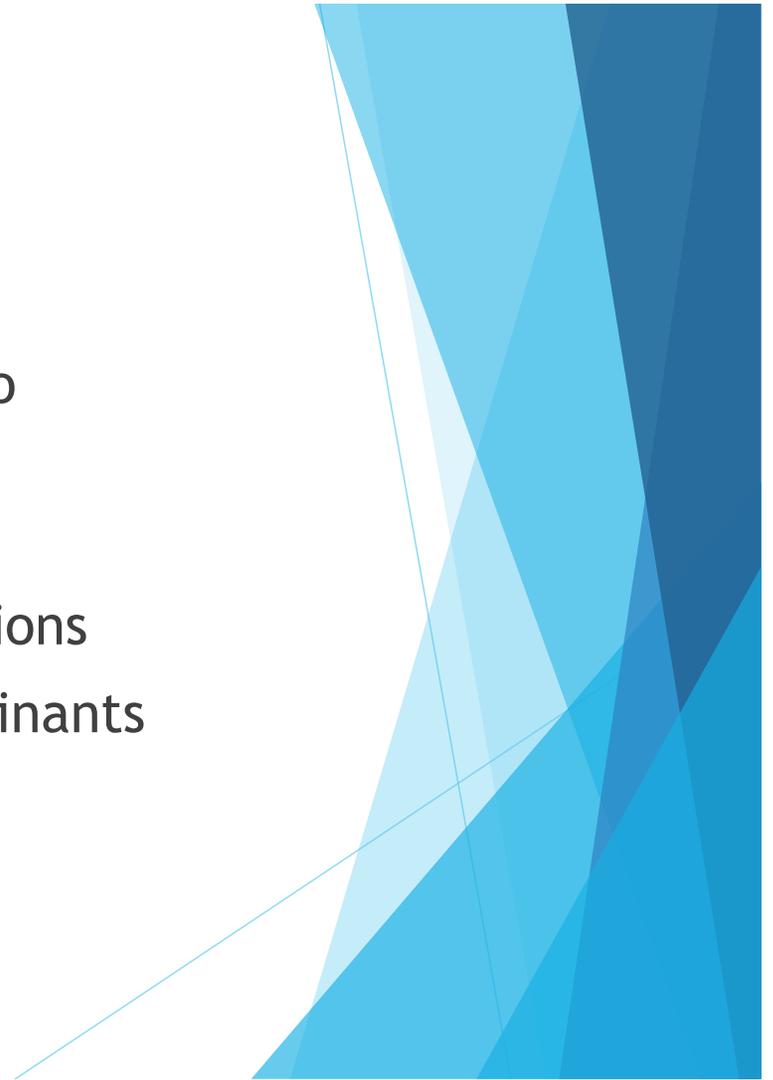
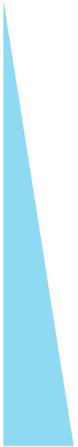


# Unauthorized Practice of Law: a Discussion for Legal Professionals

Maribeth LeHoux, Unauthorized Practice of Law Committee, Chair  
Scotti Hill, Associate General Counsel and LPP Administrator at the Utah State Bar

## Unauthorized Practice of Law Committee

- ▶ Volunteer attorneys and paralegals who investigate complaints
- ▶ Meet monthly to discuss cases
- ▶ Can't arrest or impose monetary sanctions
- ▶ Can't file lawsuits on behalf of complainants



# What is the unauthorized practice of law?

ABA Model Rule 5.5: A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction



## Rule 14-802

Except as set forth in subsections (c) and (d) of this rule, only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah.

(b) For purposes of this rule:

(b)(1) The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.

(b)(2) The “law” is the collective body of declarations by governmental authorities that establish a person’s rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person’s rights, duties, constraints and freedoms.

(b)(3) “Person” includes the plural as well as the singular and legal entities as well as natural persons.

## Rule 14-802 Continued

(c) Exceptions and Exclusions for Licensed Paralegal Practitioners. A person may be licensed to engage in the limited practice of law in the area or areas of (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change; (2) forcible entry and detainer; or (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases.

