

IN THE SUPREME COURT OF THE STATE OF UTAH

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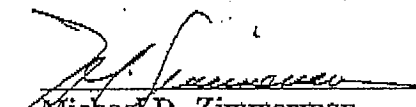
In re Petition Creation of a Legal
Assistant Division of the Utah
State Bar

No. 960126

ORDER

The Petition of the Utah State Bar to Create a Legal Assistant Division is granted. Effective April 1, 1996.

3/20/96
Date


Michael D. Zimmerman
Chief Justice
For The Court



ATTACHMENT A

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Executive Director
Stephen R. Cochell #5680
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IN THE SUPREME COURT OF THE STATE OF UTAH

IN RE:)
)
 Utah State Bar,) Petition for Creation of
) a Legal Assistant Division
) of the Utah State Bar
)
)
 Petitioner.)

Petitioner, Utah State Bar, at the resolution of its elected Board of Bar Commissioners, by and through its Executive Director and Chief Disciplinary Counsel, and pursuant to Rule 14 of the Rules for Integration and Management of the Utah State Bar, hereby petitions the Supreme Court of the State of Utah to approve the creation of a Legal Assistant Division of the Utah State Bar.

I.

INTRODUCTION

In recent years, the Bar has become increasingly concerned about the availability of low cost, affordable legal services to members of the public. With the withdrawal of public funds from

the Legal Services Corporation, an increasingly large segment of the public simply cannot gain access to quality legal services.

A. The Need for Access to Low Cost Legal Services

According to studies conducted by the American Bar Association ("ABA"), approximately half of low and moderate income American households are facing one or more situations that could be addressed by the system of civil justice.¹ Of this group, over seventy percent (70%) of the situations are not finding their way to the justice system.² For moderate-income households, the proportion is nearly two thirds (2/3) percent.³ Although the reasons for not turning to the legal justice system when faced with a legal need differs between low and moderate income households, fear of high cost of legal services is one of the primary reasons.⁴

B. The Need to Regulate the Practice of Law

The Bar anticipates that the decreased availability of low cost legal services may ultimately result in an increase in the number of individuals engaging or attempting to engage in the unauthorized practice of law. The potential injury to uninformed

¹ Legal Needs and Civil Justices: A Survey of Americans at 23; American Bar Association (1994).

² Id.

³ Id.

⁴ Id. at 24.

clients was outlined by this Court in Utah State Bar v. Summerhayes and Hayden, 277 Utah Adv. Rep. 12 (November 3, 1995). In Summerhayes, the Court held that the practice of third-party adjusting by licensed public adjusters constituted the unauthorized practice of law. Id. at 14.

Difficult legal issues are inextricably connected with third-party adjustment of personal injury and property damage claims, including determination of legal duties, proximate cause, damages and defenses, require legal knowledge and skills. Id. . . .

. . . Third-party tort claims against insurance companies can be complex and necessarily require education and knowledge that most lay persons do not possess. It would be far more difficult, time consuming, and perplexing for a person not trained in tort law to fairly and rapidly settle a claim. Moreover, public adjusters could jeopardize an injured person's legitimate tort claim against an insurance company due to lack of education and experience. Such lack of experience can easily result in failure to assert appropriate legal theories and failure to meet procedural requirements. Id. at 15.

The potential injury to clients from receiving legal advice from unqualified individuals is no less significant in other areas of law including for example, domestic relations, probate, and immigration law.

Creation of a legal assistant division of the Bar is one method by which the public can be assured that legal services will be performed at the lowest price while also assuring quality of work because legal assistants will be supervised by lawyers responsible for the ultimate work product.

C. The Role of Non-Lawyers in Provision
of Low Cost Legal Services

Although non-lawyers have assisted lawyers in rendering legal services since founding of the state of Utah, the need to deliver quality, affordable legal services has given rise to the creation and growth of the legal assistant profession.

