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**SPECIALIZED LEGAL ASSISTANTS
STUDY COMMITTEE**

February 18, 1994

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INTRODUCTION

There are many things that people want, or need, to do that they cannot do without hiring an attorney for assistance. Legal advice is frequently required to perform such common activities as buying a home or planning for retirement. A minor car accident can lead to a lawsuit that requires the services of an attorney. At one time or another during their lives, most Minnesotans will need to hire an attorney.

Hiring an attorney, however, can be expensive, sometimes prohibitively expensive. As a result, people are either unable to do the things that require the assistance of an attorney or they must make great sacrifices to do these things. They must either find the money to pay their legal fees or do without the legal advice they need. Doing without legal advice can mean that people are either unable to do what they need to do or that they are only able to do what they need to do by running the risk that their legal rights will not be enforced.

LEGISLATIVE RESPONSE

During the 1991 legislative session the Minnesota Legislature enacted 1991 Minn. Laws, Chapter 299, which has been perceived as an attempt to help people obtain the legal services they need by reducing the cost of legal services.

1991 Minn. Laws, Chapter 299

Minn. Stat. § 481.02, subd. 1 (1990) prohibits anyone "except members of the bar of Minnesota admitted and licensed to practice as attorneys at law" from providing legal advice and services to

another. Minn. Stat. § 481.02, subd. 3 (1990) removes certain activities from the prohibition created by subdivision 1.

1991 Minn. Laws, Chapter 299 does two things. First, it amends Minn. Stat. § 481.02, subd. 3. The amendment permits "the delivery of legal services by a specialized legal assistant in accordance with a specialty license issued by the supreme court before July 1, 1995." The legislation does not define "specialized legal assistant" or specify what legal services may be provided by a "specialized legal assistant." Instead, the second thing the legislation does is direct the Supreme Court to "review the feasibility of the delivery of legal services by specialized legal assistants" and "prepare a report for the legislature by December 1, 1993." Essentially, the legislature determined that the delivery of legal services by a specialized legal assistant is permissible and directed the Supreme Court to determine whether it is feasible.

The legislation recommends that the Supreme Court "consult with licensed attorneys, legal assistants, representatives of the educational community for legal assistants, and representatives of advocacy groups for the economically disadvantaged" when preparing its report. The legislation also recommends that the report address at least the following issues.

1. whether the delivery of legal services through specialized legal assistants is in the best interests of consumers of legal services;
2. areas and scope of practice of specialized legal assistants;
3. circumstances under which a specialty license will be required;

4. qualifications for legal assistants applying for a specialty license;
5. examination and specialty license requirements and fees;
6. limits and conditions of practice under a specialty license including malpractice insurance requirements;
7. continuing legal education requirements;
8. rules of professional conduct and responsibility;
9. procedures for filing, investigating, and resolving complaints and disciplinary actions against specialized legal assistants; and
10. maintenance and classification of records relating to specialized legal assistants.

In response to this legislation, the Supreme Court appointed a committee to examine the issues identified by the legislature. The committee included members of each of the groups the legislature directed the Supreme Court to consult with when preparing its report. The committee considered each of the specified issues. In addition, the committee examined the unmet need for legal services, the existing system for regulating the legal profession, and the regulation of professions generally.

LEGAL ACTIVITY IN MINNESOTA

The following statistics provide some perspective on the number of legal proceedings that occur in Minnesota each year.¹ Although it is impossible to determine from these statistics whether an attorney was required for each proceeding, it is likely that an attorney was required for many of them. These statistics

¹Statistical information included in this report is not intended to provide a definitive description of the unmet need for legal services in Minnesota. The committee concluded that, to address the issues before it, it is not necessary to identify precisely the unmet need for legal services. It is sufficient to understand in general that there are many people in Minnesota who need legal services, but are unable to obtain them.

reflect only a small portion of the legal activities that occur in the state. Entire areas of practice, such as corporations and labor law, are only minimally reflected by these statistics.

	1982	1992
Civil Lawsuits (Includes approximately 100,000 conciliation court cases)	196,691	203,197
Unlawful Detainer Actions (Included in civil lawsuit total)	14,881	24,449
Felony and Gross Misdemeanor Proceedings	17,819	35,425
Marriage Dissolutions	16,453	17,023
Other Family Law Matters	19,558	29,124
Estates Probated	15,682	16,150
Real Estate Transfers	155,910	154,173
Bankruptcy Filings	5,255	16,760

Just as the number of legal proceedings has grown during the last ten years, the number of attorneys available to handle these proceedings has also grown. In 1983 there were 12,184 attorneys licensed to practice law in Minnesota. By 1993 this number grew to 18,925 attorneys.

UNMET NEED FOR LEGAL SERVICES IN MINNESOTA

Although the number of attorneys licensed to practice law in Minnesota has increased significantly during the past ten years, there is a substantial unmet need for legal services in the state. According to the 1990 census, there are 435,331 Minnesotans living

below the poverty line. [The poverty line for a family of four is a household income of \$12,674. The poverty line is adjusted for the number of persons in a household.] This number does not include migrant farmworkers or people living on Indian reservations. When these two groups are included, it is estimated that 468,945 Minnesotans are living below the poverty line.