(c)(1)(A) Within a practice area or areas in which a Licensed Paralegal Practitioner is licensed, a Licensed Paralegal Practitioner who is in good standing may represent the interests of a natural person who is not represented by a lawyer unaffiliated with the Licensed Paralegal Practitioner by:

(c)(1)(B) establishing a contractual relationship with the client;

(c)(1)(C) interviewing the client to understand the client's objectives and obtaining facts relevant to achieving that objective;

(c)(1)(D) completing an approved form;

(c)(1)(E) informing, counseling, advising, and assisting in determining which form to use and giving advice on how to complete the form;

(c)(1)(F) signing, filing, and completing service of the form;

(c)(1)(G) obtaining, explaining, and filing any document needed to support the form;

(c)(1)(H) reviewing documents of another party and explaining them;

(c)(1)(I) informing, counseling, assisting and advocating for a client in mediated negotiations;

(c)(1)(J) filling in, signing, filing and completing service of a written settlement agreement form in conformity with the negotiated agreement;

(c)(1)(K) communicating with another party or the party's representative regarding the relevant form and matters reasonably related thereto; and

(c)(1)(L) explaining a court order that affects the client's rights and obligations.

## Rule 14-802 Continued

(d) Other Exceptions and Exclusions. Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

- ▶ (d)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.
- ▶ (d)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.
- ▶ (d)(3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

## Rule 14-802 Continued

- ▶ (d)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.
- ▶ (d)(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.
- ▶ (d)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.
- ▶ (d)(7) Representing a party in any mediation proceeding.
- ▶ (d)(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.
- ▶ (d)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.
- ▶ (d)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.
- ▶ (d)(11) Lobbying governmental bodies as an agent or representative of others.

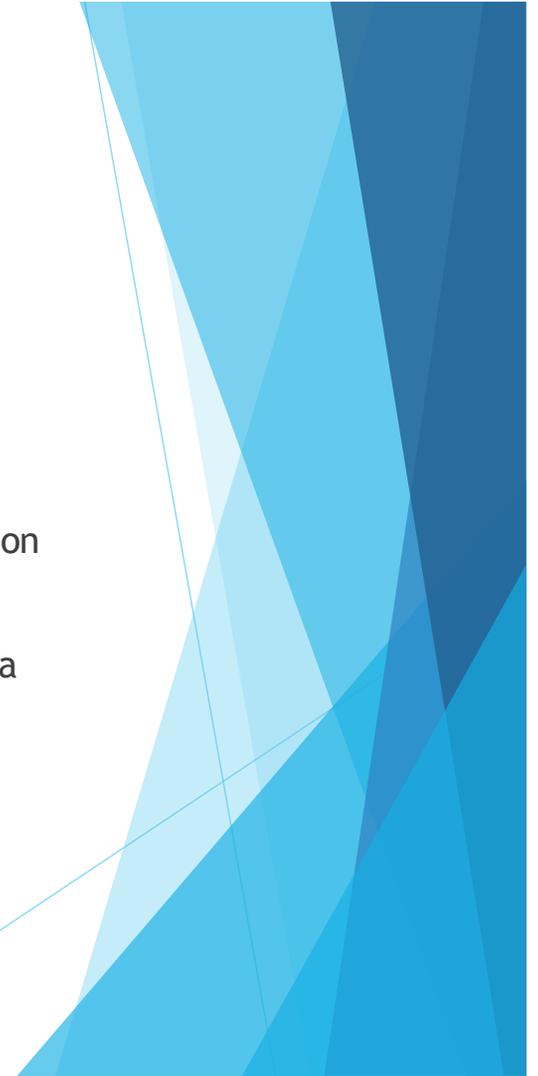
## Rule 14-802 Continued

(d)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

- ▶ (d)(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.
- ▶ (d)(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.
- ▶ (d)(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.
- ▶ (d)(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.
- ▶ (d)(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.
- ▶ (d)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

# What is applying law to facts and circumstances?

- ▶ Helping someone fill out a form vs helping someone select which form is appropriate
- ▶ Client asks you a question and you *know* the answer - but it's a legal question
- ▶ Any legal papers or pleadings on behalf of the client can only be signed by a lawyer



# ABA Model Guidelines for the Utilization of Paralegal Services

- ▶ A lawyer is responsible for all of the professional actions of a paralegal performing services at the lawyer's direction
- ▶ Lawyers can delegate certain tasks to non-lawyers
- ▶ A lawyer may not delegate to a paralegal:
  - ▶ Responsibility for establishing an attorney-client relationship.
  - ▶ Responsibility for establishing the amount of a fee to be charged for a legal service.
  - ▶ Responsibility for a legal opinion rendered to a client.

