual medication to illustrate that the medication has been linked to adverse side effects is permissible. An x-ray of a lung that has been damaged by asbestos would also be permissible. A picture or video that illustrates the nature of a particular claim or practice, such as a person on crutches or in jail, is permissible.

An illustration or photograph of a car that has been in an accident would be permissible to indicate that the lawyer handles car accident cases. Similarly, an illustration or photograph of a construction site would be permissible to show either that the lawyer handles construction law matters or workers' compensation matters. An illustration or photograph of a house with a foreclosure sale sign is permissible to indicate that the lawyer handles foreclosure matters. An illustration or photograph of a person with a stack of bills to indicate that the lawyer handles bankruptcy is also permissible. An illustration or photograph of a person being arrested, a person in jail, or an accurate rendering of a traffic stop also is permissible. An illustration, photograph, or portrayal of a bulldozer to indicate that the lawyer handles eminent domain matters is permissible. Illustrations, photographs, or scenes of doctors examining x-rays are permissible to show that a lawyer handles medical malpractice or medical products

liability cases. An image, dramatization, or sound of a car accident actually occurring would also be permissible, as long as it is not unduly manipulative.

Although some illustrations are permissible, an advertisement that contains an image, sound or dramatization that is unduly manipulative is not. For example, a dramatization or illustration of a car accident occurring in which graphic injuries are displayed is not permissible. A depiction of a child being taken from a crying mother is not permissible because it seeks to evoke an emotional response and is unrelated to conveying useful information to the prospective client regarding hiring a lawyer. Likewise, a dramatization of an insurance adjuster persuading an accident victim to sign a settlement is unduly manipulative, because it is likely to convince a viewer to hire the advertiser solely on the basis of the manipulative advertisement.

Some illustrations are used to seek attention so that viewers will receive the advertiser's message. So long as those illustrations, images, or dramatizations are not unduly manipulative, they are permissible, even if they do not directly relate to the selection of a particular lawyer.

Use of Celebrities

A lawyer or law firm advertisement may not contain the voice or image of a celebrity. A celebrity is an individual who is known to the target audience and whose voice or image is recognizable to the intended audience. A person can be a celebrity on a regional or local level, not just a national level. Local announcers or disc jockeys and radio personalities are regularly used to record advertisements. Use of a local announcer or disc jockey or a radio personality to record an advertisement is permissible under this rule as long as the person recording the announcement does not endorse or offer a testimonial on behalf of the advertising lawyer or law firm.

RULE 4-7.16 PRESUMPTIVELY VALID CONTENT

Commented [HL19]: Rule and comment deleted in its entirety.

The following information in advertisements is presumed not to violate the provisions of rules 4-7.11 through 4-7.15:

(a) Lawyers and Law Firms. A lawyer or law firm may include the following information in advertisements and unsolicited written communications:

(1) the name of the lawyer or law firm subject to the requirements of this rule and rule 4-7.21, a listing of lawyers associated with the firm, office locations and parking arrangements, disability accommodations, telephone numbers, website addresses, and electronic mail addresses, office and telephone service hours, and a designation such as "attorney" or "law firm";

(2) date of admission to The Florida Bar and any other bars, current membership or positions held in The Florida Bar or its sections or committees or those of other state bars, former membership or positions held in The Florida Bar or its sections or committees with dates of membership or those of other state bars, former positions of employment held in the legal profession with dates the positions

were held, years of experience practicing law, number of lawyers in the advertising law firm, and a listing of federal courts and jurisdictions other than Florida where the lawyer is licensed to practice;

~~(3) technical and professional licenses granted by the state or other recognized licensing authorities and educational degrees received, including dates and institutions;~~

~~(4) military service, including branch and dates of service;~~

~~(5) foreign language ability;~~

~~(6) fields of law in which the lawyer practices, including official certification logos, subject to the requirements of subdivision (a)(4) of rule 4-7.14 regarding use of terms such as certified, specialist, and expert;~~

~~(7) prepaid or group legal service plans in which the lawyer participates;~~

~~(8) acceptance of credit cards;~~

~~(9) fee for initial consultation and fee schedule, subject to the requirements of subdivisions (a)(5) of rule 4-7.14 regarding cost disclosures and honoring advertised fees;~~

~~(10) common salutary language such as "best wishes," "good luck," "happy holidays," "pleased to announce," or "proudly serving your community";~~

~~(11) punctuation marks and common typographical marks;~~

~~(12) an illustration of the scales of justice not deceptively similar to official certification logos or The Florida Bar logo, a gavel, traditional renditions of Lady Justice, the Statue of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), diploma(s), or a photograph of the lawyer or lawyers who are members of, or employed by, the firm against a plain background such as a plain unadorned office or a plain unadorned set of law books.~~

(b) Lawyer Referral Services and Qualifying Providers. A lawyer referral service or qualifying provider may advertise its name, location, telephone number, the fee charged, its hours of operation, the process by which referrals or matches are made, the areas of law in which referrals or matches are offered, the geographic area in which the lawyers practice to whom those responding to the advertisement will be referred or matched. The Florida Bar's lawyer referral service or a lawyer referral service approved by The Florida Bar under chapter 8 of the Rules Regulating the Florida Bar also may advertise the logo of its sponsoring bar association and its nonprofit status.

Comment

~~The presumptively valid content creates a safe harbor for lawyers. A lawyer desiring a safe harbor from discipline may choose to limit the content of an advertisement to the information listed in this rule and, if the information is true, the advertisement complies with these rules. However, a lawyer is not required to limit the information in an advertisement to the presumptively valid content, as long as all information in the advertisement complies with these rules.~~

RULE 4-7.17 PAYMENT FOR ADVERTISING AND PROMOTION

Commented [HL20]: Changes made to rule numbers only (not shown here)

(a) Payment by Other Lawyers. No lawyer may, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm. Rule 4-1.5(f)(4)(D) (regarding the division of contingency fees) is not affected by this provision even though the lawyer covered by subdivision (f)(4)(D)(ii) of rule 4-1.5 advertises.

(b) Payment for Referrals. A lawyer may not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising permitted by these rules, may pay the usual charges of a lawyer referral service, lawyer directory, qualifying provider or other legal service organization, and may purchase a law practice in accordance with rule 4-1.17.

(c) Payment by Nonlawyers. A lawyer may not permit a nonlawyer to pay all or a part of the cost of an advertisement by that lawyer.

Comment

Paying for the Advertisements of Another Lawyer

A lawyer is not permitted to pay for the advertisements of another lawyer not in the same firm. This rule is not intended to prohibit more than 1 law firm from advertising jointly, but the advertisement must contain all required information as to each advertising law firm.

Paying Others for Recommendations

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of rule 4-1.17, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs, qualifying providers, or lawyer directories and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rule 4-7.22. This rule does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

RULE 4-7.18 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

Commented [HL21]: Changes made to rule numbers only (not shown here)

(a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit in person, or permit employees or agents of the lawyer to solicit in person on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, by electronic means that include real-time communication face-to-face such as video telephone or video conference, or by other communication directed to a specific recipient that does not meet the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules.

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

(b) Written Communication.

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(E) the communication violates rules 4-7.11 through 4-7.17 of these rules;

(F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) Such communications are subject to the requirements of 4-7.11 through 4-7.17 of these rules.

(B) Each separate enclosure of the communication and the face of an envelope containing the communication must be reasonably prominently marked "advertisement" in ink that contrasts with both the background it is printed on and other text appearing on the same page. If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark must be reasonably prominently marked on the address panel of the brochure or pamphlet, on the inside of the brochure or pamphlet, and on each separate enclosure. If the written communication is sent via electronic mail, the subject line must begin with the word "Advertisement."

(C) Every written communication must be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation is mailed with the written communication, the top of each page of the contract must be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" must appear on the client signature line.

(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: "If you have already retained a lawyer for this matter, please disregard this letter."

(F) Written communications must not be made to resemble legal pleadings or other legal documents.

(G) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or

matter will be referred to another lawyer or law firm, any written communication concerning a specific matter must include a statement so advising the client.

(H) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to enable the recipient to understand the extent of the lawyer's knowledge regarding the recipient's particular situation.

(I) A written communication seeking employment by a specific prospective client in a specific matter must not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members, or to communications by the lawyer at a prospective client's request.

Comment

Prior Professional Relationship

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer's capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer's professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing relationship with another professional where both are members of a trade organization related to both the lawyer's and the nonlawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

Disclosing Where the Lawyer Obtained Information

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's matter is the client's name, contact information, date of arrest and charge. In the context of securities arbitration, a direct mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

Group or Prepaid Legal Services Plans

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

RULE 4-7.19 EVALUATION OF ADVERTISEMENTS

(a) Voluntary Filing Requirements. ~~Subject to the exemptions stated in rule 4-7.20, any lawyer who advertises services shall file.~~ Filing of advertisements is voluntary. Any lawyer may obtain an opinion from The Florida Bar regarding an advertisement's compliance with these rules by filing with The Florida Bar a copy of each advertisement at least 20 days prior to the lawyer's first dissemination of the advertisement. The advertisement must be filed at The Florida Bar headquarters address in Tallahassee. A lawyer who seeks an opinion from The Florida Bar regarding compliance with these rules will not be subject to discipline for dissemination of an advertisement deemed to

Commented [HL22]: Filing changed from mandatory to voluntary.

be compliant. Dissemination of an advertisement deemed to be noncompliant may subject the lawyer to discipline.

(b) Evaluation by The Florida Bar. The Florida Bar will evaluate all advertisements voluntarily filed with it pursuant to this rule for compliance with the applicable provisions set forth in ~~rules 4-7.11 through 4-7.15 and 4-7.18(b)(2)~~ this subchapter. If The Florida Bar does not send any communication to the filer within 15 days of receipt by The Florida Bar of a complete filing, or within 15 days of receipt by The Florida Bar of additional information when requested within the initial 15 days, the lawyer will not be subject to discipline by The Florida Bar, except if The Florida Bar subsequently notifies the lawyer of noncompliance, the lawyer may be subject to discipline for dissemination of the advertisement after the notice of noncompliance.

~~**(c) Preliminary Opinions.** A lawyer may obtain an advisory opinion concerning the compliance of a contemplated advertisement prior to production of the advertisement by submitting to The Florida Bar a draft or script that includes all spoken or printed words appearing in the advertisement, a description of any visual images to be used in the advertisement, and the fee specified in this rule. The voluntary prior submission does not satisfy the filing and evaluation requirements of these rules, but once completed, The Florida Bar will not charge an additional fee for evaluation of the completed advertisement.~~

~~**(d) Opinions on Exempt Advertisements Websites.** A lawyer may obtain an advisory opinion concerning the compliance of an existing or contemplated advertisement intended to be used by the lawyer seeking the advisory opinion that is not required to be filed for review by submitting the material and fee specified in subdivision (h) of this rule to The Florida Bar, except that a lawyer may not file an entire website for review. A lawyer who wishes to obtain an opinion regarding the lawyer's website may not file an entire website for review. Instead, a lawyer may obtain an advisory opinion concerning the compliance of a specific page, provision, statement, illustration, or photograph on a website.~~

(e) Facial Compliance. Evaluation of advertisements is limited to determination of facial compliance with rules ~~4-7.11~~ through 4-7.15 and 4-7.18(b)(2), and notice of compliance does not relieve the lawyer of responsibility for the accuracy of factual statements.

(f) Notice of Compliance and Disciplinary Action. A finding of compliance by The Florida Bar will be binding on The Florida Bar in a grievance proceeding unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement. The Florida Bar has a right to change its finding of compliance and in such circumstances must notify the lawyer of the finding of noncompliance, after which the lawyer may be subject to discipline for continuing to disseminate the advertisement, including dissemination of the portions of the lawyer's Internet website(s). A lawyer will be subject to discipline as provided in these rules for:

- (1) ~~failure to timely file the advertisement with The Florida Bar;~~

Commented [HL23]: Rule number references will be changed to correspond with new numbering.

~~(2) dissemination of a noncompliant advertisement in the absence of a finding of compliance by The Florida Bar;~~

~~(3) filing of an advertisement that contains a misrepresentation that is not apparent from the face of the advertisement;~~

~~(4) dissemination of an advertisement for which the lawyer has a finding of compliance by The Florida Bar more than 30 days after the lawyer has been notified that The Florida Bar has determined that the advertisement does not comply with this subchapter; or~~

~~(5) dissemination of portions of a lawyer's Internet website(s) that are not in compliance with rules 4-7.14 and 4-7.15 only after 15 days have elapsed since the date of The Florida Bar's notice of noncompliance sent to the lawyer's official bar address.~~

(g f) Notice of Noncompliance. If The Florida Bar determines that an advertisement is not in compliance with the applicable rules, The Florida Bar will advise the lawyer that dissemination or continued dissemination of the advertisement may result in professional discipline.

(h g) Contents of Filing. A filing with The Florida Bar as ~~required~~ or permitted by subdivision (a) must include:

(1) a copy of the advertisement in the form or forms in which it is to be disseminated, which is readily capable of duplication by The Florida Bar (e.g., video, audio, print media, photographs of outdoor advertising);

(2) a transcript, if the advertisement is in electronic format;

(3) a printed copy of all text used in the advertisement, including both spoken language and on-screen text;

(4) an accurate English translation of any portion of the advertisement that is in a language other than English;

(5) a sample envelope in which the written advertisement will be enclosed, if the advertisement is to be mailed;

(6) a statement listing all media in which the advertisement will appear, the anticipated frequency of use of the advertisement in each medium in which it will appear, and the anticipated time period during which the advertisement will be used;

(7) the name of at least 1 lawyer who is responsible for the content of the advertisement;

(8) a fee paid to The Florida Bar, in an amount of \$150 for each advertisement timely filed as provided in subdivision (a), or \$250 for each advertisement not timely filed. This fee will be used to offset the cost of evaluation and review of advertisements submitted under these rules and the cost of enforcing these rules; and

(9) additional information as necessary to substantiate representations made or implied in an advertisement if requested by The Florida Bar.

(h) Change of Circumstances; Refiling Requirement. If a change of circumstances occurs subsequent to The Florida Bar's evaluation of an advertisement that raises a substantial possibility that the advertisement has become false or misleading as a result of the change in circumstances, the lawyer must promptly re-file the advertisement or a modified advertisement with The Florida Bar at its headquarters address in Tallahassee along with an explanation of the change in circumstances and an additional fee set by the Board of Governors, which will not exceed \$100 if the lawyer wishes to obtain an opinion regarding compliance which will be binding in disciplinary proceedings as provided elsewhere in this rule.

(i) Maintaining Copies of Advertisements. A copy or recording of an advertisement must be submitted to The Florida Bar in accordance with the requirements of this rule, and the lawyer must retain a copy or recording for 3 years after its last dissemination along with a record of when and where it was used. If identical advertisements are sent to 2 or more prospective clients, the lawyer may comply with this requirement by filing 1 of the identical advertisements and retaining for 3 years a single copy together with a list of the names and addresses of persons to whom the advertisement was sent.

Comment

~~All advertisements must be filed for review pursuant to this rule, unless the advertisement is exempt from filing under rule 4-7.20. Even where an advertisement is exempt from filing under rule 4-7.20, a lawyer who wishes to obtain a safe harbor from discipline can submit the lawyer's advertisement that is exempt from the filing requirement and obtain The Florida Bar's opinion prior to disseminating the advertisement. Filing of advertisements prior to dissemination is voluntary. A lawyer who wishes to obtain a safe harbor from discipline can submit the lawyer's advertisement and obtain The Florida Bar's opinion prior to disseminating the advertisement.~~ A lawyer who files an advertisement and obtains a notice of compliance is therefore immune from grievance liability unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement.

Subdivision (c) of this rule precludes a lawyer from filing an entire website as an advertising submission, but a lawyer may submit a specific page, provision, statement, illustration, or photograph on a website. A lawyer who wishes to be able to rely on The Florida Bar's opinion as demonstrating the lawyer's good faith effort to comply with these rules has the responsibility of supplying The Florida Bar with all information material to a determination of whether an advertisement is false or misleading.

RULE 4-7.20 EXEMPTIONS FROM THE FILING AND REVIEW REQUIREMENT

Commented [HL24]: Rule and comment deleted in its entirety.

The following are exempt from the filing requirements of rule 4-7.19:

~~(a) an advertisement in any of the public media that contains no illustrations and no information other than that set forth in rule 4-7.16;~~

~~(b) a brief announcement that identifies a lawyer or law firm as a contributor to a specified charity or as a sponsor of a public service announcement or a specified charitable, community, or public interest program, activity, or event, provided that the announcement contains no information about the lawyer or law firm other than the permissible content of advertisements listed in rule 4-7.16, and the fact of the sponsorship or contribution. In determining whether an announcement is a public service announcement, the following criteria may be considered:~~

~~(1) whether the content of the announcement appears to serve the particular interests of the lawyer or law firm as much as or more than the interests of the public;~~

~~(2) whether the announcement concerns a legal subject;~~

~~(3) whether the announcement contains legal advice; and~~

~~(4) whether the lawyer or law firm paid to have the announcement published;~~

~~(c) a listing or entry in a law list or bar publication;~~

~~(d) a communication mailed only to existing clients, former clients, or other lawyers;~~

~~(e) a written or recorded communication requested by a prospective client;~~

~~(f) professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients; and~~

~~(g) information contained on the lawyer's Internet website(s).~~

RULE 4-7.21 FIRM NAMES AND LETTERHEAD

Commented [HL25]: Changes to rule references only (not shown here)

(a) False, Misleading, or Deceptive Firm Names. A lawyer may not use a firm name, letterhead, or other professional designation that violates rules 4-7.11 through 4-7.15.

(b) Trade Names. A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rules 4-7.11 through 4-7.15. A lawyer in private practice may use the term "legal clinic" or "legal services" in

conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) Advertising Under Trade Names. A lawyer may not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name is in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) Law Firm with Offices in Multiple Jurisdictions. A law firm with offices in more than 1 jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(e) Name of Public Officer in Firm Name. The name of a lawyer holding a public office may not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Partnerships and Business Entities. A name, letterhead, business card or advertisement may not imply that lawyers practice in a partnership or authorized business entity when they do not.

(g) Insurance Staff Attorneys. Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

(1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;

(2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;

(3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;

(4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be

required by these rules if the lawyers were private practitioners sharing space with the insurer; and

(5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

Comment

Misleading Firm Name

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as "Family Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in a law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

A sole practitioner may not use the term "and Associates" as part of the firm name, because it is misleading where the law firm employs no associates in violation of rule 4-7.13. See *Fla. Bar v. Fetterman*, 439 So. 2d 835 (Fla. 1983). Similarly, a sole practitioner's use of "group" or "team" implies that more than one lawyer is employed in the advertised firm and is therefore misleading.

Subdivision (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Three examples of such terms are "academy," "institute" and "center." Subdivision (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. An example of such an improper name is "A. Aaron Able." Although not prohibited per se, the terms "legal clinic" and "legal services" would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the community for like services.

Trade Names

Subdivision (c) of this rule precludes a lawyer from advertising under a nonsense name designed to obtain an advantageous position for the lawyer in alphabetical directory listings unless the lawyer actually practices under that nonsense name. Advertising under a law firm name that differs from the firm name under which the lawyer actually practices violates both this rule and the prohibition against false, misleading, or deceptive communications as set forth in these rules.

With regard to subdivision (f), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

All lawyers who practice under trade or firm names are required to observe and comply with the requirements of the Rules Regulating the Florida Bar, including but not limited to, rules regarding conflicts of interest, imputation of conflicts, firm names and letterhead, and candor toward tribunals and third parties.

Insurance Staff Lawyers

Some liability insurers employ lawyers on a full-time basis to represent their insured clients in defense of claims covered by the contract of insurance. Use of a name to identify these lawyers is permissible if there is such physical and functional separation as to constitute a separate law firm. In the absence of such separation, it would be a misrepresentation to use a name implying that a firm exists. Practicing under the name of a lawyer inherently represents that the identified person has supervisory responsibility. Practicing under a name prohibited by subdivision (f) is not permitted. Candor requires disclosure of the employment relationship on letterhead, business cards, and in certain other communications that are not presented to a jury. The legislature of the State of Florida has enacted, as public policy, laws prohibiting the joinder of a liability insurer in most such litigation, and Florida courts have recognized the public policy of not disclosing the existence of insurance coverage to juries. Requiring lawyers who are so employed to disclose to juries the employment relationship would negate Florida public policy. For this reason, the rule does not require the disclosure of the employment relationship on all pleadings and papers filed in court proceedings. The general duty of candor of all lawyers may be implicated in other circumstances, but does not require disclosure on all pleadings.

RULE 4-7.22 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

(a) Applicability of Rule. A lawyer is prohibited from participation with any qualifying provider that does not meet the requirements of this rule and any other applicable Rule Regulating the Florida Bar.

(b) Qualifying Providers. A qualifying provider is any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

(1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;

(2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website

address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;

(3) publishing in any media a listing of lawyers or law firms together in one place; or

(4) providing tips or leads for prospective clients to lawyers or law firms.

(c) Entities that are not Qualifying Providers. The following are not qualifying providers under this rule:

(1) a pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration; and

(2) a local or voluntary bar association solely for listing its members on its website or in its publications.

(d) When Lawyers May Participate with Qualifying Providers. A lawyer may participate with a qualifying provider as defined in this rule only if the qualifying provider:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that is a division or sharing of fees, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers, matches or otherwise connects prospective clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) does not directly or indirectly require the lawyer to refer, match or otherwise connect prospective clients to any other person or entity for other services or does not place any economic pressure or incentive on the lawyer to make such referrals, matches or other connections;

(5) provides The Florida Bar, on no less than an annual basis, with the names and Florida bar membership numbers of all lawyers participating in the service unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(6) provides the participating lawyer with documentation that the qualifying provider is in compliance with this rule unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the qualifying provider or a lawyer who participates with the qualifying provider;

(8) neither represents nor implies to the public that the qualifying provider is endorsed or approved by The Florida Bar, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public;

(10) affirmatively discloses to the prospective client at the time a referral, match or other connection is made of the location of a bona fide office by city, town or county of the lawyer to whom the referral, match or other connection is being made; and

(11) does not use a name or engage in any communication with the public that could lead prospective clients to reasonably conclude that the qualifying provider is a law firm or directly provides legal services to the public.

(e) Responsibility of Lawyer. A lawyer who participates with a qualifying provider:

(1) must report to The Florida Bar within 15 days of agreeing to participate or ceasing participation with a qualifying provider unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules; and

(2) is responsible for the qualifying provider's compliance with this rule if:

(A) the lawyer does not engage in due diligence in determining the qualifying provider's compliance with this rule before beginning participation with the qualifying provider; or

(B) The Florida Bar notifies the lawyer that the qualifying provider is not in compliance and the lawyer does not cease participation with the qualifying provider and provide documentation to The Florida Bar that the lawyer has ceased participation with the qualifying provider within 30 days of The Florida Bar's notice.

Comment

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. It is the policy of The Florida Bar to

encourage qualifying providers to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; and (c) inform the public where to seek legal services.

Subdivision (b)(3) addresses the publication of a listing of lawyers or law firms together in any media. Any media includes but is not limited to print, Internet, or other electronic media.

A lawyer may not participate with a qualifying provider that receives any fee that constitutes a division of legal fees with the lawyer, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules. A fee calculated as a percentage of the fee received by a lawyer, or based on the success or perceived value of the case, would be an improper division of fees. Additionally, a fee that constitutes an improper division of fees occurs when the qualifying provider directs, regulates, or influences the lawyer's professional judgment in rendering legal services to the client. See e.g. rules 4-5.4 and 4-1.7(a)(2). Examples of direction, regulation or influence include when the qualifying provider places limits on a lawyer's representation of a client, requires or prohibits the performance of particular legal services or tasks, or requires the use of particular forms or the use of particular third party providers, whether participation with a particular qualifying provider would violate this rule requires a case-by-case determination.

Division of fees between lawyers in different firms, as opposed to any monetary or other consideration or benefit to a qualifying provider, is governed by rule 4-1.5(g) and 4-1.5(f)(4)(D).

If a qualifying provider has more than 1 advertising or other program that the lawyer may participate in, the lawyer is responsible for the qualifying provider's compliance with this rule solely for the program or programs that the lawyer agrees to participate in. For example, there are qualifying providers that provide a directory service and a matching service. If the lawyer agrees to participate in only one of those programs, the lawyer is responsible for the qualifying provider's compliance with this rule solely for that program.

A lawyer who participates with a qualifying provider should engage in due diligence regarding compliance with this rule before beginning participation. For example, the lawyer should ask The Florida Bar whether the qualifying provider has filed any annual reports of participating lawyers, whether the qualifying provider has filed any advertisements for evaluation, and whether The Florida Bar has ever made inquiry of the qualifying provider to which the qualifying provider has failed to respond. If the qualifying provider has filed advertisements, the lawyer should ask either The Florida Bar or the qualifying provider for copies of the advertisement(s) and The Florida Bar's written opinion(s). The lawyer should ask the qualifying provider to provide

documentation that the provider is in full compliance with this rule, including copies of filings with the state in which the qualifying provider is incorporated to establish that the provider is using either its actual legal name or a registered fictitious name. The lawyer should also have a written agreement with the qualifying provider that includes a clause allowing immediate termination of the agreement if the qualifying provider does not comply with this rule.

A lawyer participating with a qualifying provider continues to be responsible for the lawyer's compliance with all Rules Regulating the Florida Bar. For example, a lawyer may not make an agreement with a qualifying provider that the lawyer must refer clients to the qualifying provider or another person or entity designated by the qualifying provider in order to receive referrals or leads from the qualifying provider. See rule 4-7.17(b). A lawyer may not accept referrals or leads from a qualifying provider if the provider interferes with the lawyer's professional judgment in representing clients, for example, by requiring the referral of the lawyer's clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider. See rule 4-1.7(a)(2). A lawyer also may not refer clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider, unless the requirements of rules 4-1.7 and 4-1.8 are met and the lawyer provides written disclosure of the relationship to the client and obtains the client's informed consent confirmed in writing. A lawyer participating with a qualifying provider may not pass on to the client the lawyer's costs of doing business with the qualifying provider. See rules 4-1.7(a)(2) and 4-1.5(a).

NEW RULE NUMBERING

4-7. INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.1 APPLICATION OF RULES

RULE 4-7.2 DECEPTIVE AND MISLEADING ADVERTISEMENTS

RULE 4-7.3 PAYMENT FOR ADVERTISING AND PROMOTION

RULE 4-7.4 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

RULE 4-7.5 EVALUATION OF ADVERTISEMENTS

RULE 4-7.6 FIRM NAMES AND LETTERHEAD

RULE 4-7.7 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

4-7. INFORMATION ABOUT LEGAL SERVICES

RULE 4-7.1 APPLICATION OF RULES

(a) Type of Media. Unless otherwise indicated, this subchapter applies to all forms of communication in any print or electronic forum, including but not limited to newspapers, magazines, brochures, flyers, television, radio, direct mail, electronic mail, and Internet, including banners, pop-ups, websites, social networking, and video sharing media. The terms “advertising” and “advertisement” as used in chapter 4-7 refer to all forms of communication seeking legal employment, both written and spoken.

(b) Lawyers. This subchapter applies to lawyers, whether or not admitted to practice in Florida or other jurisdictions, who advertise that the lawyer provides legal services in Florida or who target advertisements for legal employment at Florida residents. The term “lawyer” as used in subchapter 4-7 includes 1 or more lawyers or a law firm. This rule does not permit the unlicensed practice of law or advertising that the lawyer provides legal services that the lawyer is not authorized to provide in Florida.

(c) Referral Sources. This subchapter applies to communications made to referral sources about legal services.

Comment Websites

Websites are subject to the general lawyer advertising requirements in this subchapter and are treated the same as other advertising media. Websites of multistate firms present specific regulatory concerns. Subchapter 4-7 applies to portions of a multistate firm that directly relate to the provision of legal services by a member of the firm who is a member of The Florida Bar. Additionally, subchapter 4-7 applies to portions of a multistate firm’s website that relate to the provision of legal services in Florida, e.g., where a multistate firm has offices in Florida and discusses the provision of legal services in those Florida offices. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services by lawyers who are not admitted to The Florida Bar and who do not provide legal services in Florida. Subchapter 4-7 does not apply to portions of a multistate firm’s website that relate to the provision of legal services in jurisdictions other than Florida.

Lawyers Admitted in Other Jurisdictions

Subchapter 4-7 does not apply to any advertisement broadcast or disseminated in another jurisdiction in which a Florida Bar member is admitted to practice if the advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not broadcast or disseminated within the state of Florida or targeted at Florida residents. Subchapter 4-7 does not apply to such advertisements appearing in national media if the disclaimer “cases not accepted in Florida” is plainly noted in the advertisement. Subchapter 4-7 also does not apply to a website advertisement that

does not offer the services of a Florida Bar member, a lawyer located in Florida, or a lawyer offering to provide legal services in Florida.

Subchapter 4-7 applies to advertisements by lawyers admitted to practice law in jurisdictions other than Florida who have established a regular and/or permanent presence in Florida for the practice of law as authorized by other law and who solicit or advertise for legal employment in Florida or who target solicitations or advertisements for legal employment at Florida residents.

For example, in the areas of immigration, patent, and tax, a lawyer from another jurisdiction may establish a regular or permanent presence in Florida to practice only that specific federal practice as authorized by federal law. Such a lawyer must comply with this subchapter for all advertisements disseminated in Florida or that target Florida residents for legal employment. Such a lawyer must include in all advertisements that the lawyer is “Not a Member of The Florida Bar” or “Admitted in [jurisdiction where admitted] Only” or the lawyer’s limited area of practice, such as “practice limited to [area of practice] law.” See *Fla. Bar v. Kaiser*, 397 So. 2d 1132 (Fla. 1981).

A lawyer from another jurisdiction is not authorized to establish a regular or permanent presence in Florida to practice law in an area in which that lawyer is not authorized to practice or to advertise for legal services the lawyer is not authorized to provide in Florida. For example, although a lawyer from another state may petition a court to permit admission pro hac vice on a specific Florida case, no law authorizes a pro hac vice practice on a general or permanent basis in the state of Florida. A lawyer cannot advertise for Florida cases within the state of Florida or target advertisements to Florida residents, because such an advertisement in and of itself constitutes the unlicensed practice of law.

A lawyer from another jurisdiction may be authorized to provide Florida residents legal services in another jurisdiction. For example, if a class action suit is pending in another state, a lawyer from another jurisdiction may represent Florida residents in the litigation. Any such advertisements disseminated within the state of Florida or targeting Florida residents must comply with this subchapter.

RULE 4-7.2 DECEPTIVE AND MISLEADING ADVERTISEMENTS

A lawyer may not engage in deceptive or misleading advertising. An advertisement is deceptive or misleading if it:

- (a) contains a material statement that is factually or legally inaccurate;
- (b) omits information that is necessary to prevent the information supplied from being misleading;
- (c) implies the existence of a material nonexistent fact;

(d) is subject to varying reasonable interpretations, 1 or more of which would be materially misleading when considered in the relevant context;

(e) is literally accurate, but could reasonably mislead a prospective client regarding a material fact;

(f) is unduly manipulative or intrusive, or (g) cannot be objectively verified.

Comment

A lawyer may not engage in deceptive or misleading advertising. The examples of deceptive or misleading advertising contained in this rule and this comment are illustrative and not exhaustive. An advertisement may be considered deceptive or misleading even if it does not fall within one of the examples given in this rule or comment.

Material Omissions

An advertisement may be considered to contain a material omission if the advertisement does not state the name of at least 1 lawyer in the advertising firm or the name of the law firm and the city, town or county of 1 or more bona fide office location of the lawyer who will perform the services advertised, or if practicing virtually a statement that the lawyer is practicing virtually. Failure to include the name of the lawyer referral service if the advertisement is for the lawyer referral service, the qualifying provider if the advertisement is for the qualifying provider, or the lawyer directory is the advertisement is for the lawyer directory is also a material omission. If the case or matter will be referred to another lawyer or law firm, the failure to disclose this in the advertisement is a material omission.

Stating “over 20 years’ experience” when the experience is the combined experience of all lawyers in the advertising firm is an example of a material omission. Another example is a lawyer who states “over 20 years’ experience” when the lawyer includes within that experience time spent as a paralegal, investigator, police officer, or other nonlawyer position.

Implied Existence of Nonexistent Fact

An example of the implied existence of a nonexistent fact is an advertisement stating that a lawyer has offices in multiple states if the lawyer is not licensed in those states or is not authorized to practice law. Such a statement implies the nonexistent fact that a lawyer is licensed or is authorized to practice law in the states where offices are located.

Another example of the implied existence of a nonexistent fact is a statement in an advertisement that a lawyer is a founding member of a legal organization when the

lawyer has just begun practicing law. Such a statement falsely implies that the lawyer has been practicing law longer than the lawyer actually has.

Predictions of Success

Statements that promise a specific result or predict success in a legal matter are prohibited because they are misleading. Examples of statements that impermissibly predict success include:

“I will save your home,” “I can save your home,” “I will get you money for your injuries,” and
“Come to me to get acquitted of the charges pending against you.”

Statements regarding the legal process as opposed to a specific result generally will be considered permissible. For example, a statement that the lawyer or law firm will protect the client’s rights, protect the client’s assets, or protect the client’s family do not promise a specific legal result in a particular matter. Similarly, a statement that a lawyer will prepare a client to effectively handle cross-examination is permissible, because it does not promise a specific result, but describes the legal process.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include “goal,” “strive,” “dedicated,” “mission,” and “philosophy.” For example, the statement, “My goal is to achieve the best possible result in your case,” is permissible. Similarly, the statement, “If you’ve been injured through no fault of your own, I am dedicated to recovering damages on your behalf,” is permissible.

Modifying language can be used to prevent language from running afoul of this rule. For example, the statement, “I will get you acquitted of the pending charges,” would violate the rule as it promises a specific legal result. In contrast, the statement, “I will pursue an acquittal of your pending charges,” does not promise a specific legal result. It merely conveys that the lawyer will try to obtain an acquittal on behalf of the prospective client. The following list is a nonexclusive list of words that generally may be used to modify language to prevent violations of the rule: try, pursue, may, seek, might, could, and designed to.

General statements describing a particular law or area of law are not promises of specific legal results or predictions of success. For example, the following statement is a description of the law and is not a promise of a specific legal result: “When the government takes your property through its eminent domain power, the government must provide you with compensation for your property.”

Past Results

This rule precludes advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer’s record in obtaining favorable verdicts,

if the results are not objectively verifiable or are misleading, either alone or in the context in which they are used. For example, an advertised result that is atypical of persons under similar circumstances is likely to be misleading. A result that omits pertinent information, such as failing to disclose that a specific judgment was uncontested or obtained by default, or failing to disclose that the judgment is far short of the client's actual damages, is also misleading. The information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. An example of a past result that can be objectively verified is that a lawyer has obtained acquittals in all charges in 4 criminal defense cases. On the other hand, general statements such as, "I have successfully represented clients," or "I have won numerous appellate cases," may or may not be sufficiently objectively verifiable. For example, a lawyer may interpret the words "successful" or "won" in a manner different from the average prospective client. In a criminal law context, the lawyer may interpret the word "successful" to mean a conviction to a lesser charge or a lower sentence than recommended by the prosecutor, while the average prospective client likely would interpret the words "successful" or "won" to mean an acquittal.

Rule 4-1.6(a), Rules Regulating the Florida Bar, prohibits a lawyer from voluntarily disclosing any information regarding a representation without a client's informed consent, unless one of the exceptions to rule 4-1.6 applies. A lawyer who wishes to advertise information about past results must have the affected client's informed consent. The fact that some or all of the information a lawyer may wish to advertise is in the public record does not obviate the need for the client's informed consent.

Comparisons

Advertisements that contain comparisons that cannot be factually substantiated are prohibited as deceptive or misleading. Comparisons that cannot be factually substantiated would preclude a lawyer from representing that the lawyer or the lawyer's law firm is "the best," or "one of the best," in a field of law.

On the other hand, statements that the law firm is the largest in a specified geographic area, or is the only firm in a specified geographic area that devotes its services to a particular field of practice are permissible if they are true, because they are comparisons capable of being factually substantiated.

Characterization of Skills, Experience, Reputation or Record

Statements that characterize skills, experience, reputation, or record that are not objectively verifiable are prohibited as deceptive and misleading. Statements of a character trait or attribute are not statements that characterize skills, experience, or record. For example, a statement that a lawyer is aggressive, intelligent, creative, honest, or trustworthy is a statement of a lawyer's personal attribute, but does not

characterize the lawyer's skills, experience, reputation, or record. These statements are permissible.

Descriptive statements characterizing skills, experience, reputation, or a record that are true and factually verified are permissible. For example, the statement "Our firm is the largest firm in this city that practices exclusively personal injury law," is permissible if true, because the statement is objectively verifiable. Similarly, the statement, "I have personally handled more appeals before the First District Court of Appeal than any other lawyer in my circuit," is permissible if the statement is true, because the statement is objectively verifiable.

Descriptive statements that are misleading are prohibited by this rule. Descriptive statements such as "the best," "second to none," or "the finest" will generally run afoul of this rule, as such statements are not objectively verifiable and are likely to mislead prospective clients as to the quality of the legal services offered.

Aspirational statements are generally permissible as such statements describe goals that a lawyer or law firm will try to meet. Examples of aspirational words include "goal," "dedicated," "mission," and "philosophy." For example, the statement, "I am dedicated to excellence in my representation of my clients," is permissible as a goal. Similarly, the statement, "My goal is to provide high quality legal services," is permissible.

Areas of Practice

A lawyer may not advertise references to areas of practice in which the lawyer or law firm does not practice or intend to practice at the time of advertisement. However, this rule is not intended to prohibit lawyers from advertising for areas of practice in which the lawyer intends to personally handle cases, but does not yet have any cases of that particular type.

Dramatizations

A re-creation or staging of an event must contain a prominently displayed disclaimer, "DRAMATIZATION. NOT AN ACTUAL EVENT." For example, a re-creation of a car accident must contain the disclaimer. A re-enactment of lawyers visiting the reconstruction of an accident scene must contain the disclaimer.

If an actor is used in an advertisement purporting to be engaged in a particular profession or occupation who is acting as a spokesperson for the lawyer or in any other circumstances where the viewer could be misled, a disclaimer must be used. However, an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, may not be used in an advertisement to endorse or recommend a lawyer, or to act as a spokesperson for a lawyer.

All required disclaimers must be in the same language or languages as the advertisement and be reasonably prominent and clearly legible if written or intelligible if spoken.

Unduly Manipulative or Intrusive

A lawyer may not engage in unduly manipulative or intrusive advertisements. An advertisement that uses an image, sound, video or dramatization in a manner that is designed to solicit legal employment by appealing to a prospective client's emotions rather than to a rational evaluation of a lawyer's suitability to represent the prospective client is unduly manipulative or intrusive. An advertisement that uses an authority figure such as a judge or law enforcement officer, or an actor portraying an authority figure, to endorse or recommend the lawyer or act as a spokesperson for the lawyer is also unduly manipulative or intrusive.

A lawyer also may not offer consumers an economic incentive to employ the lawyer or review the lawyer's advertising. However, a lawyer is not prohibited from offering a discounted fee or special fee or cost structure as otherwise permitted by these rules and is not prohibited from offering free legal advice or information that might indirectly benefit a consumer economically.

Implying Lawyer Will Violate Rules of Conduct or Law

Advertisements which state or imply that the advertising lawyers will engage in conduct that violates the Rules of Professional Conduct are prohibited. The Supreme Court of Florida found that lawyer advertisements containing an illustration of a pit bull canine and the telephone number 1-800-pitbull were false, misleading, and manipulative, because use of that animal implied that the advertising lawyers would engage in "combative and vicious tactics" that would violate the Rules of Professional Conduct. *Fla. Bar v. Pape*, 918 So. 2d 240 (Fla. 2005).

Testimonials

A testimonial is a personal statement, affirmation, or endorsement by any person other than the advertising lawyer or a member of the advertising lawyer's firm regarding the quality of the lawyer's services or the results obtained through the representation. Clients as consumers are well-qualified to opine on matters such as courtesy, promptness, efficiency, and professional demeanor. Testimonials by clients on these matters, as long as they are truthful and are based on the actual experience of the person giving the testimonial, are beneficial to prospective clients and are permissible.

However, a testimonial regarding matters on which the person making the testimonial is unqualified to evaluate; is not the actual experience of the person making the testimonial; is not representative of what clients of that lawyer or law firm generally experience; that has been written or drafted by the lawyer; is in exchange for which the person making the testimonial has been given something of value; or that does not

include the disclaimer that the prospective client may not obtain the same or similar results is deceptive and misleading.

Florida Bar Approval of Ad or Lawyer

An advertisement may not state or imply that either the advertisement or the lawyer has been approved by The Florida Bar. Such a statement or implication implies that The Florida Bar endorses a particular lawyer. Statements prohibited by this provision include, “This advertisement was approved by The Florida Bar.” A lawyer referral service also may not state that it is a “Florida Bar approved lawyer referral service,” unless the service is a not-for-profit lawyer referral service approved under chapter 8 of the Rules Regulating the Florida Bar. A qualifying provider also may not state that it is a “Florida Bar approved qualifying provider” or that its advertising is approved by The Florida Bar.

Judicial, Executive, and Legislative Titles

The use of a judicial, executive, or legislative branch title is prohibited as deceptive and misleading unless accompanied by clear modifiers and placed subsequent to the person’s name, when used to refer to a current or former officer of the judicial, executive, or legislative branch. Use of a title before a name is misleading in that it implies that the current or former officer has improper influence. Thus, the titles Senator Doe, Representative Smith, Former Justice Doe, Retired Judge Smith, Governor (Retired) Doe, Former Senator Smith, and other similar titles used as titles in conjunction with the lawyer’s name are prohibited by this rule. This includes, but is not limited to, use of the title in advertisements and written communications, computeraccessed communications, letterhead, and business cards.

However, an accurate representation of one’s judicial, executive, or legislative experience is permitted if the reference is subsequent to the lawyer’s name and is clearly modified by terms such as “former” or “retired.” For example, a former judge may state “Jane Doe, Florida Bar member, former circuit judge” or “Jane Doe, retired circuit judge.”

As another example, a former state representative may not include “Representative Smith (former)” or “Representative Smith, retired” in an advertisement, letterhead, or business card.

However, a former representative may state, “John Smith, Florida Bar member, former state representative.”

Further, an accurate representation of one’s judicial, executive, or legislative experience is permitted in reference to background and experience in biographies, curriculum vitae, and resumes if accompanied by clear modifiers and placed subsequent to the person’s name. For example, the statement “John Jones was governor of the State of Florida from [. . . years of service . . .]” would be permissible.

Also, the rule governs attorney advertising. It does not apply to pleadings filed in a court. A practicing attorney who is a former or retired judge may not use the title in any form in a court pleading. A former or retired judge who uses that former or retired judge's previous title of "Judge" in a pleading could be sanctioned.

Awards, honors, and ratings

Awards, honors, and ratings are not subjective statements characterizing a lawyer's skills, experience, reputation, or record. Instead, they are statements of objectively verifiable facts from which an inference of quality may be drawn. It is therefore permissible under the rule for a lawyer to list bona fide awards, honors, and recognitions using the name or title of the actual award and the date it was given. If the award was given in the same year that the advertisement is disseminated or the advertisement references a rating that is current at the time the advertisement is disseminated, the year of the award or rating is not required.

For example, the following statements are permissible:

"John Doe is AV rated by Martindale-Hubbell. This rating is Martindale-Hubbell's highest rating."

"Jane Smith was named a 2008 Florida Super Lawyer by Super Lawyers Magazine."

Claims of board certification, specialization or expertise

This rule permits a lawyer or law firm to indicate areas of practice in communications about the lawyer's or law firm's services, provided the advertising lawyer or law firm actually practices in those areas of law at the time the advertisement is disseminated. If a lawyer practices only in certain fields, or will not accept matters except in those fields, the lawyer is permitted to indicate that. A lawyer also may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true. A lawyer who is not certified by The Florida Bar, by another state bar with comparable standards, or an organization accredited by the American Bar Association or The Florida Bar may not be described to the public as "certified" or "board certified" or any variation of similar import. A lawyer may indicate that the lawyer concentrates in, focuses on, or limits the lawyer's practice to particular areas of practice as long as the statements are true.

Certification is specific to individual lawyers; a law firm cannot be certified in an area of practice per subdivision (c) of rule 6-3.4. Therefore, an advertisement may not state that a law firm is certified in any area of practice.

A lawyer can only state or imply that the lawyer is “certified” in the actual area(s) of practice in which the lawyer is certified. A lawyer who is board certified in civil trial law, may state that, but may not state that the lawyer is certified in personal injury.

The criteria set forth in the Florida Certification Plan is designed to establish a reasonable degree of objectivity and uniformity so that the use of the terms “specialization,” “expertise,” or other variations of those terms, conveys some meaningful information to the public and is not misleading. A lawyer who meets the criteria for certification in a particular field automatically qualifies to state that the lawyer is a specialist or expert in the area of certification. However, a lawyer making a claim of specialization or expertise is not required to be certified in the claimed field of specialization or expertise or to have met the specific criterion for certification if the lawyer can demonstrate that the lawyer has the education, training, experience, or substantial involvement in the area of practice commensurate with specialization or expertise.

A law firm claim of specialization or expertise may be based on 1 lawyer who is a member of or employed by the law firm either having the requisite board certification or being able to objectively verify the requisite qualifications enumerated in this rule. For purposes of this rule, a lawyer’s “of counsel” relationship with a law firm is a sufficiently close relationship to permit a law firm to claim specialization or expertise based on the “of counsel” lawyer’s board certification or qualifications only if the “of counsel” practices law solely through the law firm claiming specialization or expertise and provides substantial legal services through the firm as to allow the firm to reasonably rely on the “of counsel” qualifications in making the claim.

Fee and cost information

Every advertisement that contains information about the lawyer’s fee, including a contingent fee, must disclose all fees and costs that the client will be liable for. If the client is, in fact, not responsible for any costs in addition to the fee, then no disclosure is necessary. For example, if a lawyer charges a flat fee to create and execute a will and there are no costs associated with the services, the lawyer’s advertisement may state only the flat fee for that service.

However, if there are costs for which the client is responsible, the advertisement must disclose this fact. For example, if fees are contingent on the outcome of the matter, but the client is responsible for costs regardless of the matter’s outcome, the following statements are permissible: “No Fee if No Recovery, but Client is Responsible for Costs,” “No Fee if No Recovery, Excludes Costs,” “No Recovery, No Fee, but Client is Responsible for Costs” and other similar statements.

On the other hand, if both fees and costs are contingent on the outcome of a personal injury case, the statements “No Fees or Costs

RULE 4-7.3 PAYMENT FOR ADVERTISING AND PROMOTION

(a) **Payment by Other Lawyers.** No lawyer may, directly or indirectly, pay all or a part of the cost of an advertisement by a lawyer not in the same firm. Rule 4-1.5(f)(4)(D) (regarding the division of contingency fees) is not affected by this provision even though the lawyer covered by subdivision (f)(4)(D)(ii) of rule 4-1.5 advertises.

(b) **Payment for Referrals.** A lawyer may not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising permitted by these rules, may pay the usual charges of a lawyer referral service, lawyer directory, qualifying provider or other legal service organization, and may purchase a law practice in accordance with rule 4-1.17.

(c) **Payment by Nonlawyers.** A lawyer may not permit a nonlawyer to pay all or a part of the cost of an advertisement by that lawyer.

Comment Paying for the Advertisements of Another Lawyer

A lawyer is not permitted to pay for the advertisements of another lawyer not in the same firm. This rule is not intended to prohibit more than 1 law firm from advertising jointly, but the advertisement must contain all required information as to each advertising law firm.

Paying Others for Recommendations

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of rule 4-1.17, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs, qualifying providers, or lawyer directories and pay the usual fees charged by such programs, subject, however, to the limitations imposed by rule 4-7.22. This rule does not prohibit paying regular compensation to an assistant, such as a secretary or advertising consultant, to prepare communications permitted by this rule.

RULE 4-7.4 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) **Solicitation.** Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit in person, or permit employees or agents of the lawyer to solicit in person on the lawyer's behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone, by electronic means that include real-time communication face-to-face such as video telephone or video conference,

or by other communication directed to a specific recipient that does not meet the requirements of subdivision (b) of this rule and rules 4-7.1 through 4-7.3 of these rules.

(2) enter into an agreement for, charge, or collect a fee for professional employment obtained in violation of this rule.

(b) Written Communication.

(1) A lawyer may not send, or knowingly permit to be sent, on the lawyer's behalf or on behalf of the lawyer's firm or partner, an associate, or any other lawyer affiliated with the lawyer or the lawyer's firm, a written communication directly or indirectly to a prospective client for the purpose of obtaining professional employment if:

(A) the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 30 days prior to the mailing of the communication;

(B) the written communication concerns a specific matter and the lawyer knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) it has been made known to the lawyer that the person does not want to receive such communications from the lawyer;

(D) the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;

(E) the communication violates rules 4-7.1 through 4-7.3 of these rules;

(F) the lawyer knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer; or

(G) the communication concerns a request for an injunction for protection against any form of physical violence and is addressed to the respondent in the injunction petition, if the lawyer knows or reasonably should know that the respondent named in the injunction petition has not yet been served with notice of process in the matter.

(2) Written communications to prospective clients for the purpose of obtaining professional employment that are not prohibited by subdivision (b)(1) are subject to the following requirements:

(A) Such communications are subject to the requirements of 4-7.1 through 47.3 of these rules.

