

# Considering New Roles for Non-lawyers: An Overview

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- I. **Why Consider Roles for Non-lawyers?** The Justice Gap persists, with millions of people proceeding annually without counsel in legal matters (for example, evictions, foreclosures, divorce, child custody, child support, consumer debt, estate planning, elder care, disputes over employment conditions or pay, health care, education, and public benefits) in state judicial systems, despite reform efforts that include:
  - Civil legal services
  - Pro bono services (by professionals & students)
  - Court reform initiatives (forms, simplification, technology, proactive judges and staff)
  - “Unbundling” (assistance with discrete tasks)
  - Civil right to counsel initiatives
  
- II. **Unauthorized Practice Laws Prohibit Roles for Non-lawyers**
  - To protect people from:
    - fraud, by people who claim to be lawyers
    - incompetence, by people incapable of performing actions reserved to lawyers
  - UPL is a crime in most states
  - UPLs prohibit non-lawyer ownership of corporations for purpose of providing civil legal services.
  
- III. **Many are now Calling for UPL Reform, Citing:**
  - Stratification in Medicine – New roles for non-physicians (nurse practitioners, physical therapists, pharmacists, emergency medical technicians)
  - Empirical studies – Non-lawyers may handle certain tasks better than lawyers.
  - Rates – Non-lawyers may be able to perform these tasks for less than lawyers.
  - Justice Gap – Non-lawyers are not a threat to the private bar, since the private bar is not providing services to the people who might benefit.
  
- IV. **Turner v. Rogers, 131 S.Ct. 2507 (2011)**
  - No federal categorical constitutional right to counsel in civil contempt child support case
  - Because some cases are not so simple they don’t need a lawyer (but if this is accurate, what rationale is left to prohibit nonlawyers from taking them?)

- Trial court has obligation to deploy alternative safeguards where no counsel, including by:
  - providing notice of potentially dispositive issue and of essential evidentiary materials
  - perhaps relying on a social worker or a form to assure due process.

**V. Key Elements of Non-lawyer Models (compensation, supervision, location, training, scope of activities, scope of subject matter, evaluation)**

1. Compensation
  - a. Non-profit
    1. legal services providers
    2. social services agencies
  - b. For-profit
    1. private law firms
    2. private nonlawyer firms
2. Supervision
  - a. Lawyers, on site
  - b. Lawyers, off-site
  - c. Social workers
  - d. Other
3. Location
  - a. In court on record
  - b. Out of court, on record (pleadings, depositions, other)
  - c. Out of court, off record (information, advice)
  - e. Before agency
4. Training
  - a. education
    1. type: community college, college or law school
    2. duration: less than three years of law school
  - b. certificate v. license
5. Scope of activities
  - a. information, un-individuated advice (navigation and explanation)
  - b. assistance (locating key documents, completing court forms)
  - c. individuated advice (shaping facts, explaining choices)
  - d. representation/advocacy
6. Scope of subject matter
  - a. basic needs
    1. housing evictions and foreclosure
    2. subsistence benefits
    3. physical safety
    4. child custody, child support, domestic violence, divorce

5. detention and deportation (federal system)
- b. additional needs
  1. debt collection
  2. estate planning
  3. elder care
  4. disputes over employment conditions or pay
  5. health care
  6. education
  7. other
7. Evaluation (research to determine efficacy)

## **VI. Questions With All Models**

- Competence – can non-lawyers ably perform the needed tasks?
- Regulation – can it be kept affordable, yet be effective?
- Economics –
  - Does a for-profit market exist?
  - Is cost of services affordable for those in need?
    - the poor
    - people of modest means
    - the middle class
  - Do incentives exist for people to enter the field?
    - Non-profit sector
    - For profit sector
  - Does model threaten the bar
    - private bar
    - legal services bar
    - law graduates
- Two tier justice system – Does the model promote unequal access to justice, as compared to the status quo?