There are six legal services programs in Minnesota that provide legal services in civil matters to persons who are "unable to afford counsel." These programs define those "unable to afford counsel" as persons below 125% of the U.S. Department of Health and Human Services official poverty level [\$15,843 household income for family of four]. Using 1990 census data, there are an estimated 635,313 Minnesotans (approximately 14.5% of the state's population) with incomes low enough to qualify for legal assistance from these programs.

It is estimated that there is a minimum of 161,388 legal problems per year for which poor people in Minnesota need legal assistance. However, existing legal services programs have resources sufficient to handle only approximately 42,000 cases each year. In 1992, legal services staff, Judicare, and volunteer attorneys were able to meet only 26.2% of the identified need for legal services among low income people in Minnesota.

Because of the lack of resources, each legal services program establishes substantive case priorities, which give priority to legal problems touching on fundamental issues of survival. Under these priority systems, many kinds of family law and consumer cases

are given low priority. For example, one of the larger legal services programs in Minnesota does not give high priority to parental rights termination cases, dependency/neglect cases, paternity defense cases, most child support problems, visitation problems that are not extreme, change of custody cases where endangerment or integration circumstances are not at issue, marriage dissolutions for petitioners where there is not abuse or displacement of a homemaker, adoptions, name changes, legal separations, and foster care placements.

In 1990 there were 528,253 Minnesotans with incomes between 125% and 200% of the poverty level [\$15,843 to \$25,348 for a family of four]. These people do not qualify to receive assistance from legal services programs. They are arguably in a position to pay some attorney fees but it is not likely that many could pay the market rate for many legal services. For these people, obtaining legal services when needed is extremely difficult and often impossible.

The committee concluded that there is a substantial unmet need for legal services in Minnesota. It is virtually beyond question that a substantial portion of the state's population is unable to pay anything for legal services. Another substantial portion of the population may be able to pay something for legal services but cannot realistically be expected to pay the market rate for legal services. For these people, general efforts to reduce the cost of legal services will probably be meaningless. Such efforts may make legal services less out-of-reach for them, but legal services will

remain out-of-reach. The problem these people face can probably only be solved by providing free, or almost free, legal services.

In addition to the unmet legal needs of this large number of low income residents, the committee concluded that there are many other Minnesotans who are seeking lower cost alternatives to hiring an attorney to perform legal services. Although the committee had no way to determine how many people are within this category, anecdotal evidence about the use of such alternatives as legal typing services and pro se representation indicates that the number is significant. And, presumably, virtually every legal services consumer is interested in obtaining needed services at a lower cost.

EXISTING SYSTEM FOR REGULATING THE PRACTICE OF LAW

The current system for regulating the practice of law consists of the following components:

1. Unauthorized Practice of Law Statute. Minn. Stat. § 481.02 makes it unlawful for any person or association of persons, except licensed attorneys, to practice law. Violating the statute is a misdemeanor offense. In lieu of criminal prosecution, any county attorney or the attorney general may seek an injunction against any acts that violate the statute.

Criminal prosecutions and actions to obtain injunctions against the unauthorized practice of law are relatively rare. This offense does not fare well in the competition for prosecution resources. Testimony to the committee indicated there are at least

two reasons why this is the case. First, the unauthorized practice of law is generally not as serious an offense as other offenses prosecutors must deal with, and, second, in some cases where it could be argued that the unauthorized practice of law statute is being violated it can also be argued that the alleged offender is providing a useful service to consumers.

The committee made no attempt to compare the relative severity of the unauthorized practice of law and other criminal offenses. The committee recognized that prosecutors must set priorities and it received no information that suggests the priority given to enforcing the unauthorized practice of law statute is misplaced.

This is not to say, however, that the committee received no information indicating that the unauthorized practice of law statute is being violated. The committee was told about instances where criminal prosecutions have been initiated and other instances where complaints have been made but no action has been taken.

The committee also heard testimony about typing services, or forms services, that operate in Minnesota. Basically, these services help pro se parties prepare legal documents by providing legal forms, reference materials, and typing services. A survey of district court judges and court referees indicated that the quality of service provided by these businesses varies. Some judges and referees reported experiences where documents were filed with numerous errors that were difficult to get corrected while others reported satisfactory work.

With regard to these services, the committee reached the conclusion that there is a demand for the services they offer. Also, it appears that at least some of these services make a diligent effort to avoid violating the unauthorized practice of law statute.

2. Attorney admission requirements. To obtain a license to practice law, a person must first receive a lengthy and expensive education (a four year undergraduate degree plus three years of law school), then pass the bar examination.

3. Continuing legal education. Following licensure, a lawyer must attend 45 hours of lectures on legal subjects every three years.

4. Ethics regulations. A lawyer is subject to the Minnesota Rules of Professional Conduct, which require honesty, diligence, and loyalty to clients. Violations may result in prosecution by the Office of Lawyers Professional Responsibility. This office, which includes nine full-time attorneys, is funded by annual license fees and receives no tax revenues. Discipline is determined by the Minnesota Supreme Court.

5. Malpractice actions and insurance. A lawyer who commits malpractice (e.g. allows a deadline for suit to expire without taking action) may be sued. However, if the amount of the client's loss is relatively low (e.g. less than \$10,000) or if the lawyer is not clearly responsible for the loss (e.g. because the client would have lost the case anyway), a malpractice action might not be

practical because the costs of suing the lawyer are too high in comparison to the likely recovery.

Most lawyers carry malpractice insurance. This is a significant expense.

6. Client Security Fund. All lawyers contribute to a Client Security Fund, which reimburses victims of lawyer dishonesty.