[https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls\\_prlgs\\_modelguidelines.pdf](https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls_prlgs_modelguidelines.pdf)

## Utah Ethics Opinion: Utah State Bar Ethics Advisory Opinion Committee Opinion No. 99-02

- ▶ Issue: Does a lawyer who negotiates or communicates with an opposing party's legal assistant, secretary or other non-lawyer representative about substantive matters assist in the unauthorized practice of law under Utah Rule of Professional Conduct 5.5(b)?

## Utah Ethics Opinion: Utah State Bar Ethics Advisory Opinion Committee Opinion No. 99-02

- ▶ Opinion: In general, a lawyer who negotiates or otherwise communicates with a non-lawyer representative on substantive matters affecting the rights of parties to a particular matter is not assisting in the unauthorized practice of law if that representative is supervised by a lawyer as required under Rule 5.3.



# In House Counsel Considerations

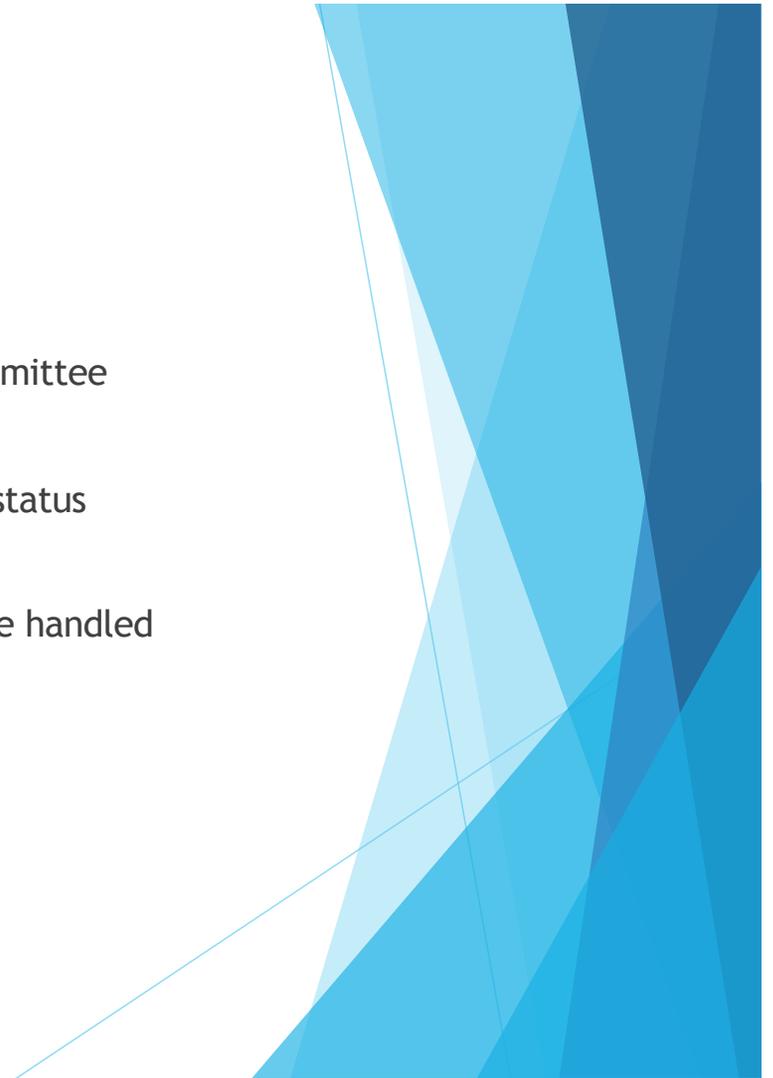
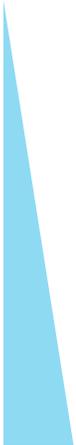
- ▶ Are you licensed in all the jurisdictions where your company has offices? If not, are you practicing law there?
  - ▶ Have to be admitted in the jurisdiction where a deposition is scheduled to take place
- ▶ Are your HR professionals practicing law?
  - ▶ Court in Pennsylvania ruled that nonattorneys were prohibited from appearing as representatives of the company in unemployment compensation proceedings
    - ▶ Legislation was passed to undo this
  - ▶ What about signing the appeal of an unemployment determination?
    - ▶ Arkansas Court dismissed an employer's appeal because the nonlawyers signature on the appeal constituted the unauthorized practice of law
      - ▶ Seems to be an extreme view