As of 1992, there were 95,000 persons employed throughout the United States as paralegals.⁵ The services of paralegals are widely used in law firms, government and corporate enterprises within and outside Utah. In Utah, paralegals have formed the Legal Assistant Association of Utah ("LAAU") which is the professional organization formed by paralegals and is affiliated with the National Association of Legal Assistants ("NALA"). Paralegals who belong to the LAAU receive training and can participate in certification programs.⁶

In 1992, the American Bar Association established the Commission on Non-Lawyer Practice (the ABA Commission") for the purpose of conducting "research, hearings and deliberations to determine the implications of non-lawyer practice for society, the

⁵ Bureau of Labor Statistics, U.S. Department of Labor, VULL. 2450-5, Social Scientists in Legal Occupations 17 (1994)

⁶ Membership in the LAAU is available to individuals who: (a) have completed an ABA approved program of study for legal assistants; (b) completed 30 semester hours of law related classroom study; (c) have completed equivalent period(s) of paralegal work under the supervision of an attorney.

client and the legal profession."⁷ After extensive study⁸ the ABA Commission issued a report (the "ABA Report") and reached three major conclusions:

- 1) Increased access of affordable assistance in law-related situations was an urgent goal of the legal profession and the states;
- 2) The public needed to be protected from persons providing assistance in law-related situations; and
- 3) When adequate protections for the public are in place, nonlawyers have important roles to perform in providing affordable access to justice.⁹

The recent conclusions set out in the ABA's Report parallel and are consistent with the conclusions reached by the Utah State Bar Commission in October, 1994. After study and analysis of the complex problem of ensuring adequate access to legal services and, at the same time, providing competent provision of affordable legal services, the Bar Commission endorsed the creation of a Legal Assistant Division of the Utah State Bar. Creation of a Legal Association Division of the Bar is expected to: 1) improve and ensure the quality of low cost, affordable legal services; and 2)

⁷ ABA Report, NonLawyer Activity in Law-Related Situations (August, 1995).

⁸ The Commission's Report is based on statements of nearly 400 witnesses and information contained in more than 2,000 documents gathered in the course of 10 hearings held from 1992-1994.

⁹ Commission Report at 3-4.

to protect the public from unqualified persons providing assistance in law-related situations.

D. Publication of the Proposal for Creation
of a Legal Assistant Division in the Utah Bar Journal

In November, 1994, Paul Moxley, then President of the Bar, informed the membership of the board's endorsement in his message to the members in the Utah Bar Journal. Mr. Moxley outlined the parameters of the Legal Assistant Division and invited comments on the proposed creation of a legal assistant division. A few comments were received; no objections were made known to Bar officials. Accordingly, the Bar requests this Honorable Court approve creation of a Legal Assistant Division and achieve the goals of increasing access to low cost, affordable legal services and, at the same time, protect the public from harm from unqualified persons seeking to provide legal assistance to unrepresented persons.

While the Board proposes creation of a "division" of the Utah State Bar, the term "affiliate" should be used to refer to individuals belonging to the Division to clarify the distinction between lawyer members of the Utah State Bar and Legal Assistant Affiliates.

II

CREATION OF A LEGAL ASSISTANT DIVISION OF THE UTAH STATE BAR
A. Definition of "Legal Assistant"

The Board has adopted the following definition of Legal Assistant:

A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task.

The term "Legal Assistant" is synonymous with the term "Paralegal". The definition of a "Legal Assistant" or "Paralegal" includes paralegals on a contract or freelance basis who work under the supervision of a lawyer or who produce work directly for a lawyer for which a lawyer is accountable.

B. Structure of Legal Assistant Division

The Board of Bar Commissioners proposes that Legal Assistant Affiliates of the Utah State Bar be required to undergo an application process.⁹ This would require the following:

⁹ While licensure may ultimately fall within the administrative responsibilities also delegated by the Court and the Bar, the Bar's Petition does not address licensure of legal assistants. This petition simply addresses creating a division of the Bar that would have minimum membership requirements. The issue of licensing of legal assistants should be fully developed and evaluated after a Legal Assistant Division has been created.

(a) an initial and annual certification of continuous sponsorship of a Legal Assistant Affiliate by an employer who is a member of the Utah State Bar;

(b) a certification by the attorney and Legal Assistant Affiliate that the legal assistant undertakes no legal work outside the attorney's supervision or supervision of attorney members of the firm. Joint sponsorship by joint employers would be permitted;

(c) an assumption of responsibility by the attorney for the compliance of the legal assistant with all applicable rules of the Utah State Bar;

(d) the Legal Assistant Affiliate's parallel commitment that the attorney and Legal Assistant Affiliate will notify the Bar of any change of employment of the Legal Assistant Affiliate. The Legal Assistant Affiliate's authority to function as a Legal Assistant Affiliate will terminate concurrent with employment by the sponsor unless sponsorship is accepted by another employer-member of the Utah State Bar; and

(e) an appropriate fee.