The purpose of the existing system for regulating the practice of law is to reduce the likelihood that consumers of legal services will be harmed by those who provide legal services. The system attempts to achieve this purpose by (1) maintaining minimum standards for providing legal services, (2) improving attorney skills, and (3) compensating the victims of inadequate legal services.

It is fair to say that the regulatory system increases the cost of legal services, but it is difficult to determine how much it increases the cost.

GENERAL CONSIDERATIONS REGARDING THE REGULATION OF PROFESSIONS

Minn. Stat. § 214.001, subds. 2 and 3 (1992) provide:

Subd. 2. **Criteria for regulation.** The legislature declares that no regulation shall be imposed upon any occupation unless required for the safety and well being of the citizens of the state. In evaluating whether an occupation shall be regulated, the following factors shall be considered:

(a) Whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote;

(b) Whether the practice of an occupation requires specialized skill or training and

whether the public needs and will benefit by assurances of initial and continuing occupational ability;

(c) Whether the citizens of this state are or may be effectively protected by other means; and

(d) Whether the overall cost effectiveness and economic impact would be positive for citizens of the state.

Subd. 3. **Regulation of new occupations.** If the legislature finds after evaluation of the factors identified in subdivision 2 that it is necessary to regulate an occupation not heretofore credentialed or regulated, then regulation should be implemented consistent with the policy of this section, in modes in the following order:

(a) Creation or extension of common law or statutory causes of civil action, and the creation or extension of criminal prohibitions;

(b) Imposition of inspection requirements and the ability to enforce violations by injunctive relief in courts;

(c) Implementation of a system of registration whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications; or

(d) Implementation of a system of licensing whereby a practitioner must receive recognition by the state of having met predetermined qualifications, and persons not so licensed are prohibited from practicing.

Two or more of these modes may be simultaneously implemented if necessary and appropriate.

This statute indicates that the purpose of a professional license requirement is to protect the citizens of the state by limiting entry into a profession to those people who have demonstrated that they possess at least a minimum level of skill and knowledge related to the practice of the profession. License requirements are intended to protect the service consuming public from the harm that can be caused by unqualified practitioners.

The issue of creating a specialty license for legal assistants does not fit neatly into the analytical framework created by Minn. Stat. § 214.001 because the practice of law is already a regulated profession. Licensing specialized legal assistants simultaneously creates a new licensed profession and relaxes the regulation of an existing licensed profession.

In the usual case, enacting a license requirement limits the number of people who can perform a task. There appears to be an assumption that limiting the number of people who can perform a task (by requiring a license) increases the cost of the licensed people's services. This assumption is probably valid; particularly if there are not enough licensed people to perform all the tasks that need to be performed.

Two different effects occur when the assumption that limiting the number of people who can perform a task by requiring a license increases the cost of the licensed people's services is applied to a specialized legal assistant license. The cost of a specialized legal assistant's services go up and the cost of a lawyer's services go down. This is because a specialized legal assistant license will limit the number of people who can perform specialized legal assistant services, but it will also increase the number of people who can perform at least some of the services that can only be performed by lawyers under the current licensing system.

This assumes that a specialized legal assistant license will permit specialized legal assistants to perform tasks that can currently be performed only by lawyers. The committee made this

assumption and considered whether a specialized legal assistant license could potentially reduce the cost of legal services without endangering the welfare of the service consuming public.

COMMITTEE RECOMMENDATION

1991 Minn. Laws, Chapter 299 permits "the delivery of legal services by a specialized legal assistant in accordance with a specialty license issued by the supreme court." The legislation does not define "specialized legal assistant" or specify any legal services that a specialized legal assistant is permitted to provide. The committee interpreted the phrase to mean an arrangement under which a legal assistant could obtain a license to provide (without the supervision of an attorney) specific legal services that may currently be provided only by an attorney. The committee examined this proposed arrangement and concluded that significant problems would accompany such a license. The committee was unable to devise a solution for these problems.

In its examination of the proposed arrangement the committee considered:

- (1) whether some of the services that can now be provided only by an attorney could appropriately be provided by a person who has not been admitted to practice law;
- (2) if there are legal services that can be provided by a person who has not been admitted to practice law, are there steps that must be taken to:

- (a) increase the likelihood that the people who provide these services are qualified, and
 - (b) reduce the likelihood that a client will be harmed by the quality of service received; and
- (3) whether permitting legal services to be provided by someone who is not licensed to practice law will reduce the cost of legal services.

The committee attempted to identify categories of routine legal services that could be provided appropriately by a legal assistant without supervision by an attorney. However, the practice of law does not naturally lend itself to the identification of discrete routine services. Few clients seek the services of an attorney to perform a clearly defined task.

Typically, a client initially describes a problem to an attorney in general terms and the attorney must identify the precise legal problem the client faces. This task requires the knowledge and skills of an attorney. A lawyer's conclusion that a client needs only a simple deed or simple will may be the end result of a complex analysis. Conversely, a client who sees a lawyer for a simple deed or simple will may actually be in need of more complex legal work. Although a legal assistant may be competent to prepare a simple deed after it is determined that the client needs a deed, preparing the deed is a small part of the legal service rendered. Determining that the deed is what the client needs is the more significant service provided by an attorney.

Creating a specialty license that would permit a legal assistant to provide a routine legal service such as preparing a simple deed ignores the fact that some legal analysis is required to determine whether a deed is what the client really needs.