## **VII. Steps toward ensuring quality with all models**

- Education – school, but less than three years law school
- Certification v. license
  - by the educating institution (a school)
  - by the authorizing institution (a court)
  - by a higher level of authorizing institution, such as the state, with possible exam
- Insurance
- Enforcement – as with lawyers (sanction, removal of authorization)
- Alternatives – malpractice civil suit, other

## **VIII. Established Models of Non-lawyers Providing Civil Legal Assistance**

- Judges and court staff – provide information in many jurisdictions
- Law students – with, and without, student practice orders, in many jurisdictions

- “Document preparers” – in Arizona and California
- “Independent paralegals” – in Ontario, see
- “Friends” and related models –
  - MacKenzie Friends in England and Wales
  - Petitioners’ friends in DV cases in Family Court in NYS
  - Reputable individuals in US immigration proceedings
- Legal advice – in the UK, including clinics in bookstores
- Administrative advocacy – in US (Social Security representatives, accredited representatives in US immigration proceedings, more)
- FileRight, Legal Zoom, JustAnswer, Justia, Rocket Lawyer, Shake Inc., We the People

## IX. Newer Models in the U.S.

1. Washington State “Limited Licensed Legal Technicians” – See <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians>
  - Compensation –
    - independent, for profit corporations
    - non-profit legal services programs
  - Training and Supervision
    - first law school class graduated in May 2015
    - pleadings may be drafted, must be supervised
  - Location – outside of the courthouse
  - Scope of tasks – explanation, form preparation
  - Scope of subject matter – per regulation, initially “domestic relations”
  - Evaluation – foundation-supported study by American Bar Foundation and National Center for State Courts
2. New York “Navigators”, <http://www.courts.state.ny.us/courts/nyc/housing/rap.shtml>
  - Compensation – Only non-profit settings
  - Training and Supervision
    - trained by the court
    - supervised by nonlawyers
  - Scope of tasks
    - Provide organizational and moral support
    - Respond when spoken to by the judge
    - Advocacy is prohibited
  - Scope of subject matter
    - Housing evictions
    - Credit card collections
  - Location
    - In court: Brooklyn Housing Court and Bronx Consumer Court
  - Evaluation –

- Preliminary “Navigator Snapshot Report” (December 2014), <https://richardzorza.files.wordpress.com/2015/02/navigator-report.pdf>
- Full study to be conducted in 2015-2016 by American Bar Foundation and National Center for State Courts

**X. Additional Models (proposed, or otherwise under consideration)**

1. New York – “Housing Court Aides” and “Consumer Court Aides” (anticipated legislation released by Office of Court Administration, NYS Unified Court System, available at <https://richardzorza.files.wordpress.com/2015/03/oca-hca-bill-and-memo-oca-2015-21.pdf>)
  - Compensation – only in nonprofit organizations, must be approved by chief administrative judge
  - Training and Supervision
    - training curriculum to be designed by Chief Administrative Judge, with advisory committee
    - supervision must be by attorney
    - not yet determined whether supervision must be on-site
    - individual HCAs and CCAs must be individually approved by chief administrative judge
  - Scope of Tasks
    - Would amend the NY UPLs
    - Allows discussion of case with judge
  - Scope of Subject Matter
    - Housing Court evictions
    - Consumer credit collection cases
  - Location
    - In the courtroom
    - Outside of the courtroom, too.
  - Evaluation
    - Required, but not yet designated
2. California
  - State Bar has conducted three public hearings
  - The State already allows “application preparers”
3. Washington State
  - Possible expansion of LLLTs’ scope of subject matter and scope of tasks, may extend to in-courtroom appearances

**Selected Reading Materials (reverse chronological order):**

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*In the Matter of the Adoption of New APR 28 – Limited Practice Rule for Limited Licensed Legal Technicians*, No. 25-700-A-1005, Supreme Court of Washington (June 15, 2012), <http://www.wsba.org/~media/Files/WSBA-wide%20Documents/LLLT/Supreme%20Court/Legal%20Technician%20Rule.ashx>

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Herbert M. Kritzer, *The Professions Are Dead, Long Live the Professions: Legal Practice in a Postprofessional World*, 33 *Law & Society Review* 713 (1999).

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[http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/Non\\_Lawyer\\_Activity.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/Non_Lawyer_Activity.authcheckdam.pdf).

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