(B) Each separate enclosure of the communication and the face of an envelope containing the communication must be reasonably prominently marked "advertisement" in ink that contrasts with both the background it is printed on and other text appearing on the same page. If the written communication is in the form of a self-mailing brochure or pamphlet, the "advertisement" mark must be reasonably prominently marked on the address panel of the brochure or pamphlet, on the inside of the brochure or pamphlet, and on each separate enclosure. If the written communication is sent via electronic mail, the subject line must begin with the word "Advertisement."

(C) Every written communication must be accompanied by a written statement detailing the background, training and experience of the lawyer or law firm. This statement must include information about the specific experience of the advertising lawyer or law firm in the area or areas of law for which professional employment is sought. Every written communication disseminated by a lawyer referral service must be accompanied by a written statement detailing the background, training, and experience of each lawyer to whom the recipient may be referred.

(D) If a contract for representation is mailed with the written communication, the top of each page of the contract must be marked "SAMPLE" in red ink in a type size one size larger than the largest type used in the contract and the words "DO NOT SIGN" must appear on the client signature line.

(E) The first sentence of any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must be: "If you have already retained a lawyer for this matter, please disregard this letter."

(F) Written communications must not be made to resemble legal pleadings or other legal documents.

(G) If a lawyer other than the lawyer whose name or signature appears on the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter must include a statement so advising the client.

(H) Any written communication prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member must disclose how the lawyer obtained the information prompting the communication. The disclosure required by this rule must be specific enough to

enable the recipient to understand the extent of the lawyer's knowledge regarding the recipient's particular situation.

(I) A written communication seeking employment by a specific prospective client in a specific matter must not reveal on the envelope, or on the outside of a selfmailing brochure or pamphlet, the nature of the client's legal problem.

(3) The requirements in subdivision (b)(2) of this rule do not apply to communications between lawyers, between lawyers and their own current and former clients, or between lawyers and their own family members, or to communications by the lawyer at a prospective client's request.

Comment Prior Professional Relationship

Persons with whom the lawyer has a prior professional relationship are exempted from the general prohibition against direct, in-person solicitation. A prior professional relationship requires that the lawyer personally had a direct and continuing relationship with the person in the lawyer's capacity as a professional. Thus, a lawyer with a continuing relationship as the patient of a doctor, for example, does not have the professional relationship contemplated by the rule because the lawyer is not involved in the relationship in the lawyer's professional capacity. Similarly, a lawyer who is a member of a charitable organization totally unrelated to the practice of law and who has a direct personal relationship with another member of that organization does not fall within the definition.

On the other hand, a lawyer who is the legal advisor to a charitable board and who has direct, continuing relationships with members of that board does have prior professional relationships with those board members as contemplated by the rule. Additionally, a lawyer who has a direct, continuing relationship with another professional where both are members of a trade organization related to both the lawyer's and the nonlawyer's practices would also fall within the definition. A lawyer's relationship with a doctor because of the doctor's role as an expert witness is another example of a prior professional relationship as provided in the rule.

A lawyer who merely shared a membership in an organization in common with another person without any direct, personal contact would not have a prior professional relationship for purposes of this rule. Similarly, a lawyer who speaks at a seminar does not develop a professional relationship within the meaning of the rule with seminar attendees merely by virtue of being a speaker.

Disclosing Where the Lawyer Obtained Information

In addition, the lawyer or law firm should reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of the information

source will help the recipient to understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not. The lawyer or law firm must disclose sufficient information or explanation to allow the recipient to locate the information that prompted the communication from the lawyer.

Alternatively, the direct mail advertisement would comply with this rule if the advertisement discloses how much information the lawyer has about the matter.

For example, a direct mail advertisement for criminal defense matters would comply if it stated that the lawyer's only knowledge about the prospective client's matter is the client's name, contact information, date of arrest and charge. In the context of securities arbitration, a direct mail advertisement would comply with this requirement by stating, if true, that the lawyer obtained information from a list of investors, and the only information on that list is the prospective client's name, address, and the fact that the prospective client invested in a specific company.

Group or Prepaid Legal Services Plans

This rule would not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of, and details concerning, the plan or arrangement that the lawyer or the lawyer's law firm is willing to offer. This form of communication is not directed to a specific prospective client known to need legal services related to a particular matter. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under other rules in this subchapter.

RULE 4-7.5 EVALUATION OF ADVERTISEMENTS

(a) Voluntary Filing Safe Harbor. Filing of advertisements is voluntary. Any lawyer may obtain an opinion from The Florida Bar regarding an advertisement's compliance with these rules by filing with The Florida Bar a copy of each advertisement at least 20 days prior to the lawyer's first dissemination of the advertisement. The advertisement must be filed at The Florida Bar headquarters address in Tallahassee. A lawyer who seeks an opinion from The Florida Bar regarding compliance with these rules will not be subject to discipline for dissemination of an advertisement deemed to be compliant. Dissemination of an advertisement deemed to be noncompliant may subject the lawyer to discipline.

(b) Evaluation by The Florida Bar. The Florida Bar will evaluate all advertisements voluntarily filed with it pursuant to this rule for compliance with the applicable provisions set forth in this subchapter. If The Florida Bar does not send any communication to the filer within 15 days of receipt by The Florida Bar of a complete filing, or within 15 days of receipt by The Florida Bar of additional information when requested within the initial 15 days, the lawyer will not be subject to discipline by The Florida Bar, except if The Florida Bar subsequently notifies the lawyer of noncompliance, the lawyer may be subject to discipline for dissemination of the advertisement after the notice of noncompliance.

(c) Opinions on Websites. A lawyer who wishes to obtain an opinion regarding the lawyer's website may not file an entire website for review. Instead, a lawyer may obtain an advisory opinion concerning the compliance of a specific page, provision, statement, illustration, or photograph on a website.

(d) Facial Compliance. Evaluation of advertisements is limited to determination of facial compliance with rules 4-7.1, 4-7.2 4-7.4(b)(2), and notice of compliance does not relieve the lawyer of responsibility for the accuracy of factual statements.

(e) Notice of Compliance and Disciplinary Action. A finding of compliance by The Florida Bar will be binding on The Florida Bar in a grievance proceeding unless the advertisement contains a misrepresentation that is not apparent from the face of the advertisement. The Florida Bar has a right to change its finding of compliance and in such circumstances must notify the lawyer of the finding of noncompliance, after which the lawyer may be subject to discipline for continuing to disseminate the advertisement, including dissemination of portions of a lawyer's Internet website(s).

(f) Notice of Noncompliance. If The Florida Bar determines that an advertisement is not in compliance with the applicable rules, The Florida Bar will advise the lawyer that dissemination or continued dissemination of the advertisement may result in professional discipline.

(g) Contents of Filing. A filing with The Florida Bar as permitted by subdivision (a) must include:

- (1) a copy of the advertisement in the form or forms in which it is to be disseminated, which is readily capable of duplication by The Florida Bar (e.g., video, audio, print media, photographs of outdoor advertising);
- (2) a transcript, if the advertisement is in electronic format;
- (3) a printed copy of all text used in the advertisement, including both spoken language and on-screen text;
- (4) an accurate English translation of any portion of the advertisement that is in a language other than English;

(5) a sample envelope in which the written advertisement will be enclosed, if the advertisement is to be mailed;

(6) a statement listing all media in which the advertisement will appear, the anticipated frequency of use of the advertisement in each medium in which it will appear, and the anticipated time period during which the advertisement will be used;

(7) the name of at least 1 lawyer who is responsible for the content of the advertisement;

(8) a fee paid to The Florida Bar, in an amount of \$150 for each advertisement timely filed as provided in subdivision (a), or \$250 for each advertisement not timely filed. This fee will be used to offset the cost of evaluation and review of advertisements submitted under these rules and the cost of enforcing these rules; and

(9) additional information as necessary to substantiate representations made or implied in an advertisement if requested by The Florida Bar.

(h) Change of Circumstances; Refiling Requirement. If a change of circumstances occurs subsequent to The Florida Bar's evaluation of an advertisement that raises a substantial possibility that the advertisement has become deceptive, false or misleading as a result of the change in circumstances, the lawyer must promptly re-file the advertisement or a modified advertisement with The Florida Bar at its headquarters address in Tallahassee along with an explanation of the change in circumstances and an additional fee set by the Board of Governors, which will not exceed \$100 if the lawyer wishes to obtain an opinion regarding compliance which will be binding in disciplinary proceedings as provided elsewhere in this rule .

(i) Maintaining Copies of Advertisements. A lawyer who voluntarily files an advertisement with The Florida Bar must retain a copy or recording for 3 years after its last dissemination along with a record of when and where it was used. If identical advertisements are sent to 2 or more prospective clients, the lawyer may comply with this requirement by filing 1 of the identical advertisements and retaining for 3 years a single copy together with a list of the names and addresses of persons to whom the advertisement was sent.

Comment

Filing of advertisements prior to dissemination is voluntary. A lawyer who wishes to obtain a safe harbor from discipline can submit the lawyer's advertisement and obtain The Florida Bar's opinion prior to disseminating the advertisement. A lawyer who files an advertisement and obtains a notice of compliance is therefore immune from grievance liability unless the advertisement contains a misrepresentation that is not

apparent from the face of the advertisement. Subdivision (c) of this rule precludes a lawyer from filing an entire website as an advertising submission, but a lawyer may submit a specific page, provision, statement, illustration, or photograph on a website. A lawyer who wishes to be able to rely on The Florida Bar's opinion as demonstrating the lawyer's good faith effort to comply with these rules has the responsibility of supplying The Florida Bar with all information material to a determination of whether an advertisement is deceptive, false or misleading.

RULE 4-7.6 FIRM NAMES AND LETTERHEAD

(a) False, Misleading, or Deceptive Firm Names. A lawyer may not use a firm name, letterhead, or other professional designation that violates rule 4-7.2.

(b) Trade Names. A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rule 4-7.2. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) Advertising Under Trade Names. A lawyer may not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name is in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) Law Firm with Offices in Multiple Jurisdictions. A law firm with offices in more than 1 jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(e) Name of Public Officer in Firm Name. The name of a lawyer holding a public office may not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Partnerships and Business Entities. A name, letterhead, business card or advertisement may not imply that lawyers practice in a partnership or authorized business entity when they do not.

(g) Insurance Staff Attorneys. Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer

representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

- (1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;
- (2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;
- (3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;
- (4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be required by these rules if the lawyers were private practitioners sharing space with the insurer; and
- (5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

Comment Misleading Firm Name

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as "Family Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in a law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

A sole practitioner may not use the term "and Associates" as part of the firm name, because it is misleading where the law firm employs no associates in violation of rule 4-7.13. See *Fla.*

Bar v. Fetterman, 439 So. 2d 835 (Fla. 1983). Similarly, a sole practitioner's use of "group" or "team" implies that more than one lawyer is employed in the advertised firm and is therefore misleading.

Subdivision (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Three examples of such terms are "academy," "institute" and "center." Subdivision (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. An example of such an improper name is "A. Aaron Able." Although not prohibited per se, the terms "legal clinic" and "legal services" would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the community for like services.

Trade Names

Subdivision (c) of this rule precludes a lawyer from advertising under a nonsense name designed to obtain an advantageous position for the lawyer in alphabetical directory listings unless the lawyer actually practices under that nonsense name. Advertising under a law firm name that differs from the firm name under which the lawyer actually practices violates both this rule and the prohibition against false, misleading, or deceptive communications as set forth in these rules.

With regard to subdivision (f), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

All lawyers who practice under trade or firm names are required to observe and comply with the requirements of the Rules Regulating the Florida Bar, including but not limited to, rules regarding conflicts of interest, imputation of conflicts, firm names and letterhead, and candor toward tribunals and third parties.

Insurance Staff Lawyers

Some liability insurers employ lawyers on a full-time basis to represent their insured clients in defense of claims covered by the contract of insurance. Use of a name to identify these lawyers is permissible if there is such physical and functional separation as to constitute a separate law firm. In the absence of such separation, it would be a misrepresentation to use a name implying that a firm exists. Practicing under the name of a lawyer inherently represents that the identified person has supervisory responsibility. Practicing under a name prohibited by subdivision (f) is not permitted. Candor requires disclosure of the employment relationship on letterhead, business cards, and in certain other communications that are not presented to a jury. The legislature of the State of Florida has enacted, as public policy, laws prohibiting the joinder of a liability insurer in most such litigation, and Florida courts have recognized

the public policy of not disclosing the existence of insurance coverage to juries. Requiring lawyers who are so employed to disclose to juries the employment relationship would negate Florida public policy. For this reason, the rule does not require the disclosure of the employment relationship on all pleadings and papers filed in court proceedings. The general duty of candor of all lawyers may be implicated in other circumstances, but does not require disclosure on all pleadings.

RULE 4-7.7 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

(a) Applicability of Rule. A lawyer is prohibited from participation with any qualifying provider that does not meet the requirements of this rule and any other applicable Rule Regulating the Florida Bar.

(b) Qualifying Providers. A qualifying provider is any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

- (1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;
- (2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;
- (3) publishing in any media a listing of lawyers or law firms together in one place; or
- (4) providing tips or leads for prospective clients to lawyers or law firms.

(c) Entities that are not Qualifying Providers. The following are not qualifying providers under this rule:

- (1) a pro bono referral program, in which the participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel, and are undertaking the referred matters without expectation of remuneration; and
- (2) a local or voluntary bar association solely for listing its members on its website or in its publications.

(d)When Lawyers May Participate with Qualifying Providers. A lawyer may participate with a qualifying provider as defined in this rule only if the qualifying provider:

(1) engages in no communication with the public and in no direct contact with prospective clients in a manner that would violate the Rules of Professional Conduct if the communication or contact were made by the lawyer;

(2) receives no fee or charge that is a division or sharing of fees, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(3) refers, matches or otherwise connects prospective clients only to persons lawfully permitted to practice law in Florida when the services to be rendered constitute the practice of law in Florida;

(4) does not directly or indirectly require the lawyer to refer, match or otherwise connect prospective clients to any other person or entity for other services or does not place any economic pressure or incentive on the lawyer to make such referrals, matches or other connections;

(5) provides The Florida Bar, on no less than an annual basis, with the names and Florida bar membership numbers of all lawyers participating in the service unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(6) provides the participating lawyer with documentation that the qualifying provider is in compliance with this rule unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(7) responds in writing, within 15 days, to any official inquiry by bar counsel when bar counsel is seeking information described in this subdivision or conducting an investigation into the conduct of the qualifying provider or a lawyer who participates with the qualifying provider;

(8) neither represents nor implies to the public that the qualifying provider is endorsed or approved by The Florida Bar, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules;

(9) uses its actual legal name or a registered fictitious name in all communications with the public;

(10) affirmatively discloses to the prospective client at the time a referral, match or other connection is made of the location of a bona fide office by city, town or

county of the lawyer to whom the referral, match or other connection is being made; and

(11) does not use a name or engage in any communication with the public that could lead prospective clients to reasonably conclude that the qualifying provider is a law firm or directly provides legal services to the public.

(e) Responsibility of Lawyer. A lawyer who participates with a qualifying provider:

(1) must report to The Florida Bar within 15 days of agreeing to participate or ceasing participation with a qualifying provider unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules; and

(2) is responsible for the qualifying provider's compliance with this rule if:

(A) the lawyer does not engage in due diligence in determining the qualifying provider's compliance with this rule before beginning participation with the qualifying provider; or

(B) The Florida Bar notifies the lawyer that the qualifying provider is not in compliance and the lawyer does not cease participation with the qualifying provider and provide documentation to The Florida Bar that the lawyer has ceased participation with the qualifying provider within 30 days of The Florida Bar's notice.

Comment

Every citizen of the state should have access to the legal system. A person's access to the legal system is enhanced by the assistance of a qualified lawyer. Citizens often encounter difficulty in identifying and locating lawyers who are willing and qualified to consult with them about their legal needs. It is the policy of The Florida Bar to encourage qualifying providers to: (a) make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem; (b) provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; and (c) inform the public where to seek legal services.

Subdivision (b)(3) addresses the publication of a listing of lawyers or law firms together in any media. Any media includes but is not limited to print, Internet, or other electronic media.

A lawyer may not participate with a qualifying provider that receives any fee that constitutes a division of legal fees with the lawyer, unless the qualifying provider is The Florida Bar Lawyer Referral Service or a lawyer referral service approved by The Florida Bar pursuant to chapter 8 of these rules. A fee calculated as a percentage of the fee received by a lawyer, or based on the success or perceived value of the case, would be an improper division of fees. Additionally, a fee that constitutes an improper division of fees occurs when the qualifying provider directs, regulates, or influences the lawyer's professional judgment in rendering legal services to the client. See e.g. rules 4-5.4 and 4-1.7(a)(2). Examples of direction, regulation or influence include when the qualifying provider places limits on a lawyer's representation of a client, requires or prohibits the performance of particular legal services or tasks, or requires the use of particular forms or the use of particular third party providers, whether participation with a particular qualifying provider would violate this rule requires a case-by-case determination.

Division of fees between lawyers in different firms, as opposed to any monetary or other consideration or benefit to a qualifying provider, is governed by rule 4-1.5(g) and 4-1.5(f)(4)(D).

If a qualifying provider has more than 1 advertising or other program that the lawyer may participate in, the lawyer is responsible for the qualifying provider's compliance with this rule solely for the program or programs that the lawyer agrees to participate in. For example, there are qualifying providers that provide a directory service and a matching service. If the lawyer agrees to participate in only one of those programs, the lawyer is responsible for the qualifying provider's compliance with this rule solely for that program.

A lawyer who participates with a qualifying provider should engage in due diligence regarding compliance with this rule before beginning participation. For example, the lawyer should ask The Florida Bar whether the qualifying provider has filed any annual reports of participating lawyers, whether the qualifying provider has filed any advertisements for evaluation, and whether The Florida Bar has ever made inquiry of the qualifying provider to which the qualifying provider has failed to respond. If the qualifying provider has filed advertisements, the lawyer should ask either The Florida Bar or the qualifying provider for copies of the advertisement(s) and The Florida Bar's written opinion(s). The lawyer should ask the qualifying provider to provide documentation that the provider is in full compliance with this rule, including copies of filings with the state in which the qualifying provider is incorporated to establish that the provider is using either its actual legal name or a registered fictitious name. The lawyer should also have a written agreement with the qualifying provider that includes a clause allowing immediate termination of the agreement if the qualifying provider does not comply with this rule.

A lawyer participating with a qualifying provider continues to be responsible for the lawyer's compliance with all Rules Regulating the Florida Bar. For example, a lawyer may not make an agreement with a qualifying provider that the lawyer must refer clients

to the qualifying provider or another person or entity designated by the qualifying provider in order to receive referrals or leads from the qualifying provider. See rule 4-7.17(b). A lawyer may not accept referrals or leads from a qualifying provider if the provider interferes with the lawyer's professional judgment in representing clients, for example, by requiring the referral of the lawyer's clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider. See rule 4-1.7(a)(2). A lawyer also may not refer clients to the qualifying provider, a beneficial owner of the qualifying provider, or an entity owned by the qualifying provider or a beneficial owner of the qualifying provider, unless the requirements of rules 4-1.7 and 4-1.8 are met and the lawyer provides written disclosure of the relationship to the client and obtains the client's informed consent confirmed in writing. A lawyer participating with a qualifying provider may not pass on to the client the lawyer's costs of doing business with the qualifying provider. See rules 4-1.7(a)(2) and 4-1.5(a).

**APPENDIX
D**

OUTLINE FOR LIMITED ASSISTANCE PARALEGAL PILOT PROGRAM

Applicability/Perimeters

The specific applicability/perimeters of the pilot program will need to be determined. The pilot program may be part of the Law Practice Innovation Lab or a pilot program within a legal aid organization.

Qualifications

To qualify as a paralegal to provide services under the pilot program the candidate must be a Florida Registered Paralegal with X ¹ years of work experience.

The Florida Bar's Florida Registered Paralegal Program will evaluate the qualifications of the Florida Registered Pilot Paralegal although the ultimate decision of whether to hire the Florida Registered Pilot Paralegal will rest with the law firm or legal aid organization.

Definitions

Form. A form is a document with blank spaces to be filled in with information unique to the limited representation client's facts and circumstances and must be a Supreme Court Approved Form as defined in chapter 10 of the Rules Regulating The Florida Bar, a form prepared by the supervising lawyer, or a form customarily used in the supervising lawyer's practice. A form may include a letter or other document that is not a pleading or will not be filed in a court.

Limited Representation Client. A limited representation client is a person who agrees in writing to receive authorized services from a paralegal providing services as part of the pilot program and acting under the authority of a supervising lawyer.

Authorized Area of Law. An authorized area of law for an paralegal providing services as part of the pilot program is family law, residential landlord tenant law on behalf of the tenant, guardianship law, wills, advance directives, Baker Act, Marchman Act, guardian advocate of the person only, or debt collection defense. For purposes of the pilot program, family law does not include adoption by individuals other than a step-parent, dependency, juvenile proceedings, or the preparation of a Qualified Domestic Relations Order or other order utilized in the division of retirement benefits.

Responsibilities of Supervising Lawyer

The supervising lawyer of the paralegal providing services under the pilot program must ensure that the paralegal is aware of the lawyer's ethical obligations for the

¹ In order to register as an FRP, the applicant must have education and work experience or be certified as a Certified Legal Assistant or Certified Paralegal. One issue to consider is whether both of these options should be available to a paralegal providing services as part of the pilot program or should the eligibility criteria be more limited.

performance of services authorized by the pilot program and must provide guidance to the paralegal relating to the performance of authorized services and ensure that the paralegal does not undertake services that are not authorized. The supervising lawyer for the paralegal remains professionally responsible for all services provided on behalf of a limited representation client and assumes full professional responsibility for the work product, including any actions taken or not taken by the paralegal in connection with the services. The services performed by the paralegal supplement, merge with, and become the lawyer's work product.

Permissible Activities

The paralegal providing services under the pilot program may perform the following services when assisting a limited representation client in matter involving an authorized area of law:

- (1) *Selection, Completion, and Filing Forms.* The paralegal may assist a limited representation client in selecting a form and assist a limited representation client in completing, filing and serving the form. This includes conducting intake to obtain relevant information from a limited representation client. The form must include the name, firm, address and telephone number of the paralegal who assisted in preparing the form. If other documents are necessary to the matter and ancillary to the form, the paralegal may assist a limited representation client in obtaining, preparing, gathering, and organizing those documents, as well as filing and serving those documents.
- (2) *Providing Information.* When assisting a limited representation client with selecting and completing a form the paralegal may:
 - (A) give general information about how to complete the form;
 - (B) explain the form and supporting documents and provide information on how to gather or find the documents;
 - (C) give general information about the anticipated course of the proceedings and legal process, deadlines, documents that must be filed, and the applicable procedure for filing and service;
 - (D) explain the other party's documents;
 - (E) advise a limited representation client as to other documents that may be necessary to the limited represented client's case, and explain how such additional documents or pleadings may affect the limited represented client's case;
 - (F) obtain relevant facts, and explain the relevancy of such information to a limited representation client;

(G) explain how a court order affects a limited representation client's rights and obligations; and

(H) provide general information about legal rights, procedures or legal options.

(3) *Assistance with Court Proceedings.* The paralegal may accompany a limited representation client to court appearances to provide administrative support and reassurance. This support is limited to:

(A) assisting in scheduling court proceedings;

(B) informing a limited representation client about and assisting in obtaining available court services such as interpreter services and court reporters;

(C) informing a limited representation client what to expect at the hearing, how to dress and act, and how to organize paperwork to present to the court;

(D) taking notes for a limited representation client; and

(E) assisting a limited representation client in locating documents or information the court requests.

The paralegal may only provide the services in an authorized area of law. If a limited representation client has a legal issue outside of an authorized area of law, the paralegal may not provide the services.

Limited Services Disclosures

When the paralegal provides any of the services as part of the pilot program, a limited representation client must give informed consent to the provision of legal services by the paralegal in a written agreement that discloses the limited scope of services the paralegal may provide and meets any other requirement of rule 4-1.2(c) of the Rules Regulating The Florida Bar. The agreement must be signed by the limited representation client, the paralegal, and the supervising lawyer. If the paralegal knows or reasonably should know that a limited representation client requires services outside of those permitted by the pilot program, the paralegal must advise the limited representation client to seek legal advice from a lawyer and may refer the limited representation client to the paralegal's supervising lawyer.

Prohibited Activities

When providing services pursuant to the pilot program, the paralegal may not hold out as representing, speaking for, or advocating on behalf of a limited representation client and may not represent a limited representation client in court, in depositions, or in appeals. This prohibition includes addressing the court or judge as the representative of a limited representation client or on behalf of a limited representation client.

**APPENDIX
E**

LAW PRACTICE INNOVATION LABORATORY PROGRAM

The Committee's proposal for Florida's Law Practice Innovation Laboratory (the Lab) Program is outlined below. The proposal designs a data driven approach beginning with an initial three year term that will be one of research, development and data collection to determine the structure and framework which best accomplishes the regulatory objective and whether the Lab should be recommended as a permanent program. The regulatory objective is to ensure that

- the Rules Regulating The Florida Bar improve, not impede, the delivery of legal services to Florida's consumers,
- Florida lawyers play a proper and prominent, though not exclusive, role in the provision of these services and
- any regulation protects the public against misconduct and maintains the highest ethical standards of all of those who are authorized by the Supreme Court of Florida to provide legal services.

It is anticipated that prior to the conclusion of the initial three-year term the Lab's purpose, structure and framework will be evaluated with data from Lab participants, consumers receiving services and other inputs. After this evaluation a recommendation will be made to the Court as to whether the Lab should be recommended as a permanent program and if any changes to the Lab are recommended. It is envisioned that the initial 3-year term will operate through a Commission or Council of the Court (the Commission) created by Administrative Order, as described more fully below. If recommended by the Commission and approved by the Court, the Commission will be formally and permanently established as a standing Supreme Court Commission or Council pursuant to the Florida Rules of General Practice and Judicial Administration.

Purpose

The Lab is a controlled environment, defined by regulatory policies and desired legal services outcomes, where new consumer-centered innovations, which may be impermissible under current regulations, can be piloted and evaluated. The goal is to allow aspiring innovators to develop new ways of offering legal services intended to benefit the public. These services will be validated in the Lab under the strict supervision of the Commission always with the goal of ensuring that the regulatory objective is met.

The Lab will allow the following:

1. Testing what innovations are possible. The Lab can allow the supervisory body to selectively modify current rules or regulations to see how much and what kinds of innovation might be possible within the legal services market to benefit the public. Modified regulatory enforcement in the Lab can allow alternate business structures, existing law firms, technology platforms and individuals etc. to experiment with offering new legal services in a way that may not otherwise be permitted because of regulatory obstacles or uncertainty as to how the current rules may apply to proposed new models. The supervisory body can use the Lab to understand how much innovation potential

actually exists beyond mere speculation; whether emerging innovations have promise in the legal services market all while evaluating risk of harm to the consumer balanced against increased consumer access to legal services.

2. Tailored evaluation plans focused on risk. The Lab model puts the burden on applicants to define how their services should be measured regarding benefits, harms, and risks. They must propose not only what innovation is possible, but also how it can be assessed by identifying outcomes and metrics which are ascertainable and measurable in terms of success, risk of harm and increased access of legal services to the public.

3. Controlled innovation. The Lab provides an insulated environment to encourage innovative practices while maintaining consumer protection. The Lab allows controlled tests to be run as to what changes to regulation might be possible, both in terms of what rules apply and how regulation is administered. Safeguards can be installed to protect approved ventures from spilling over into the general market for the provision of legal services. These safeguards should include limitations on scope of work performed so that those in the Lab cannot expand to legal services not initially contemplated as part of their application unless a new or amended application is submitted and approved. Ventures accepted into the Lab will do so with the understanding that the project may be terminated at any time if evidence indicates unacceptable levels of harm to consumers or the profession.

4. New sources of data on what regulation works best. The Lab will allow for data-driven, evidence-based policymaking and regulation. Because Lab participants gather and share data about their services' performance, the Lab can help develop standards and metrics around data-driven regulation. It can incentivize more companies to evaluate their services through rigorous understanding of benefits and harms to the public, and it can help the development of protocols to conduct this kind of data-driven evaluation.

Structure and Funding



Supreme Court of Florida

The Lab falls under the regulatory authority of the Supreme Court of Florida. The Court appoints a Commission who will oversee the Lab and the supervisory body. It is preliminarily envisioned that the Commission will have a Chair and sufficient members to achieve its purpose. The Commission's members will be appointed by the Chief Justice after consultation with the Court. The membership will include judges, clerks of

court, members of The Florida Bar including one member of the Board of Governors, members of the public, a data scientist, and an IT professional/legal technologist. To the extent possible the members should come from different judicial circuits, different sized firms and different practice areas. All members must represent the interests of the public and access to legal services and the courts generally.

Commission

The Commission appoints the supervisory body. The Commission members have the following responsibilities:

Chair -- The Chair will be responsible for strategy, meetings of the Commission, budget, operation of the Lab and quarterly reporting to the Court.

Data Scientist -- The data scientist will be responsible for developing the quantitative analytical tools used by the Commission and supervisory body in determining the approval of any application and assessing the risk of benefit or harm to the public.

IT Professional/Legal Technologist -- The IT professional/legal technologist will be responsible for reviewing, assessing, and explaining the technological aspects of any proposed products or services.

Support Staff -- The support staff will be responsible for scheduling of meetings, developing agendas, recording of minutes, assisting in the budgeting process, and assisting in operations, development, and communications.

Consultant – The Commission may retain a consultant in legal technologies when such expertise in evaluating and implementing technology platforms is required.

No member of the Commission or any consultant will be permitted to make recommendations as to any matter under consideration which would be viewed as a conflict of interest.

Supervisory Body

The supervisory body is responsible for the day-to-day operation of the Lab. The supervisory body evaluates applications and makes recommendations regarding approval, responds to applicant's questions and demands quickly and efficiently, monitor and assess the market's development and respond to such appropriately and strategically. For budgetary and staffing purposes, it is recommended that the Court delegate the regulatory objective and authority to both the Commission and the supervisory body to The Florida Bar with the Court always maintaining supervision and ultimate authority much in the way lawyer regulation and discipline is structured.

It is the supervisory body's responsibility to develop a system that works to achieve the regulatory objective. Identifying, quantifying, understanding, and responding to risk of consumer harm using an empirical approach is a priority. There are two major aspects to this priority: (1) assessing risk of consumer harm in the market as a whole (both now and over time); and (2) assessing risk of consumer harm in a particular applicant's legal service offering.

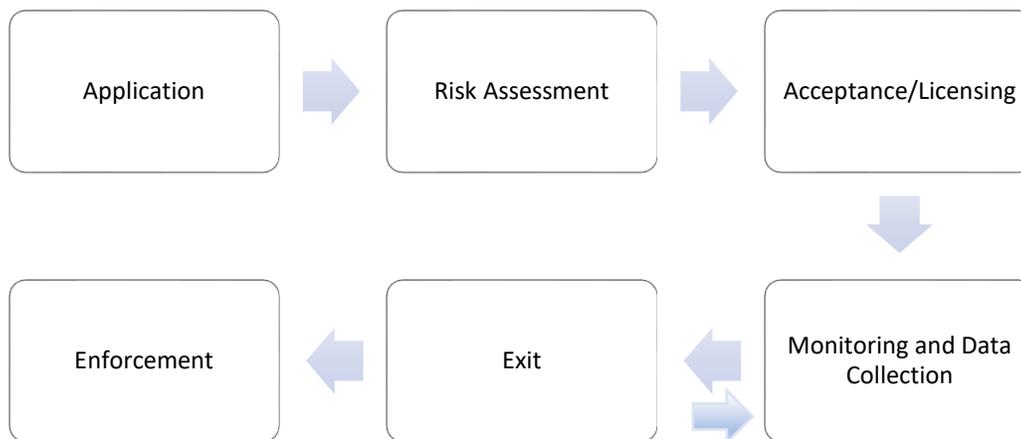
The Commission and supervisory body will work together to establish metrics by which those risks might be measured and identify the data entities will be required to submit to permit the supervisory body to assess risk on an ongoing basis. The participants will be required to submit data on these risks to be considered for participation in the market. The supervisory body should consider what level of risk self-assessment should be required from applicants in addition to any key risks identified by the supervisory body.

The supervisory body may have other duties that advance the regulatory objective. These would include its reporting duties to the Commission which will report to both the Court and the public. Reports would detail the overall state of the market, risks across the market, prioritized risk areas, and specific market sectors (by consumer, by area of law, etc.). The supervisory body may also have the authority to recommend initiatives, including public information and education campaigns to the Commission.

Funding

The Committee proposes that the program be funded primarily from fees collected from participants with the option to waive a fee for not-for-profit entities. Unless the applicant is a not-for-profit entity whose fee has been waived, the applicant would be required to submit an application fee at the outset of the approval process and a licensing fee annually to maintain an active license. At the outset, however, it is envisioned that the program be funded by The Florida Bar.

Program Overview and Regulatory Process



The key to the Lab lies in identifying and assessing risk and developing data to inform the regulatory approach. The key points of the regulatory process are: (1) licensing; (2) monitoring; and (3) enforcement. Each of the three points defines a key interaction between the supervisory body, the Commission and the regulated entity. The Lab Program will perform as follows:

Application

The applicant initiates the process by filing an application. The applicant describes the service/product/business model offered and risks and benefits of the legal service to the public. At a minimum, applicants must detail exactly what the new offering is (e.g., what the innovation is, what it intends to accomplish, and how it functions); how they expect it to benefit the public; what risks or harms they expect might arise; how they will deploy and measure this offering (the method of monitoring and assessing the project for unforeseen impacts on consumers such as surveys, case studies or fiscal impact); and which rules or regulations need to be revised in order for this offering to be allowed. The applicant should submit supplemental materials (visuals, etc.) as necessary. Any type of organization or individual can propose a new venture to be included in the Lab.¹

The supervisory body should develop a mechanism for sealing documents upon request of the applicant if the documents include information such as trade secrets. However, any decision to seal documents will be limited and in no event will it include the confidential reporting of such documents to the Commission and the Court as part of the defined reporting requirements.

Risk Assessment

Based on the description provided in the initial application, supplemented as necessary with information requests to the applicant, the supervisory body initiates the risk assessment process.

The applicant will do a self-assessment and will be expected to identify any risks to consumers. These may be risks specific to the type of project proposed, the business model, the area of law, or the target consumer population.

The supervisory body assesses the applicant's proposal. Does the proposed service implicate one of the key risks (potential for consumer harm, severity of harm, potential for consumer legal need going unmet and potential for consumer purchasing unnecessary legal services), and what is the likelihood and impact of those risks being realized? The applicant must submit required data on these risks and any information on the mitigation of these risks and the response to risk realization built into its model.

The risk level will guide the supervisory body in its regulatory approach going forward, i.e., how frequently to audit, what kind of ongoing monitoring or reporting to employ, and what kinds of enforcement tools need to be considered.

If the supervisory body finds that significant risks have been identified, but it is not clear how the applicant plans to address and mitigate those risks, the supervisory body can impose probationary requirements on the applicant targeted to address those risks or refuse licensure.

¹ Nothing in this proposal is intended to permit a lawyer admitted in another jurisdiction to open a law office in Florida or to be admitted to the practice of law in Florida.

Acceptance into Lab

After review of the application and risk assessment, the supervisory body recommends acceptance to the Commission of only those applicants that have demonstrated an innovative new offering, a strong assessment plan, and a strong potential for public benefit as weighed against any identifiable risk of public harm. The Commission approves appropriate participants to enter the Lab and establishes how the data-sharing, auditing, and evaluation will proceed. If the participants agree to these arrangements, they receive a letter of non-enforcement from the Commission that gives them permission to develop and launch the agreed upon offering, within the confines of the Lab, without being subject to the identified regulations.

Participants accepted into the Lab must conspicuously disclose that they are part of the Lab and refer consumers to the supervisory body where they can learn more about the participant and give feedback or complaints. Participants in the Lab must also agree to submit to the jurisdiction of the Florida courts for resolution of disputes with Florida consumers.

Monitoring and Data Collection

Once an entity or individual or platform is approved, the regulatory relationship moves on to the monitoring and data collection phase. The purpose of monitoring is continual improvement of the regulatory system with respect to the regulatory objective.

Monitoring enables the supervisory body to understand risks in the market and identify trends and to observe, measure, and adjust any regulatory initiatives to drive progress toward the regulatory objective.

In monitoring, the supervisory body can use several different strategies/approaches. The supervisory body should develop requirements such that participants periodically and routinely provide data on the following four key risks: 1) consumer achieves a poor legal result (consumer harm); 2) severity of the harm; 3) consumer fails to exercise their legal rights because they did not know they possessed those rights; or 4) consumer purchases a legal service that is unnecessary or inappropriate for resolution of their legal issue. The supervisory body should have the flexibility to reduce or eliminate specific reporting requirements if the data consistently shows no harm to consumers. The supervisory body should also conduct unannounced testing or evaluation of participants' performance through audits or expert audits of random samples of services or products.

The participants have an affirmative duty to monitor for and disclose any unforeseen impacts on consumers. The participants work on developing their services, instituting them in the legal services market, and collecting data on their performance. The supervisory body observes the performance of the participant to see if the public uses it, if the intended benefits result, if any expected or unexpected harms result, and receives consumer feedback and complaints. The supervisory body can recommend that the Commission suspend or cancel the non-enforcement letter at any time if the participant is not performing according to the agreement, if its services do not engage an audience, or if the services result in harms above what the supervisory body has deemed

acceptable. Whether the services help increase access to justice or the availability of legal services may also be considered.

The supervisory body should conduct consumer surveys across the market and consider how to engage with courts and other agencies to gather performance data. The supervisory body should use the data gathered to issue regular market reports and issue guidance to the public, participants and the Commission.

Exiting the Lab

Once the participant's designated period operating within the Lab finishes, the participant may be granted a license by the Court in which case the participant can continue with its approved services with the non-enforcement authorization still intact. The supervisory body can take stock of the participants, their services, and data, and it can use this information to shape the evaluation of future applications—perhaps changing the terms of the safeguards; the protocols for evaluation of risks, harms, and benefits; or what types of innovation it authorizes. The supervisory body might also use the data to recommend to the Commission permanent changes to the existing regulations for the entire market.

A condition of the Lab is that participants which successfully exit the Lab may continue providing their services as long as the risks of harm were demonstrably within appropriate levels even if the Lab is formally concluded. Periodic review and data will still be required by the supervisory body. If the review or data shows that consumers are being harmed or that services are being provided beyond what was authorized, the supervisory body may recommend to the Court that regulatory action be taken including loss of licensure and cessation of services.

Enforcement ²

Enforcement is necessary if the activities of participants are harming consumers. The supervisory body will act when evidence of consumer harm exceeds the applicable level of acceptable harm thresholds outlined in the individualized risk assessment. The supervisory body should strive to make the enforcement process as transparent, specifically targeted, and responsive as possible.

The supervisory body should develop a process for enforcement: intake (a process by which members of the public can approach the supervisory body with complaints about the services received), investigation, and redress. Evidence of consumer harm can come before the supervisory body through multiple avenues:

1. Supervisory body finds evidence of consumer harm through the course of its monitoring, auditing, or testing of participants.
2. Supervisory body finds evidence of consumer harm through its monitoring of the legal services market.

² This outline discusses regulatory enforcement only and does not discuss civil remedies the consumer may have as that is beyond the scope of the program.

3. Consumer complaints.
4. Referrals from courts or other agencies.
5. Whistleblower reports.
6. Media or other public interest reports.

The supervisory body should consider establishing a role or office to focus on consumer questions or complaints about poor legal services (issues such as poor communication, inefficient service, trouble following client direction, costs etc.). This role could be contained within the supervisory body but requires proper structural independence and authority to address complaints, require remedial action, and issue clear guidelines on what kinds of information should be referred to the enforcement authority of the supervisory body. Many of these consumer interventions are already well-established programs and processes within The Florida Bar structure.

If the supervisory body makes a finding of consumer harm that exceeds the applicable threshold, then penalties are triggered. The penalty system should be clear, simple, and driven by the regulatory objective. The supervisory body should strive to address harm in the market without unnecessarily interfering with the market.

There should be a process to appeal enforcement decisions, both within the supervisory body, to the Commission and to the Supreme Court of Florida. The quarterly report made by the Chair to the Court should include enforcement data and actions.

Final Thoughts

The Committee believes that there is a need to prioritize access to legal services in the Lab. The Lab should be designed to incentivize benefits to extend not only to people with less money to spend on services but to all consumers of legal services who currently struggle to access the same. Some specific ideas include:

1. Obligation to distribute innovations to low-income communities. As more services succeed in the Lab, there might be obligations for the companies to give free licenses, software, or other access to people who cannot afford them.
2. Matchmaking between technologists, legal aid, and social services groups. The Commission should explore whether a supervisory body, or associated group, can help encourage more access-oriented entrants by bringing together experts with new technologies and business models with professionals who work closely with low-income communities. In this way, the supervisory body could help legal aid lawyers and social service providers better understand how they might harness emerging technologies and “innovation” (when most of them do not have the resources to do this on their own). The supervisory body might also offer incentives and training to possible entrants who are focused on low-income consumers.
3. Including lawyers in the legal services delivery model to the greatest extent possible. Providing consumers greater access to legal services also includes assisting lawyers in learning how to meet these growing needs. The greatest consumer harm may in fact be no access to legal services. Just as lawyers or the legal profession cannot solve this

problem alone neither can technological innovations. The solution lies in providing the largest numbers of members of the public the greatest access to a variety of legal services with lawyers playing a prominent, though not exclusive, role.



NW Sidebar

The Voices of Washington's Legal Community



Legal Regulatory Sandbox Could Incubate Innovation in Washington

July 13, 2021



Judiciaries in Washington and other states are wrangling over how the practice of law can catch up with rapidly evolving demand and new technology. The answer might come in a Legal Regulatory Sandbox proposed by the Washington Supreme Court's Practice of Law Board.

Imagine a website that could guide people through contesting traffic infractions. More often than not drivers just pay the fine and forfeit their day in court to avoid the hassle. The online service might explain legal procedures and provide documents, or it might refer their case to a licensed attorney. Under current rules, gaining full authorization for such a practice can take years, if authorized at all.

According to its designers, the Legal Regulatory Sandbox could serve as a springboard for innovative online legal services and alternative business models, such as a solo practitioner who wants to afford a paralegal by offering them a 10 percent stake in the practice. The sandbox, or laboratory, aims to provide new alternative legal services to those who otherwise could not afford or access traditional legal representation. It would create a process to regulate and test new ideas with a streamlined Supreme Court authorization process.

Practice of Law Board Chair Michael Cherry met with the justices of the Washington Supreme Court on July 1 to present a blueprint—a plan for the Legal Regulatory Sandbox. Under the blueprint, the court would grant participation in the sandbox based on balancing the risk of consumer harm with the potential to improve access to justice. Supreme Court orders would authorize participating online legal services and alternative business structures to practice law in Washington for a two-year trial period as part of the sandbox, with the possibility of ongoing authorization to practice after showing there is no harm to consumers.

“The goal is to regulate the practice of law even for people working in the Legal Regulatory Sandbox,” Cherry told NWSidebar. For example, legal ventures such as a new legal-document software system for property management or a new business model led by nonlawyers could be authorized to work in the legal regulatory sandbox, said Cherry, who worked in technology for years before becoming a lawyer. “We’re very serious about thinking through how the court determines who gets to participate in the sandbox.”

Many online legal services operate on the assumption that they can practice in Washington if they comply with a set of conditions laid out in an Assurance of Discontinuance in Thurston County Superior Court. The court there issued the Assurance of Discontinuance following former Attorney General Robert McKenna's investigation of LegalZoom in 2010. McKenna alleged LegalZoom had engaged in an unauthorized practice of law and used deceptive business practices involving costs and benefits of its services. The Assurance of Discontinuance is a legally binding agreement with conditions under which LegalZoom can practice. It includes LegalZoom's promise "to review and offer to adjust any customer charge where the customer articulates concerns that are the subject of any prohibited practice identified in this Assurance of Discontinuance or are otherwise alleged to be unfair and deceptive, whether directly from a customer or from another person on the customer's behalf."

By participating in the Legal Regulatory Sandbox, Cherry said, new online legal services will have full authorization, which could attract investors in nontraditional legal services.

"It's a carrot-and-stick approach," Cherry said. "I believe the stick is that if we have this mechanism for people to go through and they choose not to, the Practice of Law Board can refer people offering new services outside the Legal Regulatory Sandbox for unauthorized practice of law to the appropriate enforcement agencies. We [the Practice of Law Board] also have to educate the public about the unlawful practice of law."

For law firms looking to expand legal services through partnerships with people who are not lawyers, such as paralegals, financial advisors, or software developers, the sandbox provides a regulated and accountable environment for innovations to get off the ground, he said. And it ensures those innovations are serving more than just those who can afford traditional services.

"Innovation is not a bad thing in and of itself," said Justice Barbara Madsen during the July 1 meeting with Cherry and Washington State Bar Association President Kyle Sciuchetti. "But we need the access-to-justice component."

The Practice of Law Board worked with the Access to Justice Board to model its proposed sandbox on a similar one launched by Utah's Office of Legal Innovation in August 2020. A major difference is that Washington's approach includes the potential for enhanced access to justice as a requirement for participation. In the Practice of Law Board's blueprint, participants must also provide the board with data showing their service's effectiveness.

The proposed sandbox would be funded by a participation fee of \$3,000 to \$5,000 and possibly grants if the program is found eligible. Nonprofit applicants could participate at reduced cost or no cost. Utah's sandbox is funded mainly by grants.

So far, Utah's initiative is showing promise, Cherry said. Of the 26 participants in Utah's sandbox, most were found to pose low or moderate risk of harm to consumers; 4 percent were determined high risk. More interesting, he said, was who applied to participate.

"Surprisingly, or at least surprising to the Practice of Law Board," Cherry said, "most participants are law firms exploring alternative business structures. Several are software providers that do document completion or provide other legal services without a lawyer's involvement."

In calculating an applicant's risk of causing consumer harm, Utah developed a formula focused on three categories of risk: inaccurate or inappropriate legal result, failure to exercise legal rights through ignorance or bad advice, and purchase of unnecessary or inappropriate legal service. Cherry said the board's sandbox blueprint follows Utah's approach for assessing harm with the addition of considering the consequences of harm.

"We're spending a lot of time thinking about harm," Cherry said. "Essentially the service [must be] no more likely to cause harm than the individual acting on their own."

Cherry said the Practice of Law Board factored in the potential conflict of a Legal Regulatory Sandbox Board composed of lawyers charged with granting or

denying nonlawyer participation in the sandbox. The blueprint includes a panel of lawyers and nonlawyers charged with accepting applications.

The Practice of Law Board plans to meet again with the Supreme Court in September to ask for its approval and a court order to launch the Legal Regulatory Sandbox.

About the Author



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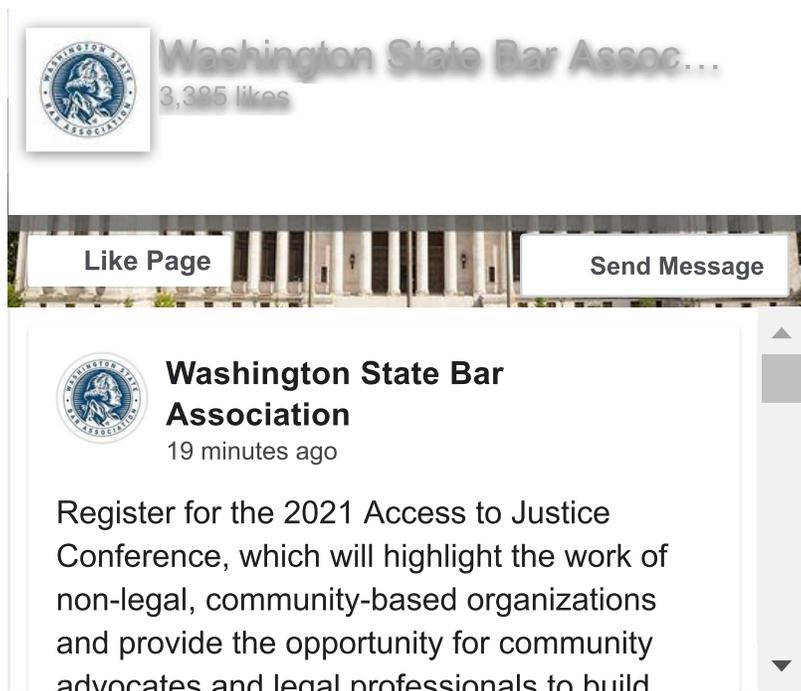
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A screenshot of a Facebook post from the Washington State Bar Association. The post features the organization's profile picture, name, and a notification of 3,385 likes. The main text of the post is partially visible, starting with "Register for the 2021 Access to Justice Conference, which will highlight the work of non-legal, community-based organizations and provide the opportunity for community advocates and legal professionals to build". The interface includes "Like Page" and "Send Message" buttons.