Another problem the committee encountered when it attempted to identify routine legal services that could be provided independently by a legal assistant was defining the services with an appropriate degree of specificity. For example, a category defined as broadly as "real estate" would clearly be inappropriate because it could be interpreted to include such diverse services as preparing an affidavit of survivorship and completing land registration proceedings. If the "real estate" category is broken down further and limited to "residential real estate transfers" it could still be interpreted to include an overly broad range of services. Some residential real estate transfers involve routine legal procedures, but others require complex legal services. One of the services an attorney provides is the analysis needed to determine which residential real estate transfer is routine and which transfer is not routine.

Creating a specialty license that would permit a legal assistant to provide routine legal services ignores the fact that a service that is routine in one instance may be complex in another instance.

To deal with this problem of defining too broadly the services a legal assistant could provide independently the committee attempted to narrow the definitions. However, by the time the

definitions were sufficiently narrow the list of identified services was so limited that the committee questioned whether anyone would be interested in obtaining a license with such limited significance. For example, in the family law area, assisting parties in administrative dissolutions (uncontested matters in which there are no children and limited property) or domestic abuse proceedings may not necessarily require attorney supervision, but it is very unlikely that there is a market for this type of service large enough to support more than a few independent legal assistants, if any.

An additional problem with attempting to identify categories of legal services that a legal assistant could provide independently was the concern that a legal assistant who is licensed to provide legal services in a specialized area might not recognize aspects of a case that affect areas of the law outside that specialty. Addressing a problem in one area of the law may have unintended consequences in another area of the law. For example, a real estate transfer could have unanticipated tax consequences or could lead to disqualification for certain government benefits.

Ultimately, the committee concluded that it is not feasible to specify certain legal procedures that a legal assistant would be allowed to provide without supervision by an attorney. Doing so is an attempt to rely on a list of specified services as the regulatory method for ensuring that legal assistants provide only those services that they are qualified to provide. But the

problems inherent in defining the procedures to be included on the list make this an inadequate regulatory method.

A second problem with independent licensure is that it would require the creation of a regulatory system similar to that for lawyers. This would entail the expense and complexity of the current attorney regulatory system. Although there is no inherent bar to the creation of a regulatory system for legal assistants, an elaborate system is already in place for lawyers. Creating a second system would be justified if it would result in significantly cheaper costs to the consumers of legal services without unacceptable risk, but it was not apparent to the committee how independent licensure would achieve these goals.

Ultimately, a licensed specialized legal assistant would have to compete in the market place. To remain in business, a specialized legal assistant would have to charge a fee for legal services performed that would cover the costs of providing the services. In any effort to reduce the cost of legal services, specialized legal assistants would face many of the same barriers that lawyers face when trying to provide legal services at a price people are willing to pay.

The costs of doing business are a barrier to providing low-cost legal services. The cost of an attorney's services is directly related to the costs of providing those services. The costs of providing legal services are higher than the public realizes. In order to attract and keep well-trained, experienced staff, a private attorney must be competitive with other businesses in

offering compensation packages that include salaries, health insurance, vacation leave and sick leave, and pension or profit-sharing benefits. In addition, a lawyer incurs the cost of legally required workers' compensation insurance, unemployment compensation insurance, and social security payments.

Because of the increasing complexity of the law, access to a continually changing body of written legal resources and computer-based-research resources is essential, much of which must be readily available in the lawyer's office. A lawyer must bear the cost of purchasing these resources and of regularly updating them. Clients expect, and the standard of practice requires, state-of-the-art equipment in word processing, facsimile capability, copying and telephones. Although rents for office space have not increased significantly in recent years, other escalating occupancy costs, such as the landlord's operating costs, are passed on to the tenant lawyer.

Malpractice premiums typically cost about \$5,000 per lawyer per year, and are increasing. Continuing legal education requirements add the additional expense of at least \$1,000 per lawyer per year and of lost revenues for the days of missed work while attending the programs.

Unlike personal service providers who are paid by insurers or vendors who are paid on the spot, lawyers who must collect their fees commonly incur a 15% loss in accounts receivable. As a result of these factors, a lawyer's overhead frequently may be as high as 50% of gross revenues, and possibly more depending on the kind of

law practice. Out of the remaining revenues, all attorney compensation (salary, health benefits, self-employment tax, retirement contribution) must be paid.

It is difficult to reduce overhead costs to permit reduced hourly rates charged by lawyers. The likely consequences of doing so are not acceptable. For example, cutting overhead costs by dropping malpractice insurance and leaving clients unprotected, by hiring less expensive but untrained and inexperienced staff, or by going lightly on the office legal research resources hoping the law has not changed to the client's detriment would reduce the quality of legal services below levels that ethical standards require and that clients demand.

The total cost of practicing law ultimately determines the hourly rate an attorney charges. Although it is probably true that there are things that could be done in every law practice (as in every business) to reduce the cost of doing business, it is not realistic to think that costs can be reduced to the point that there will not be a substantial portion of the population that cannot afford prevailing hourly rates. Even if attorneys worked without pay the non-salary costs of providing legal services would make the services unaffordable for many people.

Unless a specialized legal assistant could avoid some of the overhead costs that attorneys face, the fee that a specialized legal assistant would have to charge to cover these costs would make the services unaffordable for many people. Because most of the overhead costs an attorney faces are either costs incurred by

any business or costs incurred to maintain the quality of services provided it was not apparent to the committee how a specialized legal assistant could reduce overhead costs without reducing the quality of service provided. Therefore, the committee concluded that the fees a specialized legal assistant would have to charge to remain in business would be substantial fees that are unaffordable for many people.