# COVID-19 and the 2020 Bar Exam

- ▶ Haven't taken the bar before
- ▶ Graduated by June 30, 2020 from an ABA-approved school with a first-time taker passage rate in 2019 of 86% or higher
- ▶ Submitted their application before April 1, 2020
- ▶ Can be admitted to the bar by the end of the year if they provide evidence of 360 hours of supervised practice

# Immigration Law

- ▶ One of the areas we frequently see reported to the UPL committee
- ▶ Victims are hesitant to report because of their immigration status
- ▶ Can have life-changing consequence if immigration issues are handled incorrectly



# Notarios

“The term "notario publico" is particularly problematic in that it creates a unique opportunity for deception. The literal translation of "notario publico" is "notary public." While a notary public in the United States is authorized only to witness the signature of forms, a notary public in many Latin American (and European) countries refers to an individual who has received the equivalent of a law license and who is authorized to represent others before the government.

The problem arises when individuals obtain a notary public license in the United States, and use that license to substantiate representations that they are a "notario publico" to immigrant populations that ascribe a vastly different meaning to the term. ”

ABA “About Notario Fraud” July 19, 2018

[https://www.americanbar.org/groups/public\\_interest/immigration/projects\\_initiatives/fight-notario-fraud/about\\_notario\\_fraud/](https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fight-notario-fraud/about_notario_fraud/)



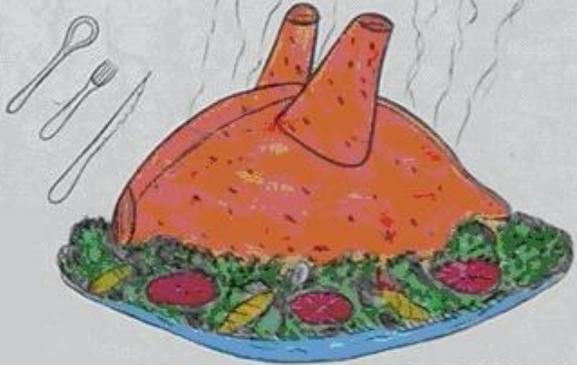
SPEED  
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**RESTAURANT**

**(305) 759-7615**

**IMMIGRATION. NOTARY PUBLIC**

**TASSOT · CHICKEN STEW · GRIOT  
LEGUME · OXTAIL · FRIED CHICKEN**



RES  
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# THE WRONG HELP CAN HURT

BEWARE OF IMMIGRATION SCAMS



[uscis.gov/avoid-scams](https://uscis.gov/avoid-scams)



## Check Before You Trust

Make sure anyone who helps you with your immigration case is authorized to help.

### Who is authorized to help me with my immigration case?

1. You can complete the forms yourself and represent yourself before USCIS.
2. You can get legal advice and other help from an attorney or a representative accredited by the U.S. Department of Justice. Learn more at [justice.gov/eoir/recognition-accreditation-roster-reports](https://justice.gov/eoir/recognition-accreditation-roster-reports).
3. To find free or low-cost legal services and authorized immigration service providers, visit [uscis.gov/avoid-scams/find-legal-services](https://uscis.gov/avoid-scams/find-legal-services).
4. Other people, such as relatives, friends, and document preparers, can help you fill out USCIS forms. But they cannot give you legal advice and they can only charge you a small fee.