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The Practice of Law Board is proposing a Regulatory Legal Sandbox to launch innovative ideas for access to justice. The idea could streamline Supreme Court authorization for online services and alternative business models. Read the blog on nwsidebar.ow.ly/J5Yp50FBHgR

	<p>Legal Regulatory Sandbox Could Incubate I... Judiciaries in Washington and other states are ... nwsidebar.wsba.org</p>
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Here is an overview of the Washington State 2021 Legislative Session: Both of WSBA's bar-request bills have been signed into law by Gov. Jay Inslee. ow.ly/Wv0z50FARcJ

	<p>Update From Olympia The Washington State Legislature... wabarnews.wsba.org</p>
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Blueprint for a Legal Regulatory Sandbox in Washington State

Table of Contents

1.0	Executive Summary.....	3
2.0	Regulatory Sandboxes.....	4
3.0	A Legal Regulatory Sandbox for Washington State	5
3.1	Goals of the Legal Regulatory Sandbox.....	5
3.2	Safeguards of the Legal Regulatory Sandbox	6
3.3	The Overall Legal Regulatory Sandbox Model.....	6
3.4	Management and Operation of a Legal Regulatory Sandbox	8
3.5	A Model for Assessing Legal Regulatory Sandbox Admission and Participation.....	10
3.6	Admission to the Legal Regulatory Sandbox	12
3.7	Legal Regulatory Sandbox Application	13
3.8	Legal Regulatory Sandbox Approval Order.....	15
3.9	Operating in the Legal Regulatory Sandbox	16
3.10	Termination from the Legal Regulatory Sandbox.....	17
3.11	Licensure (Exiting the Legal Regulatory Sandbox).....	18
3.12	Duration of the Legal Regulatory Sandbox.....	19
3.13	Funding the Legal Regulatory Sandbox	19
4.0	Next Steps	21
5.0	Appendix A: Problem Statement	22
6.0	Appendix B: Mockup Washington Legal Regulatory Sandbox Application.....	26
6.1	General Legal Regulatory Sandbox Information for Applicants	26
6.2	Description of the Proposed Non-traditional Legal Service	27
6.3	How the Non-traditional Legal Service Reduces the ATJ Gap	31
6.4	Risk of Harm to Consumers	32
6.5	Entity Information	33
6.6	Other Material Information.....	34
7.0	Appendix C: Mockup of Supreme Court Order Sandbox Participation.....	34

Table of Abbreviations

Abbreviation	Meaning
ATJ	Access to justice
ATJB	Access to Justice Board
POLB	Practice of Law Board
RPC	Rules of Professional Conduct
RCW	Revised Code of Washington
UAPL	Unauthorized practice of law (RPC 5.5(C))
UPL	Unlawful practice of law (RCW 2.48.180)
WSBA	Washington State Bar Association

1.0 Executive Summary

This proposal outlines a blueprint to create a legal regulatory sandbox in Washington State. Such a legal regulatory sandbox may help address the access to justice (ATJ) gap while protecting consumers from harm and helping to determine the appropriate regulation required to authorize non-traditional legal service providers to provide non-traditional legal services in Washington State. It will also allow for the collection of data about a non-traditional legal service so data-driven decisions about regulatory reform can be made. The Washington Supreme Court's Practice of Law Board (POLB) is proposing that Washington Supreme Court's Legal Regulatory Sandbox follow Utah Supreme Court's Legal Regulatory Sandbox model.

Therefore, the legal regulatory sandbox proposed by this blueprint would be created by a Washington Supreme Court order defining the regulation and monitoring of a non-traditional legal service providers in the legal regulatory sandbox for a defined period. As any non-traditional legal service providers will be operating in the legal regulatory sandbox under an explicit Supreme Court order, the non-traditional legal service providers would be authorized, and therefore, not be liable for Unlawful Practice of Law (UPL). Similarly, a legal professional¹ working for the entity providing the non-traditional legal service would also be authorized by the Supreme Court to provide legal advice in the legal regulatory sandbox, and therefore, would not be disciplined for violation of those Rules of Professional Conduct (RPC) authorized for testing in the legal regulatory sandbox by the Supreme Court order. In all other respects, the entity and its employees would still be required to follow all statutes, regulations, and court rules.

A non-traditional legal service provider operating in the legal regulatory sandbox could provide an online legal service (OLS), offer legal services through an alternative business structure (ABS), or both.

An OLS typically offers legal services from the internet. Such services may assist a consumer in filling out forms that the consumer may file with the court or may analyze the consumer's problem (perform the client intake), and then refer the consumer to a legal professional for a referral fee. Most OLS are moving beyond mere scrivener services to using machine learning or artificial intelligence to assist the consumer in making choices that affect the consumer's legal rights or responsibilities.

An ABS typically changes the traditional form of a legal firm. For example, an ABS may allow a virtual law firm where several lawyers, each with their own firm, work collaboratively to provide a range of legal services to consumers. Another ABS might allow equity ownership in a legal firm by a professional not licensed to practice law.

¹ This blueprint uses the term 'legal professional,' rather than lawyer, to acknowledge that Washington Courts already authorize lawyers, limited practice officers (LPOs), and limited legal license technicians (LLLTs) to practice law.

This legal regulatory sandbox blueprint is a work in progress. Just as a blueprint shows a property owner what a building might look like before construction begins, this blueprint attempts to paint a picture of the legal regulatory sandbox for the Supreme Court and other stakeholders.

With a building, an engineer must take the blueprint and determine if the plan is feasible. For example, the engineer will determine if the materials can sustain the loads. Similarly, this blueprint needs additional ‘engineering’ work. A brief list of the next steps is outlined in Section 5.0 of this blueprint but putting the blueprint into final form—building the legal regulatory sandbox—will require input from many parties. And even when built and operational, ongoing maintenance of the legal regulatory sandbox, which may modify its structure, will be required.

Although this blueprint for a legal regulatory sandbox borrows heavily from the work being done in Utah it was drafted with consideration and inputs from other jurisdictions and experts. The POLB wants to acknowledge the contributions of the Access to Justice Board (ATJB) Technology Committee, John Lund and Lucy Ricca from the Utah Office of Legal Innovation, Crispin Passmore, who is active in legal regulatory reform in the UK, and Andrew Perlman, Dean of the Suffolk School of Law.

2.0 Regulatory Sandboxes

Regulatory sandboxes are not new, nor are they unique to legal services.

In software development, a sandbox is “an isolated testing environment that enables users to run programs or execute files without affecting the application, system, or platform on which they run.”² “In financial markets, regulatory authorities have set up several initiatives, including regulatory sandboxes and innovation hubs, to engage and support financial technology (FinTech) startups.”³

Similarly, a legal regulatory sandbox allows for a non-traditional legal service provider to offer a non-traditional legal service while collecting data about the effect of the service on the ATJ gap and evaluate whether there is any potential consumer harm. It is a safe environment to test a new non-traditional legal service.

For example, the Utah Supreme Court has created an Office of Legal Innovation, which is running a legal regulatory sandbox where “any entity that wants to offer non-traditional legal services must seek approval.”⁴

² Linda Rosencrance, “Sandbox (Software Testing and Security), TechTarget.com, available at <https://searchsecurity.techtarget.com/definition/sandbox>.

³ Ahmad Alaassar, Anne-Laure Mention, Tor Helge Aas, “Exploring A New Incubation Model for FinTechs: Regulatory Sandboxes,” Technovation, May 2021, available at <https://www.sciencedirect.com/science/article/pii/S0166497221000183#bib15>.

⁴ Rebecca Love Kourlis and Neil M. Gorsuch, “Legal Advice is Often Unaffordable. Here’s How More People Can Get Help: Kourlis and Gorsuch, USA Today, Sept. 17, 2020, available at <https://www.usatoday.com/story/opinion/2020/09/17/lawyers-expensive-competition-innovation-increase-access-gorsuch-column/5817467002/>.

The regulatory sandbox can also be thought of as a laboratory. Experiments that test a hypothesis for modifying regulations for entities practicing law can be run to see if such proposed changes reduce the ATJ gap, while creating minimal risk to consumers.

3.0 A Legal Regulatory Sandbox for Washington State

A legal regulatory sandbox would allow legal professionals and entrepreneurs to offer a non-traditional legal service to consumers in Washington State. Such a legal regulatory sandbox has both goals and safeguards designed to ensure consumers get competent legal services.

3.1 Goals of the Legal Regulatory Sandbox

The goals of the legal regulatory sandbox are:

3.1.1 Create Regulatory Relationships

Create regulatory relationships between a non-traditional legal service provider and courts and regulatory agencies to provide the appropriate oversight of legal services and ensure the public is not harmed by a non-traditional legal service.

In using the legal regulatory sandbox to think about regulatory reform, some RPCs are not appropriate for experimentation or change. For example, RPC 1.1 Competence, 1.3 Diligence, and 1.4 Communications are so important to the practice of law they are required for both traditional and non-traditional legal services.

Other RPCs may need to be modified to allow for a legal regulatory sandbox. For example, 5.4 Professional Independence may require limited modification to allow legal professionals to work with non-legal professionals in the provision of a non-traditional legal service in the legal regulatory sandbox.

The RPCs most open to testing in the legal regulatory sandbox include, 1.5 Fees, 1.7 Conflicts, 5.4(b) and (d) Professional Independence, and 5.5 Unauthorized Practice of Law.

3.1.2 Encourage Innovation

Encourage legal professionals and entrepreneurs to experiment with innovative business models and non-traditional legal services to reduce the ATJ gap.

3.1.3 Enable In-Depth Data Collection

Enable in-depth data collection about any reduction of the ATJ gap and the benefits and harms to consumers through the provision of a non-traditional legal service, which will allow the Supreme Court to make data-driven decisions about the future of regulating legal services in Washington.

3.1.4 Timely Regulatory Reform

Enable timely regulatory reform. The legal regulatory sandbox may cut down the time to enable regulatory reform by several years. For example, recent changes to advertising RPCs took over 60 months from the start of rewriting to the final approval by the Supreme Court. Testing rule changes in a legal regulatory sandbox might be completed in 24-30 months because regulation testing is focused on specific regulations with supporting data be collected and analyzed for the change.

The possibility exists that some changes may become obvious based on less than 24-months' worth of data, but generally, participants would operate in the legal regulatory sandbox for two years.⁵

3.2 Safeguards of the Legal Regulatory Sandbox

Safeguards of a legal regulatory sandbox are:

3.2.1 No Skirting of Regulations

There is no intent to allow people or entities to operate in an unregulated environment. Rather, the intent is to determine the appropriate regulations to balance reducing the ATJ gap while protecting consumers of legal services from harm. The data collected during operation in the legal regulatory sandbox may generate regulatory changes for both licensed legal professionals and non-traditional legal service providers.

3.2.2 No UPL or Unauthorized Practice of Law

There is no intent to remove the restriction against UPL or unauthorized practice of law (UAPL). The intent provides pathways for legal professionals and entrepreneurs to provide non-traditional legal service under the authorization and active supervision of the Washington Supreme Court or its delegate.

3.3 The Overall Legal Regulatory Sandbox Model

An entity wanting to offer a non-traditional legal service in the Washington State Legal Regulatory Sandbox will apply by detailing:

- The entity's structure and key personnel;
- The services the entity wants to provide in Washington State;
- How the non-traditional legal service reduces the ATJ gap;
- The risk of harm to consumers;

⁵ Utah has already modified its legal regulatory sandbox based on early data. For example, as of the Utah Supreme Court's December 10, 2020, statement on referral fees, the Innovation Office will not consider applications setting forth bare referral fee arrangements between lawyers and nonlawyers. Bare referral fees are compensation paid to nonlawyers for the sole purpose of ensuring the referral of legal work. The Innovation Office will continue to consider applications in which fee sharing is one component in a more comprehensive innovative proposal. See: <https://utahinnovationoffice.org/about/what-we-do/>.

- How such harm will be mitigated;
- How these factors will be measured and reported while operating in the Legal Regulatory Sandbox.

If the application appears to meet the goals of the legal regulatory sandbox, then a Supreme Court order will be prepared to allow the operation of the non-traditional legal service in the legal regulatory sandbox. After approval of the Supreme Court, the entity may provide the defined and approved services and only the defined and approved services under the order.

While operating in the legal regulatory sandbox, the entity will provide quarterly reports measuring performance against goals. Based on these reports, the entity may continue to operate in the legal regulatory sandbox, or it may be necessary to request a modification to the Supreme Court order based on new knowledge gained from operating in the legal regulatory sandbox. Sometimes, it may also be necessary to terminate operation of the non-traditional legal service because the non-traditional legal service does not reduce the ATJ gap or is causing consumer harm.

Consumer harm could include factors such as loss of money, poor or incomplete legal service, untimely legal service, failing to exercise a legal right, or failure to meet a legal obligation.

If at the end of the legal regulatory sandbox term the entity is continuing to operate in compliance with the Supreme Court order and to meet ATJ goals without causing consumer harm, then a final Supreme Court order that defines the non-traditional legal service's ongoing operation in Washington State will be drafted and approved by the Supreme Court. Then the non-traditional legal service providers may continue to operate within the boundaries of that Supreme Court order. Such a Supreme Court order could also include specifics on any disciplinary action that would apply if the service deviates from the order, and any fee or other responsibilities that apply to the non-traditional legal service provider as it continues to operate.

This overall model for a legal regulatory sandbox is shown in Figure 1.

BLUEPRINT FOR A LEGAL REGULATORY SANDBOX IN WASHINGTON STATE

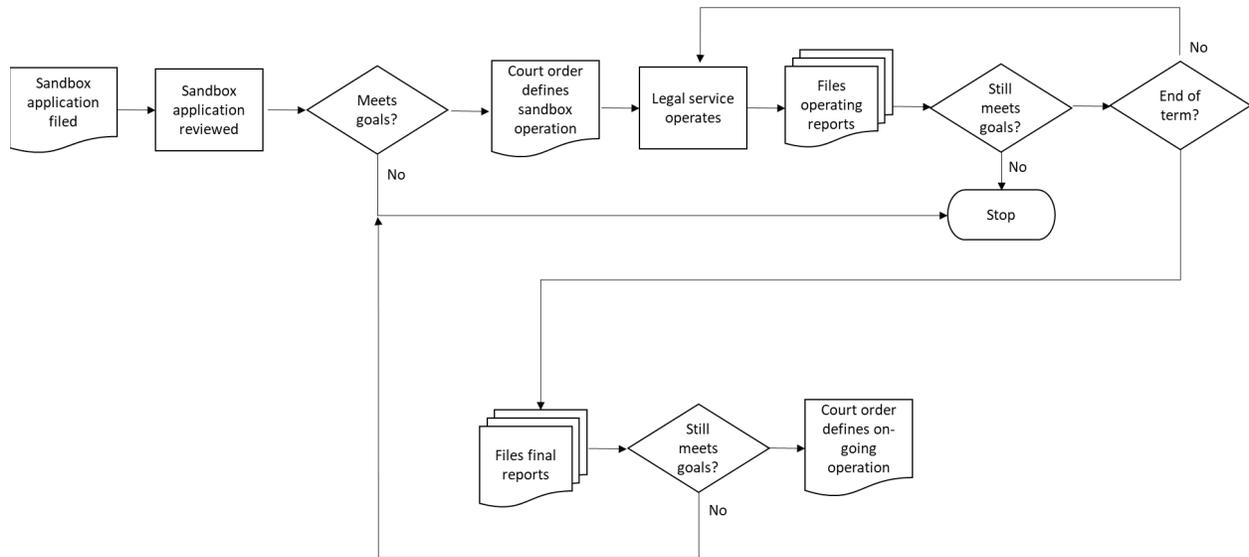


Figure 1. Overall Legal Regulatory Sandbox Model

While operating in the legal regulatory sandbox, entities are still subject to all statutes, regulations, court rules, and court orders. For example, operating in the legal regulatory sandbox does not protect the entity from prosecution for violations of the Consumer Protection Act. A legal professional working for the non-traditional legal service providers is not automatically protected from discipline for violation of an RPC. The only protections or safe harbor provided by the legal regulatory sandbox is for statutes and court rules relating to UPL and to specific RPCs as defined in the Supreme Court order. Similarly, entities approved for operation after successfully completing a term in the legal regulatory sandbox remain subject all other applicable statutes, regulations, and court rules and to the Supreme Court order, including business, licensing, and financial regulations.

To prevent consumer harm, the legal regulatory sandbox model must be transparent. It must be obvious to consumers which non-traditional legal service providers may operate in the legal regulatory sandbox, and which are authorized after operating successfully in the legal regulatory sandbox to continue to operate.

3.4 Management and Operation of a Legal Regulatory Sandbox

An entity—for the purpose of this blueprint, a Legal Regulatory Sandbox Board—will be required to manage and operate a legal regulatory sandbox for the Supreme Court. Several entities could provide such management and operational oversight, including the Washington State Bar Association (WSBA), the POLB, or a new Legal Regulatory Sandbox Board. Membership of such a Legal Regulatory Sandbox Board will need legal, corporate structure and management, and technical expertise.

The responsibilities of the Legal Regulatory Sandbox Board would be to:

- Evaluate and recommend to the Court applicants for participation in the Legal Regulatory Sandbox;

- Monitor performance of the non-traditional legal service providers providing the non-traditional legal service;
- Monitor performance of the non-traditional legal service itself;
- Take corrective action including suspension of operations in the Legal Regulatory Sandbox in cases of consumer harm.

3.4.1 WSBA as the Legal Regulatory Sandbox Managing Entity

The advantage of WSBA operating as the Legal Regulatory Sandbox Board is that such work could be viewed as within the duties already delegated to the bar by the Supreme Court to administer legal professionals admitted to practice law in Washington State. In addition, WSBA has many of the personnel capable of and needed to operate such a Legal Regulatory Sandbox Board.

The disadvantage of WSBA operating the Legal Regulatory Sandbox Board is that WSBA could have an inherent conflict of interest between existing licensed legal professional members and the entities wanting to provide the new non-traditional legal service. Such a conflict could complicate WSBA operations per recent litigation such as *North Carolina State Board of Dental Examiners v. Federal Trade Commission*⁶, and *Janus v. American Federation of State, County, and Municipal Employees*⁷.

Putting WSBA in this role could also have a chilling effect on entities' willingness to apply for the legal regulatory sandbox for similar conflict reasons.

However, even if WSBA does not manage the legal regulatory sandbox or act as the Legal Regulatory Sandbox Board, WSBA could under delegation and supervision by the Supreme Court, ensure compliance of entities that exit the legal regulatory sandbox and receive a court order allowing continued operation, like its role in administering license renewal of legal professionals today.

3.4.2 An Existing Supreme Court Board as the Legal Regulatory Sandbox Managing Entity

The advantage of an existing Washington Supreme Court Board such as the POLB or the Access to Justice Board (ATJB) operating as the Legal Regulatory Sandbox Board is that the Supreme Court would not have to create a new entity.

The disadvantage of an existing Washington Supreme Court Board operating as the Legal Regulatory Sandbox Board are these boards are staffed with volunteers who are well equipped to study problems and advise on solutions, but rarely have time for extensive document review. As volunteers they have typically agreed to a specific meeting cycle.

⁶ State Bd. of Dental Examiners v. FTC, 135 S. Ct. 1101 (2015), available at https://scholar.google.com/scholar_case?case=15100091775350559869.

⁷ Janus v. American Federation of State, 138 S. Ct. 2448 (2018), available at https://scholar.google.com/scholar_case?case=10508098745881210548.

The volume of work associated with the position would be greatly increased by taking on the management of a legal regulatory sandbox.

Further, the same conflicts that exist for WSBA may persist if such boards manage the legal regulatory sandbox, as the boards are administered by WSBA; and there is a strong connection between the boards and WSBA.

Finally, with the POLB there could be a conflict if a non-traditional legal service provider strayed from operation defined in its Supreme Court order and because of not following the order committed UPL, for example, by offering services while in the legal regulatory sandbox not authorized by the Supreme Court order. The POLB plays a role in UPL by referring UPL complaints to the Attorney General's Office or county prosecutors.

3.4.3 Create a New Independent Legal Regulatory Sandbox Board

A newly created and independent Legal Regulatory Sandbox Board may be the best alternative. The Legal Regulatory Sandbox Board would have a small nucleus, perhaps made up of a designee from WSBA, the POLB, and the ATJB. There could also be a significant number of public members with an independent Chair. Affirmative actions will be taken to nominate public members with experience:

- Working in underrepresented communities;
- Providing legal aid and pro bono services;
- Working in the technology community.

This core Legal Regulatory Sandbox Board membership could then pull in expertise as needed based on the applicant and the non-traditional legal service, from a variety of sources, including the Washington Supreme Court, WSBA, the WSBA sections (for specific legal subject matter expertise), the law schools in Washington State, and members of the bar and the tech community.

The advantage of such a Legal Regulatory Sandbox Board is that it can be small, flexible, and responsive, and it would be relatively free from conflict.

The disadvantage of such a Legal Regulatory Sandbox Board is that its functioning would have to be funded by either application fees or grants.

The new Legal Regulatory Sandbox Board would work with WSBA and the other Supreme Court Boards while taking an arm's-length approach from the day-to-day operations or administration of WSBA. For example, when the new Board uses the services from WSBA, then the new Legal Regulatory Sandbox Board would be charged the going rate for such services, to ensure WSBA member's fees are not paying for entities to operate in the Legal Regulatory Sandbox.

3.5 A Model for Assessing Legal Regulatory Sandbox Admission and Participation

A model that attempts to measure the reduction in the ATJ gap while also measuring the risk of consumer harm will help evaluate applicants for participation in the legal regulatory sandbox.

This model sets criteria such as reducing the ATJ gap against the risk of harm to consumers. When such harm might occur, this model will assist the Legal Regulatory Sandbox Board in evaluating admission to, operation in, and graduation from the legal regulatory sandbox (see Figure 2).

Legal Regulatory Sandbox Risk Analysis Model

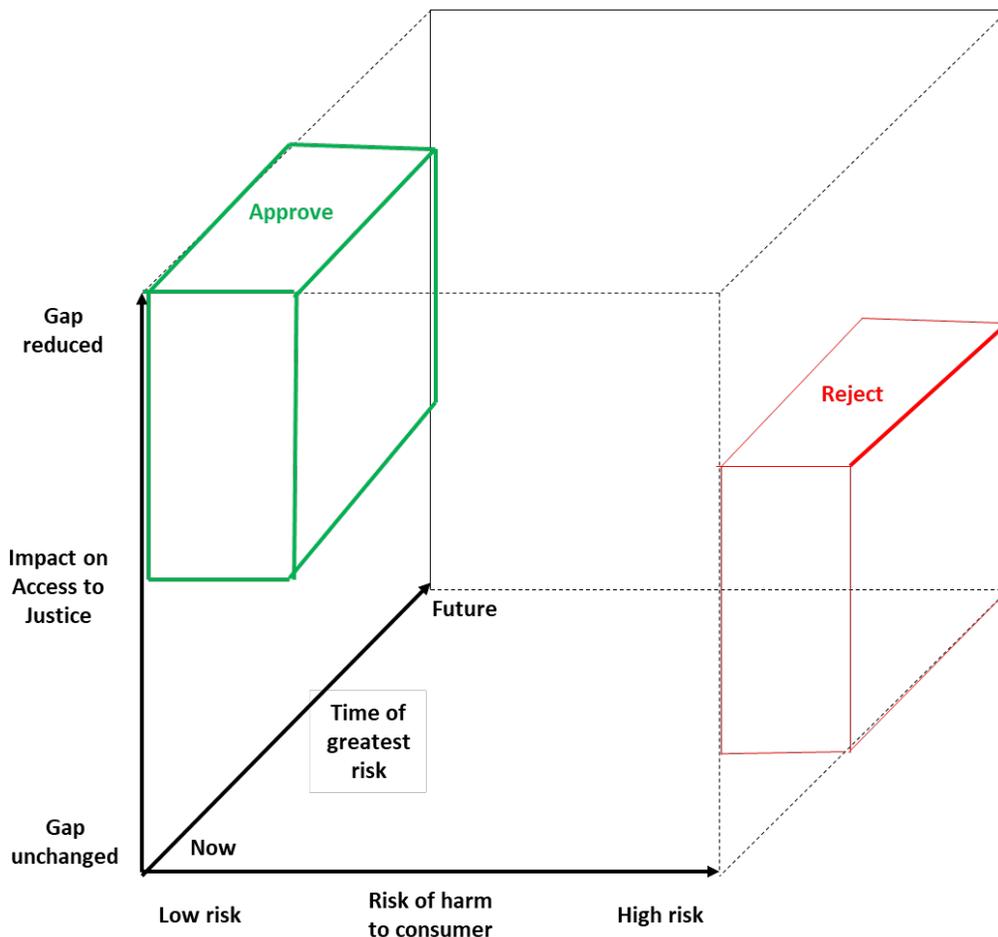


Figure 2. Legal Regulatory Sandbox Risk Analysis Model

3.5.1 Risk of Harm to Consumer

The ‘x,’ or horizontal, axis of this model (labeled ‘Risk of harm to the consumer’) shows that applicants for participation in the legal regulatory sandbox will be evaluated based on the estimated risk of consumer harm created by allowing consumers to use the non-traditional legal service.

3.5.2 Reducing the ATJ Gap

The ‘y,’ or vertical, axis of this model (labeled ‘Impact on ATJ’) shows that applicants for participation in the legal regulatory sandbox will be evaluated based on how much their proposed non-traditional legal service reduces the ATJ gap.

3.5.3 Other Criteria

The ‘z,’ or diagonal, axis in this model (labeled ‘Time of greatest risk’) shows that applicants for participation can also be measured against other criteria, for example whether potential harm to consumers is likely to be noticed or occur in the present (now) or the future (later).

However, this z axis is flexible. It could just as well be used to manage other criteria such as effect on equity (changing versus reinforcing the status quo) created by the non-traditional legal service being evaluated.

3.5.4 Model Usage Examples

Applicants proposing to use the legal regulatory sandbox to test a non-traditional legal service that appears to reduce the ATJ gap, that is determined to have a low risk of harm, and where harm to consumers—if any—occurs in the present would likely be approved. For example, an OLS designed to assist a person get a temporary protection order might fall in the green area and be easily approved for participation in the legal regulatory sandbox.

Applicants proposing to use the legal regulatory sandbox to test a non-traditional legal service with a lesser impact on the ATJ gap and a higher risk of harm (especially where harm might not be recognized immediately) will need deeper consideration and may be denied admission to the legal regulatory sandbox. Such applicants may have to submit additional information and be subject to additional data collection requirements while in the legal regulatory sandbox and potentially after successfully leaving the legal regulatory sandbox. For example, an online trust generation application that reduces the ATJ gap but might not show evidence of harm for a several years might not be appropriate for admission to the legal regulatory sandbox.

Between the green and red box in the model may fall proposed non-traditional legal service which may be granted admission to the legal regulatory sandbox if suitable data can be collected and analyzed to determine reduction of the ATJ gap, the benefit to consumers, and the risk of harm to consumers to determine whether admission to the legal regulatory sandbox is appropriate.

Once in the legal regulatory sandbox, ongoing evaluation and review will determine where within the model a particular applicant’s non-traditional legal service lies, whether the benefits outweigh any risk of harm to consumers, and whether continued operation in the legal regulatory sandbox or a form of licensure should be allowed.

3.6 Admission to the Legal Regulatory Sandbox

A proposed flowchart for the admission process to the legal regulatory sandbox is shown in Figure 3.

Admission to the Legal Regulatory Sandbox

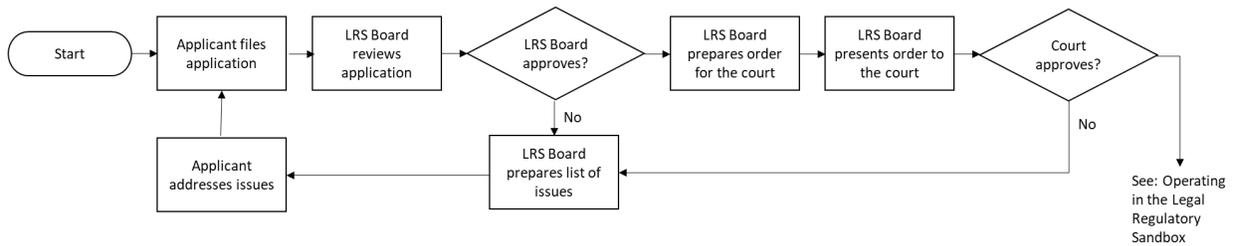


Figure 3. Admission to the Legal Regulatory Sandbox

Admission to the legal regulatory sandbox begins with an applicant applying (see Legal Regulatory Sandbox Application below) with the Legal Regulatory Sandbox Board. (For a sample completed application, see Appendix B.)

The Legal Regulatory Sandbox Board will review the application, using the Legal Regulatory Sandbox Risk Analysis Model and other criteria as warranted.

If the Legal Regulatory Sandbox Board approves the application, it will draft an order for the Supreme Court (see Legal Regulatory Sandbox Approval Order below) that defines the operating rules and operational data to be collected while the applicant is offering non-traditional legal service in the legal regulatory sandbox. (For a sample Supreme Court order, see Appendix C.)

If the Supreme Court approves the order, then the applicant can operate for a maximum of two years in the legal regulatory sandbox and offer the non-traditional legal service in Washington State during the order.

If the Legal Regulatory Sandbox Board has issues with or questions about the application, or the Supreme Court has any concerns about issuing the order, the applicant may address the issues and ask that their application be reviewed again.

3.7 Legal Regulatory Sandbox Application

At a minimum, applicants to the legal regulatory sandbox must provide the following information:

3.7.1 Description of the Proposed Non-traditional Legal Service

A description of the proposed non-traditional legal service, including:

- a) The nature and scope of the non-traditional legal service, including the specific legal issue(s) the non-traditional legal service will address;
- b) The intended market for the non-traditional legal service and whether they are or intend to operate in another jurisdiction’s legal regulatory sandbox;
- c) The entity providing the non-traditional legal service, including state of incorporation, and key management;
- d) When the provision of non-traditional legal service can begin to be offered;
- e) The costs of the non-traditional legal service to consumers.

3.7.2 How the Non-traditional Legal Service Reduces the ATJ Gap

A description of the non-traditional legal service benefits, including:

- a) Which specific consumers the non-traditional legal service targets;
- b) How the non-traditional legal service provides a high-quality legal service;
- c) How the non-traditional legal service is cost-effective;
- d) How the non-traditional legal service is more accessible to consumers than available legal services;
- e) Other aspects of the non-traditional legal service that help close the ATJ gap.

3.7.3 Risk of Harm to Consumers

A description of the risk of harm to consumers that the non-traditional legal service will create, including:

- a) What potential harm could befall a consumer using the non-traditional legal service;
- b) Which consumers are at most risk of harm;
- c) When the risk is likely to occur (present or future);
- d) How any risk of harm can be measured (that is, what data will be collected to show risk and steps to mitigate the risk).

3.7.4 Entity Information

A description of the entity proposing the non-traditional legal service, including:

- a) type of entity;
- b) state of incorporation;
- c) officers;
- d) years of operation;
- e) financial information;
- f) business plan for the non-traditional legal service;
- g) number of legal professionals (if any) involved in the creation and management of the non-traditional legal service (and any disciplinary actions against such legal professionals).

3.7.5 Other Material Information

Any other information that will help the Legal Regulatory Sandbox Board and the Supreme Court evaluate admission to the legal regulatory sandbox, such as a description of RPCs or Court Rules which may need to be modified in the legal regulatory sandbox.

3.8 Legal Regulatory Sandbox Approval Order

When the Legal Regulatory Sandbox Board approves an applicant for operation in the legal regulatory sandbox, the Legal Regulatory Sandbox Board will draft an order for the Supreme Court outlining the non-traditional legal service providers duration and the oversight of the Supreme Court via the Legal Regulatory Sandbox Board while the non-traditional legal service is in the legal regulatory sandbox. Elements of the order include:

3.8.1 Approved Non-traditional Legal Service

A description of the non-traditional legal service, including any legal transactions that the non-traditional legal service can perform.

3.8.2 Unapproved Legal Services

A description of the specific legal work that the non-traditional legal service cannot perform.

3.8.3 Appropriate Regulation

A description of regulations, including any RPCs that will apply to the provision of the non-traditional legal service, and any new or proposed modified RPCs which might be needed.

3.8.4 Data Reporting

A description of the data to be reported to the Legal Regulatory Sandbox Board on a quarterly basis, and mandatory data to be provided at the end of the legal regulatory sandbox duration. The data collected will be analyzed to show whether the ATJ gap was reduced, and whether the entity managed risked to consumers.

Required data will differ by the services being provided, but may include:

- a) Number of consumers served since last report;
- b) Number of completed transactions or services;
- c) Number of incomplete transactions or services (and explanation);
- d) Average cost per transaction or service;
- e) Elapsed time to provide each transaction or service;
- f) Number and type of complaint;
- g) Number of complaints resolved and manner of resolution;
- h) Time to resolve each complaint;
- i) Other data based on the transaction or service.

3.8.5 Mitigation Plan

A description of the mitigation plan if harm to consumers occurs.

3.8.6 Legal Regulatory Sandbox Duration

The duration of time the applicant may operate in the legal regulatory sandbox (typically two years for all applicants).

3.9 Operating in the Legal Regulatory Sandbox

A proposed flowchart for operating in the legal regulatory sandbox is shown in Figure 4.

Operating in the Regulatory Sandbox

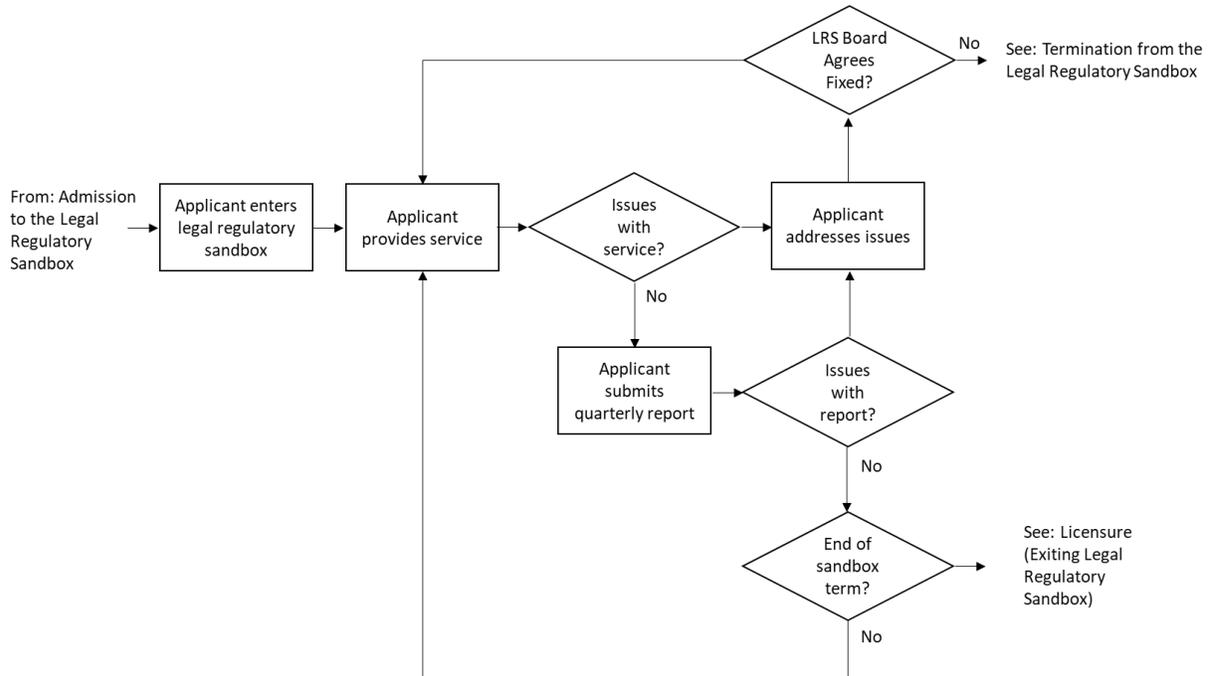


Figure 4. Operating in the Legal Regulatory Sandbox

Operation in the legal regulatory sandbox begins with the applicant getting an order from the Supreme Court defining operation of the non-traditional legal service in the legal regulatory sandbox.

If there are issues reported with the non-traditional legal service, the applicant must address such issues to the satisfaction of the Legal Regulatory Sandbox Board to continue operating in the legal regulatory sandbox.

Even if there are no issues reported with the non-traditional legal service, the applicant must submit quarterly reports to the Legal Regulatory Sandbox Board (see Data Reporting above). If there are issues with the report, the applicant must address the issues to the Legal Regulatory Sandbox Board’s satisfaction to continue to provide the legal service.

However, if the applicant does not address the issues and continues to operate, then the protection of the legal regulatory sandbox ends (see Termination from the Legal Regulatory Sandbox, below).

If the applicant operates in the legal regulatory sandbox and continues without issue to the end of the term, then the applicant leaves the legal regulatory sandbox (see Licensure, below).

Operations in the legal regulatory sandbox continue in this manner until the end of the time in the legal regulatory sandbox as defined in the Supreme Court order. If the Supreme Court does not authorize continued operation of the non-traditional legal service after the end of the time in the legal regulatory sandbox, an orderly shutdown will be needed to ensure no consumers are harmed by withdrawal of the non-traditional legal service.

3.10 Termination from the Legal Regulatory Sandbox

A proposed flowchart for termination from the legal regulatory sandbox for cause is shown in Figure 5.

Exiting Legal Regulatory Sandbox (Termination for Cause)

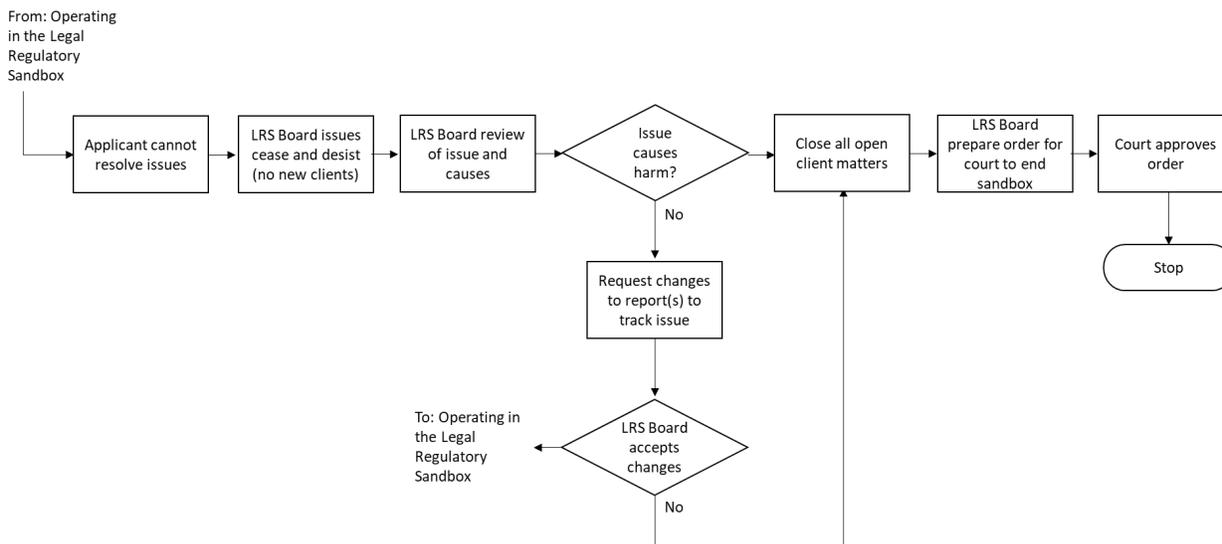


Figure 5. Exiting the Legal Regulatory Sandbox (Termination for Cause)

If an applicant’s operation in the legal regulatory sandbox creates issues, such as consumer harm, then the Legal Regulatory Sandbox Board will inform the applicant to discontinue taking on new clients and conclude existing transactions while the Legal Regulatory Sandbox Board reviews the issues and causes.

If the Legal Regulatory Sandbox Board determines the issue is harming consumers, then the applicant will close all pending matters promptly and place the applicant under the review of the Legal Regulatory Sandbox Board. The Legal Regulatory Sandbox Board will review the reported data, and data about the incidents of harm, and may have a hearing with the applicant to review the situation. If the Legal Regulatory Sandbox Board determines the legal service is causing harm, then Legal Regulatory Sandbox Board will prepare a court order to terminate the applicant’s authorization to operation in the legal regulatory sandbox.

It will be necessary to decide how to handle non-traditional legal service which do not affect the ATJ gap, and do not harm consumers. The Supreme Court may not want to authorize such services—mere lack of harm may not justify allowing continued operation.

If the issue is not harming consumers, then the Legal Regulatory Sandbox Board will work with the applicant to continue to monitor the issue (which may require additional reporting), and the applicant may resume operation in the legal regulatory sandbox.

If after receiving an order from the Supreme Court withdrawing authorization to provide the non-traditional legal service, and the applicant ignores such an order and continues offering such services in the Washington State legal market, then the applicant would be subject to action under the Consumer Protection Act and UPL statutes, and any other laws that apply.

3.11 Licensure (Exiting the Legal Regulatory Sandbox)

A proposed flowchart for successfully exiting from the legal regulatory sandbox is shown in Figure 6.

Licensure (Exiting Legal Regulatory Sandbox)

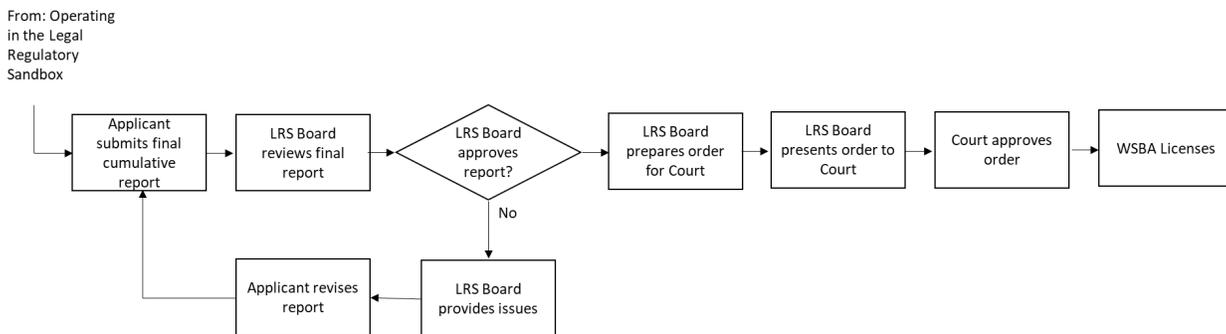


Figure 6. Licensure (Exiting Legal Regulatory Sandbox)

If an applicant completes the duration of the time in the legal regulatory sandbox, and there are no outstanding issues after review of the final report by the Legal Regulatory Sandbox Board, then the Legal Regulatory Sandbox Board will prepare an order for the Supreme Court.

The Supreme Court will have the discretion to approve or not approve the order, particularly if the Supreme Court feels the data does not support the conclusion the non-traditional legal service should be allowed to continue to operate. If the Supreme Court approves the order, then the applicant may provide the non-traditional legal service within the structure defined by that Supreme Court order. The Supreme Court can determine whether the non-traditional legal service addresses ATJ to such a positive degree, that it will allow other non-traditional legal service providers to follow the same order (without going through the legal regulatory sandbox).

This is essentially licensure, and the definition of what this entails, including reporting to the WSBA as an authorized legal service provider, and the licensure fees remains to be determined.

3.12 Duration of the Legal Regulatory Sandbox

There are two ways the legal regulatory sandbox duration could be measured. It could exist for a defined period, such as two years. (Utah started with a two-year fixed term which was recently expanded to seven years.)

Or the legal regulatory sandbox could have a rolling duration. For example, each applicant would be initially authorized by the Supreme Court order to operate in the legal regulatory sandbox under the order for two years. This means that the total duration of the legal regulatory sandbox would be for two years from the date that the last applicant enters the legal regulatory sandbox.

This blueprint proposes the second duration model. This is necessary to ensure that each applicant operates for the same duration and helps to ensure that data for each applicant is collected for a consistent period so analysis of the data will be more accurate. This rolling duration is shown in Figure 7.



Figure 7. Rolling Duration Legal Regulatory Sandbox

3.13 Funding the Legal Regulatory Sandbox

3.13.1 Estimated Operating Budget per Legal Regulatory Sandbox Applicant

It is estimated that reviewing each application to participate in the legal regulatory sandbox will require approximately four person hours (two legal professional hours at \$200/hour, and two administrative hours at \$100/hour) for a total cost of \$600.00.

Reviewing a report (each quarter) will take the one hour of legal professional time, and one hour of administrative time for \$300.00.

Preparing a final report and court order would take two person hours (one professional, one admin) for a cost of \$300.00.

Therefore, the cost of completing a two-year term per application in the legal regulatory sandbox would be:

Application fee	\$600.00
Quarterly report reviews	\$2,100.00
Final report review	\$300.00
	\$3,000.00

Each non-traditional legal service would require its own application. An entity providing two non-traditional legal service would complete two applications.

Circumstances could change these fees. For example, whether the applicant is a non-profit, a startup, or an existing for-profit entity might affect which fees would be charged. For example, non-profits and qualified legal services providers would not be charged; instead, each for-profit applicant might pay a non-profit support fee to underwrite the costs of non-profits operating in the legal regulatory sandbox.

Utah does not appear to charge fees, relying instead on grants. Utah considers the collection of data as the cost of being in the legal regulatory sandbox. This blueprint assumes that grants would be sought to cover some operation costs, and some costs would be borne by applicants.

3.13.2 Source of Funding

Ideally, the legal regulatory sandbox could initially be bootstrapped to run from the fees collected to operate in the legal regulatory sandbox. Later, ongoing funding could be supplied from licensing fees for those applicants granted a license to operate in the Washington State legal services market, and from grants from organizations that fund legal service alternatives.

4.0 Next Steps

This is a blueprint for the legal regulatory sandbox. The next steps include:

- a) Incorporating feedback from the Court and other parties
- b) Formalizing the Legal Regulatory Sandbox Board and appointing members
- c) Fund-raising (grants)
- d) Determining the RPCs and other regulations that can be tested within the legal regulatory sandbox and which cannot be tested within the legal regulatory sandbox
- e) Formalizing application processes
- f) Formalizing the court orders (templates)
- g) Creating a reporting database schema and database for collecting legal regulatory sandbox data (and standardizing with other states)
- h) Finding two test organizations to run through the process to determine what changes are needed to improve the legal regulatory sandbox and expand capacity.

5.0 Appendix A: Problem Statement

5.1.1 The Practice of Law in Washington State

Under Washington State statutes and court rules, only an authorized and licensed lawyer, a person supervised by an authorized and licensed lawyer, a Limited License Legal Technician (LLLT), or a Limited Practice Officer (LPO) can lawfully provide legal services to the public.

5.1.2 The ATJ Gap in Washington State

The Civil Legal Needs study update stated: “more than three-quarters of all low-income households in Washington State experience at least one civil (not criminal) legal problem each year. In the aggregate, low-income people experience more than one million important civil legal problems annually.”⁸

Additionally, “low-income people face more than 85 percent of their legal problems without help from an attorney. Attorney assistance is most successfully secured in family-related matters, but even here only 30 percent of legal problems reported are addressed with the assistance of an attorney. Removing family-related problems, low-income people receive help from an attorney with respect to less than 10 percent of all civil legal problems.”⁹

An update to the study in 2015 found that due to a variety of economic and social factors, “the average number of civil legal problems per low-income household having nearly tripled since 2003.”¹⁰

The Civil Legal Needs Update challenged the courts and the officers of the courts including judges, lawyers, LLLTs, and LPOs to ensure that low-income people in Washington State understand their legal rights and know where to look for legal help when they need it; to squarely address not only problems presented, but the systems that result in disparate experiences depending on one’s race, ethnicity, victim status or other identifying characteristics; and to know the costs and consequences of administering a system of justice that denies large segments of the population the ability to assert and effectively defend core legal rights.

It is clear “for decades, the United States has sought to bridge this ATJ gap through incremental improvement, such as volunteerism (i.e., pro bono work)

⁸ Washington State Supreme Court, Task Force on Civil Equal Justice Funding, The Washington State Civil Legal Needs Study, September 2003, available at <https://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>.

⁹ Id.

¹⁰ Washington State Supreme Court, Civil Legal Needs Study Update Committee, 2015 Washington State Civil Legal Needs Study Update, Oct. 2015, available at https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf.

and legal aid.”¹¹ However, “closing this ATJ gap requires both incremental improvement and breakthrough change.”¹²

5.1.3 Online Legal Services

A variety of entities are offering online legal services. Many of these entities are helping people with their civil legal problems. Under the statute and rules, these entities may be unlawfully practicing law.

One such entity, Legal Zoom, assists people by providing form-based legal services, and they may refer a person to an authorized legal practitioner (lawyer, LLLT, or LPO). Today, LegalZoom operates in Washington State under an Assurance of Discontinuance between LegalZoom and the Washington State Attorney General’s Office.¹³ This agreement essentially requires LegalZoom to follow guidelines outlined in the agreement, such as not “Comparing, directly or by implication, the costs of Respondent’s self-help products, i.e., legal forms as contemplated in GR24(b)(8), and clerical services with those provided by an attorney, without, in close proximity to each such comparison, clearly and conspicuously disclosing to Washington consumers that Respondent is not a law firm and is not a substitute for an attorney or law firm.”¹⁴

Although it is not clear whether LegalZoom was the first entity to offer online legal services to people in Washington, many others have followed and online legal services are available covering a wide variety of legal services including family law, immigration, arbitration assistance, traffic infractions, and other civil legal matters. Some of these entities are Washington based (that is, registered with the Washington Secretary of State) and others are foreign entities.

At its annual meeting with the Supreme Court on Feb. 4, 2021, the POLB identified there were over 50 OLS providers providing legal services in Washington State. Approximately 20 of these providers, such as WestLaw and CLIO, primarily provide services to legal professionals. Over 14 legal service providers, such as Avvo and LegalZoom, provide services to both legal professionals and the public, including referring people to a legal professional (generally a lawyer). Finally, over 17 legal service providers, such as FairShake and Hello Divorce, target their services to the public.