The committee also concluded, however, that greater use of legal assistants' services in the practice of law could reduce legal fees for many consumers because legal assistants are generally paid lower salaries than attorneys and these lower salaries permit a lower hourly fee. But legal assistants can play a greater role in meeting the need for legal services without creating a specialized legal assistant license or a new regulatory system for legal assistants.

To accomplish this, the committee recommends that the Supreme Court authorize attorneys to employ qualified legal assistants to perform specified legal services that may now be performed only by an attorney.

The legal services that legal assistants will be allowed to provide should be specified by the Supreme Court and should include making court appearances in specified, uncontested matters. The legal services should be provided under the supervision of an attorney who will bear the ultimate responsibility for adequate performance of the services. The attorney supervising a legal assistant will be responsible for assuring that the legal assistant

provides only those services that the legal assistant is capable of providing and the existing system for regulating attorney conduct will be used to enforce this obligation of the attorney.

This arrangement will have the potential to reduce the cost of legal services because the Supreme Court will explicitly state what services may be performed by a legal assistant, which will make it easier for attorneys to delegate tasks to legal assistants who, it is assumed, will work for a lower hourly fee than an attorney. The arrangement also eliminates the need to create a new regulatory system for specialized legal assistants.

For example, under the current system, only an attorney can make the court appearance necessary to complete a default divorce proceeding. These appearances are generally quite straightforward and they can probably be performed satisfactorily by a legal assistant. But only attorneys are allowed to make the appearances. If it is made clear to attorneys that this appearance can be made by a legal assistant, it is likely that an attorney who employs a legal assistant will send the legal assistant to make the appearance and bill the client less than would be billed if the attorney made the appearance. This potential for reducing fees will exist in the delivery of legal services to all clients, not just low income clients.

Meanwhile, the client would still be able to hold the attorney ultimately responsible for the quality of service and use the existing enforcement mechanisms (negotiation with attorney,

complaint to Lawyers Board of Professional Responsibility, or malpractice suit) to do so.

The significant difference between the committee recommendation and the creation of a specialty license for legal assistants is that, under the committee recommendation, it is not necessary to identify complete legal procedures that a legal assistant could perform for a client. Instead, an attempt will be made to identify those portions of a legal procedure that do not require the skills and knowledge of an attorney and make it easier for the attorney who is responsible for performing the entire procedure to delegate responsibility for these portions to a legal assistant. Instead of relying on a list of permitted services to ensure that legal assistants provide only those services they are qualified to provide, the arrangement recommended by the committee relies upon the discretion of the attorney who is responsible for handling the matter.

If the assumption that a legal assistant will work for a lower hourly fee than an attorney is incorrect, the arrangement recommended by the committee will have little effect on the cost of legal services. But, if this assumption is incorrect, licensing legal assistants to provide legal services without the supervision of an attorney will also have little effect on the cost of legal services.

The committee also recommends that, initially, an individual attorney should be limited to serving as the supervising attorney for one or two registered legal assistants. This will make it possible to determine whether the recommended arrangement accomplishes its intended purposes before it becomes widely used. Admittedly, limiting an attorney to supervising two registered legal assistants is somewhat arbitrary, but the committee concluded that the recommended arrangement should be considered as a pilot project until some practical experience with the arrangement demonstrates whether it functions effectively.

Although the committee recommends expanding the role of legal assistants in the practice of law, it also identified the following possible disadvantages of the arrangement it recommends:

- (1) A registration system for legal assistants creates two classes of legal assistants, those who are registered and those who are not registered. Under the committee recommendation, legal assistants will be able to continue doing the things they now do without registering and it is likely that many will continue doing what they now do. Therefore, they will have no need to become a registered legal assistant. The committee is concerned that designation as a "registered" legal assistant, by itself, may create a competitive advantage that will virtually force legal assistants to become registered even though registration may not be needed to perform the responsibilities of their jobs.

- (2) Although permitting legal assistants to perform services that may now be performed only by attorneys can reduce the cost of providing legal services, there is no guarantee that the cost saving will be passed on to consumers in the form of lower legal fees. The cost savings could instead be used to improve law firm profitability. On the other hand, if a legal assistant provides service directly to a client, the client will know who provided the service and it is likely that the client will expect to be billed accordingly. Market forces will ultimately determine who benefits from the proposed arrangement.
- (3) The proposed regulatory system for legal assistants may not be fully effective because it is indirect. The system depends upon supervising attorneys responding to complaints about the work of legal assistants. However, a more direct regulatory system would require the creation of a more elaborate regulatory mechanism.
- (4) Competition will pressure attorneys to hire legal assistants rather than entry level attorneys. One possible consequence of this could be to eliminate, or greatly restrict, a traditional training ground for attorneys.

RESPONSE TO ISSUES IDENTIFIED IN 1991 MINN. LAWS, CHAPTER 299

The committee considered each of the issues identified in 1991 Minn. Laws, chapter 299 as it relates to the committee

recommendation regarding an expanded role for legal assistants in the practice of law.

