



# IS IT TIME FOR PENNSYLVANIA TO CONSIDER QUALIFIED LEGAL ADVOCATES?

Analysis by Briana Ziff

**T**he provision of equal access to the justice system is crucial to assure that under-represented communities, and those who cannot afford the cost of a lawyer, have the assistance they need. While increasing the number of free and affordable lawyers is important, there is no likelihood that an adequate supply of attorneys for all who need them will exist anytime soon. To address this justice gap, Pennsylvania should consider joining those states that are allowing new categories of legal helpers to provide assistance in specific types of matters. (While states use various terms to describe these professionals, we will use “qualified legal advocates” – a variation of Delaware’s term – in this discussion.)

## The Justice Gap and the Role of Qualified Legal Advocates

Inequality in access to civil justice is

a crisis that disproportionately impacts low-income individuals and people of color. Some national surveys show that in three-quarters of civil cases, at least one side is unrepresented. In Pennsylvania, according to a 2017 study by the Pennsylvania IOLTA Board and the Pennsylvania Legal Aid Network, “for every person represented by the Pennsylvania Legal Aid Network program, at least two people asked for help and were eligible for services, but received inadequate or no assistance.” The problem may be growing in the wake of COVID-19, as financial disparities deepen, and more individuals face eviction and unemployment.

States are exploring various strategies for addressing the civil justice gap. One set of approaches, originally termed “Civil Gideon” and focused solely on creating new rights to counsel, now includes a range of additional options, such as

the provision of self-help materials and in-person assistance by a variety of trained individuals. Another set of efforts (the “regulatory sandbox”) involves experimentation with alternative law practice models, e.g., allowing persons other than licensed attorneys to have an ownership interest in firms or to provide legal counsel in specified situations.

“Qualified legal advocates” can fit within both approaches. In essence, these are individuals other than licensed lawyers who provide assistance in certain types of matters, such as eviction proceedings or unemployment hearings. Because these advocates may be viewed as violating unauthorized practice of law rules, several state supreme courts have adopted new rules and state-tailored pilot programs. In these programs, qualified advocates are authorized to practice law in certain specific areas, and are subject to exten-



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sive education, training, supervision, and licensure requirements. These sorts of programs may hold promise for Pennsylvania.

### **Pennsylvania's Existing Framework for Qualified Legal Advocates**

Pennsylvania already permits some representation by persons not licensed to practice law. Minor Court Civil Rule 207 permits representation by an individual who has “personal knowledge of the subject matter of the litigation” in magisterial district court proceedings. Rule 207 is less than ideal, because its “personal knowledge” requirement is simultaneously limiting and overly inclusive. For individual litigants, the rule is limiting because they are unlikely to have access to people who have personal knowledge of the facts of their case and the skills to provide representation. For business litigants, the rule potentially allows any staff member familiar with the case, such as a property manager, to provide representation -- without any required training, competence, or oversight. Nevertheless, Rule 207 can be seen as a first step toward a program of qualified legal advocates, assuming the addition of appropriate parameters and safeguards.

The Pennsylvania Supreme Court has also weighed in on representation by individuals not licensed to practice law in *Harkness v. Employment Compensation Board of Review*, 920 A.2d 162 (Pa. 2007). In *Harkness*, the Court held that a non-attorney representing an employer in an unemployment compensation hearing does not violate the unauthorized-practice rule. The Court held that what constitutes the practice of law must be determined on a case-by-case basis, stating that “paramount to the inquiry is consideration of the public interest, ... both in terms of the protection of the public as well as in ensuring that the regulation of the practice of law is not so strict that the public good suffers.” The Court also pointed to the relatively straightforward nature of unemployment compensation hearings, noting that the “activities performed by an employer representative in an unemployment compensation proceeding are largely routine.”

The Court's emphasis on the public interest and its determination that advocates can provide effective assistance in certain routine proceedings suggest principles on which a program of qualified legal advocates might be designed. Creating such a program would likely require a new rule, which could be a Pennsylvania-specific variation of the rules implemented by other states.

### **Looking to Other States for Guidance**

Washington, Utah, Arizona, Minnesota, and Delaware have all

adopted rules allowing for representation by trained individuals other than lawyers. Each state has created a tailored program, with various levels of autonomy, supervision, and licensure.

WASHINGTON: Washington was the first state to implement representation by persons other than attorneys. Beginning in 2012, its Supreme Court permitted certain non-lawyers to be licensed to undertake specific legal tasks through its Limited License Legal Technician (“LLLTs”) Program, in family law matters such as divorce and child custody. Legal Technicians were permitted to consult with and advise clients, complete and file necessary court documents, assist clients at certain types of hearings and settlement conferences, and assist with court scheduling. The license required extensive coursework and training and adherence to a code of ethics.

Although this program was initially approved by the Washington State Bar association, the LLLT option eventually lost support. In April 2020, the Supreme Court voted to reject a proposal to allow LLTs to practice in administrative law, eviction, and debt assistance. The program was dealt a final blow in June 2020 when the Supreme Court voted to allow LLLTs in good standing to remain licensed, but not to approve additional applicants. While the reasoning behind the Court's decision is unclear, some speculate it may have been due to lack of interest in the program, overly extensive training requirements, or opposition from the bar.

However, although Washington chose to end its program, other states have continued to adopt their own pilot programs of qualified legal advocates.

UTAH: In 2018, the Utah Supreme Court adopted Rule 14-802 of the Rules Governing the Utah State Bar to allow licensed paralegal practitioners (“LPP”) to practice law in certain matters. An LPP can practice law in family law, debt collection, and landlord-tenant disputes without the direct involvement or supervision of an attorney. The Utah State Bar describes the LPP as “a mid-level legal provider that is a step up from a paralegal and a step down from a fully practicing attorney.” Notably, an LPP may not appear in court and may not charge contingency fees.