¹¹ Robert W. Gordon, *Lawyers, the Legal Profession & Access to Justice in the United States, A Brief History*, DAEDALUS, Winter 2019, at 177, 178.

¹² Georgetown Law Ctr. *On Ethics & the Legal Profession, 2020 Report on the State of the Legal Market*, 2-3 (2020)

¹³ *In Re the Matter of LegalZoom.com, Inc. a Delaware Corporation*, Sept. 15, 2010 available at https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/News/Press_Releases/2010/LegalZoomAOD.pdf.

¹⁴ *Id.* at 2.1(a).

These OLS providers offer legal services across a wide spectrum of legal matters, including family law, contract disputes, traffic infractions, and immigration. Several service models are in use, including referrals to legal professionals and do-it-yourself services. They are getting positive reviews from both the public and the press and are raising significant venture capital, which means they will continue to offer more services.

To be clear, these services may not be targeting people in Washington specifically; because they are internet services, they are there if people in Washington try to use them.

The advantage of such online legal services is they are addressing the ATJ gap in Washington. People using such services are likely doing better with their legal matter than simply being a pro-se litigant. They provide timely and often simplified advice. Typically, they are also less expensive than traditional legal services.

The disadvantage of such online legal services is they are not regulated in a similar manner as traditional legal services and may not be following Washington statutes and court rules. They may not be offering accurate and complete advice. Consumer harm may be going unreported.

5.1.4 UPL Complaints and Online Legal Services

As of April 2021, the POLB has had two UPL complaints brought to its attention. Neither were referred to the Attorney General's Office or a county prosecutor for action because there was no evidence of harm to the consumer in either case. However, this does not mean that the entities were not practicing law.

5.1.1 Addressing ATJ and Online Legal Services

Several jurisdictions in the US and Canada are addressing the ATJ gap by examining the role that online legal services could play. Several alternatives be considered from doing nothing to using a regulatory sandbox to take a risk-based and data-driven approach to regulatory reform, particularly regarding regulating online legal services and ABS.

The danger of doing nothing is that the online legal services are not going away. Again, this is evidenced by the investment of venture capital into the companies offering such services. And there is the danger such services will become accepted by the public and spontaneous deregulation will occur. Some would argue this is already taking place. An example of spontaneous deregulation can be found in what happened to municipalities when ride-share and home-share services entered cities without regard to cab and zoning ordinances.

As various businesses try to create new service delivery models aimed at filling the urgent need for legal advice, they find their ideas and initiatives stifled by certain existing regulatory rules. Many smaller legal service startups can't secure funding because there are questions as to whether their businesses may operate; meanwhile, regulators hesitate to amend the existing rules, citing potential harm to the public because of these new business models and service providers. New business models, innovative partnerships, and creative approaches to new licenses are all shut down by the lack of flexibility under the current rules.

With so many people unable to access meaningful legal assistance, the time has come for us to consider opening the pool of legal service providers and eliminating the limitation that only attorneys and LLLTs may own law firms. Without data, we cannot do so responsibly. There is a simple way to solve both problems: a regulatory sandbox.

6.0 Appendix B: Mockup Washington Legal Regulatory Sandbox Application

This is a sample of how an applicant might supply information to the Legal Regulatory Sandbox Board for consideration to test a non-traditional legal service in the legal regulatory sandbox. The company is fictitious, but much of the data is accurate and might reflect information for an online software based legal service.

6.1 General Legal Regulatory Sandbox Information for Applicants

6.1.1 Purpose of the Legal Regulatory Sandbox

The legal regulatory sandbox tests and evaluates innovative models for providing non-traditional legal service that reduce the ATJ gap, while minimizing the risk of harm to the public. Such innovative services may not be capable of being offered under the Rules of Professional Conduct (RPC) or would be considered the Unlawful Practice of Law under the Revised Code of Washington (RCW) 2.48.180.

6.1.2 Authority for the Legal Regulatory Sandbox

The Washington State Legal Regulatory Sandbox is authorized by Washington Supreme Court order (number), dated (date).

6.1.3 Disbarred or Suspended Legal Professionals

No legal professional disbarred or suspended by any bar or licensing authority can participate in any entity offering non-traditional legal service in the legal regulatory sandbox.

6.1.4 No Temporary Admission to Practice in Washington

The legal regulatory sandbox is not a means by which out-of-state lawyers can practice law in Washington State, without otherwise complying with the WSBA regulations as delegated by the Washington Supreme Court to the WSBA.

6.1.5 No Impact on Washington State or Federal Laws or Regulations

The legal regulatory sandbox does not and cannot impact requirements imposed by other applicable Washington or Federal Laws, the laws or requirements imposed by other jurisdictions, or the requirements imposed by other regulatory agencies. Authorization to provide non-traditional legal service within the legal regulatory sandbox does not release or indemnify any entity or individual from conforming to all other applicable laws, regulations, and court rules.

6.1.6 Legal Professionals Still Bound by RPCs

Except as temporarily modified by the Supreme Court order allowing the entity to provide non-traditional legal service within the legal regulatory sandbox, legal professionals working with entities in the legal regulatory sandbox shall maintain their duties under the RPCs.

6.1.7 Applications and Reports are Public Information

Applications for admission to the legal regulatory sandbox, and reports of operations in the legal regulatory sandbox are public documents to ensure the transparency of the legal regulatory sandbox.

Entities whose non-traditional legal service involve trade secrets as defined by RCW 19.108.010(4) may request such trade secrets be handled by the Legal Regulatory Sandbox Board under RCW 19.108.050.

6.1.8 Penalties for False or Misleading Application Information

Making false or materially misleading statements in this application is the basis for loss of authorization to participate in the Legal Regulatory Sandbox, and other criminal and civil sanctions may apply.

6.1.9 Changing Information

If information supplied as part of this application changes, the entity shall ensure the information is updated promptly.

6.2 Description of the Proposed Non-traditional Legal Service

6.2.1 Legal Service Model

- Legal professionals employed or managed by non-legal professionals
- Less than 50% non-legal professional entity ownership
- Over 51% non-legal professional entity ownership
- Legal professional sharing fees with non-legal professional
- Non-legal professional service provider with legal professional involvement
- Non-legal professional service provider without legal professional involvement
- Software or internet service provider with legal professional involvement
- Software or internet service provider without legal professional involvement**
- Other: _____

6.2.2 Primary Legal Service Category of Legal Service

Select One

- Accident/Injury
- Adult care
- Business
- Civil misdemeanor
- Criminal Expungement
- Discrimination
- Domestic Violence
- Education
- Employment
- End-of-life Planning

- Family law
- Financial issues
- Healthcare
- Housing (Rental)**
- Housing (Mortgage)
- Housing (Manufactured Home)
- Immigration
- Military
- Native American and Tribal Law
- Public benefits
- Real estate
- Traffic

6.2.3 Secondary Legal Service Category of Legal Service

Select all that apply

- Accident/Injury
- Adult care
- Business
- Civil misdemeanor
- Criminal Expungement
- Discrimination
- Domestic Violence
- Education
- Employment
- End-of-life Planning
- Family law
- Financial issues
- Healthcare
- Housing (Rental)
- Housing (Mortgage)
- Housing (Manufactured Home)**
- Immigration
- Military
- Native American and Tribal Law
- Public benefits
- Real estate
- Traffic

6.2.4 Nature and Scope of the Non-traditional Legal Service

“Safe Rental Spaces Washington” (SRSWA) is an OLS designed to assist tenants with a smartphone, secure their rights against a landlord renting an unsafe (uninhabitable) premise.

SRSWA helps a tenant secure their rights under the Washington Residential Landlord Tenant Act (RLTA), including the Revised Code of Washington (RCW) 59.18.070(1), 59.18.070(2), 59.18.070(3), 59.18.080, 59.18.090, and common law cases *Apostle v. City of Seattle* (70 Wash. 2d 59), *Javins v. First National Realty Corporation* (428 F.2d 1071), *Foisy v. Wyman* (83 Wash. 2d 27), and *Landis & Landis Const. LLC v. Nation* (286 P. 3d 979).

To use the application, the tenant downloads the SRSWA application from the Apple or Android store to their smartphone. The application is a free download. The tenant enters information about their landlord, property, who notices about the tenancy are to be sent to per the lease, and the issue making their rental unit unsafe (uninhabitable).

Machine learning based artificial intelligence determines whether the issue is an imminent health hazard, such as no heat in the winter or extreme rodent infestation, a minor problem, such as a refrigerator or stove not working, or some other matter making their residence unsafe.

Based on the specific uninhabitable condition, the SRSWA application will generate and send a notice requiring that the landlord commence repairs in the statutorily defined period. Such notice will be sent so it proves service, such as certified mail.

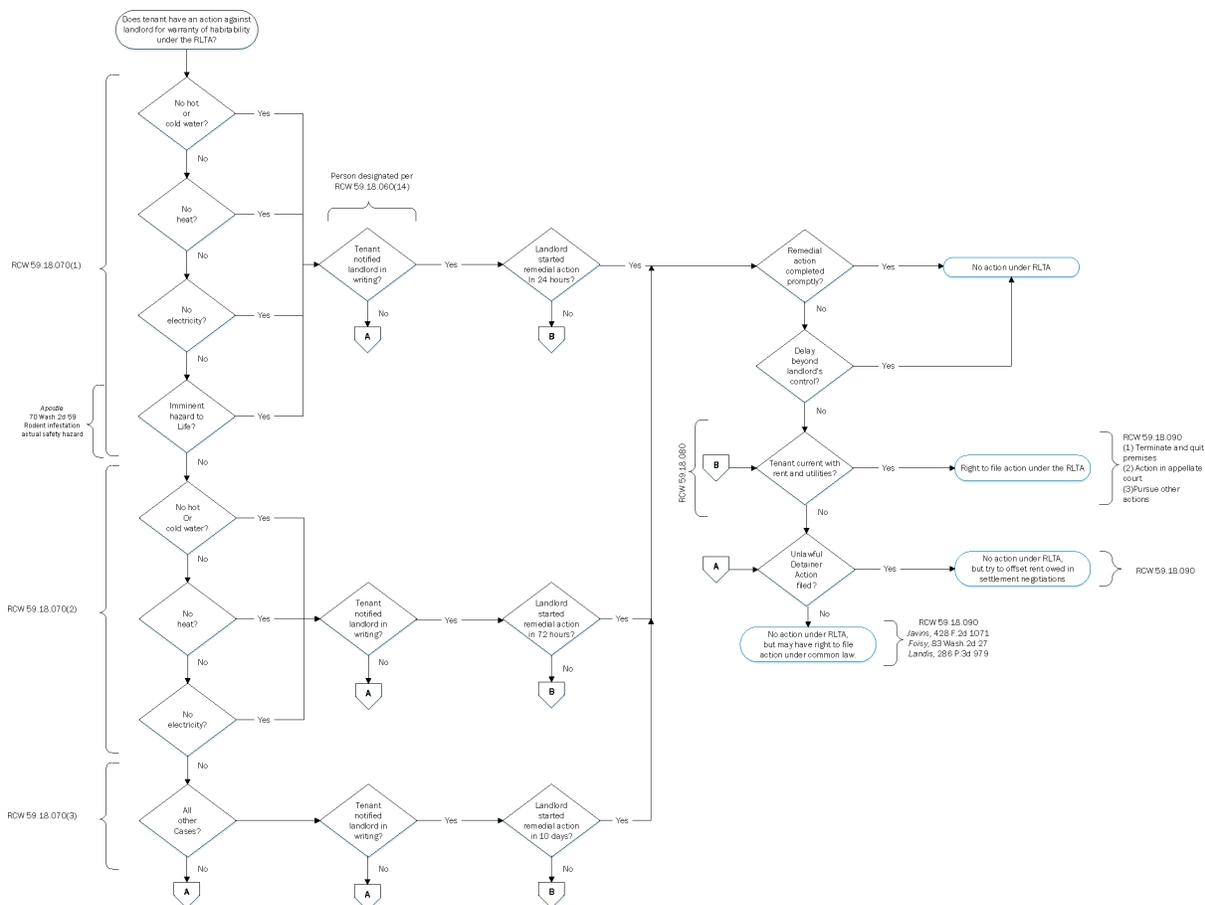
If the landlord does not commence remedial action in the statutorily defined period, and the delay is the landlord’s fault (landlord could rectify issue if they chose to but have not yet acted), then the SRSWA application will guide the tenant through exercising their statutory rights including terminating the lease and quitting the premises, suing the landlord for damages in small-claims court, or effecting repairs and charging the landlord for the cost of repairs and damages.

If available, the lease can be scanned, including documents on the status of the mechanical systems in the rental unit, and the mold, smoke detector, and tenant’s obligations under the lease will be scanned and machine learning analyze the data to modify the algorithm.

Application is doing more than merely functioning as a scrivener to fill-in forms but is deciding about the tenant’s legal rights such as determining which part of the statute applies in each scenario, delivering notices in manner which assures proof of service, and commencing a legal action including potential starting a civil case in small claims or other court.

In complex cases, the SRSWA application will assist the client in finding lawyers willing to sue the landlord.

BLUEPRINT FOR A LEGAL REGULATORY SANDBOX IN WASHINGTON STATE



6.2.5 The Intended Market for the Non-traditional Legal Service

The population of Washington State in July 2019 was 7,614,893.¹⁵ The Census Bureau estimated there were 3,195,004 housing units. A housing unit is a house, an apartment, a group of rooms, or a single room. 63% of the housing units are owner occupied, so 37% are rented. With about 2.55 people per housing unit, the calculated number of people renting would be $(3,195,004 * 0.37) * 2.55$ or 3,014,486.27.

The number of households in Seattle are 323,446.¹⁶ Using the same estimates as for the state, the number of rental households would be $(323,446 * 0.37)$ or 119,675 units. Looking at City of Seattle Code complaints for 2019¹⁷, the number of complaints about power, heat, plumbing, mold, and bugs was about 25% of the total code complaints. This means that approximately $(119,675 * 0.25)$ or 29,918 rental units in Seattle had a potential safety or habitability issue.

¹⁵ <https://www.census.gov/quickfacts/WA>.

¹⁶ <http://www.seattle.gov/opcd/population-and-demographics/about-seattle>

¹⁷ <https://data.seattle.gov/Community/Code-Complaints-and-Violations-Map/rsmq-5vwm>

Using this number statewide, $(3,195,004 * 0.25)$ or 798,751 rental units per year in Washington had a habitability issue.

The SRSWA application is not designed for any other jurisdiction at this time, as each state has different landlord-tenant law statutes.

6.2.6 When the Provision of Non-traditional Legal Service can Begin

The SRSWA application is in beta testing and will be ready for initial distribution to consumers in January 2022.

6.3 How the Non-traditional Legal Service Reduces the ATJ Gap

6.3.1 Which Specific Consumers the Non-traditional Legal Service Targets

The SRSWA application targets tenants in Washington State.

6.3.2 How the Non-traditional Legal Service Provides High-quality

The SRSWA algorithms, machine learning training, and test data has been reviewed by lawyers who advise tenants in the RLTA for a variety of agencies, including the King County Bar Association Housing Justice Project, and the Tenants Union. It follows the statutory definition of what constitutes or makes a rental unit uninhabitable, and the rights of tenants and the obligations of landlords. A professor at Seattle University who teaches a Landlord-Tenant class has also reviewed the application's logic and algorithms and helped to create test data.

Anonymized data about each transaction, and the status of the transaction over time, and source documents are used with machine learning to better train the algorithm and ensure it is working correctly and protecting tenant's rights.

Consumers can report a problem through the application, and a chat interface assists them with most issues. Consumers with complex problems outside the scope of the application will be referred to an attorney who provides legal services to tenants.

6.3.3 How the Non-traditional Legal Service is Cost-effective

The SRSWA application is free to download. Tenants will be charged only all costs associated with their transaction, such as the costs of sending certified mail or other notices.

Washington Tenant Software makes money by selling information about bad rental units, and bad landlords (those continually failing to repair rental units) to companies such as Zillow and Apartments.com who value such data. No tenant data is sold or traded to pay for SRSWA costs.

6.3.4 How the Non-traditional Legal Service is Consumer Accessible

Although a tenant/consumer might figure out how to correctly follow an uninhabitable issue through the legal process correctly, few seem able to do more than report to a county or city code enforcement office which might take timely action.

Most consumers make incorrect assumptions such as they can withhold or stop paying rent, leading to potential eviction (unlawful detainer) actions.

According to the US Census, Washingtonians have a high percentage of computers in their homes (greater than 90%), and most have access to high-speed internet, making the application highly available.

Few attorneys will take on uninhabitability matters for tenants, as few tenants can afford to pay hundreds of dollars per hour for such legal service.

Therefore, the SRSWA application should enable more tenants to exercise their legal rights under the RLTA.

6.3.5 Other Aspects of the Non-traditional Legal Service that Close the ATJ

Gap.

Many tenants live with the problem, and incur additional costs because of damage to their health, loss of wages, or harm from attempting repairs on their own.

The lower the income, the less likely the person can make repairs. Many fear retaliation including eviction or non-renewal of the lease. Others worry about being labeled a problem tenant, making it hard to rent another unit.

Few attorneys practice the tenant side of landlord-tenant law.

6.4 Risk of Harm to Consumers

6.4.1 What Potential Harm Could Befall a Consumer

Consumers may be harmed if they overstate the nature of the problem, fail to take subsequent steps in the process promptly, or stop using the application once they initiate a complaint to the landlord.

To mitigate the harm, the SRSWA application will email the consumer with the status of their matter on an ongoing basis, and clearly detailing the next steps and deadlines.

It may not scale across WA because of each court having different court rules (for example, not all Washington county courts support e-filing). However, it may be possible to modify the application to accommodate different statutes, but that is not part of the current plans.

6.4.2 Which Consumers are at Most Risk of Harm

The SRSWA application will be initially released in English and Spanish. Although every attempt has been made to use non-legal language and terms, uninhabitability and unlawful detainer matters can include complex scenarios and fact patterns, therefore, those with low reading skills or literacy may make mistakes using the application.

Those consumers in poorer communities, where affordable housing is at a premium, are at risk of retaliation from the landlord, but such risk may be less than if the tenant tried to act on their own (without assistance of the application or a legal professional).

6.4.3 When the Risk is Likely to Occur (Present or Future)

The greatest risk of consumer harm occurs when the consumer initially uses the application and lessens over time (uninhabitable issues have a relatively short timeline).

6.4.4 How Any Risk of Harm can be Measured

The application collects anonymized data about usage, including started transactions, unfinished or abandoned transactions, and failed transactions.

Consumers can report and track issues with the application through a portal and an issue id for tracking will be assigned to any complaint entered through the application.

Consumer satisfaction will be measured after each transaction.

6.5 Entity Information

6.5.1 Type of Entity

Washington Tenant Software is a Washington State LLC. The LLC is the developer or the SRSWA application.

6.5.2 Officers

John and Jane Doe are the members of Washington Tenant Software LLC. John Doe is the member manager.

6.5.3 Years of Operation

Washington Tenant Software was incorporated in 2019.

6.5.4 Financial Information

Washington Tenant Software has raised \$2 million dollars from Angel Investors and is not expected to seek any additional funding until it is in the market. SRSWA is the entity's first application.

6.5.5 Business Plan for the Non-traditional Legal Service

As noted above in 6.5.4, WTS has raised capital to fund the initial release of the application. As noted in 6.3.3 Washington Tenant Software makes money selling information about landlords and rental units, not client or tenant data.

6.6 Other Material Information

SRSWA intends to compensate lawyers advising about the RLTA with monetary payments for work performed and does not intend on having any legal professionals on staff or as members of the corporation.

SRSWA is a software development firm and is not a law firm.

7.0 Appendix C: Mockup of Supreme Court Order Sandbox Participation

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE)	
APPLICATION OF WASHINGTON TENANT)	
SOFTWARE – SAFE SPACES WASHINGTON)	ORDER
PARTICIPATION IN THE WASHINGTON)	No 00000-A-000
COURTS LEGAL REGULATORY SANDOX)	

WHEREAS, the Washington State Supreme Court has determined to implement a strategic initiative to evaluate and assess efficacy of non-traditional legal services to provide legal services that lessen the ATJ gap in Washington state while minimizing risk of consumer harm, and to evaluate the correct level of regulation for such non-traditional legal services;

NOW, THEREFORE, IT IS HEREBY ORDERED:

Washington Tenant Software, a Washington State entity, may offer legal services from its Safe Rental Spaces Washington application in Washington State as an entity providing software or internet services provider without legal professional involvement.

Washington Tenant Software shall only offer legal services in Washington State in the Housing—Rental legal services area.

Washington Tenant Software may refer clients with a complex habitability issue, which the Safe Rental Spaces Software cannot process, to a licensed and authorized legal professional in Washington, and to charge a referral fee to such legal professionals.

Washington Tenant Software shall conform to the HIGH risk reporting requirements imposed by the Washington Courts Legal Regulatory Sandbox Board.

Washington Tenant Software shall prominently display disclosure to consumers using the Safe Rental Spaces Washington application it is operating in the Washington Courts Legal Regulatory Sandbox, that it is a non-legal professional ownership company and is not a law firm, and how consumers can report a problem with the application or service.

If Washington Tenant Software desires to change these requirements, it must submit any such change to the Washington Courts Legal Regulatory Sandbox for assessment and a modification to this order.

This authority is granted for 24 months from the date the non-traditional legal service is provided to consumers in Washington State, as reported to the Washington Courts Legal Regulatory Sandbox Board.

This authority and any such extension or permanent authorization is subject to Washington Tenant Software's compliance with the conditions and regulations set forth by the Washington Courts Legal Regulatory Sandbox Board, the Washington Courts Legal Regulatory Sandbox Board's recommendation to the Supreme Court, and verification by the Washington Courts Legal Regulatory Board's verification that Washington Tenant Software has a record of compliance with all requirements, statutes, regulations, and court rules and the non-traditional legal services are not harming consumers.

DATED at Olympia, Washington this <day> day of <month>, <year>.

Support Idea?	Yes	No	Maybe
Limited License	8	0	2
Court Navigators	8	0	2
UPL Liberalization	7	1	2
ABS	5	1	4
Regulatory Sandbox	4	1	5
Fee Sharing w/ Nonlawyers	3	3	4
Alternative Admission to Bar	3	6	1
Nonlawyer Ownership	2	3	3

Summary of Regulatory Change Topics

1. Limited License for Nonlawyers.
2. Court Navigators, Document Preparers, and Other Self-Help Programs – initiatives authorized (and funded?) by statute or by court order that assist pro se parties in navigating the judicial process. Could include:
 - a. Court Navigators – training nonlawyers to operate in courthouse and assist pro se parties in understanding courtroom procedure, locating pertinent offices/division, etc. Excludes legal advice. May include allowing a navigator to respond – on behalf of a pro se party – to requests for factual information by a judge or attorney in a proceeding.
 - b. Document Preparers – certification program permitting nonlawyers to assist members of the public in preparing certain documents.
3. Alternative Business Structures – any business model through which legal services are delivered that is different from the traditional sole proprietorship or partnership model.
 - a. Examples:
 - i. Law firm/legal service entity with either
 1. Nonlawyer minority ownership interest; or
 2. No restriction on nonlawyer ownership interest.
 - ii. Business entity providing legal and non-legal services with either
 1. Nonlawyer minority ownership interest; or
 2. No restriction on nonlawyer ownership interest.
 - iii. Publicly-traded law firm.

~~[Nonlawyer Ownership]~~

4. Fee Sharing with Nonlawyers – granting authority to lawyers/law firms to share fees with nonlawyers, included staff and other third parties. (Slight difference from ABS, in that this type of fee sharing does not reflect an ownership interest.)
5. Regulatory Sandbox – a temporary pilot project whereby legal service entities and other business arrangements/partnerships associated with legal service providers that have been ordinarily prohibited are permitted to exist and operate. The “sandbox” exists for a set period of time and is heavily regulated to ensure public protection. Those participating in the project are required to report extensive data to the regulatory body overseeing the project.
6. Liberalization of UPL Statutes/Rules – redefining what constitutes the practice of law; excludes required amendments to enable creation of a limited license for nonlawyers (see #1) or other self-help opportunities (see #2). Examples:
 - a. Redefining the practice of law by:
 - i. Permitting nonlawyer assistance in drafting certain documents;

- ii. Permitting nonlawyer activity in certain matters (e.g. municipal or tax issues);
 - iii. Permitting pro bono nonlawyer activity in certain matters;
 - iv. Permitting nonlawyer partners/managers/employees of business entities to represent the entity;
 - v. Limiting scope of UPL laws to:
 - 1. Acting in a representative capacity; or
 - 2. Acting for financial or personal gain.
 - b. Permitting nonlawyers at local indigent service organizations to advise individuals on legal needs and opportunities (e.g. social workers at non-profit offering legal advice, etc.).
- 7. Alternative Admission to the Bar – permitting additional pathways to obtaining a law license. Examples:
 - a. Qualifying for the bar exam without obtaining a J.D. (e.g. substituting law school with extended apprenticeship in law office); or
 - b. Diploma privilege – law license granted based upon successful completion of law school.
 - i. Alternative: law school graduates may practice law under the supervision of an attorney between graduation and successful completion of the bar exam.

Chapter 84.

Attorneys-at-Law.

Article 1.

Qualifications of Attorney; Unauthorized Practice of Law.

§ 84-1. Oaths taken in open court.

Attorneys before they shall be admitted to practice law shall, in open court before a justice or judge of the General Court of Justice, personally appear and take the oath prescribed for attorneys by G.S. 11-11, and also the oaths of allegiance to the State, and to support the Constitution of the United States, prescribed for all public officers by Article VI, Sec. 7 of the North Carolina Constitution and G.S. 11-7, and the same shall be entered on the records of the court; and, upon such qualification had, and oath taken may act as attorneys during their good behavior. (1777, c. 115, s. 8; R.C., c. 9, s. 3; Code, s. 19; Rev., s. 209; C.S., s. 197; 1969, c. 44, s. 58; 1973, c. 108, s. 35; 1995, c. 431, s. 1.)

§ 84-2. Persons disqualified.

No justice, judge, magistrate, full-time district attorney, full-time assistant district attorney, full-time public defender, full-time assistant public defender, clerk, deputy or assistant clerk of the General Court of Justice, register of deeds, deputy or assistant register of deeds, sheriff or deputy sheriff shall engage in the private practice of law. As used in this section, the private practice of law shall not include the performance of pro bono legal services by a lawyer, other than a justice or judge of the general court of justice, who is otherwise disqualified by this section if the pro bono services are sponsored or organized by a professional association of lawyers or a nonprofit corporation rendering legal services pursuant to G.S. 84-5.1. Persons violating this provision shall be guilty of a Class 3 misdemeanor and only fined not less than two hundred dollars (\$200.00). (C.C.P., s. 424; 1870-1, c. 90; 1871-2, c. 120; 1880, c. 43; 1883, c. 406; Code, ss. 27, 28, 110; Rev., ss. 210, 3641; 1919, c. 205; C.S., s. 198; 1933, c. 15; 1941, c. 177; 1943, c. 543; 1965, c. 418, s. 1; 1969, c. 44, s. 59; 1973, c. 47, s. 2; c. 108, s. 36; 1981, c. 788, s. 1; 1993, c. 539, s. 596; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 431, s. 2; 2007-484, s. 28(a); 2017-158, s. 26.)

§ 84-2.1. "Practice law" defined.

(a) The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation:

Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.

(b) The phrase "practice law" does not encompass:

- (1) The drafting or writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by G.S. 7A-38.5 or by mediators of employment-related matters for The University of North Carolina or a constituent institution, or for an agency, commission, or board of the State of North Carolina.
- (2) The selection or completion of a preprinted form by a real estate broker licensed under Chapter 93A of the General Statutes, when the broker is acting as an agent in a real estate transaction and in accordance with rules adopted by the North Carolina Real Estate Commission, or the selection or completion of a preprinted residential lease agreement by any person or Web site provider. Nothing in this subdivision or in G.S. 84-2.2 shall be construed to permit any person or Web site provider who is not licensed to practice law in accordance with this Chapter to prepare for any third person any contract or deed conveying any interest in real property, or to abstract or pass upon title to any real property, which is located in this State.
- (3) The completion of or assisting a consumer in the completion of various agreements, contracts, forms, and other documents related to the sale or lease of a motor vehicle as defined in G.S. 20-286(10), or of products or services ancillary or related to the sale or lease of a motor vehicle, by a motor vehicle dealer licensed under Article 12 of Chapter 20 of the General Statutes. (C.C.P., s. 424; 1870-1, c. 90; 1871-2, c. 120; 1880, c. 43; 1883, c. 406; Code, ss. 27, 28, 110; Rev., ss. 210, 3641; 1919, c. 205; C.S., s. 198; 1933, c. 15; 1941, c. 177; 1943, c. 543; 1945, c. 468; 1995, c. 431, s. 3; 1999-354, s. 2; 2004-154, s. 2; 2013-410, s. 32; 2016-60, s. 1.)

§ 84-2.2. Exemption and additional requirements for Web site providers.

(a) The practice of law, including the giving of legal advice, as defined by G.S. 84-2.1 does not include the operation of a Web site by a provider that offers consumers access to interactive software that generates a legal document based on the consumer's answers to questions presented by the software, provided that all of the following are satisfied:

- (1) The consumer is provided a means to see the blank template or the final, completed document before finalizing a purchase of that document.
- (2) An attorney licensed to practice law in the State of North Carolina has reviewed each blank template offered to North Carolina consumers, including each and every potential part thereof that may appear in the completed document. The name and address of each reviewing attorney must be kept on file by the provider and provided to the consumer upon written request.

- (3) The provider must communicate to the consumer that the forms or templates are not a substitute for the advice or services of an attorney.
- (4) The provider discloses its legal name and physical location and address to the consumer.
- (5) The provider does not disclaim any warranties or liability and does not limit the recovery of damages or other remedies by the consumer.
- (6) The provider does not require the consumer to agree to jurisdiction or venue in any state other than North Carolina for the resolution of disputes between the provider and the consumer.
- (7) The provider must have a consumer satisfaction process. All consumer concerns involving the unauthorized practice of law made to the provider shall be referred to the North Carolina State Bar. The consumer satisfaction process must be conspicuously displayed on the provider's Web site.

(b) A Web site provider subject to this section shall register with the North Carolina State Bar prior to commencing operation in the State and shall renew its registration with the State Bar annually. The State Bar may not refuse registration.

(c) Each Web site provider subject to this section shall pay an initial registration fee in an amount not to exceed one hundred dollars (\$100.00) and an annual renewal fee in an amount not to exceed fifty dollars (\$50.00). (2016-60, s. 2.)

§ 84-3. Repealed by Session Laws 1973, c. 108, s. 37.

§ 84-4. Persons other than members of State Bar prohibited from practicing law.

Except as otherwise permitted by law, it shall be unlawful for any person or association of persons, except active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law, to appear as attorney or counselor at law in any action or proceeding before any judicial body, including the North Carolina Industrial Commission, or the Utilities Commission; to maintain, conduct, or defend the same, except in his own behalf as a party thereto; or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor-at-law, or in furnishing the services of a lawyer or lawyers; and it shall be unlawful for any person or association of persons except active members of the Bar, for or without a fee or consideration, to give legal advice or counsel, perform for or furnish to another legal services, or to prepare directly or through another for another person, firm or corporation, any will or testamentary disposition, or instrument of trust, or to organize corporations or prepare for another person, firm or corporation, any other legal document. Provided, that nothing herein shall prohibit any person from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney-at-law. The provisions of this section shall be in addition to and not in lieu of any other provisions of this Chapter. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina. (1931, c. 157, s. 1; 1937, c. 155, s. 1; 1955, c. 526, s. 1; 1969, c. 718, s. 19; 1981, c. 762, s. 3; 1995, c. 431, s. 4.)

§ 84-4.1. Limited practice of out-of-state attorneys.

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of and in good standing in that state, having been retained as attorney for a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, the North Carolina Utilities Commission, the North Carolina Industrial Commission, the Office of Administrative Hearings of North Carolina, or any administrative agency, may, on motion, be admitted to practice in that forum for the sole purpose of appearing for a client in the proceeding. The motion required under this section shall be signed by the attorney and shall contain or be accompanied by:

- (1) The attorney's full name, post-office address, bar membership number, and status as a practicing attorney in another state.
- (2) A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding.
- (3) A statement that unless permitted to withdraw sooner by order of the court, the attorney will continue to represent the client in the proceeding until its final determination, and that with reference to all matters incident to the proceeding, the attorney agrees to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.
- (4) A statement that the state in which the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.
- (5) A statement to the effect that the attorney has associated and is personally appearing in the proceeding, with an attorney who is a resident of this State, has agreed to be responsible for filing a registration statement with the North Carolina State Bar, and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with the legal proceedings, or any disciplinary matter, with the same effect as if personally made on the foreign attorney within this State.
- (6) A statement accurately disclosing a record of all that attorney's disciplinary history. Discipline shall include (i) public discipline by any court or lawyer regulatory organization, and (ii) revocation of any pro hac vice admission.
- (7) A fee in the amount of two hundred twenty-five dollars (\$225.00), of which two hundred dollars (\$200.00) shall be remitted to the State Treasurer for support of the General Court of Justice and twenty-five dollars (\$25.00) shall be transmitted to the North Carolina State Bar to regulate the practice of out-of-state attorneys as provided in this section.

Compliance with the foregoing requirements does not deprive the court of the discretionary power to allow or reject the application. (1967, c. 1199, s. 1; 1971, c. 550, s. 1; 1975, c. 582, ss. 1, 2; 1977, c. 430; 1985 (Reg. Sess., 1986), c. 1022, s. 8; 1991, c. 210, s. 2; 1995, c. 431, s. 5; 2003-116, s. 1; 2004-186, s. 4.2; 2005-396, s. 1; 2007-200, s. 4; 2007-323, s. 30.8(k).)

§ 84-4.2. Summary revocation of permission granted out-of-state attorneys to practice.

Permission granted under G.S. 84-4.1 may be summarily revoked by the General Court of Justice or any agency, including the North Carolina Utilities Commission, on its own motion and in its discretion. (1967, c. 1199, s. 2; 1971, c. 550, s. 2; 1995, c. 431, s. 6.)

§ 84-5. Prohibition as to practice of law by corporation.

(a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Department of Commerce, Division of Employment Security, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

- (1) A corporation authorized and licensed to act in a fiduciary capacity shall not:
 - a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.
 - b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.
 - c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.
- (2) Except as provided in subsection (b) of this section, when any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:
 - a. Offering wills for probate.
 - b. Preparing and publishing notice of administration to creditors.
 - c. Handling formal court proceedings.

- d. Drafting legal papers or giving legal advice to spouses concerning rights to an elective share under Article 1A of Chapter 30 of the General Statutes.
 - e. Resolving questions of domicile and residence of a decedent.
 - f. Handling proceedings involving year's allowances of widows and children.
 - g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
 - h. Drafting instruments releasing deeds of trust.
 - i. Drafting assignments of rent.
 - j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
 - k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
 - 1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
 - 2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
 - 3. Handling petitions to the tax court.
 - l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
 - m. In connection with the administration of an estate or trust:
 - 1. Making application for letters testamentary or letters of administration.
 - 2. Abstracting or passing upon title to property.
 - 3. Handling litigation relating to claims by or against the estate or trust.
 - 4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.
- (3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:
- a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.
 - b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.

- c. In matters involving estate and inheritance taxes and federal and State income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.
- d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing.

(b) Nothing in this section shall prohibit an attorney retained by a corporation, whether or not the attorney is also a salaried employee of the corporation, from representing the corporation or an affiliate, or from representing an officer, director, or employee of the corporation or an affiliate in any matter arising in connection with the course and scope of the employment of the officer, director, or employee. Notwithstanding the provisions of this subsection, the attorney providing such representation shall be governed by and subject to all of the Rules of Professional Conduct of the North Carolina State Bar to the same extent as all other attorneys licensed by this State. (1931, c. 157, s. 2; 1937, c. 155, s. 2; 1955, c. 526, s. 2; 1969, c. 718, s. 20; 1971, c. 747; 1997-203, s. 1; 2000-178, s. 8; 2011-401, s. 3.5.)

§ 84-5.1. Rendering of legal services by certain nonprofit corporations.

(a) Subject to the rules and regulations of the North Carolina State Bar, as approved by the Supreme Court of North Carolina, a nonprofit corporation, tax exempt under 26 U.S.C. § 501(c)(3), organized or authorized under Chapter 55A of the General Statutes of North Carolina and operating as a public interest law firm as defined by the applicable Internal Revenue Service guidelines or for the primary purpose of rendering indigent legal services, may render such services provided by attorneys duly licensed to practice law in North Carolina, for the purposes for which the nonprofit corporation was organized. The nonprofit corporation must have a governing structure that does not permit an individual or group of individuals other than an attorney duly licensed to practice law in North Carolina to control the manner or course of the legal services rendered and must continually satisfy the criteria established by the Internal Revenue Service for 26 U.S.C. § 501(c)(3) status, whether or not any action has been taken to revoke that status.

(b) In no instance may legal services rendered by a nonprofit corporation under subsection (a) of this section be conditioned upon the purchase or payment for any product, good, or service other than the legal service rendered. (1977, c. 841, s. 1; 2009-231, s. 1.)

§ 84-6. Exacting fee for conducting foreclosures prohibited to all except licensed attorneys.

It shall be unlawful to exact, charge, or receive any attorney's fee for the foreclosure of any mortgage under power of sale, unless the foreclosure is conducted by licensed attorney-at-law of North Carolina, and unless the full amount charged as attorney's fee is actually paid to and received

and retained by such attorney, without being directly or indirectly shared with or rebated to anyone else, and it shall be unlawful for any such attorney to make any showing that he has received such a fee unless he has received the same, or to share with or rebate to any other person, firm, or corporation such fee or any part thereof received by him; but such attorney may divide such fee with another licensed attorney-at-law maintaining his own place of business and not an officer or employee of the foreclosing party, if such attorney has assisted in performing the services for which the fee is paid, or resides in a place other than that where the foreclosure proceedings are conducted, and has forwarded the case to the attorney conducting such foreclosure. (1931, c. 157, s. 3.)

§ 84-7. District attorneys, upon application, to bring injunction or criminal proceedings.

The district attorney of any of the superior courts shall, upon the application of any member of the Bar, or of any bar association, of the State of North Carolina, bring such action in the name of the State as may be proper to enjoin any such person, corporation, or association of persons who it is alleged are violating the provisions of G.S. 84-4 to 84-8, and it shall be the duty of the district attorneys of this State to indict any person, corporation, or association of persons upon the receipt of information of the violation of the provisions of G.S. 84-4 to 84-8. (1931, c. 157, s. 4; 1973, c. 47, s. 2.)

§ 84-7.1. Legal clinics of law schools and certain law students and lawyers excepted.

The provisions of G.S. 84-4 through G.S. 84-6 shall not apply to any of the following:

- (1) Any law school conducting a legal clinic and receiving as its clientage only those persons unable financially to compensate for legal advice or services rendered and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic.
- (2) Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, State, or local government agency.
- (3) Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. 84-5.1. This provision does not apply to a lawyer whose license has been suspended or revoked in any state. (2011-336, s. 5.)

§ 84-8. Punishment for violations.

(a) Any person, corporation, or association of persons violating any of the provisions of G.S. 84-4 through G.S. 84-6 or G.S. 84-9 shall be guilty of a Class 1 misdemeanor.

(b) No person shall be entitled to collect any fee for services performed in violation of G.S. 84-4 through G.S. 84-6, G.S. 84-9, or G.S. 84-10.1. (1931, c. 157, s. 5; c. 347; 1993, c. 539, s. 597; 1994, Ex. Sess., c. 24, s. 14(c); 2007-200, s. 3; 2011-336, s. 4.)

§ 84-9. Unlawful for anyone except attorney to appear for creditor in insolvency and certain other proceedings.

It shall be unlawful for any corporation, or any firm or other association of persons other than a law firm, or for any individual other than an attorney duly licensed to practice law, to appear for another in any bankruptcy or insolvency proceeding, or in any action or proceeding for or growing out of the appointment of a receiver, or in any matter involving an assignment for the benefit of creditors, or to present or vote any claim of another, whether under an assignment or transfer of such claim or in any other manner, in any of the actions, proceedings or matters hereinabove set out. (1931, c. 208, s. 2.)

§ 84-10: Repealed by Session Laws 2011-336, s. 6, effective December 1, 2011, and applicable to offenses committed on or after December 1, 2011.

§ 84-10.1. Private cause of action for the unauthorized practice of law.

If any person knowingly violates any of the provisions of G.S. 84-4 through G.S. 84-6 or G.S. 84-9, fraudulently holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in G.S. 84-37(a), or knowingly aids and abets another person to commit the unauthorized practice of law, in addition to any other liability imposed pursuant to this Chapter or any other applicable law, any person who is damaged by the unlawful acts set out in this section shall be entitled to maintain a private cause of action to recover damages and reasonable attorneys' fees and other injunctive relief as ordered by court. No order or judgment under this section shall have any effect upon the ability of the North Carolina State Bar to take any action authorized by this Chapter. (2011-336, s. 7; 2016-60, s. 3.)

Article 2.

Relation to Client.

§ 84-11. Authority filed or produced if requested.

Every attorney who claims to enter an appearance for any person shall, upon being required so to do, produce and file in the clerk's office of the court in which he claims to enter an appearance, a power or authority to that effect signed by the persons or some one of them for whom he is about to enter an appearance, or by some person duly authorized in that behalf, otherwise he shall not be allowed so to do: Provided, that when any attorney claims to enter an appearance by virtue of a letter to him directed (whether such letter purport a general or particular employment), and it is necessary for him to retain the letter in his own possession, he shall, on the production of said letter setting forth such employment, be allowed to enter his appearance, and the clerk shall make a note to that effect upon the docket. (R.C., c. 31, s. 57; Code, s. 29; Rev., s. 213; C.S., s. 200.)

§ 84-12. Failure to file complaint, attorney liable for costs.

When a plaintiff is compelled to pay the costs of his suit in consequence of a failure on the part of his attorney to file his complaint in proper time, he may sue such attorney for all the costs by

him so paid, and the receipt of the clerk may be given in evidence in support of such claim. (1786, c. 253, s. 6; R.C., c. 9, s. 5; Code, s. 22; Rev., s. 214; C.S., s. 201.)

§ 84-13. Fraudulent practice, attorney liable in double damages.

If any attorney commits any fraudulent practice, he shall be liable in an action to the party injured, and on the verdict passing against him, judgment shall be given for the plaintiff to recover double damages. (1743, c. 37; R.C., c. 9, s. 6; Code, s. 23; Rev., s. 215; C. S., s. 202.)

Article 3.

Arguments.

§ 84-14: Recodified as § 7A-97 by Session Laws 1995, c. 431, s. 7.

Article 4.

North Carolina State Bar.

§ 84-15. Creation of North Carolina State Bar as an agency of the State.

There is hereby created as an agency of the State of North Carolina, for the purposes and with the powers hereinafter set forth, the North Carolina State Bar. (1933, c. 210, s. 1.)

§ 84-16. Membership and privileges.

The membership of the North Carolina State Bar shall consist of two classes, active and inactive.

The active members shall be all persons who have obtained a license or certificate, entitling them to practice law in the State of North Carolina, who have paid the membership dues specified, and who have satisfied all other obligations of membership. No person other than a member of the North Carolina State Bar shall practice in any court of the State except foreign attorneys as provided by statute and natural persons representing themselves.

Inactive members shall be:

- (1) All persons who have obtained a license to practice law in the State but who have been found by the Council to be not engaged in the practice of law and not holding themselves out as practicing attorneys and not occupying any public or private positions in which they may be called upon to give legal advice or counsel or to examine the law or to pass upon, adjudicate, or offer an opinion concerning the legal effect of any act, document, or law.
- (2) Persons allowed by the Council solely to represent indigent clients on a pro bono basis under the supervision of an active member employed by a nonprofit corporation qualified to render legal services pursuant to G.S. 84-5.1.

All active members shall be required to pay annual membership fees, and shall have the right to vote in elections held by the district bar in the judicial district in which the member resides. If a member desires to vote with the bar of some district in which the member practices, other than that

in which the member resides, the member may do so by filing with the Secretary of the North Carolina State Bar a statement in writing that the member desires to vote in the other district; provided, however, that in no case shall the member be entitled to vote in more than one district. (1933, c. 210, s. 2; 1939, c. 21, s. 1; 1941, c. 344, ss. 1, 2, 3; 1969, c. 44, s. 60; c. 1190, s. 52; 1973, c. 1152, s. 1; 1981, c. 788, s. 2; 1983, c. 589, s. 1; 1985, c. 621; 1995, c. 431, s. 8; 2007-200, s. 1.)

§ 84-17. Government.

The government of the North Carolina State Bar is vested in a council of the North Carolina State Bar referred to in this Chapter as the "Council." The Council shall be composed of a variable number of councilors equal to the number of judicial districts plus 16, the officers of the North Carolina State Bar, who shall be councilors during their respective terms of office, and each retiring president of the North Carolina State Bar who shall be a councilor for one year from the date of expiration of his term as president. Notwithstanding any other provisions of the law, the North Carolina State Bar may borrow money and may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the borrowing of money and the acquisition, rental, encumbering, leasing and sale of real property. The Council shall be competent to exercise the entire powers of the North Carolina State Bar in respect of the interpretation and administration of this Article, the borrowing of money, the acquisition, lease, sale, or mortgage of property, real or personal, the seeking of amendments to this Chapter, and all other matters. There shall be one councilor from each judicial district and 16 additional councilors. The additional councilors shall be allocated and reallocated by the North Carolina State Bar every six years based on the number of active members of each judicial district bar according to the records of the North Carolina State Bar and in accordance with a formula to be adopted by the North Carolina State Bar, to insure an allocation based on lawyer population of each judicial district bar as it relates to the total number of active members of the State Bar.

A councilor whose seat has been eliminated due to a reallocation shall continue to serve on the Council until expiration of the remainder of the current term. A councilor whose judicial district is altered by the General Assembly during the councilor's term shall continue to serve on the Council until the expiration of the term and shall represent the district wherein the councilor resides or with which the councilor has elected to be affiliated. If before the alteration of the judicial district of the councilor the judicial district included both the place of residence and the place of practice of the councilor, and if after the alteration of the judicial district the councilor's place of residence and place of practice are located in different districts, the councilor must, not later than 10 days from the effective date of the alteration of the district, notify the Secretary of the North Carolina State Bar of an election to affiliate with and represent either the councilor's district of residence or district of practice.

In addition to the councilors, there shall be three public members not licensed to practice law in this or any other state who shall be appointed by the Governor. The public members may vote and participate in all matters before the Council to the same extent as councilors elected or appointed from the various judicial districts. (1933, c. 210, s. 3; 1937, c. 51, s. 1; 1955, c. 651, s. 1; 1961, c. 641; 1973, c. 1152, s. 2; 1977, c. 841, s. 2; 1979, c. 570, ss. 1, 2; 1981, c. 788, s. 3; 1985, c. 60, s. 1; 1987, c. 316, s. 1; 1995, c. 431, s. 9; 2007-200, s. 2; 2009-82, s. 1.)

§ 84-18. Terms, election and appointment of councilors.

(a) Except as set out in this section, the terms of councilors are fixed at three years commencing on the first day of January in the year following their election. A year shall be the calendar year. No councilor may serve more than three successive three-year terms but a councilor may serve an unlimited number of three successive three-year terms provided a three-year period of nonservice intervenes in each instance. Any councilor serving a partial term of 18 months or more is considered to have served a full term and shall be eligible to be elected to only two successive three-year terms in addition to the partial term. Any councilor serving a partial term of less than 18 months is eligible to be elected to three successive three-year terms in addition to the partial term. This paragraph shall not apply to officers of the State Bar.

The secretary of a judicial district bar shall notify the secretary-treasurer of the State Bar in writing of any additions to or deletions from the delegation of councilors representing the district within 90 days of the effective date of the change. No new councilor shall assume a seat until official notice of the election has been given to the secretary-treasurer of the State Bar.

Any active member of the North Carolina State Bar is eligible to serve as a councilor from the judicial district in which the member is eligible to vote.

(b) The Council may promulgate rules to govern the election and appointment of councilors. The election and appointment of councilors shall be as follows:

Each judicial district bar shall elect one eligible North Carolina State Bar member for each Council vacancy in the district. Any vacancy occurring after the election, whether caused by resignation, death, reconfiguration of the district by the General Assembly, or otherwise shall be filled by the judicial district bar in which the vacancy occurs. The appointment shall be for the unexpired portion of the term and shall be certified to the Council by the judicial district bar. Any appointed councilor shall be subject to the terms set forth in subsection (a) of G.S. 84-18.

(c) Public members shall serve three-year terms. No public member shall serve more than two complete consecutive terms. The Secretary of the North Carolina State Bar shall promptly inform the Governor when any seat occupied by a public member becomes vacant. The successor shall serve the remainder of the term. Any public member serving a partial term of 18 months or more is considered to have served a full term and is eligible to be elected to only one additional three-year term in addition to the partial term. Any public member serving a partial term of less than 18 months is eligible to be elected to two successive three-year terms in addition to the partial term. (1933, c. 210, s. 4; 1953, c. 1310, s. 1; 1979, c. 570, s. 3; 1981, c. 788, s. 4; 1985, c. 60, ss. 2, 3; 1987, c. 316, s. 2; 1995, c. 431, s. 10.)