### Legal advice includes:

- Helping you interpret questions on immigration forms; and
- Explaining your immigration options.

### How can USCIS help me with my immigration questions?

- Call USCIS customer service at 1-800-375-5283 (For customers with disabilities which require

accommodation: TTY/ASCII: 1-800-877-8339, Voice: 1-866-377-8642);

- Ask Emma, the USCIS virtual assistant, at [uscis.gov/Emma](https://uscis.gov/Emma);
- Find an upcoming event at [uscis.gov/outreach](https://uscis.gov/outreach); or
- Schedule an appointment at a field office at [my.uscis.gov/appointment](https://my.uscis.gov/appointment).

## Protect Others, Report Immigration Scams!

### Do you know about an immigration scam?

Notify the Federal Trade Commission at [1.usa.gov/IsuOHSS](https://1.usa.gov/IsuOHSS) or call 1-877-382-4357. You can make an anonymous report in English or Spanish. You can also report immigration scams to the appropriate state agency. Learn more at [uscis.gov/avoid-scams/report-scams](https://uscis.gov/avoid-scams/report-scams).

Protect yourself and your family from immigration scams. Learn the facts and find legal help at [uscis.gov/avoid-scams](https://uscis.gov/avoid-scams).

## Common Sense Is Your Best Defense

Some businesses and websites pretend to be immigration experts or say they have special connections to the government. Always go to the official USCIS website, [uscis.gov](https://uscis.gov), and not a copycat website. Know how to spot a scam by learning about scams at [uscis.gov/avoid-scams/common-scams](https://uscis.gov/avoid-scams/common-scams).

If you receive email that you think is a scam, forward it to [USCIS.Webmaster@uscis.dhs.gov](mailto:USCIS.Webmaster@uscis.dhs.gov).

## Tips to Remember

### Always...

- Get immigration information from the U.S. government, starting with [uscis.gov](https://uscis.gov) or [state.gov](https://state.gov).
- Check that the person who helps you is an attorney or accredited representative.
- Get a receipt if you pay someone to help you.
- Get photocopies of forms prepared for you.
- Keep all letters and notices from USCIS in a safe place.
- Manage your case with self-help tools at [uscis.gov/tools](https://uscis.gov/tools).
- Report immigration scams immediately: [uscis.gov/avoid-scams/report-scams](https://uscis.gov/avoid-scams/report-scams).

### Never...

- Pay for immigration forms. You can get forms free at [uscis.gov/forms](https://uscis.gov/forms), by calling 1-800-870-3676, or at your local USCIS office.
- Sign a blank form. Make sure all forms are complete before you sign them.
- Sign any forms that have false information.
- Send original documents as evidence to support your application unless USCIS asks for the original.

### When looking for immigration help, remember: the wrong help can hurt!

Learn the facts and find legal help at [uscis.gov/avoid-scams](https://uscis.gov/avoid-scams).



U.S. Citizenship  
and Immigration  
Services



## Immigration Consultant

A person may not engage in an activity of an immigration consultant for compensation unless the person is either exempt under Utah Code Ann. Section 13-49-201 (1)(b) or registered with the Division under Section 13-49-201(1)(a).

[Click Here to Apply Online!](#)

### Frequently Asked Questions (click question to view answer)

**Q:** [Who is an immigration consultant?](#)

- A:** An Immigration Consultant means a person who provides nonlegal assistance or advice on an immigration matter, including:
- completing a document provided by a federal or state agency, but not advising a person as to the person's answers on the document;
  - translating a person's answer to a question posed in a document provided by a federal or state agency;
  - securing for a person supporting documents, such as a birth certificate, that may be necessary to complete a document provided by a federal or state agency;
  - submitting a completed document on a person's behalf and at the person's request to the United States Citizenship and Immigration Services; and
  - referring a person who could undertake legal representation activities in an immigration matter.