- (1) whether the delivery of legal services through specialized legal assistants is in the best interest of consumers of legal services;

If "delivery of legal services through specialized legal assistants" means delivery of legal services without the supervision of an attorney, the committee's answer is no, this is not in the best interests of consumers of legal services. The committee was not able to identify a significant number of discrete legal services that could be provided adequately by a legal assistant.

- (2) areas and scope of practice of specialized legal assistants;

Under the arrangement the committee recommends the Supreme Court will specify tasks that attorneys can delegate to legal assistants. Any legal assistant who is registered as working for an attorney will be allowed to perform any of the specified tasks if directed to do so by an attorney. Presumably, an attorney who is responsible for the work of a legal assistant will be careful to delegate only those tasks that a legal assistant is capable of performing.

Specifying services that can be performed by legal assistants will encourage lawyers to employ legal assistants to perform the specified services by removing uncertainties about the ethical propriety of doing so. It will also enable lawyers to offer enforceable retainer agreements to clients in which clients may

contract to pay a fee for performance of specified services by legal assistants. This will reduce the amount of time needed for lawyer involvement in the delivery of the specified services, presumably reducing the cost, and will also encourage lawyers to provide legal services in matters now regarded by lawyers as not profitable from a business point of view.

The services a legal assistant should be allowed to provide should:

1. Have relatively uncomplicated legal and factual components. Legal assistants should not perform legal services that involve complex analysis of legal principles and factual issues.
2. Ordinarily be repetitious and ministerial in nature.
3. Be uncontested where court appearances are necessary.
4. Focus on legal services that are needed by a substantial portion of the population. e.g., marriage dissolution, probate, wills, conciliation court litigation, purchase and sale of residential real estate, and consumer protection.

The following should be considered as areas of law in which legal assistants could provide additional legal services under the supervision of an attorney:

- A. Conciliation Court: Legal assistants could assist plaintiffs and defendants in preparing claims and in preparing their presentations of evidence.
- B. Landlord/Tenant: Unlawful Detainer Actions.

C. Simple Wills

D. Probate Proceedings (uncontested)

1. Informal unsupervised proceedings
2. Informal supervised proceedings
3. Formal unsupervised proceedings
4. Formal supervised proceedings
5. Summary proceedings
6. Guardianship proceedings
7. Conservatorship proceedings

E. Law of the elderly

1. Power of attorney
2. Health Care Power of Attorney
3. Living will
4. Social security applications
5. Obtaining nursing home services

F. Unemployment Compensation

(Minn. R. 3310.2916 (1991) allows any authorized representative to appear before a referee on behalf of a partnership or corporation. Minn. R. 3310.5000 (1991) allows similar appearances before the commissioner.)

G. Family Law

1. Uncontested dissolution proceedings
2. Administrative proceedings under M.S.A. 518.13, Subd. 5
3. Summary proceedings under M.S.A. 518.195

4. Child support collection
- H. Residential Real Estate Transactions
1. Purchases and sales using standard forms.
 2. Creation/severance of joint tenancies.
 3. Preparation of leases.
 4. Affidavits of survivorship.
 5. Satisfactions of mortgages and liens.
 6. Torrens hearing respecting lost owner's duplicate certificate.
 7. Recording documents.
- I. Consumer Protection
1. Automobile lemon law matters
 2. Disputes with credit agencies
- (3) circumstances under which a specialty license will be required;**

Under the committee recommendation a specialty license will not be created. Instead, there will be a registration procedure under which a legal assistant will register to perform legal assistant duties under the supervision of a named attorney. The attorney will be required to sign the registration form of the legal assistant and accept responsibility for the work of the legal assistant. In addition to obtaining the signature of a supervising attorney, a legal assistant will have to meet education and experience requirements. Any registered legal assistant will be allowed to perform any of the services specified by the Supreme Court when directed to do so by an attorney.

- (4) qualifications for legal assistants applying for a specialty license;

CURRENT EDUCATION FOR LEGAL ASSISTANTS

Program types

There are four different types of legal assistant programs currently offered in Minnesota. (1) Four year baccalaureate degrees with legal assistant as a major or concentration; (2) Two year (AA or AAS) degrees offered by community colleges and at least one technical college with legal assistant as a major or program; (3) A proprietary institute that confers certificates and (4) A couple of business colleges offering nontransferable credit and degrees that they call paralegal or legal assistant.

The proprietary institute offers its program post baccalaureate. Its students are almost all college graduates. The two and four year colleges accept high school and college graduates and people with some college education. The business schools offer their classes post high school.

This same pattern is found nationally. In addition, there are a few "correspondence" courses.

Generalists v. specialist education

Nationally, there are two different approaches to curriculum design: (1) the paralegal generalist trained in the fields of law where the demand for legal assistants is strongest who is able to assist either a general practitioner or a lawyer who specializes and (2) the paralegal specialist trained to assist the work of a lawyer in only one field e.g. probate paralegal.

In Minnesota, most programs offer primarily generalist training because there is not enough demand for any identifiable specialist.

Curriculum

The typical legal assistant curriculum includes a core of required courses including an introductory course on law and legal systems and one or more courses in legal research and writing. All Minnesota college level programs also include an internship. Beyond these common requirements, the programs require a variety of specific courses and allow the students to select a certain number of electives that fit individual interests and career plans.