To become an LPP, one must meet certain education requirements and complete 1500 hours of substantive law-related experience within three years prior to the LPP application; pass a professional ethics examination; and pass a LPP examination for each area in which the applicant seeks to practice. The Utah Supreme Court has also adopted Licensed Paralegal Practitioner Rules of Professional Conduct. Utah asserts this program serves as a viable solution to the need for more accessible legal representation.



ARIZONA: In 2019, the Task Force on Delivery of Legal Services recommended that the Supreme Court establish the Licensed Legal Advocate Pilot Program. In 2021, the Arizona Supreme Court's Board of Nonlawyer Legal Service Providers approved licensure of legal paraprofessionals ("LP"). The Court compared an LP to a nurse practitioner in the medical field and stated that the goal of the LP program is to "provide Arizonans with a viable alternative to hiring lawyers for their less complex legal needs while maintaining the standards outlined by the Rules of the Supreme Court." The Court further noted that "80.3% of the public supported the proposal that was adopted as Legal Paraprofessionals."

As defined by Arizona's rules, an LP is "a professional with specific education and experience who is licensed to provide legal services in limited practice areas." An LP must meet certain education requirements and pass an examination in each area in which they intend to practice. The areas include family law, limited jurisdiction civil cases, limited jurisdiction criminal cases where no jail time is involved, and state administrative law (where the administrative agency allows). According to a report by Michele Aerin, 14 LP's had been licensed as of March of this year.

MINNESOTA: In March 2019, Minnesota Supreme Court Order ADM19-8002 established the "Implementation Committee for the Proposed Legal Paraprofessional Pilot Project" to assess options and provide recommendations for implementing and evaluating the Pilot. The Court issued an order in 2021 approving a pilot program that permits legal paraprofessionals, under the supervision of a Minnesota attorney, to provide legal advice and sometimes represent a client in court in landlord-tenant disputes and family law.

The program is a two-year pilot project currently set to end in March 2023. Minnesota differs from both Delaware



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and Arizona in its LP requirements. In Minnesota, to become a legal paraprofessional, one does not need any additional licensure beyond the education and work experience requirements specified by Rule 12.02.

The Standing Committee for the Legal Paraprofessional Pilot Project released an interim report on the pilot project in January 2022. The report stated that supervising attorneys reported satisfaction with

the pilot project and that paraprofessionals believe that they are providing access to justice for more Minnesotans. The report also noted that LPs requested "more education on effective courtroom representation and practices." The Committee concluded that, so far, the Pilot Project "has had a positive impact and shows that legal paraprofessionals can successfully provide quality services to parties in family and housing cases."

DELAWARE: Delaware recently adopted Rule 57.1, allowing for "nonlawyer representation of residential tenants in eviction actions." Daniel Atkins, the Executive Director of Community Legal Aid Society, Inc., was a key player in the adoption process. Mr. Atkins points out that the Delaware Supreme Court has a rule, somewhat like our Rule 207, that allows non-attorney agents to represent landlords in eviction proceedings. Given this rule, the Delaware Supreme Court was open to creating a rule that would level the playing field.

A committee was formed, including both landlord and tenant representatives, to study the asymmetry in representation of tenants (fewer than 5% of tenants) and landlords (over 85%). The Committee to Examine Amendment of the Supreme Court Rules to Permit Non-Attorney Representation of Tenants in Residential Eviction Proceedings recommended the adoption of Rule 57.1. Rule 57.1 notably had support from both the landlord and tenant representative sides as it allows both sides to have non-lawyer representation.

Rule 57.1 allows tenants to be represented by a "Qualified Tenant Advocate," under the supervision of three legal aid agencies in Delaware. The Qualified Tenant Advocate is an employee or independent contractor of Community Legal Aid Society, Inc., Delaware Volunteer Legal Services, or Legal Services Corporation of Delaware, Inc. The three agencies are collaborating to offer one ongoing and easily replicable training to teach non-at-



torneys how to effectively represent individuals in eviction proceedings.

Because this rule is so new, the efficacy of this groundbreaking program has yet to be determined. However, Pennsylvania could look to this program as a possible model because like Delaware, Pennsylvania already has an existing framework that allows for non-lawyer representation in certain contexts.

### Qualified Legal Advocate Representation is Feasible for Pennsylvania

The varying approaches in Delaware, Washington, Arizona, Minnesota, and Utah demonstrate ways of introducing non-lawyer representation while avoiding unauthorized-practice problems. Although designing and implementing these programs is not easy, it is clearly doable. While these states provide varying levels of autonomy to their alternative legal professionals, each state has created certain education or testing requirements to ensure that its advocates are properly vetted and qualified. Further, each qualified non-lawyer professional is limited to certain practice areas and activities. The safeguards implemented in each program provide reassurance to people in need of legal services that they are receiving quality help, as well as reassurance to those

who have concerns over the provision of legal services by persons not licensed to practice law.

Pennsylvania might want to implement a program like Delaware's, where the trained professionals are employees or independent contractors of specific legal aid societies. Alternatively, Pennsylvania might prefer a program more like that in Utah, which created a new level of legal professional who can function in certain areas without attorney supervision. If Pennsylvania is interested in exploring these possibilities, the first step should be to create a committee of stakeholders to study Pennsylvania's needs and other states' models.

While the efficacy of these new pilot programs has yet to be fully determined, the results shown thus far suggest that these programs can help get legal assistance to people who need it. Moreover, while any innovation carries risks, doing nothing is hardly a risk-free alternative, given the large numbers of unassisted litigants who struggle every day in Pennsylvania courts. The time has come for Pennsylvania to explore addressing these needs by creating its own "qualified legal advocate" program.

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