**Q:** [Who is exempt from having to register as an immigration consultant?](#)

**Q:** [How much does it cost to register as an immigration consultant?](#)

**Q:** [What does it take to register?](#)

### Manual Registration Forms

- [Registration Form](#)
- [Bond Form](#)
- [Background Check Instructions](#)
- [Background Check Consent Form](#)
- [Background Check Terminate Consent Form](#)

### Statutes & Rules

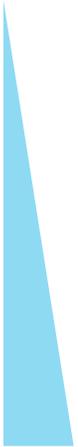
- [Utah Code Annotated §13-49](#)

# The UPL Committee

- ▶ Investigate complaints
  - ▶ Talk to complainants and alleged UPLers
- ▶ Try to determine if there was an unauthorized practice of law
  - ▶ Advertising issues?
  - ▶ Performed legal work?
  - ▶ Just fraud?

# Types of Cases We See

- ▶ Immigration
- ▶ Trusts and Estates
- ▶ Filing court documents
- ▶ Family law
- ▶ Independent paralegals





What is the Harm?

# Working with Other Entities

- ▶ Consumer Assistance Program - help clients resolve problems they have with their attorneys that may not rise to the level of a violation of the Rules of Professional Conduct
- ▶ Office of Professional Conduct - investigate allegations against attorneys and LPPs for violating the Rules of Professional Conduct
- ▶ DOJ/USCIS
- ▶ Consumer Protection
- ▶ Other state UPL/OPC committees

# Out of State Practice

## ▶ ISSUE

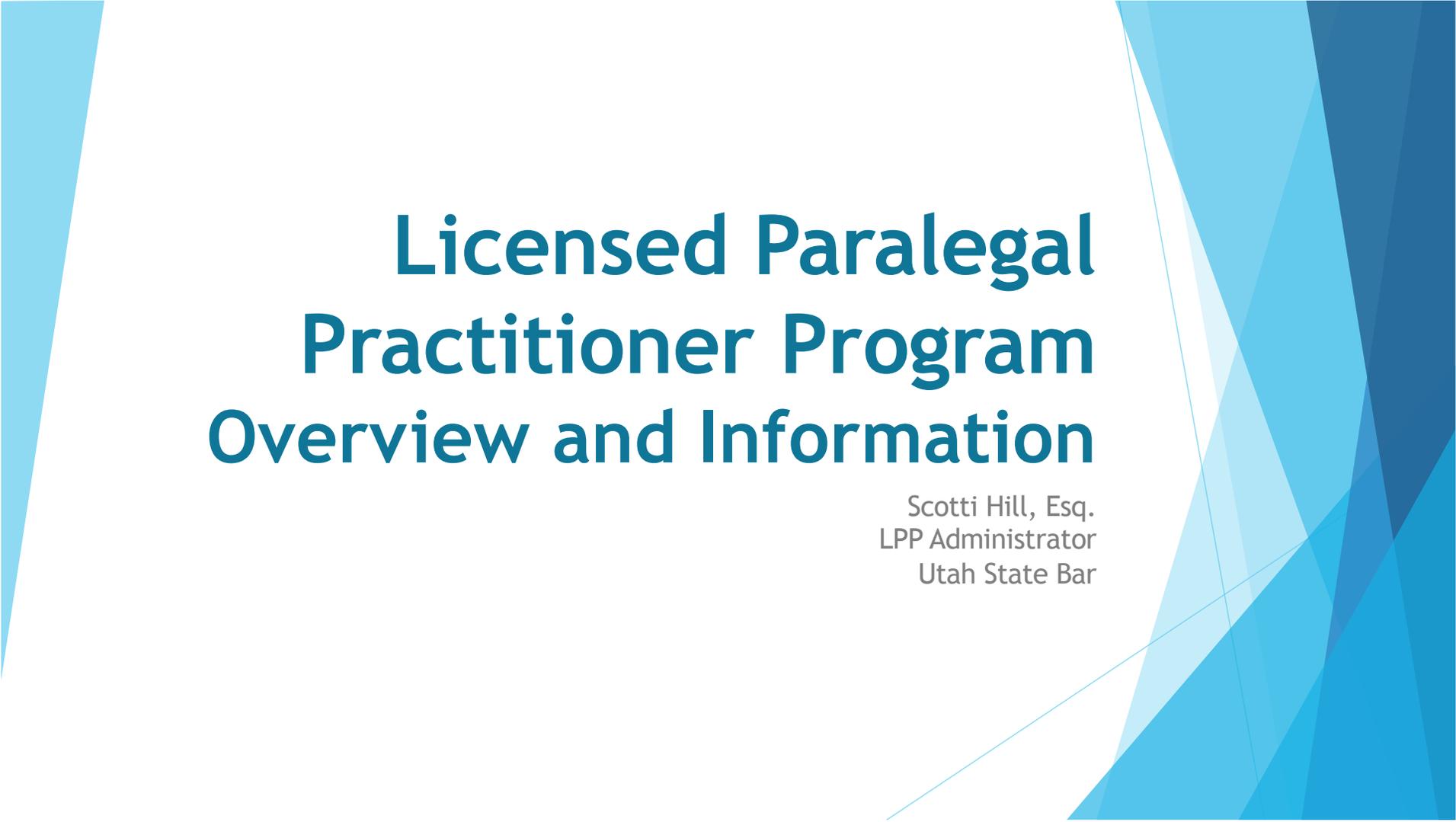
If an individual licensed as an active attorney in another state and in good standing in that state establishes a home in Utah and practices law for clients from the state where the attorney is licensed, neither soliciting Utah clients nor establishing a public office in Utah, does the attorney violate the ethical prohibition against the unauthorized practice of law?