§ 84-18.1. Membership and fees of district bars.

(a) The district bar shall be a subdivision of the North Carolina State Bar subject to the general supervisory authority of the Council and may adopt rules, regulations and bylaws that are not inconsistent with this Article. A copy of any rules, regulations and bylaws that are adopted, along with any subsequent amendments, shall be transmitted to the Secretary-Treasurer of the North Carolina State Bar.

(b) Any district bar may from time to time by a majority vote of the members present at a duly called meeting prescribe an annual membership fee to be paid by its active members as a service charge to promote and maintain its administration, activities and programs. The fee shall be in addition to, but shall not exceed, the amount of the membership fee prescribed by G.S. 84-34 for active members of the North Carolina State Bar. The district bar may also charge a late fee, which shall not exceed fifteen dollars (\$15.00), for the failure to pay judicial district bar dues on time. The district bar shall mail a written notice to every active member of the district bar at least

30 days before any meeting at which an election is held to impose or increase mandatory district bar dues. Every active member of a district bar which has prescribed an annual membership fee shall keep its secretary-treasurer notified of his correct mailing address and shall pay the prescribed fee at the time and place set forth in the demand for payment mailed to him by its secretary-treasurer. The name of each active member of a district bar who is more than 12 full calendar months in arrears in the payment of any fee shall be furnished by the secretary-treasurer of the district bar to the Council. In the exercise of its powers as set forth in G.S. 84-23, the Council shall thereupon take disciplinary or other action with reference to the delinquent as it considers necessary and proper. (1969, c. 241; 1983, c. 390, s. 1; 1995, c. 431, s. 11; 2005-396, s. 2.)

§ 84-19. Judicial districts definition.

For purposes of this Article, the term "judicial district" refers to prosecutorial districts established by the General Assembly and includes the High Point Superior Court District as described under G.S. 7A-41(b)(13). The term "district bar" means the bar of a judicial district as defined by this section. (1933, c. 210, s. 5; 1955, c. 651, s. 2; 1979, c. 570, s. 4; 1987, c. 316, s. 3; 1995, c. 431, s. 12; 2011-28, s. 1.)

§ 84-20. Compensation of councilors.

The members of the Council and members of committees when actually engaged in the performance of their duties, including committees sitting upon disbarment proceedings, shall receive as compensation for the time spent in attending meetings an amount to be determined by the Council, subject to approval of the North Carolina Supreme Court, and shall receive actual expenses of travel and subsistence while engaged in their duties provided that for transportation by use of private automobile the expense of travel shall not exceed the business standard mileage rate set by the Internal Revenue Service per mile of travel. The Council shall determine per diem and mileage to be paid. The allowance fixed by the Council shall be paid by the secretary-treasurer of the North Carolina State Bar upon presentation of appropriate documentation by each member. (1933, c. 210, s. 6; 1935, c. 34; 1953, c. 1310, s. 2; 1971, c. 13, s. 1; 1995, c. 431, s. 13; 2006-66, s. 22.23; 2006-221, s. 24.)

§ 84-21. Organization of Council; publication of rules, regulations and bylaws.

- (a) The Council shall adopt the rules pursuant to G.S. 45A-9.
- (b) The rules and regulations adopted by the Council under this Article may be amended by the Council from time to time in any manner not inconsistent with this Article. Copies of all rules and regulations and of all amendments adopted by the Council shall be certified to the Chief Justice of the Supreme Court of North Carolina, entered by the North Carolina Supreme Court upon its minutes, and published in the next ensuing number of the North Carolina Reports and in the North Carolina Administrative Code: Provided, that the court may decline to have so entered upon its minutes any rules, regulations and amendments which in the opinion of the Chief Justice are inconsistent with this Article. (1933, c. 210, s. 7; 1991, c. 418, s. 7; 1995, c. 431, s. 14; 2011-336, s. 8.)

§ 84-22. Officers and committees of the North Carolina State Bar.

The officers of the North Carolina State Bar and the Council shall consist of a president, president-elect, vice-president and an immediate past president, who shall be deemed members of the Council in all respects. The president, president-elect and vice-president need not be members of the Council at the time of their election. There shall be a secretary-treasurer who shall also have the title of executive director, but who shall not be a member of the Council. All officers shall be elected annually by the Council at an election to take place at the annual meeting of the North Carolina State Bar. The regular term of all officers is one year. The Council is the judge of the election and qualifications of its members.

In addition to the committees and commissions as may be specifically established or authorized by law, the North Carolina State Bar may have committees, standing or special, as from time to time the Council deems appropriate for the proper discharge of the duties and functions of the North Carolina State Bar. The Council shall determine the number of members, composition, method of appointment or election, functions, powers and duties, structure, authority to act, and other matters relating to each committee. Any committee may, at the discretion of the appointing or electing authority, be composed of Council members or members of the North Carolina State Bar who are not members of the Council, or of lay persons, or of any combination. (1933, c. 210, s. 8; 1941, c. 344, ss. 4, 5; 1973, c. 1152, s. 3; 1979, c. 570, s. 5; 1995, c. 431, s. 15.)

§ 84-23. Powers of Council.

(a) The Council is vested, as an agency of the State, with the authority to regulate the professional conduct of licensed lawyers and State Bar certified paralegals. Among other powers, the Council shall administer this Article; take actions that are necessary to ensure the competence of lawyers and State Bar certified paralegals; formulate and adopt rules of professional ethics and conduct; investigate and prosecute matters of professional misconduct; grant or deny petitions for reinstatement; resolve questions pertaining to membership status; arbitrate disputes concerning legal fees; certify legal specialists and paralegals and charge fees to applicants and participants necessary to administer these certification programs; determine whether a member is disabled; maintain an annual registry of interstate and international law firms doing business in this State; and formulate and adopt procedures for accomplishing these purposes. The Council may do all things necessary in the furtherance of the purposes of this Article that are not otherwise prohibited by law.

(b) The Council or any committee of the Council, including the Client Security Fund and the Disciplinary Hearing Commission or any committee of the Commission, may subpoena financial records of any licensed lawyers, lawyers whose licenses have been suspended, or disbarred lawyers, relating to any account into which client or fiduciary funds have been deposited.

(c) The Council may publish an official journal concerning matters of interest to the legal profession.

(d) The Council may acquire, hold, rent, encumber, alienate, lease, and otherwise deal with real or personal property in the same manner as any private person or corporation, subject only to the approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing and sale of real property. The Council may borrow money upon its bonds, notes, debentures, or other evidences of indebtedness sold through public

or private sale pursuant to a loan agreement or a trust agreement or indenture with a trustee, with such borrowing either unsecured or secured by a mortgage on the Council's interest in real or personal property, and engage and contract with attorneys, underwriters, financial advisors, and other parties as necessary for such borrowing, with such borrowing and security subject to the approval of the Governor and the Council of State. The Council may utilize the services of the Purchase and Contract Division of the Department of Administration to procure personal property, in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. However, the Council shall: (i) submit all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Council under this subsection a standard clause which provides that the State Auditor and internal auditors of the Council may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. The Council shall not award a cost plus percentage of cost agreement or contract for any purpose. (1933, c. 210, s. 9; 1935, c. 74, s. 1; 1937, c. 51, s. 2; 1975, c. 582, s. 3; 1977, c. 841, s. 2; 1995, c. 431, s. 16; 2003-116, s. 2; 2004-174, s. 1; 2005-396, s. 4; 2009-82, s. 2; 2010-194, s. 12; 2011-326, s. 15(l).)

§ 84-23.1. Prepaid legal services.

(a) This section is in addition to and not a limitation of the powers and responsibilities of the council set out in G.S. 84-23. To the extent that this section deals with the same powers and responsibilities it shall be taken to be in amplification of those powers and not in derogation thereof.

(b) Repealed by Session Laws 1991, c. 210, s. 1.

(b1) All organizations offering prepaid legal services plans shall register those plans with the North Carolina State Bar Council on forms provided by the Council. Each plan shall be registered prior to its implementation or operation in this State and shall renew its registration with the State Bar annually.

(b2) Every plan shall pay an administrative fee to the Council for the initial registration and an annual renewal fee in amounts determined by the Council.

(c) Repealed by Session Laws 1991, c. 210, s. 1.

(d) Notwithstanding registration of the plan with the North Carolina State Bar Council pursuant to subsection (b1), any plan for prepaid legal services is subject to regulation under Chapter 58 of the General Statutes if offered by a company engaged in the insurance business or if the plan itself constitutes the offering of insurance.

(e) Repealed by Session Laws 1991, c. 210, s. 1. (1975, c. 707, s. 1; 1991, c. 210, s. 1; 2005-396, ss. 5, 6.)

§ 84-24. Admission to practice.

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the

Council, who need not be members of the Council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years.

The Board of Law Examiners shall elect a member of the Board as chair thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable the Board to perform its duties promptly and properly. The chair and any employees shall serve for a period of time determined by the Board.

The examination shall be held in the manner and at the times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide assistance as may be required to enable it to perform its duties promptly and properly. Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records within the meaning of Chapter 132 of the General Statutes.

All applicants for admission to the Bar shall be fingerprinted to determine whether the applicant has a record of criminal conviction in this State or in any other state or jurisdiction. The information obtained as a result of the fingerprinting of an applicant shall be limited to the official use of the Board of Law Examiners in determining the character and general fitness of the applicant.

The Department of Public Safety may provide a criminal record check to the Board of Law Examiners for a person who has applied for a license through the Board. The Board shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this section.

The Board of Law Examiners, subject to the approval of the Council, shall by majority vote, from time to time, make, alter, and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that no change in the educational requirements for admission to the Bar that establishes an additional or greater requirement shall become effective until two years after the date of the adoption of the change.

All rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the Council.

Whenever the Council shall order the restoration of license to any person as authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to the person, noting thereon that the license is issued in compliance with an order of the Council, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be promulgated by the Supreme Court. (1933, c. 210, s. 10; c. 331; 1935, cc. 33, 61; 1941, c. 344, s. 6; 1947, c. 77; 1951, c. 991, s. 1; 1953, c. 1012; 1965, cc. 65, 725; 1973, c. 13; 1977, c. 841, s. 2; 1983, c. 177; 1991, c. 210, s. 4; 1995, c. 431, s. 17; 2002-147, s. 5; 2014-100, s. 17.1(o); 2015-264, s. 47.)

§ 84-25. Fees of applicants.

All applicants before the Board of Law Examiners shall pay such fees as prescribed under the rules of said Board as may be promulgated under G.S. 84-21 and 84-24. (1935, c. 33, s. 1; 1955, c. 651, s. 3.)

§ 84-26. Expenses of Board of Law Examiners.

Notwithstanding G.S. 93B-5(b), each member of the Board of Law Examiners shall receive the member's actual expenses of travel and subsistence while engaged in duties assigned to the member; provided, however, that for transportation by the use of private automobile the expense of that transportation shall be the same as paid other boards and commissions by the State. (1935, c. 33, s. 2; 1937, c. 35; 1953, c. 1310, s. 3; 1971, c. 13, s. 2; 1973, c. 1368; 2013-9, s. 1.)

§ 84-27. Repealed by Session Laws 1945, c. 782.

§ 84-28. Discipline and disbarment.

(a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the Council under such rules and procedures as the Council shall adopt as provided in G.S. 84-23.

(b) The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice under G.S. 84-4.1, individually or in concert with any other

person or persons, shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise:

- (1) Conviction of, or a tender and acceptance of a plea of guilty or no contest to, a criminal offense showing professional unfitness;
 - (2) The violation of the Rules of Professional Conduct adopted and promulgated by the Council in effect at the time of the act;
 - (3) Knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct; failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter; or contempt of the Council or any committee of the North Carolina State Bar.
- (c) Misconduct by any attorney shall be grounds for:
- (1) Disbarment;
 - (2) Suspension for a period up to but not exceeding five years, any portion of which may be stayed upon reasonable conditions to which the offending attorney consents;
 - (3) Censure – A censure is a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or members of the public, but the protection of the public does not require suspension of the attorney's license;
 - (4) Reprimand – A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct, but the protection of the public does not require a censure. A reprimand is generally reserved for cases in which the attorney's conduct has caused harm or potential harm to a client, the administration of justice, the profession, or members of the public; or
 - (5) Admonition – An admonition is a written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

Any order disbarring or suspending an attorney may impose reasonable conditions precedent to reinstatement. No attorney who has been disbarred by the Disciplinary Hearing Commission, the Council, or by order of any court of this State may seek reinstatement to the practice of law prior to five years from the effective date of the order of disbarment. Any order of the Disciplinary Hearing Commission or the Grievance Committee imposing an admonition, reprimand, censure, or stayed suspension may also require the attorney to complete a reasonable amount of continuing legal education in addition to the minimum amount required by the North Carolina Supreme Court.

(d) Any attorney admitted to practice law in this State, who is convicted of or has tendered and has had accepted, a plea of guilty or no contest to, a criminal offense showing professional unfitness, may be disciplined based upon the conviction, without awaiting the outcome of any appeals of the conviction. An order of discipline based solely upon a conviction of a criminal offense showing professional unfitness shall be vacated immediately upon receipt by the Secretary of the North Carolina State Bar of a certified copy of a judgment or order reversing the conviction. The fact that the attorney's criminal conviction has been overturned on appeal shall not prevent the

North Carolina State Bar from conducting a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

(d1) An attorney who is disciplined as provided in subsection (d) of this section may petition the court in the trial division in the judicial district where the conviction occurred for an order staying the disciplinary action pending the outcome of any appeals of the conviction. The court may grant or deny the stay in its discretion upon such terms as it deems proper. A stay of the disciplinary action by the court shall not prevent the North Carolina State Bar from going forward with a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

(e) Any attorney admitted to practice law in this State who is disciplined in another jurisdiction shall be subject to the same discipline in this State: Provided, that the discipline imposed in the other jurisdiction does not exceed that provided for in subsection (c) above and that the attorney was not deprived of due process in the other jurisdiction.

(f) Upon application by the North Carolina State Bar, misconduct by an attorney admitted to practice in this State may be restrained or enjoined where the necessity for prompt action exists regardless of whether a disciplinary proceeding in the matter of the conduct is pending. The application shall be filed in the Superior Court of Wake County and shall be governed by the procedure set forth in G.S. 1A-1, Rule 65.

(g) Any member of the North Carolina State Bar may be transferred to disability inactive status for mental incompetence, physical disability, or substance abuse interfering with the attorney's ability to competently engage in the practice of law under the rules and procedures the Council adopts pursuant to G.S. 84-23.

(h) There shall be an appeal of right by either party from any final order of the Disciplinary Hearing Commission to the North Carolina Court of Appeals. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any appeal shall be as provided by statute or court rule for appeals in civil cases. A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of any appeal of right.

(i) The North Carolina State Bar may invoke the process of the General Court of Justice to enforce the powers of the Council or any committee to which the Council delegates its authority.

(j) The North Carolina State Bar may apply to appropriate courts for orders necessary to protect the interests of clients of missing, suspended, disbarred, disabled, or deceased attorneys.

The senior regular resident judge of the superior court of any district wherein a member of the North Carolina State Bar resides or maintains an office shall have the authority and power to enter orders necessary to protect the interests of the clients, including the authority to order the payment of compensation by the member or the estate of a deceased or disabled member to any attorney appointed to administer or conserve the law practice of the member. Compensation awarded to a member serving under this section awarded from the estate of a deceased member shall be considered an administrative expense of the estate for purposes of determining priority of payment. (1933, c. 210, s. 11; 1937, c. 51, s. 3; 1959, c. 1282, ss. 1, 2; 1961, c. 1075; 1969, c. 44, s. 61; 1975, c. 582, s. 5; 1979, c. 570, ss. 6, 7; 1983, c. 390, ss. 2, 3; 1985, c. 167; 1987, c. 316, s. 4; 1989, c. 172, s. 2; 1991, c. 210, s. 5; 1995, c. 431, s. 18; 2005-237, s. 1.)

§ 84-28.1. Disciplinary hearing commission.

(a) There shall be a disciplinary hearing commission of the North Carolina State Bar which shall consist of 20 members. Twelve of these members shall be members of the North Carolina State Bar, and shall be appointed by the Council. The other eight shall be citizens of North Carolina not licensed to practice law in this or any other state, four of whom shall be appointed by the Governor, two by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and two by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The Council shall designate one of its appointees as chair and another as vice-chair. The chair shall have actively practiced law in the courts of the State for at least 10 years. Except as set out herein, the terms of members of the commission are set at three years commencing on the first day of July of the year of their appointment. The Council, the Governor, and the General Assembly respectively, shall appoint members to fill unexpired terms when vacancies are created by resignation, disqualification, disability or death, except that vacancies in appointments made by the General Assembly may also be filled as provided by G.S. 120-122. No member may serve more than a total of seven years or a one-year term and two consecutive three-year terms: Provided, that any member or former member who is designated chair may serve one additional three-year term in that capacity. No member of the Council may be appointed to the commission.

(b) The disciplinary hearing commission of the North Carolina State Bar, or any committee of the disciplinary hearing commission, may hold hearings in discipline, incapacity and disability matters, make findings of fact and conclusions of law after these hearings, enter orders necessary to carry out the duties delegated to it by the Council, and tax the costs to an attorney who is disciplined or is found to be incapacitated or disabled.

(b1) The disciplinary hearing commission of the North Carolina State Bar, or any committee thereof, acting through its chairman, shall have the power to hold persons, firms or corporations in contempt as provided in Chapter 5A.

(c) Members of the disciplinary hearing commission shall receive the same per diem and travel expenses as are authorized for members of State commissions under G.S. 138-5. (1975, c. 582, s. 6; 1979, c. 570, s. 8; 1983, c. 390, s. 4; 1995, c. 431, s. 19; c. 490, s. 51; 2003-116, s. 3; 2005-396, s. 3.)

§ 84-28.2. Persons immune from suit.

Persons shall be immune from suit for all statements made without malice, and intended for transmittal to the North Carolina State Bar or any board, committee, officer, agent or employee thereof, or given in any investigation or proceedings, pertaining to alleged misconduct or disability or to reinstatement of an attorney. The protection of this immunity does not exist, however, as to statements made to others not intended for this use. (1975, c. 582, s. 4; 1995, c. 431, s. 20.)

§ 84-29. Evidence and witnesses.

In any investigation of charges of professional misconduct or disability or in petitions for reinstatement, the Council and any committee thereof, and the disciplinary hearing commission, and any committee thereof, may administer oaths and affirmations and shall have the power to subpoena and examine witnesses under oath, and to compel their attendance, and the production of books, papers and other documents or writings deemed by it necessary or material to the inquiry. Each subpoena shall be issued under the hand of the secretary-treasurer or the president of the Council or the chair of the committee appointed to hear the charges, and shall have the force and

effect of a summons or subpoena issued by a court of record, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or to testify or produce the books, papers, or other documents or writings required, shall be liable to punishment for contempt either by the Council or its committee or a hearing committee of the disciplinary hearing commission through its chair pursuant to the procedures set out in Chapter 5A of the General Statutes, but with the right to appeal therefrom. Depositions may be taken in any investigations of professional misconduct as in civil proceedings, but the Council or the committee hearing the case may, in its discretion, whenever it believes that the ends of substantial justice so require, direct that any witness within the State be brought before it. Witnesses giving testimony under a subpoena before the Council or any committee thereof, or the disciplinary hearing commission or any committee thereof, or by deposition, shall be entitled to the same fees as in civil actions.

In cases heard before the Council or any committee thereof or the disciplinary hearing commission or any committee thereof, if the party shall be convicted of the charges, the party shall be taxed with the cost of the hearings: Provided, however, that the bill of costs shall not include any compensation to the members of the Council or committee before whom the hearings are conducted. (1933, c. 210, s. 12; 1959, c. 1282, s. 2; 1975, c. 582, s. 7; 1983, c. 390, s. 6; 1995, c. 431, s. 21.)

§ 84-30. Rights of accused person.

Any person who shall stand charged with an offense cognizable by the council or any committee thereof or the disciplinary hearing commission or any committee thereof shall have the right to invoke and have exercised in his favor the powers of the council or any committee, in respect of compulsory process for witnesses and for the production of books, papers, and other writings and documents, and shall also have the right to be represented by counsel. (1933, c. 210, s. 13; 1959, c. 1282, s. 2; 1975, c. 582, s. 8.)

§ 84-31. Counsel; investigators; powers; compensation.

The Council may appoint a member of the North Carolina State Bar to represent the North Carolina State Bar in any proceedings in which it has an interest including reinstatement and the prosecution of charges of misconduct or disability in the hearings that are held, including appeals, and may authorize counsel to employ assistant counsel, investigators, and administrative assistants in such numbers as it deems necessary. Counsel and investigators engaged in discipline, reinstatement, and disability matters shall have the authority throughout the State to serve subpoenas or other process issued by the Council or any committee thereof or the disciplinary hearing commission or any committee thereof, in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice. The Council may allow counsel, assistant counsel, investigators and administrative assistants such compensation as it deems proper. (1933, c. 210, s. 14; 1969, c. 44, s. 62; 1975, c. 582, s. 9; 1995, c. 431, s. 22.)

§ 84-32. Records and judgments and their effect; restoration of licenses.

(a) In cases heard by the disciplinary hearing commission or any committee thereof, the proceedings shall be recorded by a certified court reporter and an official copy of all exhibits introduced into evidence shall be made and preserved in the office of the secretary-treasurer. Final judgments of censure, whether issued by the State Bar Grievance

Committee or the disciplinary hearing commission, and final orders of suspension or disbarment issued by the disciplinary hearing commission shall be entered upon the judgment docket of the superior court in the district wherein the respondent resides or practices law, and also upon the minutes of the Supreme Court of North Carolina; and the judgment shall be effective throughout the State. Final determinations of incapacity or disability, whether issued by the State Bar Grievance Committee or the disciplinary hearing commission, shall be entered upon the judgment docket of the superior court in the same manner as final judgments of censure, suspension, or disbarment, and the determination shall be effective throughout the State.

(b) Whenever any attorney desires to voluntarily surrender his license, the attorney must tender the license and a written resignation to the Council. The Council, in its discretion, may accept or reject the tender. If the tender is accepted, the Council shall enter an order of disbarment. A copy of any order of disbarment shall be filed with the clerk of the superior court of the county where the respondent resides, maintains an office, or practices law and also upon the minutes of the Supreme Court of North Carolina. The judgment shall be effective throughout the State.

(c) Whenever any attorney has been deprived of the attorney's license by suspension or disbarment, the Council or the disciplinary hearing commission or the secretary-treasurer may, in accordance with rules and regulations prescribed by the Council, restore the license upon due notice being given and satisfactory evidence produced of proper reformation of the suspended or disbarred attorney and of satisfaction of any conditions precedent to restoration.

(d) The Council has jurisdiction to determine any petition seeking the reinstatement of the license of any attorney disbarred or suspended by any court in its inherent power when requested by the court. The proceeding shall be governed by the rules and regulations adopted by the Council. The disbarred or suspended attorney shall satisfy all conditions precedent to reinstatement generally imposed upon attorneys disbarred or suspended by the disciplinary hearing commission or the Council, as well as any conditions imposed by the court. Under no circumstances shall an attorney disbarred by a court or by the North Carolina State Bar be reinstated prior to five years from the effective date of the order of disbarment. (1933, c. 210, s. 15; 1935, c. 74, s. 2; 1953, c. 1310, s. 4; 1959, c. 1282, s. 2; 1975, c. 582, s. 10; 1983, c. 390, s. 5; 1995, c. 431, s. 23; 2019-243, s. 9.)

§ 84-32.1. Confidentiality of records.

(a) All documents, papers, letters, recordings, electronic records, or other documentary materials, regardless of physical form or characteristic, in the possession of the State Bar or its staff, employees, legal counsel, councilors, and Grievance Committee advisory members concerning any investigation, inquiry, complaint, disability, or disciplinary matter in connection with the State Bar Grievance Committee, the State Bar's Trust Accounting Supervisory Program, or any audit of an attorney trust account shall not be considered public records within the meaning of Chapter 132 of the General Statutes.

(b) All documents, papers, letters, recordings, electronic records, or other documentary materials containing or reflecting the deliberations of the Disciplinary Hearing Commission in disciplinary or disability matters shall not be considered public records within the meaning of Chapter 132 of the General Statutes.

(c) Notwithstanding any other provision of this section, any record, paper, or other document containing information collected and compiled by or on behalf of the State Bar that is admitted as evidence in any hearing before the Disciplinary Hearing Commission, or any court or tribunal, shall be a public record within the meaning of Chapter 132 of the General Statutes unless it is admitted into evidence under seal by order of the Disciplinary Hearing Commission, or the court or tribunal in which the proceeding is held.

(d) All documents, papers, letters, recordings, electronic records, or other documentary materials in the possession of the State Bar or its staff, employees, legal counsel, and Lawyer Assistance Program volunteers, relating in any way to a member's participation or prospective participation in the Lawyer Assistance Program, including, but not limited to, any medical, counseling, substance abuse, or mental health records, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Neither the State Bar nor any person acting under the authority of the State Bar or of the Lawyer Assistance Program shall be required to produce or testify regarding the contents or existence of such documents. (2011-267, s. 5.)

§ 84-33. Annual and special meetings.

The Council shall hold an annual meeting and other meetings necessary to conduct the business of the North Carolina State Bar. (1933, c. 210, s. 16; 1969, c. 104; 1995, c. 431, s. 24.)

§ 84-34. Membership fees and list of members.

Every active member of the North Carolina State Bar shall, prior to the first day of July of each year, pay to the secretary-treasurer an annual membership fee in an amount determined by the Council but not to exceed three hundred dollars (\$300.00), and every member shall notify the secretary-treasurer of the member's correct mailing address. Any member who fails to pay the required dues by the last day of June of each year shall be subject to a late fee in an amount determined by the Council but not to exceed thirty dollars (\$30.00). All dues for prior years shall be as were set forth in the General Statutes then in effect. The membership fee shall be regarded as a service charge for the maintenance of the several services authorized by this Article, and shall be in addition to all fees required in connection with admissions to practice, and in addition to all license taxes required by law. The fee shall not be prorated: Provided, that no fee shall be required of an attorney licensed after this Article shall have gone into effect until the first day of January of the calendar year following that in which the attorney was licensed; but this proviso shall not apply to attorneys from other states admitted on certificate. The fees shall be disbursed by the secretary-treasurer on the order of the Council. The secretary-treasurer shall annually, at a time and in a law magazine or daily newspaper to be prescribed by the Council, publish an account of the financial transactions of the Council in a form to be prescribed by it. The

secretary-treasurer shall compile and keep currently correct from the names and mailing addresses forwarded to the secretary-treasurer and from any other available sources of information a list of members of the North Carolina State Bar and furnish to the clerk of the superior court in each county, not later than the first day of October in each year, a list showing the name and address of each attorney for that county who has not complied with the provisions of this Article. The name of each of the active members who are in arrears in the payment of membership fees shall be furnished to the presiding judge at the next term of the superior court after the first day of October of each year, by the clerk of the superior court of each county wherein the member or members reside, and the court shall thereupon take action that is necessary and proper. The names and addresses of attorneys so certified shall be kept available to the public. The Secretary of Revenue is hereby directed to supply the secretary-treasurer, from records of license tax payments, with any information for which the secretary-treasurer may call in order to enable the secretary-treasurer to comply with this requirement.

The list submitted to several clerks of the superior court shall also be submitted to the Council at its October meeting of each year and it shall take the action thereon that is necessary and proper. (1933, c. 210, s. 17; 1939, c. 21, ss. 2, 3; 1953, c. 1310, s. 5; 1955, c. 651, s. 4; 1961, c. 760; 1971, c. 18; 1973, c. 476, s. 193; c. 1152, s. 4; 1977, c. 841, s. 2; 1981, c. 788, s. 5; 1989, c. 172, s. 1; 1995, c. 431, s. 25; 2005-237, s. 2; 2005-276, s. 23A.1(a); 2013-360, s. 21.1(b); 2013-381, s. 38.1(d).)

§ 84-34.1. Deposits of the North Carolina State Bar.

Deposits of the North Carolina State Bar, its boards, agencies, and committees shall be secured as provided in G.S. 159-31(b). (1991, c. 210, s. 3.)

§ 84-34.2. Specific statutory authority for certain fees.

In addition to fees the Council is elsewhere authorized to charge and collect, the Council may charge and collect the following fees in amounts determined by the Council:

- (1) A reinstatement fee for any attorney seeking reinstatement from inactive status, administrative suspension, or suspension for failure to comply with the annual continuing legal education requirements.
- (2) A registration fee and annual renewal fee for an interstate or international law firm.
- (3) An attendance fee for continuing legal education programs that may include a fee to support the Chief Justice's Commission on Professionalism.
- (4) A late fee for failing to file timely the continuing legal education annual report form, for failure to pay attendance fees, or failure to complete the annual continuing legal education requirements.
- (5) An administrative fee for any attorney against whom discipline has been imposed. (2005-396, s. 7.)

§ 84-35. Saving as to North Carolina Bar Association.

Nothing in this Article contained shall be construed as affecting in any way the North Carolina Bar Association, or any local bar association. (1933, c. 210, s. 18.)

§ 84-36. Inherent powers of courts unaffected.

Nothing contained in this Article shall be construed as disabling or abridging the inherent powers of the court to deal with its attorneys. (1937, c. 51, s. 4.)

§ 84-36.1. Clerks of court to certify orders.

The clerk of any court of this State in which a member of the North Carolina State Bar is convicted of any criminal offense, disciplined, found to be in contempt of the court or adjudged incompetent shall transmit a certified copy of the order or judgment to the secretary-treasurer of the North Carolina State Bar within 10 days of the entry of such judgment or order. (1975, c. 582, s. 11.)

§ 84-37. State Bar may investigate and enjoin unauthorized activities.

(a) The Council or any committee appointed by it for that purpose may inquire into and investigate any charges or complaints of (i) unauthorized or unlawful practice of law or (ii) the use of the designations, "North Carolina Certified Paralegal," "North Carolina State Bar Certified Paralegal," or "Paralegal Certified by the North Carolina State Bar Board of Paralegal Certification," by individuals who have not been certified in accordance with the rules adopted by the North Carolina State Bar. The Council may bring or cause to be brought and maintained in the name of the North Carolina State Bar an action or actions, upon information or upon the complaint of any person or entity against any person or entity that engages in rendering any legal service, holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in this subsection, or makes it a practice or business to render legal services that are unauthorized or prohibited by law. No bond for cost shall be required in the proceeding.

(b) In an action brought under this section, the final judgment if in favor of the plaintiff shall perpetually restrain the defendant or defendants from the commission or continuance of the unauthorized or unlawful act or acts. A temporary injunction to restrain the commission or continuance of the act or acts may be granted upon proof or by affidavit, that the defendant or defendants have violated any of the laws applicable to unauthorized or unlawful practice of law or the unauthorized use of the designations set forth in subsection (a) of this section or any other designation implying certification by the State Bar. The provisions of law relating generally to injunctions as provisional remedies in actions shall apply to a temporary injunction and the proceedings for temporary injunctions.

(c) The venue for actions brought under this section shall be the superior court of any county in which the relevant acts are alleged to have been committed or in which there appear reasonable grounds that they will be committed in the county where the defendants in the action reside, or in Wake County.

(d) The plaintiff in the action shall be entitled to examine the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for examining parties.

(e) This section shall not repeal or limit any remedy now provided in cases of unauthorized or unlawful practice of law. Nothing contained in this section shall be construed as disabling or abridging the inherent powers of the court in these matters.

(f) The Council or its duly appointed committee may issue advisory opinions in response to inquiries from members or the public regarding whether contemplated conduct would constitute the unauthorized practice of law. (1939, c. 281; 1979, c. 570, s. 9; 1995, c. 431, s. 26; 2004-174, s. 2.)

§ 84-38. Solicitation of retainer or contract for legal services prohibited; division of fees.

It shall be unlawful for any person, firm, corporation, or association or his or their agent, agents, or employees, acting on his or their behalf, to solicit or procure through solicitation either directly or indirectly, any legal business, whether to be performed in this State or elsewhere, or to solicit or procure through solicitation either directly or indirectly, a retainer or contract, written or oral, or any agreement authorizing an attorney or any other person, firm, corporation, or association to perform or render any legal services, whether to be performed in this State or elsewhere.

It shall be unlawful for any person, firm, corporation, or association to divide with or receive from any attorney-at-law, or group of attorneys-at-law, whether practicing in this State or elsewhere, either before or after action is brought, any portion of any fee or compensation charged or received by such attorney-at-law, or any valuable consideration or reward, as an inducement for placing or in consideration of being placed in the hands of such attorney or attorneys-at-law, or in the hands of another person, firm, corporation or association, a claim or demand of any kind, for the purpose of collecting such claim or instituting an action thereon or of representing claimant in the pursuit of any civil remedy for the recovery thereof, or for the settlement or compromise thereof, whether such compromise, settlement, recovery, suit, claim, collection or demand shall be in this State or elsewhere. This paragraph shall not apply to agreements between attorneys to divide compensation received in cases or matters legitimately, lawfully and properly received by them.

Any person, firm, corporation or association of persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

The council of the North Carolina State Bar is hereby authorized and empowered to investigate and bring action against persons charged with violations of this section and the provisions as set forth in G.S. 84-37 shall apply. Nothing contained herein shall be construed to supersede the authority of district attorneys to seek injunctive relief or institute criminal proceedings in the same manner as provided for in G.S. 84-7. Nothing herein shall be construed as abridging the inherent powers of the courts to deal with such matters. (1947, c. 573; 1973, c. 47, s. 2; 1993, c. 539, s. 599; 1994, Ex. Sess., c. 24, s. 14(c).)

APPENDIX A
State Definitions of the Practice of Law

Alabama

**CODE OF ALABAMA TITLE 34. PROFESSIONS AND BUSINESSES. CHAPTER 3.
ATTORNEY-AT-LAW.**

§34-3-6. Who may practice as attorneys.

(b) For the purposes of this chapter, the practice of law is defined as follows:

Whoever,

- (1) In a representative capacity appears as an advocate or draws papers, pleadings or documents, or performs any act in connection with proceedings pending or prospective before a court or a body, board, committee, commission or officer constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof; or
- (2) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document or instrument affecting or relating to secular rights; or
- (3) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or
- (4) As a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense;

is practicing law.

(c) Nothing in this section shall be construed to prohibit any person, firm or corporation from attending to and caring for his or its own business, claims or demands, nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon, but any such person, firm or corporation engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles to real or personal property are prohibited from preparing or drawing or procuring or assisting in the drawing or preparation of deeds, conveyances, mortgages and any paper, document or instrument affecting or relating to secular rights, which acts are hereby defined to be an act of practicing law, unless such person, firm or corporation shall have a proprietary interest in such property; however, any such person, firm or corporation so engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles shall be permitted to prepare or draw or procure or assist in the drawing or preparation of simple affidavits or statements of fact to be used by such person, firm or corporation in support of its title policies, to be retained in its files and not to be recorded.

Alaska

**ALASKA STATUTES TITLE 8. BUSINESS AND PROFESSIONS. CHAPTER 08. ATTORNEYS.
ARTICLE 4. Unlawful Acts. Sec. 08.08.230 Unlawful practice a misdemeanor. RULE 63.
UNAUTHORIZED PRACTICE OF LAW--AS 08.08.230**

For purposes of AS 08.08.230 (making unauthorized practice of law a misdemeanor), "practice of law" is defined as:

(a) representing oneself by words or conduct to be an attorney, and, if the person is authorized to practice law in another jurisdiction but is not a member of the Alaska Bar Association, representing oneself to be a member of the Alaska Bar Association; and

(b) either (i) representing another before a court or governmental body which is operating in its adjudicative capacity, including the submission of pleadings, or (ii), for compensation, providing advice or preparing documents for another which effect legal rights or duties.

Rule 15. Grounds For Discipline.

. . .

(b) **Unauthorized Practice of Law.** (1) For purposes of the practice of law prohibition for disbarred and suspended attorneys in subparagraph (a)(6) of this rule, except for attorneys suspended solely for non-payment of bar fees, "practice of law" is defined as: (A) holding oneself out as an attorney or lawyer authorized to practice law; (B) rendering legal consultation or advice to a client; (C) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body which is operating in its adjudicative capacity, including the submission of pleadings; (D) appearing as a representative of the client at a deposition or other discovery matter; (E) negotiating or transacting any matter for or on behalf of a client with third parties; or (F) receiving, disbursing, or otherwise handling a client's funds. (2) For purposes of the practice of law prohibition for attorneys suspended solely for the non-payment of fees and for inactive attorneys, "practice of law" is defined as it is in subparagraph (b)(1) of this rule, except that these persons may represent another to the extent that a layperson would be allowed to do so.

Arizona (Adopted January 15, 2003, effective July 1, 2003)

RULES OF THE SUPREME COURT OF ARIZONA – RULE 31 – REGULATION OF THE PRACTICE OF LAW

(a) Supreme Court Jurisdiction Over the Practice of Law

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definition: Practice of Law.* The "practice of law" means providing legal advice or services to or for another by:

(A) Preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(B) Preparing or expressing legal opinions;

(C) Representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitrations and mediations;

(D) Preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(E) Negotiating legal rights or responsibilities for a specific person or entity.

3. *Definition: Unauthorized Practice of Law.* "Unauthorized practice of law" includes but is not limited to:

(A) Engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or

(B) Using the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “JD,” “Esq.,” or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

4. *Definition of Paralegal/Legal Assistant.* A “legal assistant/paralegal” is a person qualified by education and training who performs substantive legal work, which requires a sufficient knowledge and expertise of legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona and for whom an active member of the state bar is responsible, unless otherwise authorized by Supreme Court Rule.

5. *Definition of Mediator.* “Mediator” means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement, signed by all disputants, to mediate a dispute.

(b) *Authority to Practice.* Except as hereinafter provided in section (c), no person shall practice law in this state or hold himself out as one who may practice law in this state unless he is an active member of the state bar, and no member shall practice law in this state or hold himself out as one who may practice law in this state, while suspended, disbarred, or on disability inactive status.

(c) *Exceptions.* Notwithstanding the provisions of section (b):

1. In any proceeding before the Department of Economic Security, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may represent himself or be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.

2. An employee may represent himself or designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.

3. An officer of a corporation who is not an active member of the state bar may represent the corporation before a justice court or police court, provided that: the corporation has specifically authorized such officer to represent it before such courts; such representation is not the officer's primary duty to the corporation, but secondary or incidental to other duties relating to the management or operation of the corporation; and the corporation was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence which gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.

4. A person who is not an active member of the State Bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.

5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.

6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.

7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized fulltime employee of the corporation who is not charging a fee for the representation.

8. In any administrative appeal proceeding of the Department of Health Services, for behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may represent himself or be represented by a duly authorized agent who is not charging a fee for the representation.

9. An officer or employee of a corporation or unincorporated association who is not an active member of the State Bar may represent the corporation or association before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.

10. An officer or full- time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona department of environmental quality in an administrative proceeding authorized under Arizona Revised Statutes, Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.

11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may appear on his or her own behalf or be represented by a duly authorized agent who is not charging a fee for the representation.

13. In any administrative proceeding before the Arizona Department of Revenue or before the Office of Administrative Hearings relating to the Arizona Department of Revenue, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including the Department, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the

particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).

15. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the rules of professional conduct.

16. Nothing in these rules shall prohibit the supreme court, court of appeals, or superior courts in this state from creating and distributing form documents for use in Arizona courts.

17. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

18. Nothing in these rules shall prohibit the preparation of tax returns.

19. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.

20. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.

21. Nothing in these rules shall prohibit a certified document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208.

Arkansas

Arkansas Bar Association v. Block, 323 S.W.2d 912 (1959).

Research of authorities by able counsel and by this court has failed to turn up any clear, comprehensible definition of what really constitutes the practice of law. Courts are not in agreement. We believe it is impossible to frame any comprehensive definition of what constitutes the practice of law. Each case must be decided upon its own particular facts.--The practice of law is difficult to define. Perhaps it does not admit of exact definition.

California

People v. Merchants Protective Corp., 209 P.363, 365 (1922)

'As the term is generally understood, the practice of the law is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court.' *Quoting In the case of Eley v. Miller*, 7 Ind. App. 529, 34 N. E. 836.

Baron v. Los Angeles, 2 C.3d 535, 86 C.R. 673, 469 P.2d 353 (1970).

(T)he Legislature adopted the state bar act in 1927 and used the term 'practice law' without defining it. [FN7] The conclusion is obvious and inescapable that in so doing it accepted both the definition already judicially supplied for the term and the declaration of the Supreme Court (in *Merchants'*) that it had a sufficiently definite meaning to need no further definition. The definition above quoted from *People v. Merchants' Protective Corp.* has been approved and accepted in the subsequent California decisions (citations), and must be regarded as definitely establishing, for the jurisprudence of this state, the meaning of the term 'practice law." (*People v. Ring* (1937) supra. 26 Cal.App.2d Supp. 768, 772, 70 P.2d 281, 283.)

Colorado

Koscove v. Bolte, 30 P.3d 784 (Colo.App. 2001)

While acknowledging the difficulty of giving an all-inclusive definition of the practice of law, the supreme court has defined it as follows: We believe that generally one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting him in connection with these rights and duties is engaged in the practice of law. *Denver Bar Ass'n v. Public Utilities Commission*, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964). *See also* C.R.C.P. 201.3(2).

COLORADO COURT RULES GOVERNING ADMISSION TO THE BAR CHAPTER 18. RULES GOVERNING ADMISSION TO THE BAR RULE 201.3. CLASSIFICATION OF APPLICANTS Rule 201.3(2)

(2) For purposes of this rule, "practice of law" means:

(a) the private practice of law as a sole practitioner or as a lawyer employee of or partner or shareholder in a law firm, professional corporation, legal clinic, legal services office, or similar entity; or

(b) employment as a lawyer for a corporation, partnership, trust, individual, or other entity with the primary duties of:

(i) furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or

(ii) preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies; or

(c) employment as a lawyer in the law offices of the executive, legislative, or judicial departments of the United States, including the independent agencies thereof, or of any state, political subdivision of a state, territory, special district, or municipality of the United States, with the primary duties of

(i) furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or

(ii) preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies; or

(d) employment as a judge, magistrate, hearing examiner, administrative law judge, law clerk, or similar official of the United States, including the independent agencies thereof, or of any state, territory or municipality of the United States with the duties of hearing and deciding cases and controversies in judicial or administrative proceedings, provided such employment is available only to a lawyer; or

(e) employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant's employment; or

f) any combination of subparagraphs (a)-(e) above.

Connecticut

State Bar Association of Connecticut v. Connecticut Bank & Trust Co., 140 A.2d 863, 870 (1958)

The practice of law consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces the giving of legal advice on a large variety of subjects and the preparation of legal instruments covering an extensive field.

Delaware

Marshall-Steele v. Nanticoke Memorial Hosp., Inc., 1999 WL 458724 (Del.Super. 1999)

The Delaware Supreme Court has sanctioned the following definition of the practice of law:

In general, one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply the possession and use of legal knowledge and skill. The practice of law includes 'all advice to clients, and all actions taken for them in matters connected with the law' ... and the exercise of such professional skill certainly includes the pursuit, as an advocate for another, of a legal remedy within the jurisdiction of a quasi judicial tribunal.

Delaware State Bar Ass'n v. Alexander, Del.Supr., 386 A.2d 652, 661 (1978).

District of Columbia

COURT RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS TITLE VI. GENERAL PROVISIONS RULE 49. UNAUTHORIZED PRACTICE OF LAW

(2) "Practice of Law" means the provision of professional legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

(a) Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments or any other instruments intended to affect interests in real or personal property, wills, codicils, instruments intended to affect the disposition of property of decedents' estates, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;

(b) Preparing or expressing legal opinions;

(c) Appearing or acting as an attorney in any tribunal;

(d) Preparing any claims, demands or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency or other tribunal;

(e) Providing advice or counsel as to how any of the activities described in sub-paragraph (a) through (d) might be done, or whether they were done, in accordance with applicable law;

(f) Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (a) through (e) above.

Comment:

Although section (b) of the original rule included definitions, not all of the essential terms were defined. The new section (b) follows the conventional approach of rules and statutes in defining such terms.

As originally stated in sections (b)(2) and (3) of the prior Rule, the "practice of law" was broadly defined, embracing every activity in which a person provides services to another relating to legal rights. This approach has been refined, in recognition that there are some legitimate activities of non-Bar members that may fall within an unqualifiedly broad definition of "practice of law."

The definition set forth in section (b)(2) is designed to focus first on the two essential elements of the practice of law: The provision of legal advice or services, and a client relationship of trust or reliance. Where one provides such advice or services within such a relationship, there is an implicit representation that the provider is authorized or competent to provide them; just as one who provides any services requiring special skill gives an implied warranty that they are provided in a good and workmanlike manner. See, e.g., *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1200(D.C. 1984); *Carey v. Crane Service Co., Inc.*, 457 A.2d 1102, 1007 (D.C. 1983).

Recognizing that the definition of "practice of law" may not anticipate every relevant circumstance, the Rule adopts four methods of definition: (1) the more refined definition focusing on the provision of legal advice or services and a client relationship of trust or reliance; (2) an enumerated list of the most common activities which are rebuttably presumed to be the practice

of law; (3) this commentary; and (4) opinions of the Committee on Unauthorized Practice of Law where further questions of interpretation may arise. See section (d)(3)(G) below. (Emphasis added)

The definition of "practice of law," the list of activities, this commentary and opinions of the Committee on Unauthorized Practice of Law are to be considered and applied in light of the purposes of the Rule as set forth in the commentary to sections (a) and (b).

The presumption that one's engagement in one of the enumerated activities is the "practice of law" may be rebutted by showing that there is no client relationship of trust or reliance, or that there is no explicit or implicit representation of authority or competence to practice law, or that both are absent. (Emphasis added)

While the Rule is meant to embrace every client relationship where legal advice or services are rendered, or one holds oneself out as authorized or competent to provide such services, the Rule is not intended to cover conduct which lacks the essential features of an attorney-client relationship.

For example, a law professor instructing a class in the application of law to a particular real situation is not engaged in the practice of law because she is not undertaking to provide advice or services for one or more clients as to their legal interests. An experienced industrial relations supervisor is not engaged in the practice of law when he advises his employer what he thinks the firm must do to comply with state or federal labor laws, because the employer does not reasonably expect it is receiving a professional legal opinion. See also the exception for Internal Counsel set forth in Section (c)(6). Law clerks, paralegals and summer associates are not practicing law where they do not engage in providing advice to clients or otherwise hold themselves out to the public as having authority or competence to practice law. Tax accountants, real estate agents, title company attorneys, securities advisors, pension consultants, and the like, who do not indicate they are providing legal advice or services based on competence and standing in the law are not engaged in the practice of law, because their relationship with the customer is not based on the reasonable expectation that learned and authorized professional legal advice is being given. Nor is it the practice of law under the Rule for a person to draft an agreement or resolve a controversy in a business context, where there is no reasonable expectation that she is acting as a qualified or authorized attorney.

The rule is not intended to cover the provision of mediation or alternative dispute resolution ("ADR") services. This intent is expressed in the first sentence of the definition of the "practice of law" which requires the presence of two essential factors: the provision of legal advice or services and a client relationship of trust or reliance. ADR services are not given in circumstances where there is a client relationship of trust or reliance; and it is common practice for providers of ADR services explicitly to advise participants that they are not providing the services of legal counsel.

While payment of a fee is often a strong indication of an attorney-client relationship, it is not essential.

Ordinarily, one who provides or offers to provide legal advice or services to clients in the District of Columbia implies to the consumer that he or she is authorized and competent to practice law in the District of Columbia. It is not sufficient for a person who is not an enrolled, active member of the District of Columbia Bar merely to give notice that he is not a lawyer while engaging in conduct that is likely to mislead consumers into believing that he is a licensed attorney at law. Where consumers continue to seek services after such notice, the provider must take special care

to assure that they understand that the person they are consulting does not have the authority and competence to render professional legal services in the District of Columbia. *See In Re Banks*, 561 A.2d 168 (D.C. 1987).

The Rule also confines the practice of law to provision of legal services under engagement for another. One who represents himself or herself is not required to be admitted to the District of Columbia Bar.

The conduct described in Section (b)(2)(F) concerning the furnishing of attorneys is not intended to include legitimate or official referral services, such as those offered by the District of Columbia Bar, bar associations, labor organizations, non-fee pro bono organizations and other court-authorized organizations.

Florida

State ex rel. The Florida Bar v. Sperry, 140 So.2d 587, 591 (1962)

Many courts have attempted to set forth a broad definition of the practice of law. Being of the view that such is nigh onto impossible and may injuriously affect the rights of others not here involved, we will not attempt to do so here. Rather we will do so only to the extent required to settle the issues of this case.

It is generally understood that the performance of services in representing another before the courts is the practice of law. But the practice of law also includes the giving of legal advice and counsel to others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court.

We think that in determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

Georgia

CODE OF GEORGIA ANNOTATED TITLE 15. COURTS CHAPTER 19. ATTORNEYS ARTICLE 3. REGULATION OF PRACTICE OF LAW

§5-19-50. "Practice of law" defined.

The practice of law in this state is defined as: (1) Representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body; (2) Conveyancing; (3) The preparation of legal instruments of all kinds whereby a legal right is secured; (4) The rendering of opinions as to the validity or invalidity of titles to real or personal property; (5) The giving of any legal advice; and (6) Any action taken for others in any matter connected with the law.