The Board of Bar Commissioners also proposes that Legal Assistant Affiliates of the Utah State Bar also would consist of a suborganization which would have a leadership group consisting of a president and four active Affiliates elected by the group, and that one of the leadership groups would serve as an ex-officio member of the Bar Commission.

Legal Assistant Affiliates would receive the Utah Bar Journal, notices of Bar functions and Bar member rates at seminars and meetings. However, Legal Assistant Affiliates would not be eligible for office within the Utah State Bar.

Finally, under this proposal, any legal assistant, whether a

member of the Division or not, would not be directly subject to discipline by the Bar since legal assistant status is dependent upon affiliation with an attorney, and since the affiliation confers no rights or privileges to the public. The supervising attorney is subject to discipline for failure to adequately supervise legal assistants. This avoids establishment of additional disciplinary procedures specific to legal assistants.

C. Creation of Legal Assistant Division Will
Not Have a Fiscal Impact on the Bar

Creation of a Legal Assistant Division of the Bar will not impose a fiscal burden on the Bar. It is anticipated that all activities of the Division shall be self-funded through the collection of membership fees.

III. CONCLUSION

The Bar's proposal will create a Legal Assistant Division of the Utah State Bar. The Bar believes that this measure is an appropriate response to the ever increasing need of the public to have sufficient access to the legal system to meet the legal needs of low and moderate income families. Creation of a Legal Assistant Division will not impose additional fiscal burdens on the Bar.

A copy of the proposed amendment is attached as Exhibit A.

DATED THIS _____ DAY OF _____, 1996.

UTAH STATE BAR

BY:

JOHN C. BALDWIN
EXECUTIVE DIRECTOR

BY:

STEPHEN R. COHELL
CHIEF DISCIPLINARY COUNSEL

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Proposed Amendment to the Rules for Integration and Management of
the Utah State Bar

24. Creation of Legal Assistant Division.

A. Legal Assistant Defined: A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or the entity in the capacity or function which involves the performance, under the ultimate direction and supervision of an attorney of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that absence such assistance, the attorney would perform the task. A legal assistant or "paralegal" includes paralegals on a contract or free lance basis who work under the supervision of a lawyer or who produce work directly for a lawyer for which a lawyer is accountable.

B. Membership and Structure of Legal Assistant Division

Qualified individuals can become "Legal Assistant Affiliates" of the Utah State Bar upon submitting an application to the legal assistant division of the Utah State Bar. This would require the following:

(a) an initial and annual certification of continuous sponsorship of a Legal Assistant Affiliate by an employer who is a member of the Utah State Bar;

(b) a certification by the attorney and Legal Assistant Affiliate that the legal assistant undertakes no legal work outside the attorney's supervision or supervision of attorney members of the firm. Joint sponsorship by joint employers would be permitted;

(c) an assumption of responsibility by the attorney for the compliance of the legal assistant with all applicable rules of the Utah State Bar;

(d) the Legal Assistant Affiliates' parallel commitment that the attorney and Legal Assistant Affiliate will notify the Bar of any change of employment of the Legal Assistant Affiliate. The Legal Assistant Affiliates' authority to function as a Legal Assistant Affiliate will terminate concurrent with employment by the sponsor unless sponsorship is accepted by another employer-member of the Utah State Bar; and

(e) an appropriate fee.

C. Officers of Legal Assistant Division and Ex Officio Membership on the Utah State Bar Commission

The legal assistant division may appoint officers (president, vice president, treasurer, secretary) on an annual basis. The division may also appoint an Ex Officio, non-voting member of the Utah State Bar Commission who shall report regularly to the division's membership regarding the overall activities of the Utah State Bar.

a. Legal assistant affiliates are eligible to receive the Utah Bar Journal, notices of Bar functions and bar member rates at seminars and meetings. Legal Assistant Affiliates are not eligible for office within the Utah State Bar.

b. Legal Assistant Affiliates shall not be directly subject to discipline by the Utah State Bar. However, supervising or responsible attorneys are responsible for all work undertaken by Legal Assistant Affiliates for or on their behalf.