## ▶ OPINION

The Utah Rules of Professional Conduct do not prohibit an out-of-state attorney from representing clients from the state where the attorney is licensed even if the out-of-state attorney does so from his private location in Utah. However, **in order to avoid engaging in the unauthorized practice of law, the out-of-state attorney who lives in Utah must not establish a public office in Utah or solicit Utah business.**



## UPL and Access to Justice



# Licensed Paralegal Practitioner Program Overview and Information

Scotti Hill, Esq.  
LPP Administrator  
Utah State Bar

# Educational Requirements

- ▶ Law degree from ABA approved law school. Utah Supreme Court Rules of Professional Practice. Rule 15-703(a)(4)(A); **OR**
- ▶ Associate degree in paralegal studies from an accredited school. Rule 15-703(a)(4)(B); **OR**
- ▶ Bachelor's degree in paralegal studies from an accredited school. Rule 15-703(a)(4)(C); **OR**
- ▶ Bachelor's degree in any field from accredited school **plus**,
  - ❖ A Paralegal Certificate from an accredited program; **or**
  - ❖ 15 credit hours, minimum, of paralegal studies from an accredited school. Rule 15-703(a)(4)(D)

# Limited Time Waiver

## “Grandfathering Provision”

### For waiver of educational requirements only.

- ▶ Bar may grant waiver of minimum educational requirements for three years from the date the Bar initially begins to accept LPP applications for licensure. Rule 15-705(a).
- ▶ Applicant must show, within two years from the waiver request, that they:
  - ❖ Have filed the Application for a Limited Time Waiver and paid prescribed fees. Rule 15-705(a)(1)
  - ❖ Are at least 21 years old. Rule 15-705(a)(2)
  - ❖ Have completed seven years of full-time substantive law related experience within the 10 years preceding the application, including experience in the practice area in which they seek licensure. Rule 15-705(a)(3)
    - 500 hours of substantive law-related experience in temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change.
    - 100 hours of substantive law-related experience in forcible entry and detainer or debt collection.
    - Proof of substantive law related experience will be certified by supervising attorney, meeting requirements in Rule 15-705(a)(3)(A)-(C)
  - ❖ Proof that applicant has successfully passed the LPP Ethics Examination and the LPP Examinations for the practice areas in which the applicant will be licensed. Rule 15-705(a)(4) and (a)(5)

# Experience Requirements

- ▶ Applicants with a first law degree are exempt from experience requirement.
- ▶ If no law degree, applicant must have 1500 total hours of substantive law-related experience within the last three years. 15-703(a)(5)
  - ❖ For licensure in family law, must have 500 hours of substantive law-related experience in temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change
  - ❖ For licensure in other areas, must have 100 hours of substantive law-related experience in forcible entry and detainer or debt collection.
- ▶ In all practice areas, applicants must have gained experience under the supervision of a licensed Utah attorney or LPP.
  - ❖ Full or part-time job
  - ❖ Paid or unpaid internship
  - ❖ Volunteer or pro bono work