Hawaii

Fought & Co., Inc. v. Steel Engineering and Erection, Inc., 951 P.2d 487 (Hawaii 1998)

In drafting the statutes, the legislature expressly declined to adopt a formal definition of the term "practice of law," noting that "[a]ttempts to define the practice of law in terms of enumerating the specific types of services that come within the phrase are fruitless because new developments in society, whether legislative, social, or scientific in nature, continually create new concepts and

new legal problems." Sen. Stand. Comm. Rep. No. 700, in 1955 Senate Journal, at 661; Hse. Stand. Comm. Rep. No. 612, in 1955 House Journal at 783. The legislature recognized that the practice of law is not limited to appearing before the courts. It consists, among other things of the giving of advice, the preparation of any document or the rendition of any service to a third party *affecting the legal rights ... of such party*, where such advice, drafting or rendition of service requires the use of any degree of legal knowledge, skill or advocacy.

Sen. Stand. Comm. Rep. No. 700, in 1955 Senate Journal, at 661 (emphasis added); *see also* Hse. Stand. Comm. Rep. No. 612, in 1955 House Journal, at 783.

Similarly, while it has explored the concept's dimensions, this court has never formally defined the term "practice of law."

Idaho

Idaho State Bar v. Villegas, 879 P.2d 1124 (Idaho 1994)

This Court has defined the practice of law as:

'The doing or performing services in a court of justice, in any matter depending [sic] therein, throughout its various stages, and in conformity with adopted rules of procedure. *But in a larger sense, it includes legal advice and counsel, and the preparation of instruments and contracts by which legal rights are secured, although such matter may or may not be depending [sic] in a court.*'

Idaho State Bar v. Meservy, 80 Idaho 504, 508, 335 P.2d 62, 65 (1959) (emphasis in original) (quoting *In re Matthews*, 57 Idaho 75, 83, 62 P.2d 578, 584 (1936)).

Illinois

Continental Cas. Co. v. Cuda, 715 N.E.2d 663 (Ill.App. 1 Dist., 1999)

Our supreme court has described the practice of law as:

"[T]he giving of advice or rendition of any sort of service by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill." *People ex rel. Illinois State Bar Ass'n v. Schafer*, 404 Ill. 45, 51, 87 N.E.2d 773 (1949).

Indiana

(On January 24, 2002, the Indiana State Bar House of Delegates approved a recommendation calling for a definition of the practice of law. The Bar's Unauthorized Practice of Law Committee is developing a definition. Should there be a House meeting in the spring of 2003, it's likely a recommendation would be ready for consideration by the delegates at that time.)

Fink v. Peden, 17 N.E.2d 95 (1938)

The practice of law is defined in 7 C.J.S., Attorney and Client, 703, Section 3(g), as follows: 'The general meaning of the term, 'practice law' or 'practice of law', is of common knowledge, although the boundaries of its definition may be indefinite as to some transactions. As generally understood, it is the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure; but it is not confined to performing services in an action or proceeding pending in courts of justice, and, in a larger sense, it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be pending in a court. *To 'practice law' is to carry on the business of an attorney at law; to do or practice that which an attorney or counselor at law is authorized to do and practice; to exercise the calling or profession of the law; usually for the purpose of gaining a livelihood, or at least for gain; to make it one's business to act for, and by the warrant of, others in legal formalities, negotiations, or proceedings.*' (Court's italics.)

Iowa

Iowa Supreme Court Com'n on Unauthorized Practice of Law v. Sturgeon, 635 N.W.2d 679 (Iowa 2001)

The commission notes that this court has the inherent authority to define and regulate the practice of law, citing *Baker (Committee on Professional Ethics & Conduct v. Baker*, 492 N.W.2d 695, 700 (Iowa 1992). In *Baker* we approved the nonexclusive definition of the practice of law found in Ethical Consideration 3-5:

It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. However, the practice of law includes, but is not limited to, representing another before the courts; giving of legal advice and counsel to others relating to their rights and obligations under the law; and preparation or approval of the use of legal instruments by which legal rights of others are either obtained, secured or transferred even if such matters never become the subject of a court proceeding. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of professional judgment of the lawyer is the educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, nonlawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional judgment is required.

Iowa Code of Prof'l Responsibility EC 3-5; *see also Baker*, 492 N.W.2d at 701 (approving a similar version of this definition).

Kansas

(The Kansas Bar has created a UPL Task Force that, among other things, is discussing the definition of the practice of law. The task force does not yet have a report or recommendation.)

State v. Schumacher, 519 P.2d 1116 (1974)

I. What is the practice of law?

Although it may sometimes be articulated more simply, one definition has gained widespread acceptance, and has been adopted by this Court:

A general definition of the term frequently quoted with approval is given in *Eley v. Miller*, 7 Ind.App. 529, 34 N.E. 836, as follows:

'As the term is generally understood, the 'practice' of law is the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.' *State ex rel. v. Perkins*, 138 Kan. 899, 907, 908, 28 P.2d 765, 769 (1934).

The court, in *Perkins*, also pointed out that '(o)ne who confers with clients, advises them as to their legal rights, and then takes the business to an attorney and arranges with him to look after it in court is engaged in the practice of law.' 138 Kan. at 908, 28 P.2d at 770. The quotation from the *Eley* case has been adopted as the general rule in 7 C.J.S. Attorney and Client s 3 g (1937).

A more recent source defines the practice of law as 'the rendition of services requiring the knowledge and application of legal principles and technique to serve the interests of another with his consent.' *R. J. Edwards, Inc. v. Hert*, 504 P.2d 407, 416 (Okl. 1972).

Kentucky

KENTUCKY REVISED STATUTES, RULES OF THE SUPREME COURT III, PRACTICE OF LAW SCR 3.020. Practice of Law Defined.

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor. An appearance in the small claims division of the district court by a person who is an officer of or who is regularly employed in a managerial capacity by a corporation or partnership which is a party to the litigation in which the appearance is made shall not be considered as unauthorized practice of law.

Louisiana

LOUISIANA REVISED STATUTES TITLE 37. PROFESSIONS AND OCCUPATIONS CHAPTER 4. ATTORNEYS § 212.

37:212 Practice of Law defined.

A. The Practice of law means and includes:

(1) In a representative capacity, the appearance as an advocate, or the drawing of papers, pleadings or documents, or the performance of any act in connection with pending or prospective proceedings before any court of record in this state; or

(2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect;

(a) The advising or counseling of another as to secular law;

(b) In behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights;

(c) The doing of any act, in behalf of another, tending to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right; or

(d) Certifying or giving opinions as to title to immovable property or any interest therein or as to the rank or priority or validity of a lien, privilege or mortgage as well as the preparation of acts of sale, mortgages, credit sales or any acts or other documents passing titles to or encumbering immovable property.

B. Nothing in this Section prohibits any person from attending to and caring for his own business, claims, or demands; or from preparing abstracts of title; or from insuring titles to property, movable or immovable, or an interest therein, or a privilege and encumbrance thereon, but every title insurance contract relating to immovable property must be based upon the certification or opinion of a licensed Louisiana attorney authorized to engage in the practice of law. Nothing in this Section prohibits any person from performing, as a notary public, any act necessary or incidental to the exercise of the powers and functions of the office of notary public, as those powers are delineated in Louisiana Revised Statutes of 1950, Title 35, Section 1, et seq.

C. Nothing in this Section shall prohibit any partnership, corporation, or other legal entity from asserting any claim, not exceeding five thousand dollars, or defense pertaining to an open account or promissory note, or suit for eviction of tenants on its own behalf in the courts of limited jurisdiction on its own behalf through a duly authorized partner, shareholder, officer, employee, or duly authorized agent or representative. No partnership, corporation, or other entity may assert any claim on behalf of another entity or any claim assigned to it.

D. Nothing in Article V, Section 24, of the Constitution of Louisiana or this Section shall prohibit justices or judges from performing all acts necessary or incumbent to the authorized exercise of duties as judge advocates or legal officers.

Louisiana Rule of Professional Conduct 5.5: Unauthorized Practice of Law

For purposes of this Rule, the practice of law shall include the following activities:

- (i) Holding oneself out as an attorney or lawyer authorized to practice law;
- (ii) Rendering legal consultation or advice to a client;
- (iii) Appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;
- (iv) Appearing as a representative of the client at a deposition or other discovery matter;
- (v) Negotiating or transacting any matter for or on behalf of a client with third parties;
- (vi) Otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

Maine

Board of Overseers of the Bar v. Mangan, 763 A.2d 1189 (Me. 2001)

The Maine Bar Rules do not explicitly state what constitutes the "practice of law," nor have we ever defined what constitutes the "practice of law."

The term "practice of law" is a "term of art connoting much more than merely working with legally-related matters." *Attorney Grievance Commission of Maryland v. Shaw*, 354 Md. 636, 732 A.2d 876, 882 (1999) (quoting *In re Application of Mark W.*, 303 Md. 1, 491 A.2d 576, 585 (1985)).

"The focus of the inquiry is, in fact, 'whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent.'" *Id.* (quoting *In re Discipio*, 163 Ill.2d 515, 206 Ill.Dec. 654, 645 N.E.2d 906, 910 (1994)). Even where "trial work is not involved but the preparation of legal documents, their interpretation, the giving of legal advice, or the application of legal principles to problems of any complexity, is involved, these activities are still the practice of law." *Shaw*, 732 A.2d at 883 (quoting *Lukas v. Bar Ass'n of Montgomery County*, 35 Md.App. 442, 448, 371 A.2d 669, 673, cert. denied, 280 Md. 733 (1977)).

[¶ 14] In *Shaw*, 354 Md. 636, 732 A.2d 876, 882 (1999), the court noted that the practice of law includes "[u]tilizing legal education, training, and experience [to apply] the special analysis of the profession to a client's problem." (quoting *Kennedy v. Bar Ass'n of Montgomery County, Inc.*, 316 Md. 646, 662, 561 A.2d 200, 208 (1989)). The *Shaw* court further noted that "[t]he Hallmark of the practicing lawyer is responsibility to clients regarding their affairs, whether as advisor, advocate, negotiator, as intermediary between clients, or as evaluator by examining a client's legal affairs." *Shaw*, 732 A.2d at 883 (quoting *In re Application of R.G.S.*, 312 Md. 626, 632, 541 A.2d 977, 980 (1988)).

[¶ 15]

As attorneys' roles increase in complexity and overlap with other professions, the answer to [the question of what constitutes the practice of law] will continue to evolve. Ultimately, the question will turn on the specific facts of the work undertaken and the understanding of the parties.

. . . .

[¶ 16] The determination of what constitutes the practice of law is very fact specific.

Maryland

**ANNOTATED CODE OF MARYLAND BUSINESS OCCUPATIONS AND PROFESSIONS,
TITLE 10. LAWYERS SUBTITLE 1--DEFINITIONS; GENERAL PROVISIONS § 10-101.**

Definitions

Sec. 10-101(h)

(1) "Practice law" means to engage in any of the following activities:

- (i) giving legal advice;
 - (ii) representing another person before a unit of the State government or of a political subdivision; or
 - (iii) performing any other service that the Court of Appeals defines as practicing law
- (2) "Practice law" includes:
- (i) advising in the administration of probate of estate of decedents in an orphans' court of the state
 - (ii) preparing an instrument that affects title to real estate
 - (iii) preparing or helping in the preparation of any form or document that is filed in a court or affects a case that is or may be filed in a court; or
 - (iv) giving advice about a case that is or may be filed in a court.

§ 10-206. Bar admission requirement

(a) Except as otherwise provided by law, before an individual may practice law in the State, the individual shall:

- (1) Be admitted to the Bar; and
- (2) Meet any requirement that the Court of Appeals may set by rule.

(b) This section does not apply to:

(1) A person while representing a landlord in a summary ejectment proceeding in the District Court of Maryland;

(2) A person while representing a tenant in a summary ejectment proceeding in the District Court of Maryland if the person is:

(i) A law student practicing in a clinical law program at a law school accredited by the American Bar Association with the in-court supervision of a faculty member; or

(ii) Employed by a nonprofit organization receiving grants from the Maryland Legal Services Corporation and:

- 1. The person has training and experience;
- 2. The person is supervised by a lawyer; and
- 3. The supervising lawyer's appearance is entered in the proceeding;

(3) An insurance company while defending an insured through staff counsel;

(4) (i) An officer of a corporation, an employee designated by an officer of a corporation, a partner in a business operated as a partnership or an employee designated by a partner, or an employee designated by the owner of a business operated as a sole proprietorship while the officer, partner, or employee is appearing on behalf of the corporation, partnership, or business in a civil action in the District Court of Maryland if the action:

- 1. Is based on a claim that does not exceed the amount set under § 4-405 of the Courts Article for a small claim action; and
- 2. Is not based on an assignment, to the corporation, partnership, or business, of the claim of another;

(ii) An employee designated under subparagraph (i) of this paragraph:

1. May not be assigned on a full-time basis to appear in the District Court on behalf of the corporation, partnership, or business;

2. Shall provide the court a power of attorney sworn to by the employer that certifies that the designated employee is an authorized agent of the corporation, partnership, or sole proprietorship and may bind the corporation, partnership, or sole proprietorship on matters pending before the court; and

3. May not be an individual who is disbarred or suspended as a lawyer in any state;

(iii) A corporation, partnership, or business may not contract, hire, or employ another business entity to provide appearance services under subparagraph (i) of this paragraph; or

(5) An individual who is authorized by a county employee to represent the employee at any step of the county's grievance procedure.

(c) (1) In this subsection, "practice patent law":

(i) Means to perform professional services that the Patent and Trademark Office requires to be performed by an individual registered to practice before that Office; and

(ii) Includes preparing a copyright application or assignment and submitting it to the Copyright Office of the Library of Congress.

(2) While there is a Patent and Trademark Office in the State, an individual may practice patent law in the State if the individual is:

(i) Authorized to practice law in any other state; and

(ii) Registered to practice patent law before the Patent and Trademark Office.

(3) Unless otherwise authorized under this title, an individual who practices patent law under this subsection may not:

(i) Appear as an attorney at law in a court; or

(ii) Practice law generally in the State.

(d) (1) Subject to paragraph (2) of this subsection, this section does not apply to an individual while giving legal advice to a corporation in this State if the individual is:

(i) Employed by the corporation; and

(ii) Admitted to the bar of any other state.

(2) An individual who gives legal advice under this subsection:

(i) Is subject to disciplinary proceedings as the Maryland Rules provide;

(ii) May not appear before a unit of the State government or of a political subdivision unless a court grants the individual a special admission in accordance with § 10-215 of this subtitle. (Special admission to practice law)

Massachusetts

Massachusetts Conveyancers Ass'n, Inc. v. Colonial Title & Escrow, Inc., 2001 WL 669280 (Mass.Super. 2001)

Whether a particular activity constitutes the practice of law is fact specific. *Matter of Shoe Manufacturers Protective Association*, 295 Mass. 369, 372 (1936). While a comprehensive definition would be impossible to frame what constitutes "the practice of law", in general, consists of:

"[D]irecting and managing the enforcement of legal claims and the establishment of the legal rights of others, where it is necessary to form and to act upon opinions as to what those rights are and as to the legal methods which must be adopted to enforce them, the practice of giving or furnishing legal advice as to such rights and methods and the practice, as an occupation, of drafting documents by which such rights are created, modified, surrendered or secured ..."

Id.

Michigan

Dressel v. Ameribank, 635 N.W.2d 328 (Mich.App. 2001)

Michigan law prohibits the unauthorized practice of law by individuals. MCL 600.916. Moreover, M.C.L. § 450.681 specifically enjoins corporations from practicing law without a license. . . . However, these statutes fail to define precisely what constitutes the "practice of law." Rather, such determinations have been left to the discretion of the courts.

This Court agrees with the majority opinion of the states that charging a fee can take an otherwise incidental act into the realm of the unauthorized practice of law.

Minnesota

Cardinal v. Merrill Lynch Realty/Burnet, Inc., 433 N.W.2d 864 (Minn. 1988)

The line between what is and what is not the practice of law cannot be drawn with precision. Lawyers should be the first to recognize that between the two there is a region wherein much of what lawyers do every day in their practice may also be done by others without wrongful invasion of the lawyers' field. ' *Cowern v. Nelson*, 207 Minn. 642, 647, 290 N.W. 795, 797 (1940).

Proposed to Supreme Court in Petition of Minnesota State Bar Association Regarding Multidisciplinary Practice (Jan. 2002) – Petition Denied Sept, 17, 2002

“Practice of law” denotes the following activities:

1. Rendering legal consultation or advice to a client;
2. Appearing on behalf of a client in any hearing, proceeding or related deposition or discovery matter or before any judicial officer, court, public agency, referee, magistrate, commissioner or hearing officer, except where rules of the tribunal involved permit representation by nonlawyers;
3. Engaging in other activities that constitute the practice of law as provided by statute or common law.

Mississippi

Mississippi Com'n on Judicial Performance v. Jenkins, 725 So.2d 162 (Miss. 1998)

This Court defined the practice of law to include "... the drafting or selection of documents, the giving of advice in regard to them, and the using of an informed or trained discretion in the drafting of documents to meet the needs of the person being served. So any exercise of intelligent choice in advising another of his legal rights and duties brings the activity within the practice of the legal profession. *Oregon State Bar v. Security Escrows, Inc.*, 233 Or. 80, 377 P.2d 334 (1962)." *Darby v. Mississippi State Bd. of Bar Admissions*, 185 So.2d 684, 687 (Miss.1966).

Darby v. Mississippi State Board of Bar Admissions, 185 So.2d 684, 688 (1966).

The acts designated in Section 8682 as constituting the practice of law are not all-exclusive nor all-inclusive. Manifestly there are many others which might be performed by an unlicensed person which may also constitute the practice of law. Section 8682 (Miss. Code Ann.) simply provides that the designated acts under the defined circumstances constitute the unlawful practice of law, but it does not encroach on the constitutional power of the judiciary to determine that other acts may also do so.

Mississippi Code Annotated §73-3-55. Unlawful to practice law without license; certain abstract companies may certify titles.

It shall be unlawful for any person to engage in the practice of law in this state who has not been licensed according to law. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of section 97-23-43. Any person who shall for fee or reward or promise directly or indirectly write or dictate any paper or instrument of writing to be filed in any cause or proceeding pending or to be instituted in any court in this state or give any counsel or advice therein or who shall write or dictate any bill of sale deed of conveyance deed of trust mortgage contract or last will and testament or shall make or certify to any abstract of title or real estate other than his own or in which he may own an interest shall be held to be engaged in the practice of law. This section shall not however prevent title or abstract of title guaranty companies incorporated under the laws of this state from making abstract or certifying titles to real estate where it acts through some person as agent authorized under the laws of the State of Mississippi to practice law; nor shall this section prevent any abstract company chartered under the laws of the State of Mississippi with a

paid up capital of fifty thousand dollars (\$50,000.00) or more from making or certifying to abstracts of title to real estate through the president secretary or other principal officer of such company.

Missouri Revised Statutes

MISSOURI STATUTES TITLE XXXII. COURTS CHAPTER 484. ATTORNEYS AT LAW §484.010. Practice of the law and law business defined.

1. The "practice of the law" is hereby defined to be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.

2. The "law business" is hereby defined to be and is the advising or counseling for a valuable consideration of any person, firm, association, or corporation as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to obtain or securing or tending to secure for any person, firm, association or corporation any property or property rights whatsoever.

Montana

Pulse v. North American Land Title Co. of Montana, 707 P.2d 1105 (Mont. 1985)

What constitutes the practice of law is not easily defined. In *Cowern v. Nelson* (1940), 207 Minn. 642, 290 N.W. 795, 797, the Minnesota Court stated: "The line between what is and what is not the practice of law cannot be drawn with precision. Lawyers should be the first to recognize that between the two there is a region wherein much of what lawyers do every day in their practice may also be done by others without wrongful invasion of the lawyer's field."

Nebraska

State ex rel. Johnson v. Childe, 23 N.W.2d 720 (Neb. 1946)

The power to define what constitutes the practice of law is lodged with this court. The sole power to punish any person assuming to practice law within this state without having been licensed to do so also rests with this court. It is the character of the act and not the place where the act is performed that constitutes the controlling factor. An all inclusive definition of what constitutes the practice of law is too difficult for simple statement. We shall not attempt it here, but will follow the practice established by the previous decisions of this court and examine the facts and circumstances of each case and determine whether the defendant purported to exercise the legal training, experience and skill of an attorney at law without a license to do so. Our former decisions supporting these views are collected and discussed in *State ex rel. Johnson v. Childe*, 139 Neb. 91, 295 N.W. 381.

Nevada

Pioneer Title Ins. & Trust Co. v. State Bar of Nev., 326 P.2d 408 (Nev. 1958)

As stated in *Lowell Bar Ass'n v. Loeb*, supra [315 Mass. 176, 52 N.E.2d 34], 'The actual practices of the community have an important bearing on the scope of the practice of law.'

New Hampshire

Sup.Ct.Rules, Rule 35, Rule 1

There is no satisfactory, all-inclusive definition of what constitutes the practice of law. Ethical Consideration 3-5 (E.C. 3-5) of the former Code of Professional Responsibility provided: "It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of a lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment."

HB 1420 – CHAPTER 218:1, LAWS OF 2002 AN ACT establishing a task force to define the practice of law in New Hampshire.

Final Report

The above-named Task Force appointed to define the practice of law in New Hampshire, having duly met offers the following final report:

· That we are unable to reach a consensus of opinion in order to offer specific findings and recommendations on the practice of law in New Hampshire.

New Jersey

In re Jackman, 761 A.2d 1103 (N.J. 2000)

The practice of law in New Jersey is not limited to litigation. *State v. Rogers*, 308 N.J. Super. 59, 67-70, 705 A.2d 397 (App.Div.), certif. denied, 156 N.J. 385, 718 A.2d 1214 (1998). One is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required. *Id.* at 66, 705 A.2d 397. Other jurisdictions have adopted a similar definition. *See Kennedy v. Bar Ass'n*, 316 Md. 646, 561 A.2d 200, 208 (1989)(using legal education, training, and experience to apply legal analysis to client's problems constitutes practice of law).

In re Opinion 33 of Committee on Unauthorized Practice of Law, 733 A.2d 478 (N.J. 1999)

In *In re Opinion 26, supra*, 139 N.J. at 340, 654 A.2d 1344, we described that standard in simple and pragmatic terms:

Practically all of the cases in this area are relatively recent. They consistently reflect the conclusion that the determination of whether someone should be permitted to engage in conduct that is arguably the practice of law is governed not by attempting to apply some definition of what constitutes that practice, but rather by asking whether the public interest is disserved by permitting such conduct. The resolution of the question is determined by practical, not theoretical, considerations; the public interest is weighed by analyzing the competing policies and interests that may be involved in the case; the conduct, if permitted, is often conditioned by requirements designed to assure that the public interest is indeed not disserved.

Our earliest precedents are faithful to that formulation. In *Auerbacher v. Wood*, 142 N.J. Eq. 484, 59 A.2d 863 (E. & A.1948), . . . observing that "[w]hat constitutes the practice of law does not lend itself to precise and all-inclusive definition." *Id.* at 485, 59 A.2d 863

New Mexico

NEW MEXICO STATUTES ANNOTATED Rules Governing Legal Assistant Services Rules Governing the Bar

Rule 20-102. Definitions. As used in these guidelines:

B. practice of law, insofar as court proceedings are concerned, includes: (1) representation of parties before judicial or administrative bodies; (2) preparation of pleadings and other papers, incident to actions and special proceedings; (3) management of such actions and proceedings; and (4) noncourt-related activities, such as: (a) giving legal advice and counsel; (b) rendering a

service which requires use of legal knowledge or skill; and (c) preparing instruments and contracts by which legal rights are secured.

Comes from *State ex. rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 514 P.2d 40 (1973), which also states that there is no definition of the practice of law that may be employed to fit all situations.

New York

The August 2001 Report of the New York State Bar Association Special Committee on the Law Governing Firm Structure and Operation recommended that New York adopt the definition below. The report went to the NYSBA House of Delegates on January 25, 2002. There were a number of concerns raised in the House, primarily centering on whether the proposed statute would criminalize conduct that would be permissible under current New York law. Accordingly, the House voted to re-commit the report to the Committee for further development. The committee will be working with representatives of the New York County Lawyers' Association and the City Bar - both of which expressed concerns - to see whether a modified statute would be acceptable. There is no timetable to bring it back to the House, but it would probably be June 2002 at the earliest.

1. "Practice of Law" means the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person. The practice of law includes, but is not limited to:

- a. the provision of advice involving the application of legal principles to specific facts or purposes;
- b. the preparation of legal instruments of any character, including but not limited to pleadings and other papers incident to actions or proceedings, deeds, mortgages, assignments, discharges, leases, or other instruments affecting real estate, wills, codicils, trusts, or other instruments affecting the disposition of property after death; and documents or agreements which affect the legal rights of an entity or person.
- c. except as otherwise authorized by law, the representation of the interest of another before any judicial, executive, or administrative tribunal.

North Carolina

NORTH CAROLINA GENERAL STATUTES ANNOTATED. CHAPTER 84. ATTORNEYS-AT-LAW. ARTICLE 1. QUALIFICATIONS OF ATTORNEY; UNAUTHORIZED PRACTICE OF LAW

§84-2.1. "Practice of law" defined.

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.

North Dakota

State v. Niska, 380 N.W.2d 646 (N.D. 1986) – what constitutes the practice of law does not lend itself to an inclusive definition.

Ohio

Land Title Abstract & Trust Co. v. Dworken, 193 N.E. 650 (1934) at 650.

The practice of law is, 'as generally understood, the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.' 49 Corpus Juris, p. 1313.

This view is supported by substantial authorities, among the cases being *People v. Alfani*, 227 N. Y. 334, 125 N. E. 671, where it is held as follows:

'The practice of law is not limited to the conduct of cases in courts. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law. An attorney-at-law is one who engages in any of these branches of the practice of law.'

A very terse definition of the practice of law is announced in the case of *People v. Title Guarantee & Trust Co.*, 180 App.Div. 648, 168 N. Y. S. 278, 280, as follows:

'The 'practice of the law,' as the term is now commonly used, embraces much more than the conduct of litigation. The greater, more responsible, and delicate part of a lawyer's work is in other directions. Drafting instruments creating trusts, formulating contracts, drawing wills and negotiations, all require legal knowledge and power of adaptation of the highest order. Beside these employments, mere skill in trying lawsuits, where ready wit and natural resources often prevail against profound knowledge of the law, is a relatively unimportant part of a lawyer's work.'

Though this case was distinguished from *People v. Alfani*, *supra*, and the judgment reversed in 227 N. Y. 366, 125 N. E. 666, 669, the several opinions disclose wherein the case differs materially from the instant case, in that such decision turned upon the interpretation of the New York statute with reference to which the majority opinion states that 'persuasive reasons might be marshalled in favor of a decision of the question in either way.' The correctness of this observation is indicated by the fact that, of the four judges joining in the judgment, two state limited concurrences, while Cardozo, J., announces a dissent in which two judges concur. But in none of those opinions is there any modification of the definition of the practice of law as theretofore announced.

In the case of *Boykin v. Hopkins*, 174 Ga. 511, 162 S. E. 796, the Supreme Court of Georgia adopts and applies the definition of the practice of law above quoted.

McMillan v. McCahan, 167 N.E.2d 541 (1960) at 550. (followed above).

Oklahoma

R.J. Edwards, Inc. v. Hert, 504 P.2d 407 (1972)

Our decisions definitely spell out the concept of the practice of law: the rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent.

State Bar of Arizona v. Arizona Land Title & Trust Co., 90 Ariz. 76, 366 P.2d 1 (1961); *Beach Abstract & Guaranty Co. v. Bar Assoc. of Arkansas*, 230 Ark. 494, 326 S.W.2d 910 (1930); *Arkansas Bar Assoc. v. Union Nat. Bank*, 224 Ark. 48, 273 S.W.2d 408 (1954); *Biakanja v. Irving*, 49 Cal.2d 647, 320 P.2d 16, 65 A.L.R.2d 1358 (1958); *Title Guar. & Trust Co. v. Denver Bar Assoc.*, 135 Colo. 423, 312 P.2d 1011 (1937); *People ex rel. Illinois State Bar Assoc. v. People's Stock Yards State Bank*, 344 Ill. 462, 176 N.E. 901 (1931); *People ex rel. Chicago Bar Assoc. v. Tinkoff*, 399 Ill. 282, 77 N.E.2d 693 (1948); *State ex rel. Boynton v. Perkins*, 138 Kan. 899, 28 P.2d 765 (1934); *Depew v. Wichita Assoc. of Credit Men, Inc.*, 142 Kan. 403, 49 P.2d 1041 (1935); *Frazee v. Citizens Fidelity Bank & Trust Co.*, 393 S.W.2d 788 (Ky.1965); *Fritchette v. Taylor*, 191 Minn. 582, 254 N.W. 510, 94 A.L.R. 356; *Liberty Mut. Ins. Co. v. Jones*, 344 Mo. 932, 130 S.W.2d 945 (1919); *Hulse v. Criger*, 363 Mo. 26, 247 S.W.2d 855 (Mo.1952); *Hoffmeister v. Tod*, 349 S.W.2d 5 (Mo.1961); *State ex rel. Johnson v. Childe*, 147 Neb. 527, 23 N.W.2d 720 (1940); *People v. Alfani*, 227 N.Y. 234, 125 N.E. 671 (1919); *People v. Lawyers Title Corp.*, 282 N.Y. 513, 27 N.E.2d 30 (1940); *Judd v. City Trust & Savings Bank*, 133 Ohio St. 81, 12 N.E.2d 288 (1937); *Oregon State Bar v. John H. Miller & Co.*, 235 Ore. 341, 385 P.2d 181 (1965); *In re Morse*, 98 Vt. 85, 126 A. 550 (1924); *Washington State Bar Assoc. v. Washington Assoc. of Realtors*, 41 Wash.2d 697, 251 P.2d 619 (1953); *State ex rel. Reynolds v. Dinger*, 14 Wis.2d 193, 109 N.W.2d 685.

In view of our own prior statements, and of this long line of like statements elsewhere, it was unnecessary that we should otherwise have defined 'practice of law' to include specific acts as a prerequisite to the exercise of the proper jurisdiction of the judicial department.

Oregon

Oregon State Bar v. Security Escrows, Inc., 377 P.2d 334 (Or. 1962)

The present statutes contain no definition of the practice of law. From 1919 to 1937 there was a statutory definition. *See* § 32-505, Oregon Code 1930, repealed by Oregon Laws 1937, ch. 343.

Even so, we have found no authority for the proposition that legislative silence in this instance is the equivalent of a legislative definition of the practice of law. We must hold that the legislature has not attempted to define the practice of law, and, accordingly, there is no need to inquire whether it has the power to do so.

Before we may proceed with the case at bar, however, it is necessary to have before us enough of a definition so that we can decide whether the court below should have issued the injunction. We must mark out at least enough of the boundaries of the practice of law so that we can decide whether or not the activities complained of fall within them, leaving to future cases such other definitional problems as may remain unresolved.

There have been numerous attempts elsewhere to define the practice of law. [FN1] None has been universally accepted. [FN2] The Arizona Supreme Court has said that an exhaustive definition is impossible. Perhaps it is. *See State Bar of Arizona v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 366 P.2d 1, 9 (1961), on petition for rehearing, 91 Ariz. 293, 371 P.2d 1020 (1962).

For the purposes of this case, we hold that the practice of law includes the drafting or selection of documents and the giving of advice in regard thereto any time an informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of the persons

being served. The knowledge of the customer's needs obviously cannot be had by one who has no knowledge of the relevant law. One must know what questions to ask. Accordingly, any exercise of an intelligent choice, or an informed discretion in advising another of his legal rights and duties, will bring the activity within the practice of the profession. We reject such artificial or haphazard tests as custom, payment, [FN5] or the quality of being 'incidental.' [FN6]

Pennsylvania

Gmerek v. State Ethics Com'n, 751 A.2d 1241 (Pa.Cmwlt. 2000)

In attempting to determine the parameters of what constitutes the "practice of law", the Pennsylvania Supreme Court stated long ago:

There is no need for present purposes to venture upon a comprehensive survey of the boundaries--necessarily somewhat obscure--which limit the practice of law. An attempt to formulate a precise definition would be more likely to invite criticism than to achieve clarity. We know, however, that when a lawyer has, through patient years of study, acquired an understanding of the law and obtained a license to engage in its practice, he applied his knowledge in three principal domains of professional activity:

1. He instructs and advises clients in regard to the law, so that they may properly pursue their affairs and be informed as to their rights and obligations.
2. He prepares for clients documents requiring familiarity with legal principles, beyond the ken of the ordinary layman,--for example, wills and such contracts as are not of a routine nature.
3. He appears for clients before public tribunals to whom is committed the function of determining rights of life, liberty and property according to the law of the land, in order that he may assist the deciding official in the proper interpretation and enforcement of the law...

Shortz v. Farrell, 327 Pa. 81, 84, 193 A. 20, 21 (1937). Thus, although the "practice of law" may be difficult to define, it most assuredly encompasses: advising clients regarding the law; preparing documents for clients which require a familiarity with legal principles beyond the ken of the ordinary layman such as wills and contracts; and appearing for clients before public tribunals charged with the power of determining liberty or property rights. *Id.*

However, it is important to stress that the "practice of law" is not limited to a lawyer's appearance in court. As it has been previously noted:

[I]t is too obvious for discussion that the practice of law is not limited to the conduct of cases in courts. According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients, and all action taken for them in matters connected with the law. An attorney at law is one who engages in any of these branches of the practice of law. The following is the concise definition given by the Supreme Court of the United States: "Persons acting professionally in legal formalities, negotiations, or proceedings by the warrant or authority of their clients may be regarded as attorneys at law within the meaning of that designation as employed in this country." [*Savings Bank v. Ward*, 100 U.S. 195, 199, 10 Otto 195, 25 L.Ed. 621 (1879).]

In re Duncan, 83 S.C. 186, 187-190, 65 S.E. 210, 211 (1909).

Rhode Island

**GENERAL LAWS OF RHODE ISLAND, 1956 TITLE 11. CRIMINAL OFFENSES CHAPTER 27.
LAW PRACTICE
§11-27-2. Practice of law defined.**

The term "practice law" as used in this chapter shall be deemed to mean the doing of any act for another person usually done by attorneys at law in the course of their profession, and, without limiting the generality of the foregoing, shall be deemed to include the following:

- (1) The appearance or acting as the attorney, solicitor, or representative of another person before any court, referee, master, auditor, division, department, commission, board, judicial person, or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the court or other body;
- (2) The giving or tendering to another person for a consideration, direct or indirect, of any advice or counsel pertaining to a law question or a court action or judicial proceeding brought or to be brought;
- (3) The undertaking or acting as a representative or on behalf of another person to commence, settle, compromise, adjust, or dispose of any civil or criminal case or cause of action;
- (4) The preparation or drafting for another person of a will, codicil, corporation organization, amendment, or qualification papers, or any instrument which requires legal knowledge and capacity and is usually prepared by attorneys at law.

South Carolina

In re Duncan, 65 S.E. 210 (1909)

According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients, and all action taken for them in matters connected with the law.

South Dakota

(In 2001, a Bar Association Task Force proposed the following definition, which has now been withdrawn and is being reworked.)

"Practice of law" means the performance for another person or entity, of any of the following services:

- (a) Representation before a judicial, legislative, or executive, administrative, or other governmental official or body, or before a government-owned body, or before an arbitrator or similar body;
- (b) Preparation or review of documents involving liberty, property, or other rights or interests; or
- (c) Any other service including, but not limited to, advice or negotiation, which in view of the facts and circumstances requires the knowledge, skill and judgment of a person trained in law.
- (d) Whether or not they constitute the "Practice of law", the following are permitted:
 - (1) Practicing law in accordance with §16-16-7.1, 16-16-7.6, 16-16-17.1, 16-18-2, 16-18-2.1 to 16-18-2.10, and 16-18-34 to 16-18-34.6.
 - (2) Acting as a lay representative before administrative agencies or tribunals, if statutorily authorized.
 - (3) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

- (4) "Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements."
- (5) Providing assistance to another to complete a form provided by a court for protection under Chapters 29-19(a) and 25-10 when no fee is charged to do so.
- (6) Acting as a registered legislative lobbyist under Chapter 2-12.
- (7) Preparing a federal, state or local tax return or an appearance before a federal, state or local taxing authority in connection with an audit or administrative appeal of an audit or return by a person with respect to (i) their own tax returns, or (ii) tax returns of entities of which they are a substantial (ten percent or more) owner. The preparation of federal, state or local tax returns for third parties or the appearance before agents of taxing authorities in connection with audits on behalf of third parties or appearances before non-evidentiary administrative appeal bodies are also permitted.
- (8) Other activities that the South Dakota Supreme Court has determined do not constitute the unauthorized practice of law.

For reference:

§16-16-7.1 refers to nonresident attorneys employed by legal aid bureaus or public defender agencies;

§16-16-7.6 refers to attorneys who are state court administrators or full-time law school faculty and administrators;

§16-16-17.1 refers to conditionally admitted bar applicants;

§16-18-2 refers to nonresident attorneys admitted for a trial or hearing of a particular cause;

§16-18-2.1 refers to law students serving as legal interns; and to 16-18-2.10

§16-18-34 refers to legal assistants. to 16-18-34.6

"Unauthorized practice of law" means the practice of law by a person or entity who is not legally authorized to do so.

As to EXCEPTION 5, SDCL 29-19(a) pertains to stalking and SDCL 25-10 pertains to domestic abuse.

Tennessee

TENNESSEE CODE ANNOTATED, TITLE 23. ATTORNEYS-AT-LAW CHAPTER 3. UNAUTHORIZED PRACTICE AND IMPROPER CONDUCT PART 1--GENERAL PROVISIONS §23-3-101. Definitions.

As used in this chapter, unless the context otherwise requires: (1) "Law business" means the advising or counseling for a valuable consideration of any person, firm, association, or corporation, as to any secular law, or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights, or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to secure for any person, firm, association or corporation any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services; and (2) "Practice of law" means the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.

Texas

TEXAS STATUTES AND CODES. GOVERNMENT CODE. TITLE 2. JUDICIAL BRANCH. SUBTITLE G. ATTORNEYS. CHAPTER 81. STATE BAR. SUBCHAPTER G. UNAUTHORIZED PRACTICE OF LAW

§81.101. Definition.

(a) In this chapter the “practice of law” means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

(b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.

(c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

In April 2001, the Texas UPL Task Force recommended changing 81.101 to the following:

§ 81.101 Definitions

A. The “practice of law,” as used in this chapter, includes

1. Providing legal representation;
2. Providing legal advice;
3. Preparing or negotiating, in whole or in part, a will, trust, contract, conveyance, pleading, or other instrument to the extent such preparation or negotiation is performed or offered explicitly or implicitly to provide legal advice or legal representation; or
4. Those activities described in section 81.102.B.

B. “Legal representation” means acting as an advocate in governmental adjudicative proceedings in a court or administrative agency to determine the specific rights or obligations of one or more persons.

C. “Legal advice” means acting in a professional capacity as a personal advisor to another person as to the specific rights or obligations of one or more persons through the interpretation and application of laws, regulations, and other legal standards;

D. “In a professional capacity” means acting i) with the expectation that compensation for such advice will be provided by or on behalf of the person receiving the advice or that such compensation, although ordinarily expected by the provider, will be waived for charitable or civic reasons, ii) with the express or implied representation that the provider is an attorney or lawyer, or iii) as part of a pattern of recurring conduct in which the provider holds himself or herself out as an advisor having special competence in the interpretation and application of laws, regulations, and other legal standards.

E. “Individual” means a human being.

F. “Person” means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any legal entity.

G. “Attorney” or “lawyer” means an individual who is a member of the state bar or is otherwise licensed and in good standing to practice law in another state of the United States.

H. The definition of the practice of law in this section is not exclusive and does not deprive the judicial branch of the power and authority to determine whether other services and acts not enumerated may constitute the practice of law.

§83.001. Prohibited Acts. (Current)

(a) A person, other than a person described in Subsection (b), may not charge or receive, either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien.

(b) This section does not apply to:

- (1) an attorney licensed in this state;
- (2) a licensed real estate broker or salesman performing the acts of a real estate broker pursuant to The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes); or
- (3) a person performing acts relating to a transaction for the lease, sale, or transfer of any mineral or mining interest in real property.

Utah

Board of Com'rs of Utah State Bar v. Petersen, 937 P.2d 1263 (Utah 1997)

Although "the practice of law" has not been exactly defined, an "ordinary reader" would understand that certain services, when performed on someone else's behalf, are part of such practice. Such services would include not only appearing in court, but also drafting complaints, drafting or negotiating contracts, drafting wills, counseling or giving advice on legal matters, and many other things. In *Utah State Bar v. Summerhayes & Hayden, Public Adjusters*, 905 P.2d 867 (Utah 1995), this court, while noting that "[w]hat constitutes the practice of law in any given situation requires a case-by-case decision," stated:

The practice of law, although difficult to define precisely, is generally acknowledged to involve the rendering of services that require the knowledge and application of legal principles to serve the interests of another with his consent. It not only consists of performing services in the courts of justice throughout the various stages of a matter, but in a larger sense involves counseling, advising, and assisting others in connection with their legal rights, duties, and liabilities. It also includes the preparation of contracts and other legal instruments by which legal rights and duties are fixed.

Id. at 869-70 (citations omitted). Further, when such services are performed for a fee, it is even more likely that they constitute the practice of law. In *Nelson v. Smith*, 107 Utah 382, 154 P.2d 634 (1944), this court stated that "[t]he practice of law, though impossible of exact definition, involves the carrying on of the calling of an attorney usually for gain." *Id.* at 389, 154 P.2d 634. The court further stated that an element of the practice of law is "the rendering of legal service or the giving of legal advice to another usually for gain." *Id.* at 390, 154 P.2d 634.

Proposed H.B. 349 (Passed March 5, 2003 – To Take Effect, May 3, 2004 - Pending Governor's signature – March 20, 2003)

PRACTICE OF LAW AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

This act defines the practice of law and states that only persons admitted by the Supreme Court may practice law in this state.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS: 78-9-102, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah: Section 78-9-101 is repealed [May 1, 2003] May 3, 2004. Section 2. Section 78-9-102 is enacted to read:

78-9-102. Practice of law defined -- Who may practice.

(1) The term "practice law" means appearing as an advocate in any criminal proceeding or before any court of record in this state in a representative capacity on behalf of another person.

(2) Only persons who have been admitted by the Supreme Court of this state to practice law may practice or hold themselves out as licensed to practice law in this state.

(3) A person may not use "J.D.", "Esq.", "attorney", or "attorney-at-law" on business cards, signs, advertisements, or official documents as those terms are used to indicate status as an attorney, unless licensed to practice law.

Vermont

In re Welch, 185 A.2d 458 (1962)

In general, one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply the possession and use of legal knowledge and skill. The practice of law includes all advice to clients, and all actions taken for them in matters connected with the law.

Practice of law includes the giving of legal advice and counsel, and the preparation of legal instruments and contracts of which legal rights are secured.

Where the rendering of services for another involves the use of legal knowledge or skill on his behalf--where legal advice is required and is availed of or rendered in connection with such services--these services necessarily constitute or include the practice of law.

Virginia

ANNOTATED CODE OF VIRGINIA RULES OF THE SUPREME COURT OF VIRGINIA PART SIX. INTEGRATION OF THE STATE BAR SECTION I. UNAUTHORIZED PRACTICE RULES AND CONSIDERATIONS PRACTICE OF LAW IN THE COMMONWEALTH OF VIRGINIA Part 6, §1. Practice of Law in the Commonwealth of Virginia.

(A) No non-lawyer shall engage in the practice of law in the Commonwealth of Virginia or in any manner hold himself out as authorized or qualified to practice law in the Commonwealth of Virginia except as may be authorized by rule or statute.(B) Definition of the Practice of Law. The principles underlying a definition of the practice of law have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore, it is from the relation of attorney and client that any practice of law must be derived. The relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is nonetheless practicing law though such person may employ others to whom may be committed the actual performance of such duties. The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others shall be properly trained and educated, and be subject to a peculiar discipline. That fact, and the necessity for protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to define the practice of law. Generally, the relation of attorney and client exists, and one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill. Specifically, the relation of attorney and client exists, and one is deemed to be practicing law whenever

(1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.(2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.(3) One

undertakes, with or without compensation, to represent the interest of another before any tribunal--judicial, administrative, or executive--otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from legal conclusions, by an employee regularly and bona fide employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such representation by such employee or expert does not involve the examination of witnesses or preparation of pleadings.

Washington

WASHINGTON COURT RULES PART I. RULES OF GENERAL APPLICATION GENERAL RULES, GR 24

Definition of the Practice of Law

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a court house facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Nonlawyer Assistants: Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

West Virginia

ANNOTATED CODE OF WEST VIRGINIA, CHAPTER 51. COURTS AND THEIR OFFICERS, ARTICLE 1. SUPREME COURT OF APPEALS

WV ST § 51-1-4a

§ 51-1-4a Rules governing practice of law; creation of West Virginia State bar; providing its powers, and fees for administration.

The supreme court of appeals of West Virginia shall, from time to time, prescribe, adopt, promulgate, and amend rules:

(a) Defining the practice of law.

Brammer v. Taylor, 338 S.E.2d 207 (W.Va. 1985)

This Court has promulgated a definition of the practice of law, pursuant to our "power to promulgate rules ... for all of the courts of the State relating to ... practice ...," W.Va. Const. art. VIII, § 3, and pursuant to the express provision of W.Va.Code, 51-1-4a(a) [1945] to promulgate rules defining the practice of law. This definition, [FN7] emphasizing the need for protection of the public from legal advice and representation from and by persons who are "unqualified and undisciplined," is to be read in pari materia with W.Va.Code, 30-2-4 [1931] and W.Va.Code, 30-2-5 [1972], which impose misdemeanor criminal penalties for the unauthorized practice of law by a natural person or by a corporation or association.

FN7. Adopted in 1947 and last amended in 1961, our "Definition of the Practice of Law" is as follows (after a preamble reciting the importance of licensing and regulation of persons performing legal services):

In general, one is deemed to be practicing law whenever he or it furnishes to another advice or service under circumstances which imply the possession of [or] use of legal knowledge and skill. More specifically but without purporting to formulate a precise and completely comprehensive definition of the practice of law or to prescribe limits to the scope of that activity, one is deemed to be practicing law whenever (1) one undertakes, with or without compensation and whether or not in connection with another activity, to advise another in any matter involving the application of legal principles to facts, purposes or desires; (2) one undertakes, with or without compensation and whether or not in connection with another activity, to prepare for another legal instruments of any character; or (3) one undertakes, with or without compensation and whether or not in connection with another activity, to represent the interest of another before any judicial tribunal or officer, or to represent the interest of another before any executive or administrative tribunal, agency or officer otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions in respect to such facts and figures. (emphasis added)

Vol. 1A, W.Va.Code, at 267-68 (1982 Repl.Vol.).

WV ST § 30-2-4 - Practice without license or oath; penalty; qualification after institution of suits.

It shall be unlawful for any natural person to practice or appear as an attorney-at-law for another in a court of record in this state, or to make it a business to solicit employment for an attorney, or to furnish an attorney or counsel to render legal services, or to hold himself out to the public as being entitled to practice law, or in any other manner to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law, or in any manner to advertise that he, either alone or together with other persons, has, owns, conducts or maintains a law office, without first having been duly and regularly licensed and admitted to practice law in a court of record of this state, and without having subscribed and taken the oath required by the next preceding section [§30-2-3]. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars; but this penalty shall not be incurred by any attorney who institutes suits in the circuit courts after obtaining a license, if he shall qualify at the first term thereafter of a circuit court of any county of the circuit in which he resides.

WV ST § 30-2-5 - Practice by corporations or voluntary associations; penalties; limitations of section.

Except as provided by section five-a [§ 30-2-5a] of this article, it shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person in any court of this state or before any judicial body, or to hold itself out to the public as being entitled to practice law, or to render or furnish legal services or advice, or to furnish an attorney or counsel to render legal services of any kind in actions or proceedings of any nature, or in any other manner to assume to be entitled to practice law, or assume, use or advertise the title of lawyer in such manner as to convey the impression that it is entitled to practice law or to furnish legal advice, services or counsel, or to advertise that, either alone or together with or by or through any person, whether a duly and regularly admitted attorney-at-law or not, it has, owns, conducts or maintains a law office for the practice of law, or for furnishing legal advice, services or counsel. It shall be unlawful further for any corporation or voluntary association to solicit, itself or by or through its officers, agents or employees, any claim or demand for the purpose of bringing an action thereon, or of settling the estate of any insolvent debtor, or of representing as attorney-at-law, or of furnishing legal advice, services or counsel to, a person sued or about to be sued in any action or proceeding, or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil or criminal remedy. Any corporation or voluntary association violating the provisions of this section, or any officer, trustee, director, agent or employee of such corporation or voluntary association who directly or indirectly engages in any of the acts herein prohibited, or assists such corporation or voluntary association to do such prohibited acts, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars. The fact that any such officer, trustee, director, agent or employee shall be a duly and regularly admitted attorney-at-law shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein, nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this section.

This section shall not apply to a partnership composed of licensed attorneys, or to a corporation or voluntary association lawfully engaged in examining and insuring the titles to real property, nor shall it prohibit a corporation or voluntary association from employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may be a

party, nor shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy.

Wisconsin

On November 8, 2002, the Wisconsin State Bar Board of Governors approved a recommendation to petition the supreme court to appoint a committee to develop proposed rules for the court's consideration and action that define the practice of law and establish a system to administer the program.