General education requirements

Both the community colleges and the four year colleges require students to meet graduation requirements outside their legal assistant course work. The ABA has stressed the importance of general education and requires that graduates of approved programs meet minimum standards. Each school sets a total number of courses, semester hours or quarter hours that must be completed before a student can graduate. Most of these requirements apply to the school as a whole and conform to college and university accrediting standards that exceed ABA requirements. Each school also has course distribution requirements that must be met before graduation; students must take a certain number of courses in each category set by the school e.g. science, humanities, math. The proprietary institute and the post-baccalaureate programs offered

by the colleges rely on the student's bachelor's degree to meet general education requirements.

This general education requirement, which is not met by the trade and business schools, is one factor that keeps these programs from being ABA approved. (Also the business schools tend to have problems with inadequate student support services, library facilities and in some instances faculty qualifications.)

ABA approval

The ABA has been approving legal assistant programs for years. The ABA approved programs in Minnesota include those offered at Hamline University, Winona State University, Inver Hills Community College, North Hennepin Community College and the Minnesota Legal Assistant Institute. Approval indicates that the faculty and curriculum of the program meet the standards set for paralegal education by the ABA. The ABA does not approve or certify individual graduates.

Professional Certification

There are two national professional organizations for legal assistants; NFPA, the National Federation of Paralegal Associations and NALA, the National Association of Legal Assistants. Two differences between these groups have been their positions about educational standards and "certification". NALA has taken the position that testing and certification are the best ways to establish competency of individual paralegals and maintain high standards for the paralegal profession as a whole. NFPA has taken a position against testing and certification, but has sought to

encourage higher educational qualifications, specifically a four year degree, as the professional standard. NALA has developed, and for several years has offered to its membership, tests leading to certification as a legal assistant. More recently, NALA has begun to offer tests leading to certification as a specialist in a variety of fields.

NALA offers its own review courses for the tests it sponsors. There are study books available as well.

EDUCATION FOR LEGAL ASSISTANTS

Working under the supervision of an attorney

To become a registered legal assistant, a legal assistant will need to meet education and experience requirements. Because there are some currently practicing legal assistants who have significant experience as legal assistants but lack a higher education degree, the committee believes that these experienced professionals should have an opportunity to register for an initial two-year period without meeting education requirements. The committee proposes that after this two-year period, no legal assistant be permitted to register without meeting both the education and experience requirements for registration.

After an initial two-year period, the committee believes that all registered legal assistants should have:

1. a BA or BS degree with a major in paralegal studies or a certification following completion of the four year degree, and two years of experience working as a legal assistant, or

2. an AA degree from a two-year paralegal program and four years of experience working as a legal assistant.

The committee believes that a combination of education and practical experience, coupled with the recommendation of a licensed attorney, is sufficient to assure citizens of Minnesota that they are receiving quality legal work.

(5) examination and specialty license requirements and fees;

There will not be an examination. There will be registration requirements outlined in (3) and (4). There will be a registration fee calculated to pay the cost of maintaining the registration system.

(6) limits and conditions of practice under a specialty license including malpractice insurance requirements;

Registered legal assistants will be allowed to perform any of the services specified by the Supreme Court when directed to do so by the supervising attorney. Because the supervising attorney will bear ultimate responsibility for the work of the legal assistant, the existing systems for assuring the quality of legal services provided by an attorney will be relied on to assure the quality of legal services provided by a registered legal assistant.

Rule 5.3 Minnesota Rules of Professional Conduct, governs the scope of the lawyer's responsibility for legal assistants. The scope of the lawyer's responsibility should be increased if the lawyer employs a registered legal assistant. For example, a new subparagraph (c)(3) could be added to the rule as follows:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; ~~or~~

(2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; ~~or~~

(3) the nonlawyer was acting pursuant to a registration filed by the lawyer in the Minnesota Supreme Court and the lawyer could have prevented the conduct through reasonable supervision.

(7) continuing legal education requirements;

A legal assistant has the same need as a practicing attorney to keep current with changes in the law. Therefore, the committee believes that a registered legal assistant should meet the same continuing legal education requirements as an attorney.

(8) rules of professional conduct and responsibility;

Legal assistants will be expected to comply with the rules of professional conduct and responsibility applicable to attorneys. It may be necessary to modify some of these rules, or add some new rules, to reflect the arrangement the committee proposes. The modifications will not change the standards for conduct; they will simply recognize the existence of the working relationship between a supervising attorney and a registered legal assistant. The

following modifications of the Rules of Professional Conduct should be considered:

1. Amending Rule 1.4 by adding a paragraph (c) as follows:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer may delegate responsibility for client communication to a registered legal assistant, but shall remain responsible for the adequacy of the communication as provided in Rule 5.3. The client shall be advised in writing that the client should inform the lawyer in writing if the registered legal assistant's communications are unsatisfactory.

2. Amending Rule 5.4(a) to provide that a lawyer may share fees with a registered legal assistant where those fees are generated by legal services performed by the legal assistant.
3. Amending Rule 5.4(b) to permit a lawyer to form a partnership with registered legal assistants who perform legal services specified by the Supreme Court. (If this amendment were adopted, it would permit a supervising lawyer and a registered legal assistant to operate outside an employer/employee relationship.)
4. Amending Rule 5.4(d) to permit a lawyer to practice in the form of a professional corporation or association authorized to practice law where a registered legal assistant is a member of the professional corporation or association. (If this amendment were adopted, it would permit a supervising lawyer and a registered legal

assistant to operate outside an employer/employee relationship.)