# Experience

## Requirements- Continued

- ▶ “Substantive Law-Related Experience” means the provision of legal services as a paralegal, paralegal student, or law student including, but not limited to, drafting pleadings, legal documents or correspondence, completing forms, preparing reports or charts, legal research, and interviewing clients or witnesses. Substantive law-related experience for landlord-tenant and debt collection includes, but is not limited to, the provision of legal services in the areas of bankruptcy, real estate, mortgage and/or banking law. Rule 15-701(bb)
  - ❖ Substantive law-related experience **does not include** routine clerical or administrative duties.

# Requirements for Applicants without a First Professional Law Degree.

- ▶ If an applicant has not obtained a first professional law degree, the applicant will be required to meet two additional requirements:
  - ❖ Completion of LPP-Approved Courses for Ethics and any practice-area in which they want to be licensed. Currently, Utah Valley University is the only institution that is offering these courses; AND
  - ❖ A National Certification from one of the certification organizations set forth in the next slide.
- ▶ Applicants who have obtained a first professional law degree are not required to take the LPP courses, but they are encouraged to do so.

# National Certification Requirement

- ▶ Unless the applicant has a first law degree as described above, applicants for licensure as an LPP **must** have obtained one of the following:
  - ❖ Designation as a Certified Paralegal (CP) OR Certified Legal Assistant (CLA) by the National Association of Legal Assistants (NALA). Click [here](#) for more information about NALA certification.
  - ❖ Certification as a Professional Paralegal (PP) from the National Association for Legal Professionals (NALS). Click [here](#) or more information about the NALS PP certification.
  - ❖ Designation as a CORE Registered Paralegal (CRP) by the National Federation of Paralegal Associations (NFPA). Click [here](#) for more information about the CRP designation.

# Testing and Admissions

- ▶ To be licensed, all LPPs must pass the LPP Ethics Exam **and** an exam for the specific area in which they will be practicing. Rule 15-703(a)(6)-(7)
- ▶ The Bar will oversee the admission of LPPs and will regulate licensing.
  - ❖ LPPs will be required to complete 12 hours of Continuing Legal Education per two-year reporting period. Rule 15-404.
- ▶ Each applicant must be of good moral character. Rule 15-708
  - ❖ The Bar will perform character and fitness examinations for each applicant before they are admitted, similar to investigation for applicants taking the Bar Exam.
- ▶ LPPs will be governed by Standards of Professionalism and Civility and Rules of Professional Conduct.
  - ❖ Rules are based on those that apply to attorneys.

# LPP Exam Application

## Dates & Timelines

### APPLICATIONS FOR LPP ADMISSION BY EXAMINATION - DEADLINES

#### MARCH EXAMINATION:

Application filing deadline date - October 1

Late filing deadline date - October 15 *(include a \$50 late fee)*

Final filing deadline date - November 1 *(include a \$100 late fee)*

#### AUGUST EXAMINATION:

Application filing deadline date - April 1

Late filing deadline date - April 15 *(include a \$50 late fee)*

Final filing deadline date - May 1 *(include a \$100 late fee)*

The Application, with all forms and applicable supplementary documentation, must be **received by the Bar (NOT postmarked) by close of business on the appropriate filing deadline.** If the deadline date falls on a Saturday, Sunday or holiday the deadline date will be the first business day thereafter.

**NO APPLICATIONS OR SUPPLEMENTAL DOCUMENTATION FOR APPLICATIONS WILL BE ACCEPTED AFTER NOVEMBER 1 FOR THE MARCH LPP EXAMINATION AND MAY 1 FOR THE AUGUST LPP EXAMINATION.**

# Contact Information

Scotti Hill  
LPP Administrator  
Utah State Bar  
(801) 746-5201  
[scotti.hill@utahbar.org](mailto:scotti.hill@utahbar.org)

If you need immediate assistance, please email me at the address above. I will be able to respond more quickly.