(Current)

WISCONSIN STATUTES ANNOTATED COURTS CHAPTER 757. GENERAL PROVISIONS CONCERNING COURTS OF RECORD, JUDGES, ATTORNEYS AND CLERKS

WI ST 757.30 Penalty for practicing without license

(2) Every person who appears as agent, representative or attorney, for or on behalf of any other person, or any firm, partnership, association or corporation in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state, or who otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice not incidental to his or her usual or ordinary business, or renders any legal service for any other person, or any firm, partnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.

Wyoming

Rules of the Supreme Court of Wyoming Providing for the Organization and Government of the Bar Association and Attorneys at Law of the State of Wyoming

Rule 11. Attorney's right to practice law.

(a) "Practice of law" means advising others and taking action for them in matters connected with law. It includes preparation of legal instruments and acting or proceeding for another before judges, courts, tribunals, commissioners, boards or other governmental agencies.

New legal services rules make waves in Arizona and Utah as other states weigh reforms

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REUTERS LEGAL • March 19, 2021

(Reuters) - In Utah this week, a company launched what it says is the first entirely non-lawyer owned law firm in United States. Hundreds of miles away in Arizona, two other companies got approval to operate from the state's high court under a structure allowing lawyers and nonlawyers to co-own businesses that offer legal services.



These businesses in Arizona and Utah are taking advantage of regulatory reforms and programs that allow for non-traditional legal service delivery models, a trend that hasn't yet gotten as far in other states but may gain momentum.

The Arizona Supreme Court earlier this week approved Trajan Estate LLC and Payne Huebsch PLC as the first entities in the state to operate as "Alternative Business Structures," after the court authorized several changes to the regulation of the practice of law last year. Trajan Estate focuses on estate planning and Payne Huebsch offers transactional legal services with tax and accounting advice, the Arizona court said in announcing the approvals on Wednesday.

The court as part of broader reforms in August 2020 scrapped state professional conduct rule 5.4, which barred nonlawyers from legal fee-sharing and from having an economic interest in a law firm, enabling the new business structure.

Over in Utah, registered agent services company Northwest Registered Agent LLC on Monday launched Law on Call, a firm that will provide clients subscription-based phone access to licensed lawyers.

[Back to top](#)

legal services delivery models. The court authorized the program last August.

Several other states, including California, Connecticut, New York and North Carolina have created task forces on regulatory reform over the past few years, in part to spur legal innovation with an overarching goal of increasing access to justice.

"Absolutely there is momentum," said Zack DeMeola, director of legal education and the legal profession at the Institute for the Advancement of the American Legal System, a national research center at the University of Denver.

There was talk but no movement on this type of regulatory change for decades, before Arizona and Utah took steps to make reforms a reality, DeMeola said.

"Not only have they built it, but people are coming," he said.

Utah's newly created Office of Legal Services Innovation received 37 applications by the end of January, according to a monthly report published on its website.

The innovation office, which oversees and regulates the program, recommended 20 of the applications to the state's top court, which as of January had authorized 18 entities offering various services under different models, according to the report.

Rocket Lawyer Inc is one of the higher-profile companies to have been approved to practice law in Utah as part of the sandbox.

The Arizona high court said in the Wednesday announcement that three additional providers have applied for Alternative Business Structure authorization. Businesses could begin applying for ABS approval on Jan. 1.

DeMeola said he expects awareness and information about participation in Arizona and Utah to drive reform-minded activity in other states.

So does Anthony Sebok, a law professor at Cardozo Law School and co-director of its Jacob Burns Center for Ethics in the Practice of Law, who said if there are no adverse effects to the public in Arizona, other states are likely to follow.

nonlawyers to increase their stake in legal services.

References

[ROCKET LAWYER INC](#)

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The first nonlawyer-owned law firm takes root in Utah's innovation 'sandbox'

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REUTERS LEGAL • March 16, 2021

(Reuters) - After the Utah Supreme Court authorized a program last summer aiming to test out innovative legal services delivery models, a Spokane, Wash.-based registered agent services company was finally able to do something it had been wanting to do for over a decade: offer legal advice.



"It was earth-shattering," said Tom Glover, president of Northwest Registered Agent LLC. Now, empowered by the Utah decision, Northwest is unveiling Law on Call, which the company says is the first entirely nonlawyer-owned law firm in the United States.

Launching this week in Salt Lake City, Law on Call will offer some legal services with what Glover touted as quick access to lawyers at a cheaper price than traditional law firms. Structured like a call center, clients will pay a \$9-a-month subscription to get "unlimited phone access to licensed lawyers" for legal advice, and can pay for legal work, if needed, starting at \$100 per hour, the company said in announcing the new firm this week.

Utah's high court in August 2020 gave the green light to a two-year pilot program to address what the court called the "access-to-justice crisis." The ruling authorized a "regulatory sandbox" that allows for nontraditional legal providers, including entities with non-lawyer investment and ownership, to offer legal services.

The court will assess whether the program should continue after the two-year period. As of the end of January, it had authorized 18 entities under the program.

Other states have also taken steps to loosen restrictions through regulatory changes. In Arizona, among other reforms, entities could begin applying for licensure as an "alternative

The Utah Supreme Court authorized Law on Call to practice there in December.

Glover anticipates the firm will be able to expand beyond Utah. The company is planning to register in Arizona shortly, he said, adding that it is looking for lawyers in Salt Lake City who are admitted in Arizona in preparation. If and when more states approve new business structures, "we'll have the logistics to quickly ramp up in those states," Glover said.

"If New York and California and Illinois approve it, we're going to be right there, chasing it around the country," he said.

Northwest helps sets up LLCs and corporations and has offices in every state, Glover said. Often customers have questions about next steps for their businesses, but Northwest until now has not been able to offer legal advice to help them, he said.

The company services more than one million small businesses, including about 25,000 customers in Utah, he said. There are three lawyers and two paralegals currently in Salt Lake City, and Glover said he expects to eventually have between 80 and 100 lawyers in the state.

References

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Office of Legal Services Innovation
An Office of the Utah Supreme Court

INNOVATION OFFICE ACTIVITY REPORT

MAY 2021

DRAFTED JUNE 18, 2021

Table of Contents

Overall Metrics	1
Summary	2
Sandbox Activity (October 2020 - May 2021)	2
Authorized Entities	4



OVERALL METRICS

Total Applications Received	47
Applicants Recommended to Court for Authorization	28
Applicants Denied Recommendation from Innovation Office	1
Applicants Denied Authorization by Court	0
Applicants Tabled (referral fees)	8
Inactive or Withdrawn Applicants Before Recommendation	7
Currently Under Office Review	2
Recommended to Court for Authorization Decision	1
Authorized Entities	28
Entities Reporting Data (this month)	7
Entities Recommended to Exit the Sandbox	0
Key Risks and Trends	There was one reported consumer-related complaint from reporting entities.



SUMMARY

This report summarizes activities and negative risk assessment of entities approved by the Utah Supreme Court to implement legal services within the Utah Sandbox and monitored by the Office of Legal Services Innovation. This report covers the period of October 2020 through May 2021.

SANDBOX ACTIVITY (OCTOBER 2020 - MAY 2021)

- 28 entities approved to offer services
 - Low Risk=4 (AGS Law, Blue Bee, Firmly, Hello Divorce)
 - Low/Moderate=10 (FOCL Law, Jordanelle Blocks, LawPal, Legal Claims, Inc., Mountain West Legal Protective, R&R, Robert Debry & Associates, Rocket Lawyer, Tanner, Xira)
 - Moderate=13 (1Law, Davis & Sanchez, DSD Solutions, Estate Guru, Holy Cross Ministries, LawGeex, Law HQ, Law on Call, Nuttall, Brown & Coutts, Off the Record, Pearson Butler, Sudbury Consulting, Timpanogos Legal Center)
 - High=1 (AAA Fair Credit)
 - 4% high risk; 46% moderate risk; 36% low/moderate risk; 14% low risk
- 12 entities reporting data to date; 8 reporting this period
 - 2 low risk entities; 6 low/moderate risk entities; 4 moderate entities
- 1896 legal services sought from over 1500 unduplicated clients
 - Low=113 legal services sought (2 entities)
 - Low/Moderate=491 legal services sought (6 entities)
 - Moderate=1292 legal services sought (4 entities)
 - 68% of legal services produced via moderate risk entities
 - 1459 legal services have been delivered by a lawyer (or lawyer employee) or software for form or document completion only with lawyer involvement
 - 437 legal services have been delivered by software with lawyer involvement
 - The rank of legal category addressed has been 1) End of Planning; 2) Business; 3) Marriage/Family; 4) Financial; 5) Accident/Injury. Five legal categories accounted for 77% of legal services. The remaining 15 possible legal categories accounted for 23%. The top three categories accounted for 58% of legal service.



- o To date, entities have reported two complaints to the Office. The first complaint was reported on in the previous report and received an appropriate response. The second complaint was found to fall outside of the three consumer harms.

Consumer Complaint Assessment: All Reporting Entities to Date

Complaint Risk Category	# Consumer Complaints	% Consumer Complaints
Consumer achieves an inaccurate or inappropriate legal result.	1	<1%
Consumer fails to exercise legal rights through ignorance or bad advice.	0	0%
Consumer purchases an unnecessary or inappropriate legal service.	0	0%

- o Audit materials have begun to be collected from two moderate risk entities that have delivered sufficient moderate risk services.
- o Applicable mismatches between services sought and received were linked to quality control of legal service intake coding (improving service sought identification methods) and error in the process of linking life events to appropriate legal needs. The Office concluded that mismatches were not harms. Audits of moderate risk services will further inform the mismatch issue as applicable to two entities.
- o Other identified data reporting issues were linked to entities having difficulty pulling data from internal systems to align with Sandbox prescribed coding. These issues were resolved through follow-up communications and/or data clarification requests.
- o Legal results were appropriate given legal matters and scope of service. Some distal legal outcomes will not be knowable by reasonable means.
- o The pilot of the vanguard service audits of moderate risk entities is ongoing. One entity has submitted audit materials, and the second entity is preparing to submit data on a subset of moderate risk services as selected by the Office. The Office is working through mechanisms to recruit and pay auditors but may use volunteers to pilot the audit method during June/July to expedite the process.



TABLE 1: AUTHORIZED ENTITIES

Entity Name	Risk Level	Service Models	Service Categories
10 - Blue Bee Bankruptcy	Low	Lawyers employed / managed by nonlawyers	Education
		<50% nonlawyer ownership	Consumer Financial Issues
15 - AGS Law	Low	<50% nonlawyer ownership	Business
			End of Life Planning
			Real Estate
19 - Firmly, LLC	Low	<50% nonlawyer ownership	Business
44 - Hello Divorce	Low	Lawyers employed / managed by nonlawyers	Marriage and Family
		<50% nonlawyer ownership	
04 - Lawpal	Low / Moderate	Lawyers employed / managed by nonlawyers	End of Life Planning
		50+% nonlawyer ownership	Consumer Financial Issues
		Software provider /w lawyer - doc completion	Housing (Rental)
			Marriage and Family
05 - Rocket Lawyer	Low / Moderate	Lawyers employed / managed by nonlawyers	Accident / Injury
			Adult Care
			Business
			Criminal Expungement
			Criminal (Other)
			Discrimination
			Domestic Violence
			Education
			Employment
			End of Life Planning
		50+% nonlawyer ownership	Consumer Financial Issues



			Healthcare
			Housing (Rental)
			Immigration
			Marriage and Family
			Military
			Public Benefits
			Real Estate
07 - R & R Legal Services	Low / Moderate	Lawyers employed / managed by nonlawyers	Accident / Injury
			Adult Care
			Business
			Domestic Violence
			End of Life Planning
		50+% nonlawyer ownership	Consumer Financial Issues
			Healthcare
			Marriage and Family
			Public Benefits
14 - FOCL Law	Low / Moderate	Lawyers employed / managed by nonlawyers	Marriage and Family
		50+% nonlawyer ownership	
		Software provider /w lawyer - doc completion	
32 - Tanner LLC (Withdrawn from Sandbox)	Low / Moderate	Lawyers employed / managed by nonlawyers	Business
		50+% nonlawyer ownership	
33 - Xira Connect	Low / Moderate	50+% nonlawyer ownership	Accident / Injury
			Adult Care
			Business
			Criminal Expungement
			Discrimination



		Fee Sharing	Domestic Violence
			Education
			Employment
			End of Life Planning
			Consumer Financial Issues
			Healthcare
			Housing (Rental)
			Immigration
		Intermediary Platform	Marriage and Family
			Military
			Native American / Tribal
			Public Benefits
			Real Estate
			Traffic Citations
37 - Robert DeBry (Withdrawn form Sandbox)	Low / Moderate	Lawyers employed / managed by nonlawyers	Accident / Injury
		50+% nonlawyer ownership	
38 - Davis & Sanchez	Low / Moderate	Lawyers employed / managed by nonlawyers	Accident / Injury
		50+% nonlawyer ownership	Education
39 - Legal Claims Benefits	Low / Moderate	Lawyers employed / managed by nonlawyers	Accident / Injury
			Education
		50+% nonlawyer ownership	Healthcare
			Military
41 - Mountain West Legal Protective	Low / Moderate	Lawyers employed / managed by nonlawyers	Housing - Rental
		50+% nonlawyer ownership	Real Estate



02 - 1Law	Moderate	Lawyers employed / managed by nonlawyers	Accident / Injury
			Adult Care
			Business
			Criminal Expungement
			Criminal (Other)
		50+% nonlawyer ownership	Discrimination
			Domestic Violence
			Education
			Employment
			End of Life Planning
		Software provider w/ lawyer involvement	Consumer Financial Issues
			Healthcare
			Housing (Rental)
			Immigration
		Non-lawyer provider w/ lawyer involvement	Marriage and Family
			Public Benefits
Real Estate			
Traffic Citations			
03 - Law HQ	Moderate	Lawyers employed / managed by nonlawyers	Accident / Injury
		50+% nonlawyer ownership	Business
		Software provider w/ lawyer involvement	Employment
12 - Nuttall Brown	Moderate	Lawyers employed / managed by nonlawyers	Accident Injury
		50+% nonlawyer ownership	Business
		Software provider w/ lawyer involvement	Discrimination
		Non-lawyer provider w/ lawyer involvement	Employment



			Marriage and Family
13 - Estate Guru	Moderate	Lawyers employed / managed by nonlawyers	Business
		50+% nonlawyer ownership	End of Life Planning
		Fee Sharing	Consumer Financial Planning
		Software provider /w lawyer - doc completion	Healthcare
		Software provider w/ lawyer involvement	Real Estate
		Non-lawyer provider w/ lawyer involvement	
23 - Off the Record	Moderate	50+% nonlawyer ownership	Traffic Citations
		Fee Sharing	
		Software provider w/ lawyer involvement	
27 - Sudbury Consulting	Moderate	Software provider w/ lawyer involvement	Criminal Expungement
			Employment
28 - Pearson Butler	Moderate	50+% nonlawyer ownership	Accident / Injury
			Adult Care
			Business
			Discrimination
			Education
		Fee Sharing	Employment
			End of Life Planning
			Consumer Financial Issues
			Housing (Rental)
			Immigration
		Non-lawyer provider w/ lawyer involvement	Marriage and Family
Military			



			Native American / Tribal
			Public Benefits
			Real Estate
30 - Law on Call	Moderate	Lawyers employed / managed by nonlawyers	Business
			End of Life Planning
		50+% nonlawyer ownership	Consumer Financial Issues
			Housing (Rental)
		Non-lawyer provider w/ lawyer involvement	Real Estate
31 - DSD Solutions	Moderate	Lawyers employed / managed by nonlawyers	Accident / Injury
			Business
			Criminal Expungement
		50+% nonlawyer ownership	Domestic Violence
			Employment
			End of Life Planning
		Software provider w/ lawyer involvement	Housing (Rental)
			Immigration
			Marriage and Family
		Non-lawyer provider w/ lawyer involvement	Public Benefits
			Real Estate
Traffic Citations			
36 - Timp. Cert. Advocates	Moderate	Nonlawyer provider w/out lawyer involvement	Domestic Violence
			Marriage and Family
42 - Jordanelle Blocks	Moderate	Lawyers employed / managed by nonlawyers	Business
		50+% nonlawyer ownership	
		Fee Sharing	Housing - Rental
		Software provider /w lawyer - doc completion	



		Software provider w/ lawyer involvement	Real Estate
		Non-lawyer provider w/ lawyer involvement	
43 - LawGeex	Moderate	Lawyers employed / managed by nonlawyers	Business
		50+% nonlawyer ownership	Healthcare
		Software provider w/ lawyer involvement	
45 - Holy Cross Ministries	Moderate	Non-lawyer provider w/ lawyer involvement	Financial Issues
			Immigration
			Health Care
			Public Benefits
46 - Gregory Hawkins	Moderate	Lawyer sharing fees with nonlawyers	End of life planning
47 - AAA Fair Credit	High	Non-lawyer provider w/out lawyer involvement	Financial Issues
			Healthcare
			Public Benefits



TABLE 2: AUTHORIZED ENTITIES REPORTING STATUSES

Entity Name	Risk Category	Launch Date	First Report Due	Frequency
Blue Bee Bankruptcy	Low	Oct. 1, 2020	Jan. 5, 2021	Quarterly
AGS Law	Low	Oct. 1, 2020	Jan. 5, 2021	Quarterly
Firmly LLC	Low	Jan. 1, 2021	Apr. 5, 2021	Quarterly
Hello Divorce	Low	Aug. 1, 2021	Oct. 5, 2021	Quarterly
Rocket Lawyer	Low-Moderate	Oct. 1, 2020	Nov. 5, 2020	Monthly
R&R Legal Services	Low-Moderate	Jan. 1, 2021	Feb. 5, 2021	Monthly
LawPal	Low-Moderate	Jan. 15, 2021	Jan. 5, 2021	Monthly
FOCL Law	Low-Moderate	Jan. 1, 2021	Feb. 5, 2021	Monthly
Xira Connect	Low- Moderate	Jun. 1, 2021	Jul. 5, 2021	Monthly
Davis & Sanchez	Low-Moderate	TBD	TBD	Monthly
Legal Claims Benefits	Low-Moderate	TBD	TBD	Monthly
1Law	Moderate	Oct. 1, 2020	Nov. 5, 2020	Monthly
LawHQ	Moderate	TBD	TBD	Monthly
Nuttal Brown	Moderate	Feb. 1, 2021	Mar. 5, 2021	Monthly
Estate Guru	Moderate	Dec. 1, 2020	Jan. 5, 2020	Monthly
Sudbury Consulting / Code for America	Moderate	TBD	TBD	Monthly
Off the Record	Moderate	TBD	TBD	Monthly
Law on Call	Moderate	Feb. 1, 2021	Mar. 5, 2021	Monthly
DSD Solutions	Moderate	Aug. 1, 2021	Sept. 5, 2021	Monthly
Pearson Butler	Moderate	Mar. 1, 2021	Apr. 5, 2021	Monthly
Timp Cert. Legal Advocates	Moderate	TBD	TBD	Monthly
Mountain West Legal Protective	Moderate	Jul. 1, 2021	Aug. 5, 2021	Monthly
Jordanelle Blocks	Moderate	TBD	TBD	Monthly
Law Geex	Moderate	Aug. 2, 2021	Sept. 1, 2021	Monthly
Holy Cross Ministries	Moderate	TBD	TBD	Monthly
Gregory Hawkins	Moderate	TBD	TBD	Monthly
AAA Fair Credit	High	TBD	TBD	Monthly



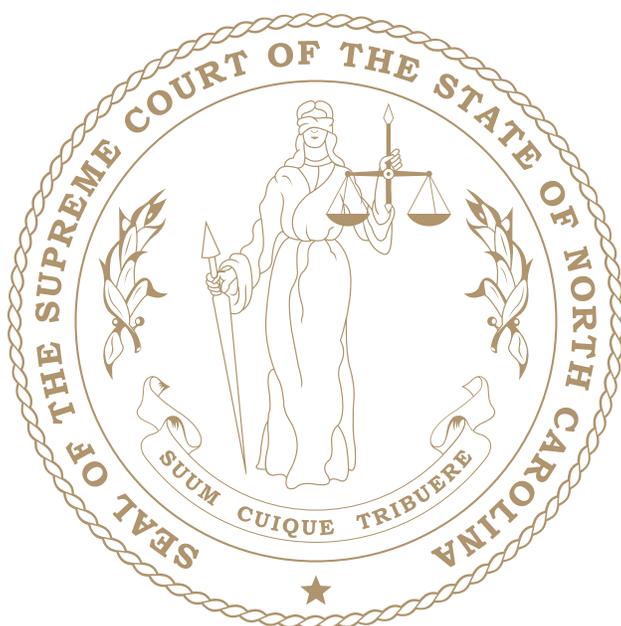
Alternative Business Structures Program

The following entities have been licensed by the Arizona Supreme Court

Status	License Name	Lic. #	Business Address	City	State	Zip	Email	Phone
ACTIVE	Payne Huebsch, PLC	70116	1955 S. Val Vista Dr., Ste 121	Mesa	AZ	85234	mike@taxpayne.com	602-699-4829
ACTIVE	Trajan Estate, LLC	70115	890 W. Elliott Rd., Ste. 110	Gilbert	AZ	85233	kent@phelpsestateplanning.com	480-771-0707
ACTIVE	MLR Professional Tax Services, LLC	70117	2440 N. Litchfield Rd., Ste 208	Goodyear	AZ	85395	mlr@mlrtaxservice.com	623-505-7141

GENERAL RULES OF PRACTICE

FOR THE SUPERIOR AND DISTRICT COURTS



CODIFIED BY THE OFFICE OF ADMINISTRATIVE
COUNSEL, SUPREME COURT OF NORTH CAROLINA

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Table of Contents

Foreword

Foreword	5
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Rules

Rule 1. Philosophy of General Rules of Practice	6
Rule 2. Calendaring of Civil Cases	6
Rule 2.1. Designation of Exceptional Civil Cases and Complex Business Cases	8
Rule 2.2. Designation of Special Superior Court Judge for Complex Business Cases.....	9
Rule 3. Continuances	10
Rule 3.1. Guidelines for Resolving Scheduling Conflicts	10
Rule 4. Enlargement of Time	12
Rule 5. Filing of Pleadings and Other Documents in Counties with <i>Odyssey</i>	12
Rule 5.1. Filing of Pleadings and Other Documents in Counties without <i>Odyssey</i>	14
Rule 6. Motions in Civil Actions.....	15
Rule 7. Pre-Trial Procedure (See Rule 16).....	16
Rule 7.1. [Appointment of Guardian Ad Litem for Minor Victim or Minor Witness].....	16
Rule 8. Discovery	17

Rule 9. Opening Statements	17
Rule 10. Opening and Concluding Arguments	17
Rule 11. Examination of Witnesses	18
Rule 12. Courtroom Decorum.....	18
Rule 13. Presence of Counsel During Jury Deliberation	19
Rule 14. Custody and Disposition of Evidence at Trial.....	19
Rule 15. Electronic Media and Still Photography Coverage of Public Judicial Proceedings	20
Rule 16. Withdrawal of Appearance	24
Rule 17. Entries on Records	25
Rule 18. Custody of Appellate Reports	25
Rule 19. Recordari; Supersedeas; Certiorari.....	25
Rule 20. Sureties.....	26
Rule 21. Jury Instruction Conference.....	26
Rule 22. Local Rules of Practice and Procedure.....	27
Rule 23. [Summary Jury Proceedings]	27
Rule 23.1. Summary Procedure for Significant Commercial Disputes	28
Rule 24. Pretrial Conference in Capital Cases.....	33

Rule 25. Motions for Appropriate Relief and Habeas Corpus Applications in
Capital Cases 33

Rule 26. Secure-Leave Periods for Attorneys 35

Rule 27. Sealed Documents and Protective Orders..... 37

Forms

Form 1. Certificate of Readiness 40

Form 2. Order on Final Pre-Trial Conference 41

Tables

A Publication Record of the General Rules of Practice 46

Foreword

The only codification of the General Rules of Practice that the Supreme Court of North Carolina has adopted is the original 1970 promulgation of the rule set, which is published at [276 N.C. 735–47](#). Since that original promulgation, the Court has adopted numerous amendments to the rules that vary in form and style from the original. This up-to-date codification gathers the rules together once again, but many of the inconsistencies in form and style that are present in the various amendments remain.

Still, I have made several minor changes to the form and style of the rules in this codification to improve their readability. Examples of my changes include the adjustment of spacing, the reformatting of text, and the addition of titles to untitled rules. These changes are meant to be nonsubstantive. Editor’s notes, which appear throughout the rule set, are intended to help the reader understand the editorial decisions that I have made. Nonetheless, if the reader wishes to view a rule as it has been approved by the Court, the history note after each rule contains links to the published orders of the Court.

Questions or feedback about this codification may be directed to rules@sc.nccourts.org.

Grant E. Buckner
Administrative Counsel
Supreme Court of North Carolina

**General Rules of Practice
for the Superior and District Courts
Supplemental to the Rules of Civil Procedure
Adopted Pursuant to G.S. 7A-34**

Rule 1. Philosophy of General Rules of Practice

These rules are applicable in the Superior and District Court Divisions of the General Court of Justice. They shall at all times be construed and enforced in such manner as to avoid technical delay and to permit just and prompt consideration and determination of all the business before them.

History Note.

276 N.C. 735.

Rule 2. Calendaring of Civil Cases

Subject to the provisions of Rule 40(a), Rules of Civil Procedure and G.S. 7A-146:

(a) The Senior Resident Judge and Chief District Judge in each Judicial District shall be responsible for the calendaring of all civil cases and motions for trial or hearing in their respective jurisdictions. A case management plan for the calendaring of civil cases must be developed by the Senior Resident Judge and the Chief District Court Judge. The Administrative Office of the Courts shall be available to provide assistance to judges in developing a case management program.

The effective date of the plan and any amendments thereto shall be either January 1 or July 1. The plan must be promulgated in writing and copies of the plan must be distributed to all attorneys of record within the judicial district. In order to provide for statewide dissemination, copies of plans effective January 1 shall be filed with the Administrative Office of the Courts on or before October 31 and on or before April 30 for plans effective July 1.

In districts with Trial Court Administrators, the responsibility for carrying out the case management plan may be delegated to the Trial Court Administrator.

The case management plan must contain a provision that attorneys may request that cases may be placed on the calendar.

(b) The civil calendar shall be prepared under the supervision of the Senior Resident Judge or Chief District Court Judge. Calendars must be published and distributed by the Clerk of Court to each attorney of record (or party where there is no attorney of record) and presiding judge no later than four weeks prior to the first day of court.

(c) Except in districts served by a Trial Court Administrator, a ready calendar shall be maintained by the Clerk of Court for the District and Superior Courts. Five months after a complaint is filed, the Clerk shall place that case on a ready calendar, unless the time is extended by written order of the Senior Resident Judge or the Chief District Judge for their respective jurisdictions. In districts with Trial Court Administrators, a case tracking system shall be maintained.

(d) During the first full week in January and the first full week following the 4th of July or such other weeks as the Senior Resident Judge shall designate that are agreeable to the Chief Justice, the Senior Resident Judge of each district shall be assigned to his home district for administrative purposes. During such administrative terms, the Senior Resident Judge shall be responsible for reviewing all cases on the ready calendar, or all cases designated by the Trial Court Administrator, of each county in the judicial district. The Senior Resident Judge shall take appropriate actions to insure prompt disposition of any pending motions or other matters necessary to move the cases toward a conclusion. The Chief District Court Judge shall undertake periodically such an administrative review of the District Court Civil Docket.

(e) When an attorney is notified to appear for the setting of a calendar, pretrial conference, hearing of a motion or for trial, he must, consistent with ethical requirements, appear or have a partner, associate or another attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before whom the matter is scheduled and has given prior notice to his opponent, a case will not be continued.

(f) Requests for a peremptory setting for cases involving persons who must travel long distances or numerous expert witnesses or other extraordinary reasons for such a request must be made to the Senior Resident Judge or Chief District Judge. In districts with Trial Court Administrators, requests should be made to the Trial Court Administrator. A peremptory setting shall be granted only for good and compelling reasons. A Senior Resident Judge or Chief District Judge may set a case peremptorily on his own motion.

(g) When a case on a published calendar (tentative or final) is settled, all attorneys of record must notify the Trial Court Administrator (Clerk of Court in those counties with no Trial Court Administrator) within twenty-four (24) hours of the settlement and advise who will prepare and present judgment, *and when*.

History Note.

276 N.C. 735; 300 N.C. 751; 322 N.C. 842; 374 N.C. 943.

Editor's Note.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 2.1. Designation of Exceptional Civil Cases and Complex Business Cases

(a) The Chief Justice may designate any case or group of cases as (a) “exceptional” or (b) “complex business.” A senior resident superior court judge, chief district court judge, or presiding superior court judge may ex mero motu, or on motion of any party, recommend to the Chief Justice that a case or cases be designated as exceptional or complex business.

(b) Such recommendation for exceptional cases may include special areas of expertise needed by the judge to be assigned and may include a list of recommended judges. Every complex business case shall be assigned to a special superior court judge for complex business cases, designated by the Chief Justice under Rule 2.2, who shall issue a written opinion upon final disposition of the case.

(c) Such recommendation shall be communicated to the Chief Justice through the Administrative Office of the Courts.

(d) Factors which may be considered in determining whether to make such designations include: the number and diverse interests of the parties; the amount and nature of anticipated pretrial discovery and motions; whether the parties voluntarily agree to waive venue for hearing pretrial motions; the complexity of the evidentiary matters and legal issues involved; whether it will promote the efficient administration of justice; and such other matters as the Chief Justice shall deem appropriate.

(e) The Chief Justice may enter such orders as are appropriate for the pretrial, trial, and other disposition of such designated case or cases.

History Note.

319 N.C. 683; 341 N.C. 737.

Editor’s Note.

In the order amending Rule 2.1, [341 N.C. 737](#), quotation marks around the word “exceptional” in subsection (a) were deleted without a strikethrough. This change has been treated as inadvertent. Accordingly, “exceptional” appears in this codification with quotation marks.

In the order amending Rule 2.1, [341 N.C. 737](#), a period after the word “exceptional” in subsection (a) was deleted without a strikethrough, and the word “cases” was inserted into the first sentence of subsection (b) without an underline. These changes have been treated as intentional. Accordingly, the period after “exceptional” does not appear in this codification, but “cases” does.

Rule 2.2. Designation of Special Superior Court Judge for Complex Business Cases

The Chief Justice shall designate one or more superior court judges as special judges to hear and decide complex business cases as provided in Rule 2.1. Any judge so designated shall be known as a Special Superior Court Judge for Complex Business Cases.

Comment

The portion of this rule providing for the designation of a case as “exceptional” has been in effect in North Carolina since January 5, 1988, and has been utilized numerous times in various situations. The portion of this rule providing for the designation of a “complex business case” was adopted by the North Carolina Supreme Court on August 28, 1995, as a result of a recommendation in the January 1995 ANNUAL REPORT OF THE NORTH CAROLINA COMMISSION ON BUSINESS LAWS AND THE ECONOMY chaired by the North Carolina Attorney General.

The North Carolina Commission on Business Laws and the Economy was established by an executive order of the Governor on April 19, 1994, to recommend “any needed changes in existing statutes and regulations which affect the operation of businesses in North Carolina, particularly Chapter 55 of the North Carolina General Statutes . . . and to recommend any needed new statutes, rules and regulations designed to assure that North Carolina offers a legal environment which provides the flexibility and support to allow businesses to operate successfully in this state and which will attract them to locate and incorporate here.”

The Commission’s report noted that many national corporations incorporate in the state of Delaware because of that state’s Chancery Court

which provides a high level of judicial expertise on corporate law issues. It also observed the desirability of a state having a substantial body of corporate law that provides predictability for business decision making. Also, it is essential that corporations litigating complex business issues receive timely and well reasoned written decisions from an expert judge.

Accordingly, the Commission recommended that the North Carolina Supreme Court amend Rule 2.1 to allow the Chief Justice to designate certain cases as complex business cases. The Commission also recommended that the Governor appoint at least one expert in corporate law matters as a Special Judge to hear cases designated by the Chief Justice pursuant to Rule 2.2.

The term “complex business case” is purposely not defined in order to give litigants the flexibility to seek a designation as such with respect to any business issue that they believe requires special judicial expertise. It is anticipated that any case involving significant issues arising under Chapters 55, 55B, 57C, 59, 78A, 78B and 78C of the General Statutes of North Carolina would be designated a complex business case.

History Note.

341 N.C. 737.

Editor’s Note.

The order adopting Rule 2.2, 341 N.C. 737, includes the above comment.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 3. Continuances

An application for a continuance shall be made to the presiding judge of the court in which the case is calendared.

History Note.

276 N.C. 735; 282 N.C. 737; 356 N.C. 703.

Rule 3.1. Guidelines for Resolving Scheduling Conflicts

(a) In resolving scheduling conflicts when an attorney has conflicting engagements in different courts, the following priorities should ordinarily prevail:

1. Appellate courts should prevail over trial courts.
2. Any of the trial court matters listed in this subdivision, regardless of trial division, should prevail over any trial court matter not listed in this subdivision, regardless of trial division; there is no priority among the matters listed in this subdivision:
 - any trial or hearing in a capital case;
 - the trial in any case designated pursuant to Rule 2.1 of these Rules;
 - the trial in a civil action that has been peremptorily set as the first case for trial at a session of superior court;
 - the trial of a criminal case in superior court, when the defendant is in jail or when the defendant is charged with a Class A through E felony and the trial is reasonably expected to last for more than one week;
 - the trial in an action or proceeding in district court in which any of the following is contested:
 - termination of parental rights,
 - child custody,
 - adjudication of abuse, neglect or dependency or disposition following adjudication,
 - interim or final equitable distribution,
 - alimony or post-separation support.
3. When none of the above priorities applies, priority shall be as follows: superior court, district court, magistrate's court.

(b) When an attorney learns of a scheduling conflict between matters in the same priority category, the attorney shall promptly give written notice to opposing counsel, the clerk of all courts and the appropriate judges in all cases, stating therein

the circumstances relevant to resolution of the conflict under these guidelines. When the attorney learns of the conflict before the date on which the matters are scheduled to be heard, the appropriate judges are Senior Resident Superior Court Judges for matters pending in the Superior Court Division and Chief District Court Judges for matters pending in the District Court Division; otherwise the appropriate judges are the judges presiding over those matters. The appropriate judges should promptly confer, resolve the conflict, and notify counsel of the resolution.

(c) In resolving scheduling conflicts between court proceedings in the same priority category, the presiding judges should give consideration to the following:

- the comparative age of the cases;
- the order in which the trial dates were set by published calendar, order or notice;
- the complexity of the cases;
- the estimated trial time;
- the number of attorneys and parties involved;
- whether the trial involves a jury;
- the difficulty or ease of rescheduling;
- the availability of witnesses, especially a child witness, an expert witness or a witness who must travel a long distance;
- whether the trial in one of the cases had already started when the other was scheduled to begin.

(d) When settlement proceedings have been ordered in superior or district court cases, only trials, hearings upon dispositive motions, and hearings upon motions scheduled for counties with less than one court session per month shall have precedence over settlement proceedings.

(e) When a mediator, other neutral, or attorney learns of a scheduling conflict between a court proceeding and a settlement proceeding, the mediator, other neutral, unrepresented parties or attorneys shall **promptly** give written notice to the appropriate judges and request them to resolve the conflict; stating therein the circumstances relevant to a determination under (d) above.

(f) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

History Note.

356 N.C. 703; 358 N.C. 746.

Rule 4. Enlargement of Time

The judge or clerk of the court in which the action is pending may by order extend the time for filing answer.

When counsel, by consent under Rule 6(b), agree upon an enlargement of time, the agreement shall be reduced to writing and filed with the clerk.

History Note.

276 N.C. 735.

Editor's Note.

The rule referenced in the second paragraph of Rule 4 is ostensibly Rule 6(b) of the North Carolina Rules of Civil Procedure.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 5. Filing of Pleadings and Other Documents in Counties with *Odyssey*

(a) **Scope.** This rule applies only in those counties that have implemented *Odyssey*, the Judicial Branch's new electronic-filing and case-management system. The Administrative Office of the Courts maintains a list of the counties with *Odyssey* at <https://www.nccourts.gov/ecourts>. In a county without *Odyssey*, a person must proceed under Rule 5.1 of these rules.

(b) Electronic Filing in *Odyssey*.

- (1) **Registration.** A person must register for a user account to file documents electronically. The Administrative Office of the Courts must ensure that the registration process includes security procedures consistent with N.C.G.S. § 7A-49.5(b1).
- (2) **Requirement.** An attorney must file pleadings and other documents electronically. A person who is not represented by an attorney is encouraged to file pleadings and other documents electronically but is not required to do so.
- (3) **Signing a Document Electronically.** A person may sign a document electronically by typing his or her name in the document preceded by "/s/."
- (4) **Time.**
 - a. **When Filed.** A document is filed when it is received by the court's electronic-filing system, as evidenced by the file stamp on the face of the document.
 - b. **Deadline.** If a document is due on a date certain, then the document must be filed by 5:00 p.m. Eastern Time on that date.

- (5) **Relief if Emergency Prevents Timely Filing.** If an *Odyssey* service outage, natural disaster, or other emergency prevents an attorney from filing a document in a timely manner by use of the electronic-filing system, then the attorney may file a motion that asks the court for any relief that is permitted by law.
- (6) **Orders, Judgments, Decrees, and Court Communications.** The court may sign an order, judgment, decree, or other document electronically and may file a document electronically. The court may also send notices and other communications to a person by use of the electronic-filing system.

(c) **Paper Filing.** Documents filed in paper with the court should be unfolded and firmly bound with no manuscript cover. They must be letter size (8 ½" x 11"), except for wills and exhibits. The clerk of superior court may require a party to refile a document that does not conform to these requirements.

In civil actions, special proceedings, and estates, documents filed in paper with the court must include a cover sheet that summarizes the critical elements of the document in a format that the Administrative Office of the Courts prescribes. The clerk of superior court may not reject the filing of a document that does not include a cover sheet. Instead, the clerk must file the document, notify the party of the omission, and grant the party no more than five days to file the cover sheet. Other than dismissing the case, the court should not act on the document before the cover sheet is filed.

(d) **Service.** Service of pleadings and other documents must be made as provided by the General Statutes. A Notification of Service generated by the court's electronic-filing system is an "automated certificate of service" under Rule 5(b1) of the Rules of Civil Procedure.

(e) **Private Information.** A person should omit or redact nonpublic and unneeded sensitive information in a document before filing it with the court.

(f) **Business Court Cases.** The filing of documents with the North Carolina Business Court is governed by the [North Carolina Business Court Rules](#). This rule defines how a person must file a document "with the Clerk of Superior Court in the county of venue" under Rule 3.11 of the North Carolina Business Court Rules in counties with *Odyssey*.

Comment

The North Carolina Judicial Branch will implement *Odyssey*, a statewide electronic-filing and case-management system, beginning in July 2021. The system will be made available across the state in phases over a five-year period.

Rule 5 of the General Rules of Practice defines filing in those counties with *Odyssey*.

Rule 5.1 defines filing in those counties without *Odyssey*.

Subsection (b)(2) of Rule 5 requires an attorney to file pleadings and other documents electronically. An attorney who seeks relief from this filing requirement for a particular document should be prepared to show the existence of an

exceptional circumstance. In an exceptional circumstance, the attorney should exercise due diligence to file the document electronically before the attorney asks the court for relief.

Subsection (b)(5) of Rule 5 describes the process of asking the court for relief if an emergency prevents an attorney from filing a document electronically in a timely manner. Subsection (b)(5) should not be construed to expand the court's authority to extend time or periods of limitation. The court will provide relief only as permitted by law.

The North Carolina Business Court currently accepts filings through *eFlex*, a legacy electronic-filing and case-management system.

History Note.

276 N.C. 735; 304 N.C. 743; 344 N.C. 743; 346 N.C. 805; Order Dated 23 September 2020; Order Dated 21 April 2021.

Until *Odyssey* is implemented both in the Business Court and in the county of venue, duplicate filings in Business Court cases will still be required (see Rule 3.11 of the [North Carolina Business Court Rules](#)). Subsection (f) of Rule 5 of the General Rules of Practice clarifies that in Business Court cases, Rule 5 governs filings “with the Clerk of Superior Court in the county of venue.”

As *Odyssey* is implemented, litigants should expect the General Rules of Practice, the North Carolina Business Court Rules, and the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project to undergo change.

Rule 5.1. Filing of Pleadings and Other Documents in Counties without *Odyssey*

(a) **Scope.** This rule applies only in those counties that have not yet implemented *Odyssey*, the Judicial Branch's new electronic-filing and case-management system. In a county with *Odyssey*, a person must proceed under Rule 5 of these rules.

(b) **Electronic Filing.** Electronic filing is available only in (i) cases that are either designated “complex business” or assigned to a Business Court judge under Rule 2.1 of these rules and (ii) cases subject to the legacy North Carolina eFiling Pilot Project. The procedure for filing documents electronically in those cases is governed by the [North Carolina Business Court Rules](#) and by the [Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project](#), respectively. In all other cases, only paper filing is available.

(c) **Paper Filing.** Documents filed in paper with the court should be unfolded and firmly bound with no manuscript cover. They must be letter size (8 ½" x 11"), except for wills and exhibits. The clerk of superior court may require a party to refile a document that does not conform to these requirements.

In civil actions, special proceedings, and estates, documents filed in paper with the court must include a cover sheet that summarizes the critical elements of the document in a format that the Administrative Office of the Courts prescribes. The clerk of superior court may not reject the filing of a document that does not include a cover sheet. Instead, the clerk must file the document, notify the party of the omission, and grant the party no more than five days to file the cover sheet.

Other than dismissing the case, the court should not act on the document before the cover sheet is filed.

Comment

The North Carolina Judicial Branch will implement *Odyssey*, a statewide electronic-filing and case-management system, beginning in July 2021. The system will be made available across the state in phases over a five-year period.

Rule 5 of the General Rules of Practice defines filing in those counties with *Odyssey*. Rule 5.1 defines filing in those counties without *Odyssey*.

Subsection (b) of Rule 5.1 lists those contexts in which electronic filing exists in the counties without *Odyssey*.

As *Odyssey* is implemented, litigants should expect the General Rules of Practice, the North Carolina Business Court Rules, and the Supplemental Rules of Practice and Procedure for the North Carolina eFiling Pilot Project to undergo change.

History Note.

[Order Dated 21 April 2021.](#)

Rule 6. Motions in Civil Actions

All motions, written or oral, shall state the rule number or numbers under which the movant is proceeding. (See Rule 7 of Rules of Civil Procedure.)

Motions may be heard and determined either at the pre-trial conference or on motion calendar as directed by the presiding judge.

Every motion shall be signed by at least one attorney of record in his individual name. He shall state his office address and telephone number immediately following his signature. The signature of an attorney constitutes a certificate by him that he has read the motion; that to the best of his knowledge, information and belief, there are good grounds to support it; and that the motion is not interposed for delay. (See Rule 7(b)(2); also Rule 11).

The court in civil matters, on its motion or upon motion by a party, may in its discretion order that argument of any motion be accomplished by means of a telephone conference without requiring counsel to appear in court in person. Upon motion of any party, the court may order such argument to be recorded in such manner as the court shall direct. The court may direct which party shall pay the costs of the telephone calls. Conduct of counsel during such arguments may be subject to punishment as for direct criminal contempt of court.

History Note.

[276 N.C. 735, 311 N.C. 774.](#)

Editor's Note.

The rules referenced in the third paragraph of Rule 6 are ostensibly Rule 7(b)(2) and Rule 11 of the North Carolina Rules of Civil Procedure.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 7. Pre-Trial Procedure (See Rule 16)

There shall be a pre-trial conference in every civil case, unless counsel for all parties stipulate in writing to the contrary and the court approves the stipulation. Upon its own motion or upon request of any party, the court may dispense with or limit the scope of the pre-trial conference or order.

In uncontested divorce, default, and magistrate cases and magistrate appeals, a pre-trial conference or order is not required.

A party who has not requested a pre-trial conference may not move for a continuance on the ground that it has not been held.

At least twenty-one days prior to trial date, the plaintiff's attorney shall arrange a pre-trial conference with the defendant's attorney to be held not later than seven days before trial date. At such conference a pre-trial order shall be prepared and signed by the attorneys.

If, after due diligence, plaintiff's attorney cannot arrange a conference with defendant's attorney, he may apply to the presiding judge or other judge holding court in the district (or district court judge with respect to district court cases) who shall make an appropriate order. The defense attorney may initiate pre-trial under the same rules applicable to plaintiff's attorney.

The pre-trial order shall be in substance as shown on the attached [sample form](#).

History Note.

[276 N.C. 735](#).

Editor's Note.

The rule referenced in the title of Rule 7 is ostensibly Rule 16 of the North Carolina Rules of Civil Procedure.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 7.1. [Appointment of Guardian Ad Litem for Minor Victim or Minor Witness]

When any person is charged with a crime wherein the victim is a minor, or a minor is a potential witness to such crime, the court may appoint an attorney, from a list of *pro bono* attorneys approved by the Chief District Court Judge, as guardian ad litem for such minor victim or witness.

History Note.

[327 N.C. 670](#).

Editor's Note.

The order adopting Rule 7.1, [327 N.C. 670](#), does not indicate a title for the rule. The title that appears in brackets, above, was added by the editor.

Rule 8. Discovery

Counsel are required to begin promptly such discovery proceedings as should be utilized in each case, and are authorized to begin even before the pleadings are completed. Counsel are not permitted to wait until the pre-trial conference is imminent to initiate discovery.

History Note.

276 N.C. 735; 322 N.C. 842.

Rule 9. Opening Statements

At any time before the presentation of evidence counsel for each party may make an opening statement setting forth the grounds for his claim or defense.

The parties may elect to waive opening statements.

Opening statements shall be subject to such time and scope limitations as may be imposed by the court.

History Note.

276 N.C. 735.

Rule 10. Opening and Concluding Arguments

In all cases, civil or criminal, if no evidence is introduced by the defendant, the right to open and close the argument to the jury shall belong to him. If a question arises as to whether the plaintiff or the defendant has the final argument to the jury, the court shall decide who is so entitled, and its decision shall be final.

In a criminal case, where there are multiple defendants, if any defendant introduces evidence the closing argument shall belong to the solicitor.

In a civil case, where there are multiple defendants, if any defendant introduces evidence, the closing argument shall belong to the plaintiff, unless the trial judge shall order otherwise.

History Note.

276 N.C. 735.

Editor's Note.

After Rule 10 was adopted, "solicitor" was changed in the Constitution to "district attorney." Compare N.C. Const. art. IV, § 18 (showing the current title as "district attorney"), with N.C. Const. of 1868, art. IV, § 16 (1962) (showing the former title as "solicitor").

Rule 11. Examination of Witnesses

When several counsel are employed by the same party, the examination or cross-examination of each witness for such party shall be conducted by one counsel, but the counsel may change with each successive witness or, with leave of the court, in a prolonged examination of a single witness.

History Note.

276 N.C. 735.

Rule 12. Courtroom Decorum

Except for some unusual reason connected with the business of the court, attorneys will not be sent for when their cases are called in their regular order.

Counsel are at all times to conduct themselves with dignity and propriety. All statements and communications to the court other than objections and exceptions shall be clearly and audibly made from a standing position behind the counsel table. Counsel shall not approach the bench except upon the permission or request of the court.

The examination of witnesses and jurors shall be conducted from a sitting position behind the counsel table except as otherwise permitted by the court (see *S. vs. Bass*, 5 N.C. App. 429, 431 (1969)). Counsel shall not approach the witness except for the purpose of presenting, inquiring about, or examining the witness with respect to an exhibit, document, or diagram.

Any directions or instructions to the court reporter are to be made in open court by the presiding judge only, and not by an attorney.

Business attire shall be appropriate dress for counsel while in the courtroom.

All personalities between counsel should be avoided. The personal history or peculiarities of counsel on the opposing side should not be alluded to. Colloquies between counsel should be avoided.

Adverse witnesses and suitors should be treated with fairness and due consideration. Abusive language or offensive personal references are prohibited.

The conduct of the lawyers before the court and with other lawyers should be characterized by candor and fairness. Counsel shall not knowingly misinterpret the contents of a paper, the testimony of a witness, the language or argument of opposite counsel or the language of a decision or other authority; nor shall he offer evidence which he knows to be inadmissible. In an argument addressed to the court, remarks or statements should not be interjected to influence the jury or spectators. (See Rule 22, Canons of Ethics and Rules of Professional Conduct, N.C. State Bar, G.S. 4A p. 273.)

Suggestions of counsel looking to the comfort or convenience of jurors should be made to the court out of the jury's hearing. Before, and during trial, a lawyer should attempt to avoid communicating with jurors, even as to matters foreign to the cause.

Counsel should yield gracefully to rulings of the court and avoid detrimental remarks both in court and out. He should at all times promote respect for the court. (See Rule 1, Canons of Ethics and Rules of Professional Conduct, N.C. State Bar, G.S. 4A p. 269.)

History Note.

276 N.C. 735.

Editor's Note.

In the order adopting Rule 12, 276 N.C. 735, the reference to *State v. Bass* is set off by brackets. In this codification, those brackets have been replaced by parentheses so that the reference is not mistakenly interpreted as an alteration by the editor.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 13. Presence of Counsel During Jury Deliberation

The right to be present during the trial of civil cases shall be deemed to be waived by a party or his counsel by voluntary absence from the courtroom at a time when it is known that proceedings are being conducted, or are about to be conducted. In such event the proceedings, including the giving of additional instructions to the jury after they have once retired, or receiving the verdict, may go forward without waiting for the arrival or return of counsel or a party.

After the jury has retired to deliberate upon a verdict in a criminal case, at least one attorney representing the defendant shall remain in the immediate area of the courtroom so as to be available at all times during the deliberation of the jury and when the verdict is received.

History Note.

276 N.C. 735.

Rule 14. Custody and Disposition of Evidence at Trial

Once any item of evidence has been introduced, the clerk (not the court reporter) is the official custodian thereof and is responsible for its safekeeping and availability for use as needed at all adjourned sessions of the court and for appeal.

After being marked for identification, all exhibits offered or admitted in evidence in any cause shall be placed in the custody of the clerk, unless otherwise ordered by the court.

Whenever any models, diagrams, exhibits, or materials have been offered into evidence and received by the clerk, they shall be removed by the party offering them, except as otherwise directed by the court, within 30 days after final judgment in the trial court if no appeal is taken; if the case is appealed, within 60 days after certification of a final decision from the appellate division. At the time of removal a detailed receipt shall be given to the clerk and filed in the case file.

If the party offering an exhibit which has been placed in the custody of the clerk fails to remove such article as provided herein, the clerk shall write the attorney of record (or the party offering the evidence if he has no counsel) calling attention to the provisions of this rule. If the articles are not removed within 30 days after the mailing of such notice, they may be disposed of by the clerk.

History Note.

276 N.C. 735.

Rule 15. Electronic Media and Still Photography Coverage of Public Judicial Proceedings

(a) **Definition.** The terms “electronic media coverage” and “electronic coverage” are used in the generic sense to include coverage by television, motion picture and still photography cameras, broadcast microphones and recorders.

(b) **Coverage allowed.** Electronic media and still photography coverage of public judicial proceedings shall be allowed in the appellate and trial courts of this state, subject to the conditions below.

- (1) The presiding justice or judge shall at all times have authority to prohibit or terminate electronic media and still photography coverage of public judicial proceedings, in the courtroom or the corridors immediately adjacent thereto.
- (2) Coverage of the following types of judicial proceedings is expressly prohibited: adoption proceedings, juvenile proceedings, proceedings held before clerks of court, proceedings held before magistrates, probable cause proceedings, child custody proceedings, divorce proceedings, temporary and permanent alimony proceedings, proceedings for the hearing of motions to suppress evidence, proceedings involving trade secrets, and in camera proceedings.
- (3) Coverage of the following categories of witnesses is expressly prohibited: police informants, minors, undercover agents, relocated witnesses, and victims and families of victims of sex crimes.

- (4) Coverage of jurors is prohibited expressly at any stage of a judicial proceeding, including that portion of a proceeding during which a jury is selected. The trial judge shall inform all potential jurors at the beginning of the jury selection process of the restrictions of this particular provision which is designated (b)(4).
- (c) **Location of equipment and personnel.**
- (1) The location of equipment and personnel necessary for electronic media and still photographic coverage of trial proceedings shall be at a place either inside or outside the courtroom in such a manner that equipment and personnel are completely obscured from view from within the courtroom and not heard by anyone inside the courtroom.
 - (i) If located within the courtroom, this area must be set apart by a booth or other partitioning device constructed therein at the expense of the media. Such construction must be in harmony with the general architectural style and decor of the courtroom and must meet the approval of the Senior Resident Superior Court Judge and the governing body of the county or municipality that owns the facility.
 - (ii) If located outside the courtroom, any booth or other partitioning device must be built so that passage to and from the courtroom will not be obstructed. This arrangement must meet the approval of the Senior Resident Superior Court Judge and the governing body of the county or municipality that owns the facility.
 - (2) Appropriate openings to allow photographic coverage of the proceedings under these rules may be made in the booth or partitioning device, provided that no one in the courtroom will see or hear any photographic or audio equipment or the personnel operating such equipment. Those in the courtroom are not to know when or if any such equipment is in operation.
 - (3) The presiding judge may, however, exercise his or her discretion to permit the use of electronic media and still photography coverage without booths or other restrictions set out in Rule 15(c)(1) and (c)(2) if the use can be made without disruption of the proceedings and without distraction to the jurors and other participants. Such permission may be withdrawn at any time.
 - (4) Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the courtroom.

- (5) Media personnel shall not exit or enter the booth area or courtroom once the proceedings are in session except during a court recess or adjournment.
 - (6) Electronic media equipment and still photography equipment shall not be taken into the courtroom or removed from the designated media area except at the following times:
 - (i) prior to the convening of proceedings;
 - (ii) during the luncheon recess;
 - (iii) during any court recess with the permission of the presiding justice or judge; and
 - (iv) after adjournment for the day of the proceedings.
 - (7) The Chief Justice of the Supreme Court, and the Chief Judge of the Court of Appeals may waive the requirements of Rule 15(c)(1) and (2) with respect to judicial proceedings in the Supreme Court and in the Court of Appeals, respectively.
- (d) **Official representatives of the media.**
- (1) This Court hereby designates the North Carolina Association of Broadcasters, the Radio and Television News Directors Association of the Carolinas, and the North Carolina Press Association, as the official representatives of the news media. The governing boards of these associations shall designate one person to represent the television media, one person to represent the radio broadcasters, and one person to represent still photographers in each county in which electronic media and still photographic coverage is desired. The names of the persons so designated shall be forwarded to the Senior Resident Superior Court Judge, the Director of the Administrative Office of the Courts, and the county manager or other official responsible for administrative matters in the county or municipality in which coverage is desired. Thereafter, these persons shall conduct all negotiations with the appropriate officials concerning the construction of the booths or partitioning devices referred to above. Such persons shall also be the only persons authorized to speak for the media to the presiding judge concerning the coverage of any judicial proceedings.
 - (2) It is the express intent and purpose of this rule to preclude judges and other officials from having to “negotiate” with various representatives of the news media. Since these rules require pooling of equipment and personnel, cooperation by the media is of the essence and the designation of three media representatives

is expressly intended to prevent presiding judges from having to engage in discussion with others from the media.

(e) **Equipment and personnel.**

- (1) Not more than two television cameras shall be permitted in any trial or appellate court proceedings.
- (2) Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes, shall be permitted in any proceeding in a trial or appellate court.
- (3) Not more than one wired audio system for radio broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup for all media purposes shall be accomplished with existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes may be installed and maintained at media expense. The microphones and wiring must be unobtrusive and shall be located in places designated in advance of any proceeding by the Senior Resident Superior Court Judge of the judicial district in which the court facility is located. Such modifications or additions must be approved by the governing body of the county or municipality which owns the facility. Provided, however, hand-held audio tape recorders may be used upon prior notification to, and with the approval of, the presiding judge; such approval may be withdrawn at any time.
- (4) Any “pooling” arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.
- (5) In no event shall the number of personnel in the designated area exceed the number necessary to operate the designated equipment or which can comfortably be secluded in the restricted area.

(f) **Sound and light criteria.**

- (1) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover

judicial proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera.

- (2) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with a still camera.

(g) **Courtroom light sources.** With the concurrence of the Senior Resident Superior Court Judge of the judicial district in which a court facility is situated, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained without public expense and provided such modifications or additions are approved by the governing body of the county or municipality which owns the facility.

(h) **Conferences of counsel.** To protect the attorney-client privilege and the right to counsel, there shall be no audio pickup or broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge held at the bench.

(i) **Impermissible use of media material.** None of the film, video tape, still photographs or audio reproductions developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any retrial or appeal of such proceedings.

History Note.

276 N.C. 735; 306 N.C. 797; 307 N.C. 741; 311 N.C. 775; 319 N.C. 681; 322 N.C. 868; 327 N.C. 664.

Rule 16. Withdrawal of Appearance

No attorney who has entered an appearance in any civil action shall withdraw his appearance, or have it stricken from the record, except on order of the court. Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court. (See *Smith vs. Bryant*, 264 N.C. 208. See also Rule 43 of Rules of the N.C. State Bar, Volume 4A of General Statutes of North Carolina, page 278, entitled “Withdrawal from employment as attorney or counsel.”)

History Note.

276 N.C. 735.

Editor’s Note.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 17. Entries on Records

No entry shall be made on the records of the Superior or District Court by any person except the clerk, his regular deputy, a person specifically directed by the presiding judge, or the judge himself.

History Note.

276 N.C. 735.

Rule 18. Custody of Appellate Reports

The clerks of the Superior Court shall be officially responsible for the care and preservation of the volumes of the Appellate Division Reports furnished by the State pursuant to G.S. 147-45, and for the General Statutes of North Carolina furnished by the Administrative Office of the Courts under G.S. 7A-300(9).

Each clerk of the Superior Court shall report to the presiding judge of the Superior Court at the first session of court held in January and July each year what volumes, if any, of said reports are missing or have been lost since the last report to the end that the judge may enter an appropriate order for replacement of same pursuant to G.S. 147-51.

History Note.

276 N.C. 735.

Editor's Note.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 19. Recordari; Supersedeas; Certiorari

The Superior Court shall grant the writ of recordari only upon petition specifying the grounds of the application. The petition shall be verified and the writ may be granted with or without notice. When notice is given the petition shall be heard upon answer thereto duly verified and upon the affidavits and other evidence offered by the parties. The decision thereupon shall be final, subject to appeal as in other cases. If the petition is granted without notice, the petitioner shall give an undertaking for costs and for the writ of supersedeas, if prayed for. In such case the writ of recordari shall be made returnable to the session of the Superior Court of the county in which the judgment or proceeding complained of was granted, and ten days' written notice shall be given to the adverse party before the session of the court to which the writ is returnable. At that session the respondent may move to dismiss, or may answer the writ, and the answer shall be verified. After hearing the application upon the petition, answer, affidavits, and evidence offered, the court shall dismiss it or order it placed on the trial docket.

In proper cases and in like manner, the court may grant the writ of certiorari. When a diminution of the record is suggested and the record is manifestly imperfect, the court may grant the writ upon motion in the cause.

History Note.

276 N.C. 735.

Rule 20. Sureties

No member of the bar, in any case, suit, action or proceeding in which he appears as counsel, and no employee of the General Court of Justice, employee of the Sheriff's Department, or other law enforcement officer, shall act as a surety in any suit, action or proceeding pending in any division of the General Court of Justice.

History Note.

276 N.C. 735.

Rule 21. Jury Instruction Conference

At the close of the evidence (or at such earlier time as the judge may reasonably direct) in every jury trial, civil and criminal, in the superior and district courts, the trial judge shall conduct a conference on instructions with the attorneys of record (or party, if not represented by counsel). Such conference shall be out of the presence of the jury, and shall be held for the purpose of discussing the proposed instructions to be given to the jury. An opportunity must be given to the attorneys (or party if not represented by counsel) to request any additional instructions or to object to any of those instructions proposed by the judge. Such requests, objections and the rulings of the court thereon shall be placed in the record. If special instructions are desired, they should be submitted in writing to the trial judge at or before the jury instruction conference.

At the conclusion of the charge and before the jury begins its deliberations, and out of the hearing, or upon request, out of the presence of the jury, counsel shall be given the opportunity to object on the record to any portion of the charge, or omission therefrom, stating distinctly that to which he objects and the grounds of his objection.

The court may recall the jury after they have retired and give them additional instructions in order: (i) to correct or withdraw an erroneous instruction; or (ii) to inform the jury on a point of law which should have been covered in the original instructions. The provisions of the first two paragraphs of this Rule 21 also apply to the giving of all additional instructions, except that the court in its discretion shall decide whether additional argument will be permitted.

History Note.

304 N.C. 744.

Rule 22. Local Rules of Practice and Procedure

(a) **Purpose.** Local rules of practice and procedure for a judicial district must be supplementary to, and not inconsistent with, the General Rules of Practice. Local rules should be succinct and not unnecessarily duplicative of statutes or Supreme Court rules.

(b) **Enforcement.** A trial judge must enforce the local rules of the judicial district in which the trial judge is assigned to hold court. This enforcement provision does not apply to cases that are either designated “complex business” or assigned to a Business Court judge under Rule 2.1 of these rules.

History Note.

304 N.C. 745; Order Dated 21 April 2021.

Rule 23. [Summary Jury Proceedings]

The senior resident superior court judge of any superior court district or a presiding judge unless prohibited by local rule may upon joint motion or consent of all parties order the use of a summary jury upon good cause shown and upon such terms and conditions as justice may require. The order shall describe the terms and conditions proposed for the summary jury proceeding. Such terms and conditions may include: (1) a provision as to the binding or non-binding nature of the summary jury proceeding; (2) variations in the method for selecting jurors; (3) limitations on the amount of time provided for argument and the presentation of witnesses; (4) limitations on the method or manner of presentation of evidence; (5) appointment of a referee to preside over the summary jury trial; (6) setting the date for conducting the summary jury trial; (7) approval of a settlement agreement contingent upon the outcome of the summary jury proceeding; or (8) such other matters as would in the opinion of the court contribute to the fair and efficient resolution of the dispute. The court shall maintain jurisdiction over the case, and may, where appropriate, rule on pending motions.

Comment

The summary jury trial is a dispute resolution technique pioneered in the federal courts in the early 1980s. Pursuant to reports of its success as a settlement tool, the North Carolina Supreme Court in 1987 authorized the use of summary jury trials in three judicial districts on an experimental basis. Since that time, a number of summary jury trials have been conducted.

In May, 1991, a report prepared by the Private Adjudication Center detailed the North Carolina state courts’ experience with the summary jury trial. That report noted that a

number of variations in the summary jury trial process had been used successfully. The report concluded with a number of recommendations subsequently endorsed by the Dispute Resolution Committee of the North Carolina Bar Association. One of the recommendations was that the North Carolina Supreme Court adopt a General Rule of Practice authorizing the use of summary jury trials throughout the state.

Pursuant to that recommendation, this General Rule provides for the use of summary jury trials based upon the voluntary agreement of the parties, manifested by way of a joint motion

to the court. The rule further provides that the authority to approve the request lies with the senior resident superior court judge for the county or judicial district in which the action is pending (or a presiding judge unless prohibited by local rule). The request shall be approved if the court finds that it is in the interest of justice for good cause shown. In this context, good cause relates to a judicial determination that the use of a summary jury trial represents a fair and efficient method for pursuing settlement of the dispute.

The Rule does *not* authorize a court to mandate the use of a summary jury trial. Nothing in the rule, however, prohibits a judge or other court administrator from raising the possibility of using a summary jury trial with the parties during a pre-trial conference or other

event and explaining the possible benefits of the process.

The summary jury trials conducted to date in North Carolina have employed a number of innovative techniques. These variations, many of which are detailed in the above referenced report, have ranged from variations on the methods used to select a jury to limitations on the manner in which evidence is presented. In other cases, the parties have requested that the court appoint a referee to preside over the summary jury proceeding. In addition, the parties in several summary jury trials have agreed that the results would be binding, sometimes pursuant to a “high/low agreement” that limits both parties’ risk of an aberrant result. The Rule specifically provides that the court has the power to authorize these practices in appropriate cases.

History Note.

[329 N.C. 805](#).

Editor’s Note.

The order adopting Rule 23, [329 N.C. 805](#), does not indicate a title for the rule. The title that appears in brackets, above, was added by the editor.

The order adopting Rule 23, [329 N.C. 805](#), includes the above comment.

Rule 23.1. Summary Procedure for Significant Commercial Disputes

(a) The senior resident superior court judge of any superior court district, or a presiding judge unless prohibited by local rule may, upon joint motion or consent of all parties, order Summary Procedures For A Significant Commercial Dispute (“Summary Procedures”) in any case within the subject matter jurisdiction of the superior court that does not include a claim for personal, physical or mental injury where 1) the amount in controversy exceeds \$500,000; 2) at least one party is a North Carolina citizen, corporation or business entity (or a subsidiary of such corporation or business entity) or has its principal place of business in North Carolina; and 3) all parties agree to forego any claim of punitive damages and waive the right to a jury trial. The joint motion or consent for summary procedures must be filed with the court on or before the time the answer or other responsive pleading is due.

(b) To the extent they are not inconsistent with these Rules, the North Carolina Rules of Civil Procedure shall apply to Summary Procedures.

(c) Summary Procedures are commenced by filing with the court and serving a complaint.

(d) The complaint and any accompanying documents shall be sent, via next-day delivery, to either a person identified in the agreement between the parties to receive notice of Summary Procedures or, absent such specification, to each defendant's principal place of business or residence.

(e) The complaint must state prominently on the first page that Summary Procedures are requested. The complaint also must contain a statement of the amount in controversy exclusive of interest and costs, a statement that one of the parties is a North Carolina citizen, corporation or other business entity, or a subsidiary of such corporation or business entity, or that such citizen, corporation or business entity has its principal place of business in North Carolina, and a statement that the defendant has agreed to submit to the court's jurisdiction for Summary Procedures.

(f) Any action pending in any other jurisdiction which could have been brought initially as a Summary Procedure in this state may, subject to the procedures of the court of the other jurisdiction, be transferred to the superior courts of this state and converted to a Summary Procedure. Any pending action in this state may be converted to a Summary Procedure subject to the provisions of this Rule 23.1. Within 15 days of transfer or conversion, the court shall hold a conference at which time a schedule for the remainder of the action shall be established that will conform as closely as feasible to these Rules. Unless cause not to do so is shown, the record from any prior proceedings shall be incorporated into the record of the Summary Procedure.

(g) A defendant shall serve an answer together with any compulsory counterclaims within thirty days after service of the complaint.

(h) A plaintiff shall serve a reply to any counterclaim within twenty days after service of the counterclaim. Any answer or reply to a counterclaim shall be accompanied by a list of persons consulted, or relied upon, in connection with preparation of the answer or reply. Crossclaims, permissive counterclaims and third-party claims are not permitted absent agreement of all parties. Crossclaims, counterclaims and third-party claims, if any, are subject to the provisions of this Rule 23.1.

(i) A party may, in lieu of an answer, respond to a complaint or counterclaim by moving to dismiss. A motion to dismiss and accompanying brief must be served within thirty days after service of the complaint upon the defendant. A motion to dismiss a counterclaim and accompanying brief must be served within twenty days after service of the counterclaim. An answering brief in opposition to a motion to dismiss is due within fifteen days after service of the motion and accompanying brief. A reply brief in support of the motion to dismiss is due within ten days after service of the answering brief. The opening and answering briefs shall be limited to twenty-five pages, and the reply brief shall be limited to ten pages. Within thirty days after the filing of the final reply brief on all motions to dismiss, if no oral argument occurs, or within thirty days of oral argument if oral argument occurs, the court will either render to the parties its decision on such motions or will

provide to the parties an estimate of when such decision will be rendered. Such additional time shall not normally exceed an additional thirty days. If a motion to dismiss a claim is denied, an answer to that claim shall be filed within ten days of such denial.

(j) Within seven days of filing of the answer, a plaintiff shall serve upon the answering defendant a copy of each document in the possession of plaintiff that plaintiff intends to rely upon at trial, a list of witnesses that plaintiff intends to call at trial and a list of all persons consulted or relied upon in connection with preparation of the complaint. Within thirty days of the filing of the answer, the answering defendant shall provide to all other parties a list of witnesses it intends to call at trial and all documents in its possession that it intends to rely upon at trial. A plaintiff against whom a counterclaim has been asserted shall serve upon the defendant asserting the counterclaim, within thirty days after such plaintiff receives from the defendant asserting the counterclaim the materials referred to in the preceding sentence, a list of witnesses it intends to call at trial in opposition to the counterclaim, all documents in its possession that it intends to rely upon at trial in opposition to the counterclaim and all persons consulted or relied upon in connection with preparation of the reply to the counterclaim.

(k) Any party may serve upon any other party up to ten written interrogatories (with any sub-part to be counted as a separate interrogatory) within thirty days after the filing of the last answer. Responses are due within twenty days after service of the interrogatories.

(l) Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents, said request to be served within thirty days after filing of the last answer. The response to a document request is due within thirty days after service of the document request and must include production of the documents at that time for inspection and copying.

(m) Any party may serve on any other party a notice of up to four depositions to begin no sooner than seven days from service of the deposition notice and subsequent to the filing of all answers. A party may also take the deposition of any person on the other party's witness list, as well as the deposition of all affiants designated under Section (s) of this Rule. The first deposition notice by a party shall be served not later than sixty days after the filing of the last answer. All depositions to be taken by a party are to be scheduled and completed within 120 days of the filing of the last answer.

(n) Any party may serve upon any other party up to ten requests for admission (with any sub-part to be counted as a separate request for admission) within thirty days of the filing of the last answer. Responses are due within twenty days after service.

(o) Parties are obligated to supplement promptly their witness list, the documents they intend to rely upon at trial and their discovery responses under this Rule.

(p) Discovery disputes, at the court's option, may be addressed by a referee at the expense of the parties or by the court.

(q) Unless otherwise ordered by the court, all discovery, except for discovery contemplated by Section(s) of this Rule, shall be completed within 180 days after the filing of the last answer.

(r) There shall be no motions for summary judgment in Summary Proceedings.

(s) If the parties notify the court within seven days after the close of discovery that the parties have agreed to forego witnesses at the trial of the case, the parties may submit briefs and appendices in support of their cause as follows:

- (1) Plaintiff's Brief—thirty days following close of discovery;
- (2) Defendant's Answering Brief—within thirty days after service of plaintiff's brief; and
- (3) Plaintiff's Reply Brief—within fifteen days of service after Defendant's Answering Brief.

(t) The briefs must cite to the applicable portions of the record. Affidavits may be used but all affiants must be identified prior to the close of discovery and must, at the option of any other party, be produced for deposition within two weeks from the date discovery would otherwise close. The court shall make factual findings based upon the record presented by the parties.

(u) If the parties elect to forego witnesses at trial and submit briefs pursuant to Section(s) of this Rule, trial shall consist of oral argument, or submission on briefs if oral argument is waived by the parties with the consent of the court, to be scheduled and held by the court within one week of the close of briefing pursuant to Section(s).

(v) If the parties elect to present live witnesses at trial, the trial shall be scheduled to begin between thirty and sixty days after the close of discovery. Within thirty days after the close of discovery, the parties shall provide the court with an agreed upon pre-trial order. The pre-trial order shall include a summary of the claims or defenses of each party, a list of the witnesses each party expects to introduce at trial, a description of any evidentiary disputes, a statement of facts not in dispute and a statement of disputed issues of fact. Absent contrary court order, the trial shall be limited to five days, which shall be allocated equitably between the parties. Within ten days of the close of trial, each party shall file a post-trial brief including proposed findings of fact and conclusions of law. Each brief shall not exceed fifty pages.

(w) Within thirty days after the filing of the final brief, if no oral argument occurs, or within thirty days of argument if oral argument occurs, the court will either

render to the parties its decision after trial or will provide the parties an estimate of when the decision will be rendered. Such additional time shall not normally exceed an additional thirty days.

(x) The schedule for trial or decision after trial or on motion to dismiss shall not be extended unless the assigned judge certifies that:

- (1) the demands of the case and its complexity make the schedule under this Rule incompatible with serving the ends of justice; or
- (2) the trial cannot reasonably be held or the decision rendered within such time because of the complexity of the case or the number or complexity of pending criminal cases.

Comment

This rule was adopted by the North Carolina Supreme Court on August 28, 1995 as a result of a recommendation in the January 1995 ANNUAL REPORT OF THE NORTH CAROLINA COMMISSION ON BUSINESS LAWS AND THE ECONOMY chaired by the North Carolina Attorney General.

In its report, the Commission observed that, historically, North Carolina has enjoyed a high quality, efficient civil justice system. In recent years, however, civil litigation (and in particular, complex commercial litigation) has become protracted and costly. This is the result of many factors, including more complex laws and regulations, legal tactics and increased caseload.

The North Carolina court system has responded by instituting a number of innovative programs designed to resolve civil disputes more efficiently. These include court-ordered arbitration and a pilot mediation program. Despite the success of these programs, resolution of complex business and commercial disputes in North Carolina can be slow and costly.

The Commission noted that a state court system that offers alternatives to the normal litigation process which can expedite the resolution of significant commercial and business disputes is an important element of a progressive, efficient business environment. States that can

offer alternatives are more likely to attract new business organizations and incorporations as well as business expansions.

Accordingly, the Commission recommended that the State establish a summary procedure through which North Carolina citizens and business entities and their subsidiaries, and businesses which are headquartered in the State can more efficiently resolve significant commercial civil disputes. The Commission recommended that the availability of such a summary procedure be limited to civil actions in superior court where 1) at least \$500,000 is in controversy, 2) at least one party is a North Carolina citizen or corporation, and 3) all parties consent to the summary proceeding. As part of that agreement, the parties to the summary proceeding must agree to waive punitive damages and a jury trial.

The summary procedure provided for in this Rule can be utilized only with consent of all parties. It does not restrict any parties' rights and is supplementary to, and not inconsistent with, the General Statutes. (See G.S. 7A-34.) Its purpose is to provide an alternative procedure for significant commercial disputes and thereby improve the overall efficiency of the court system.

History Note.

[341 N.C. 737](#).

Editor's Note.

The order adopting Rule 23.1, [341 N.C. 737](#), includes the above comment.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 24. Pretrial Conference in Capital Cases

There shall be a pretrial conference in every case in which the defendant stands charged with a crime punishable by death. No later than ten days after the superior court obtains jurisdiction in such a case, the district attorney shall apply to the presiding superior court judge or other superior court judge holding court in the district, who shall enter an order requiring the prosecution and defense counsel to appear before the court within forty-five days thereafter for the pretrial conference. Upon request of either party at the pretrial conference the judge may for good cause shown continue the pretrial conference for a reasonable time.

At the pretrial conference, the court and the parties shall consider:

- (1) simplification and formulation of the issues, including, but not limited to, the nature of the charges against the defendant, and the existence of evidence of aggravating circumstances;
- (2) timely appointment of assistant counsel for an indigent defendant when the State is seeking the death penalty; and
- (3) such other matters as may aid in the disposition of the action.

The judge shall enter an order that recites that the pretrial conference took place, and any other actions taken at the pretrial conference.

This rule does not affect the rights of the defense or the prosecution to request, or the court's authority to grant, any relief authorized by law, including but not limited to appointment of assistant counsel, in advance of the pretrial conference.

History Note.

336 N.C. 789.

Rule 25. Motions for Appropriate Relief and Habeas Corpus Applications in Capital Cases

When considering motions for appropriate relief and/or applications for writs of habeas corpus in capital cases, the following procedures shall be followed:

- (1) All appointments of defense counsel shall be in accordance with G.S. 7A-451(c), (d), and (e) and rules adopted by the Office of Indigent Defense Services;
- (2) All requests for appointment of experts made prior to the filing of a motion for appropriate relief and subsequent to a denial by the Director of Indigent Defense Services shall be ruled on by the senior resident superior court judge or the senior resident superior court judge's designee in accordance with rules adopted by the Office of Indigent Defense Services;

- (3) All requests for other *ex parte* and similar matters arising prior to the filing of a motion for appropriate relief shall be ruled on by the senior resident superior court judge or the senior resident superior court judge's designee in accordance with rules adopted by the Office of Indigent Defense Services;
- (4) All motions for appropriate relief, when filed, shall be referred to the senior resident superior court judge or the senior resident superior court judge's designee for that judge's review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions;
- (5) Subsequent to direct appeal, an application for writ of habeas corpus shall not be used as a substitute for appeal and/or a motion for appropriate relief and is not available as a means of reviewing and correcting nonjurisdictional legal error. If the applicant has been sentenced pursuant to a final judgment issued by a competent tribunal of criminal jurisdiction (i.e., by a trial court having subject matter jurisdiction to enter the sentence), the application for writ of habeas corpus shall be denied. In the event the application for writ of habeas corpus raises a meritorious challenge to the original jurisdiction of the sentencing court, and the writ is granted, the judge shall make the writ returnable before the senior resident superior court judge of the judicial district where the applicant was sentenced or the senior resident superior court judge's designee. In the event the application for writ of habeas corpus raises a meritorious nonjurisdictional challenge to the applicant's conviction and sentence, the judge shall immediately refer the matter to the senior resident superior court judge of the judicial district where the applicant was sentenced or the senior resident superior court judge's designee for disposition as a motion for appropriate relief; and
- (6) All requests for and awards of attorney fees and other expenses of representation shall be made in accordance with rules adopted by the Office of Indigent Defense Services.

History Note.

348 N.C. 709; 356 N.C. 710; 357 N.C. 669.

Editor's Note.

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

Rule 26. Secure-Leave Periods for Attorneys

(a) **Definition; Entitlement.** A “secure-leave period” is one complete calendar week that is designated by an attorney during which the superior courts and the district courts may not hold a proceeding in any case in which that attorney is an attorney of record. An attorney is entitled to enjoy a secure-leave period that has been designated according to this rule.

(b) **Allowance.**

- (1) Within a calendar year, an attorney may enjoy three different secure-leave periods for any purpose. A secure-leave period that spans across calendar years counts against the attorney’s allowance for the first calendar year.
- (2) Within the twenty-four weeks after the birth or adoption of an attorney’s child, that attorney may enjoy twelve additional secure-leave periods for the purpose of caring for the child.

(c) **Form of Designation.** An attorney must designate his or her secure-leave periods in writing.

(d) **Content of Designation.** An attorney’s designation of a secure-leave period must contain the following information:

- (1) the attorney’s name, address, e-mail, telephone number, and state bar number;
- (2) the date of the Sunday on which the secure-leave period is to begin and the date of the Saturday on which it is to end;
- (3) the allowance that the secure-leave period will count against, with reference to either subsection (b)(1) or (b)(2) of this rule;
- (4) the dates of any previously designated secure-leave periods that count against that allowance;
- (5) a statement that the secure-leave period is not being designated for the purpose of interfering with the timely disposition of any proceeding;
- (6) a statement that the attorney has taken adequate measures to protect the interests of the attorney’s clients during the secure-leave period; and
- (7) the attorney’s signature and the date on which the attorney submits the designation.

(e) **Where to Submit Designation.**

- (1) **In Criminal Actions.** The attorney must submit his or her designation of a secure-leave period to the office of the district

attorney for each prosecutorial district in which the attorney's criminal actions are pending.

- (2) **In Civil Actions.** The attorney must submit his or her designation of a secure-leave period to the office of the senior resident superior court judge for each superior court district and to the office of the chief district court judge for each district court district in which the attorney's civil actions are pending.
- (3) **In Special Proceedings and Estate Proceedings.** The attorney must submit his or her designation of a secure-leave period to the office of the clerk of the superior court of the county in which the attorney's special proceedings or estate proceedings are pending.
- (4) **In Juvenile Proceedings.** The attorney must submit his or her designation of a secure-leave period to the juvenile case calendaring clerk in the office of the clerk of the superior court of the county in which the attorney's juvenile proceedings are pending.

(f) **When to Submit Designation.** An attorney must submit his or her designation of a secure-leave period:

- (1) at least ninety days before the secure-leave period begins; and
- (2) before a proceeding in any of the attorney's cases is scheduled for a time that conflicts with the secure-leave period.

But because of the uncertainty of a child's birth or adoption date, the superior court or district court scheduling authority must make reasonable exception to these requirements so that an attorney may enjoy leave with the child.

(g) **Depositions.** A party may not notice a deposition for a time that conflicts with a secure-leave period that another party's attorney has designated according to this rule.

(h) **Other Leave.** Nothing in this rule limits the inherent power of the superior courts or the district courts to allow an attorney to enjoy leave that has not been designated according to this rule.

History Note.

350 N.C. 861; 372 N.C. 896; 374 N.C. 943.

Rule 27. Sealed Documents and Protective Orders

(a) General Principles.

- (1) **“Persons” Defined.** References to “persons” in this rule include parties and nonparties who are interested in the confidentiality of a document.
- (2) **“Provisionally Under Seal” Defined.** A document is “provisionally under seal” if it is filed electronically with a confidential designation in the electronic-filing system or if it is filed in paper inside of a sealed envelope or container marked “Contains Confidential Information – Provisionally Under Seal.”
- (3) **Open Courts.** A person who appears before the court should strive to file documents that are open to public inspection and should file a motion to seal a document only if necessary.
- (4) **Scope.** This rule does not apply to documents that are closed to public inspection by operation of statute or other legal authority, nor does it apply to search warrants and other criminal investigatory documents. This rule does not affect a person’s responsibility to omit or redact private information from court documents pursuant to statute or other legal authority.

(b) Procedure for Sealing a Document.

- (1) **Filing.** A person who seeks to have a document (or part of a document) sealed by the court must file the document provisionally under seal and file a motion that asks the court to seal the document. The document must be filed on the same day as the motion.
- (2) **Motion.** The motion to seal must contain:
 - a. a nonconfidential description of the document the movant is asking to be sealed;
 - b. the circumstances that warrant sealing the document;
 - c. an explanation of why no reasonable alternative to sealing the document exists;
 - d. a statement that specifies whether the document should be accessible only to counsel of record (as opposed to the parties);
 - e. a statement that specifies how long the document should be sealed and how the document should be handled upon unsealing;

- f. a statement, if applicable, that (i) the movant is filing the document provisionally under seal because another person has designated the document as confidential and the terms of a protective order require the movant to file the document provisionally under seal and (ii) the movant has unsuccessfully sought the consent of the other person to file the document unsealed; and
 - g. a statement, if applicable, that a nonparty who designated the document as confidential under the terms of a protective order has been served with a copy of the motion and notified of the right to file a brief in support of the motion.
- (3) **Briefing.** A person may file a brief in support of or in opposition to the motion no later than twenty days after having been served with the motion.
 - (4) **Hearing.** The movant must notice a hearing on the motion as soon as practicable after the briefing period ends.
 - (5) **Disclosure Pending Decision.** Until the court rules on the motion, a document that is provisionally under seal may be disclosed only to counsel of record and unrepresented parties unless otherwise ordered by the court or agreed to by the parties.
 - (6) **Decision by Court.** The court may rule on the motion with or without a hearing. In the absence of a motion or brief that justifies sealing the document, the court may order that the document (or part of the document) be made public.
 - (7) **Public Version of Document.** If the movant seeks to have only part of a document sealed by the court, then the movant must file a public version of the document no later than ten days after filing the document provisionally under seal. The public version of the document may include redactions and omissions, but the redactions and omissions should be as limited as practicable. If the movant seeks to have the entire document sealed, then the movant must file a notice that the entire document has been filed provisionally under seal instead of filing a public version of the document. The notice must contain a nonconfidential description of the document.

(c) **Protective Orders.** The procedure for sealing a document in subsection (b) of this rule should not be construed to change any requirement or standard that governs the issuance of a protective order. The court may therefore enter a protective order that contains standards and processes for the handling, filing, and service of a confidential document. To the extent that a proposed protective order

outlines a procedure for sealing a confidential document, the proposed protective order should include (or incorporate by reference) the procedures described in subsection (b) of this rule. Persons are encouraged to agree on terms for a proposed protective order before submitting it to the court.

History Note.

Order Dated 21 April 2021.

Forms

Form 1. Certificate of Readiness

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
_____ COURT DIVISION

FILE #: _____

FILM #: _____

PLAINTIFF

-v-

DEFENDANT

CERTIFICATE OF READINESS

As counsel of record for _____ (name the party you represent), who is a plaintiff, defendant, third party, (underline one) I hereby certify that:

- A. I know of no procedural matters which would delay the trial of the case when called for jury trial;
- B. All motions existing of record this date have been heard or otherwise disposed of;
- C. I know of no parties or witnesses desired that will not be available on the trial date;
- D. I know of no current reason that would cause me to move for a continuance;
- E. I am ready for trial.

This the _____ day of _____.

Attorney

History Note.

276 N.C. 735.

Editor's Note.

The "Certificate of Readiness" form is referenced in the original version of Rule 2, 276 N.C. 735. A subsequent amendment to Rule 2, 300 N.C. 751, eliminated the reference to the form, but the Court has never eliminated the form itself. Accordingly, the form appears in this codification.

Form 2. Order on Final Pre-Trial Conference

IN THE GENERAL COURT OF JUSTICE
_____ COURT DIVISION

Plaintiff(s))	
)	FILE #: _____
-v-)	
)	FILM #: _____
Defendant(s))	

ORDER ON FINAL PRE-TRIAL CONFERENCE

Pursuant to the provisions of Rule 16 of the State Rules of Civil Procedure, and Rule 7, General Rules of Practice, a final pre-trial conference was held in the above-entitled cause on the _____ day of _____, 19____. _____, Esquire, appeared as counsel for the plaintiff(s); _____, Esquire, appeared as counsel for the defendant(s).

(1) It is stipulated that all parties are properly before the court, and that the court has jurisdiction of the parties and of the subject matter.

Note: If the facts are otherwise they should be accurately stated.

(2) It is stipulated that all parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.

Note: If the facts are otherwise, they should be accurately stated.

(3) If any of the parties is appearing in a representative capacity, it should be set out whether there is any question concerning the validity of the appointment of the representatives. Letters or orders of appointment should be included as exhibits.

(4) Any third-party defendant(s) or cross-claimant(s) should follow the same procedure as set out in paragraphs (4) and (5) for plaintiff(s) and defendant(s).

(5) In addition to the other stipulations contained herein, the parties hereto stipulate and agree with respect to the following undisputed facts:

- (a)
- (b)

Note: Here set out all facts not in genuine dispute.*

(6) The following is a list of all known exhibits the plaintiff(s) may offer at the trial:

- (a)
- (b)

Note: Here list the pre-trial identification numbers and a brief description of each exhibit.

(7) It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the plaintiff(s), except:

Note: Here set out stipulations with respect to (a) the exhibits that have been furnished opposing counsel, (b) the arrangements made for the inspection of exhibits of the character which prohibits or makes

* IN CONTRACT CASES, the parties may stipulate upon, or state their contentions with respect to, where applicable (a) whether the contract relied on was oral or in writing; (b) the date thereof and the parties thereto; (c) the substance of the contract, if oral; (d) the terms of the contract which are relied upon and the portions in controversy; (e) any collateral oral agreement, if claimed, and the terms thereof; (f) any specific breach of contract claimed; (g) any misrepresentation of fact claimed; (h) if modification of the contract or waiver of covenant is claimed, what modification or waiver, and how accomplished, and (i) an itemized statement of damages claimed to have resulted from any alleged breach, the source of such information, how computed, and any books or records available to sustain such damage claimed.

IN MOTOR VEHICLE NEGLIGENCE CASES, the parties may stipulate upon, or state their contentions with respect to, where applicable (a) the owner, type and make of each vehicle involved; (b) the agency of each driver; (c) the place and time of accident, conditions of weather, and whether daylight or dark; (d) nature of terrain as to level, uphill or downhill; (e) traffic signs, signals and controls, if any, and by what authority placed; (f) any claimed obstruction of view; (g) presence of other vehicles, where significant; (h) a detailed list of acts negligence or contributory negligence claimed; (i) specific statutes, ordinances, rules, or regulations alleged to have been violated, and upon which each of the parties will rely at the trial to establish negligence or contributory negligence; (j) a detailed list of nonpermanent personal injuries claimed, including the nature and extent thereof; (k) a detailed list of permanent personal injuries claimed, including nature and extent thereof; (l) the age of any party alleged to have been injured; (m) the life and work expectancy of any party seeking to recover for permanent injury; (n) an itemized statement of all special damages, such as medical, hospital, nursing, etc., with the amount and to whom paid; (o) if loss of earnings is claimed; (p) a detailed list of any property damages, and (q) in death cases, the decedent's date of birth, marital status, employment for five years before date of death, work expectancy, reasonable probability of promotion, rate of earnings for five years before date of death, life expectancy under mortuary table, and general physical condition immediately prior to date of death.

IN THE EVENT THIS CASE DOES NOT FALL WITHIN ANY OF THE CATEGORIES ENUMERATED ABOVE, OR ANY OF THE CATEGORIES SUGGESTED BY THIS FORM, COUNSEL SHOULD, NEVERTHELESS, SET FORTH THEIR POSITIONS WITH AS MUCH DETAIL AS POSSIBLE.

impractical their reproduction, and (c) any waiver of the requirement to furnish opposing counsel with a copy of exhibits.

(8) It is stipulated and agreed that each of the exhibits identified by the plaintiff(s) is genuine and, if relevant and material, may be received in evidence without further identification or proof, except:

Note: Here set out with particularity the basis of objection to specific exhibits.

It is permissible to generally reserve the right to object at the trial on grounds of relevancy and materiality.

(9) The following is a list of all known exhibits the defendant(s) may offer at the trial:

(a)

(b)

Note: Here list the pre-trial identification numbers and a brief description of each exhibit.

(10) It is stipulated and agreed that opposing counsel has been furnished a copy of each exhibit identified by the defendant(s), except:

Note: Here set out stipulations with respect to (a) the exhibits that have been furnished opposing counsel, (b) the arrangements made for the inspection of exhibits of the character which prohibits or makes impractical their reproduction, and (c) any waiver of the requirement to furnish opposing counsel with a copy of exhibits.

(11) It is stipulated and agreed that each of the exhibits identified by the defendant(s) is genuine, and, if relevant and material, may be received in evidence without further identification or proof, except:

Note: Here set out with particularity the basis of objection to specific exhibits. It is permissible to generally reserve the right to object at the trial on grounds of relevancy and materiality.

(12) Any third-party defendant(s) and cross-claimant(s) should follow the same procedure with respect to exhibits as required of plaintiff(s) and defendant(s).

Note: Attention is called to the provisions of the pre-trial rule with respect to the obligation to immediately notify opposing counsel if additional exhibits are discovered after the preparation of this order.

(13) The following is a list of the names and addresses of all known witnesses the plaintiff(s) may offer at the trial:

Note: If either plaintiff's or defendant's attorney discovers additional witnesses after this listing, attention is called to obligation to notify opposing counsel. There shall be no requirement that all witnesses listed

by a party be used, and the court may after satisfactory explanation, in his discretion, permit the use of a witness not listed.

The trial judge may, for good cause made known to him, relieve a party of the requirement of disclosing the name of any witness.

(14) The following is a list of the names and addresses of all known witnesses the defendant(s) may offer at the trial:

(15) Any third-party defendant(s) and cross-claimant(s) should follow the same procedure with respect to witnesses as above outlined for plaintiff(s) and defendant(s). Counsel shall immediately notify opposing counsel if the names of additional witnesses are discovered after the preparation of this order.

(16) There are no pending motions, and neither party desires further amendments to the pleadings, except:

Note: Here state facts regarding pending or impending motion. If any motions are contemplated, such as motion for the physical examination of a party, motion to take the deposition of a witness for use as evidence, etc., such motions should be filed in advance of the final pre-trial conference so that they may be ruled upon, and the rulings stated in the final pre-trial order. The same procedure should be followed with respect to any desired amendments to pleadings.

(17) Additional consideration has been given to a separation of the triable issues, and counsel for all parties are of the opinion that a separation of issues in this particular case would (would not) be feasible.

(18) The plaintiff(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:

(19) The defendant(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:

(20) Any third-party defendant(s) and cross-claimant(s) contends (contend) that the contested issues to be tried by the court (jury) are as follows:

Note: In all instances possible, the parties should agree upon the triable issues and include them in this order in the form of a stipulation, in lieu of the three preceding paragraphs.

(21) Counsel for the parties announced that all witnesses are available and the case is in all respects ready for trial. The probable length of the trial is estimated to be _____ days.

(22) Counsel for the parties represent to the court that, in advance of the preparation of this order, there was a full and frank discussion of settlement possibilities. Counsel for the plaintiff will immediately notify the clerk in the event of material change in settlement prospects.

Note: Counsel shall be required to conduct a frank discussion concerning settlement possibilities at the time of the conference of attorneys, and clients shall either be consulted in advance of the conference concerning settlement figures or be available for consultation at the time of the conference. The court will make inquiry at the time of trial as to whether this requirement was strictly observed.

Counsel for Plaintiff(s)

Counsel for Defendant(s)

Date: _____

Approved and Ordered Filed.

Judge Presiding

History Note.

276 N.C. 735.

Editor’s Note.

The “Order on Final Pre-Trial Conference” form is referenced in [Rule 7](#).

References in the General Rules of Practice to statutes, other rule sets, and caselaw have not been updated in this codification.

A Publication Record of the General Rules of Practice



Reporter Volume	Page(s)	Rules Affected	Key Dates*
276 N.C.	735–47	Complete Rule Set	Adopted 14 May 1970 Effective 1 July 1970
282 N.C.	737	Rule 3	Adopted 13 February 1973
300 N.C.	751–52	Rule 2	Adopted 3 June 1980
304 N.C.	743	Rule 5	Ordered 5 May 1981 Effective 1 July 1982
304 N.C.	744	Rule 21	Adopted 15 September 1981
304 N.C.	745	Rule 22	Adopted 21 September 1981
306 N.C.	797–801	Rule 15	Adopted 21 September 1982 Order suspends Rule 15 from 18 October 1982 through 18 October 1984 and implements a temporary rule
307 N.C.	741	Rule 15	Adopted 10 November 1982 Order amends the temporary rule that the Court adopted on 21 September 1982
311 N.C.	774	Rule 6	Ordered 28 August 1984 Effective 1 January 1985
311 N.C.	775	Rule 15	Adopted 1 October 1984 Order extends the effective date of the temporary rule, as amended, through 31 December 1984
319 N.C.	681–82	Rule 15	Adopted 24 June 1987 Order further amends the temporary rule and makes the temporary rule, as amended, effective from 1 July 1987 to 30 June 1988

A Publication Record of the General Rules of Practice



Reporter Volume	Page(s)	Rules Affected	Key Dates*
319 N.C.	683	Rule 2.1	Ordered 5 January 1988 Effective 5 January 1988
322 N.C.	841	Rule 2.1	Reprint of Order Dated 5 January 1988
322 N.C.	842	Rules 2, 8	Ordered 16 May 1988 Effective 1 July 1988
322 N.C.	868	Rule 15	Adopted 30 June 1988 Order further amends the temporary rule and makes the temporary rule, as amended, effective from 1 July 1988 to 30 June 1990
327 N.C.	664–69	Rule 15	Adopted 13 June 1990
327 N.C.	670	Rule 7.1	Adopted 26 July 1990 Effective 1 October 1990
329 N.C.	805–07	Rule 23	Adopted 14 August 1991
336 N.C.	789–90	Rule 24	Adopted 7 April 1994 Effective 1 June 1994
341 N.C.	737–44	Rules 2.1, 2.2, 23.1	Adopted 28 August 1995
344 N.C.	743	Rule 5	Adopted 5 September 1996 Effective 1 October 1996
346 N.C.	805	Rule 5	Adopted 25 June 1997 Effective 1 August 1997
346 N.C.	805	Rule 5	Adopted 24 July 1997 Order delays the effective date of the Court's 25 June 1997 order until 1 October 1997

A Publication Record of the General Rules of Practice



Reporter Volume	Page(s)	Rules Affected	Key Dates*
348 N.C.	709	Rule 25	Adopted 7 May 1998 Effective 1 June 1998
350 N.C.	861–64	Rule 26	Adopted 6 May 1999 Effective 1 January 2000
356 N.C.	703–05	Rules 3, 3.1	Adopted 15 August 2002
356 N.C.	710–11	Rule 25	Adopted 19 December 2002
357 N.C.	669–70	Rule 25	Adopted 1 May 2003
358 N.C.	746–49	Rule 3.1	Adopted 4 March 2004 Effective 4 March 2004
372 N.C.	896–901	Rule 26	Ordered 4 September 2019 Effective for secure-leave periods designated on or after 11 September 2019
374 N.C.	943–44	Rules 2, 26**	Ordered 14 May 2020

* The type of date provided for each published entry (e.g., “Adopted,” “Effective,” “Ordered”) reflects the information that was preserved in the North Carolina Reports.

** Order granted emergency relief in response to the COVID-19 pandemic.

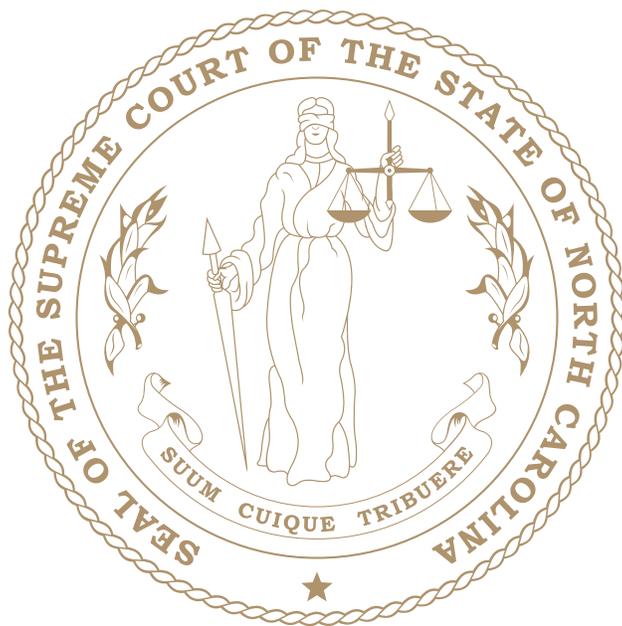
Current Slip Orders	Rules Affected	Key Dates
Order Dated 23 September 2020	Rule 5	Ordered 23 September 2020 Effective 1 October 2020
Order Dated 21 April 2021	Rules 5, 5.1, 22, 27	Ordered 21 April 2021 Effective 10 May 2021

A Publication Record of the General Rules of Practice



Document ID

General Rules of Practice for the Superior and District Courts – Codified 10 May 2021



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