5. Amending Rule 5.5 by adding language that specifically declares that a lawyer does not violate the provisions of Rule 5.5 by permitting a registered legal assistant to perform legal services specified by the Supreme Court.
 6. Amending Rule 7.4 to permit a lawyer who employs a registered legal assistant to communicate the fact that the registered legal assistant practices in particular fields of law.
 7. Amending Rule 8.3 to require a lawyer to inform the Office of Lawyer's Professional Responsibility when the lawyer has knowledge that a registered legal assistant employed by a lawyer has committed a violation of the Rules of Professional Conduct.
- (9) procedures for filing, investigating, and resolving complaints and disciplinary actions against specialized legal assistants; and**

There will not be a new disciplinary board created for legal assistants. Instead, complaints about legal assistants will be treated as complaints against the supervising attorney. If a supervising attorney fails to provide adequate supervision, disciplinary action could be taken against the attorney. There will also be an indirect disciplinary procedure for a legal assistant arising from the employer/employee relationship with the supervising attorney. Presumably, an attorney who receives complaints about the work of a legal assistant will take steps to

correct the problem because failing to do so could result in direct disciplinary action against the attorney.

The Supreme Court should be able to deny or revoke the registration of a legal assistant for good cause. If the legal assistant timely contests the denial or revocation, the issue should be resolved by a simple procedure providing minimum due process.

(10) maintenance and classification of records relating to specialized legal assistants.

A designated office will be required to maintain the registration forms of all registered legal assistants. These forms will allow identification of the supervising attorney for each legal assistant. A supervising attorney will be required to notify the registration office if the supervisory relationship ends. The records will have the same classification as attorney registration records.

It should be noted that, if the committee recommendation is enacted, it will not prevent taking the additional step of licensing legal assistants to practice without attorney supervision. Implementing the committee recommendation will allow an expanded role for legal assistants that may reveal problems that will arise if a specialized legal assistant license is created in the future. Also, the process of expanding the role of legal assistants can take place gradually. An initial list of services that can be provided by legal assistants can be limited and

additional services can be added if it is determined that the proposed arrangement functions effectively.

Finally, it should also be noted that the committee recommendation was not supported unanimously. Included in the appendix is a letter from one committee member that may be considered as a minority report.

APPENDIX I

February 3, 1994

the Honorable Randy Peterson, Chair
Specialized Legal Assistants Study Committee
Court of Appeals
Minnesota Judicial Center
St. Paul, Minnesota

re: Report to the Supreme Court

Dear Judge Peterson and members:

After reading the final draft of the report of the committee, I find I cannot agree with the recommendation for the following reasons:

1. To expect the registration of legal assistants will substantially add to the pool of persons available to provide legal services to the poor and working poor is, at this time, pure speculation. No firm or attorney has, to my knowledge, committed to using the registration system for such a purpose; the bar associations nor any other group or individual has been presented with the proposal. Since the success of the proposal depends entirely on acceptance by lawyers of the INTENT of the proposition, it is premature to go forward.
2. To create a list, any list, of tasks a legal assistant can perform will be perceived, regardless of its intent, as a list of the ONLY tasks the LA can perform, and will therefore have a chilling effect on the now wide spread and wide ranging use of these professionals. Furthermore, it is at least conceivable that the list will create confusion and the need for "further clarification" and thus the hornets' nest of regulation.
3. It will cloud the issue of recourse for those clients who are the victims of malpractice or malfeasance. It is my understanding that a licensed attorney is, in Minnesota, responsible for all acts of his employees. The proposal we have presented removes that absolute responsibility and therefore puts the client at greater risk than is now the case.
4. It will do nothing to inhibit the activities of the renegade operations, such as typing services, which now are perceived to clutter up the scene, particularly in the area of family law.
5. It ignores the plain fact that few legal problems of the poor are simple or routine in nature and that many of them are criminal in nature, but below the gross misdemeanor level.

That being said, I respectfully submit that there are measures to be taken which will mitigate to a degree the problems recited by the legislature in its charge to the Court.

1. Encourage firms and sole practitioners to create lawyer positions within the firm to be filled by persons expressly hired to meet the recited needs with the understanding that salaries will be at legal assistant levels.
2. Provide a sum of money to contract with Legal Services for training in the identified areas of law to be paid for by the lawyer with hours of service. (A modified version of what is now done by Legal Advice Clinic in Hennepin County.)
3. Require that the preparers of all pleadings and other documents for which they have charged a fee be identified on the paper, and create a duty to pay attorney's fees for those whose legal matter they have compounded.
4. Create a pilot project, with careful monitoring, wherein two or three judges who are willing participants, agree to test the premise that nonlawyers can responsibly represent litigants in district court, with the express understanding that the judge will have complete discretion as to the persons allowed to test such a role and will also have control of the fees charged by that person for services rendered; and including the same requirement as to attorney fees as recited above.

Respectfully,


Carolyn Lawrence

APPENDIX II

WITNESSES WHO APPEARED BEFORE SPECIALIZED LEGAL ASSISTANTS STUDY COMMITTEE

- George McCormick, Counsel for Senate Governmental Operations and Reform Committee
- Jon Lebowitz, L & M Legal Services
- Lois Lang and Larry Nordick, MSBA's Paralegal Task Force Report
- Roger Jensen, Chair, MSBA's Committee on Consumer Protection for Legal Services
- Joe Bixler, Minnesota Lawyer's Mutual
- Peg Corneille, Director, Minnesota Board of Legal Examiners
- Fred Grittner, Supreme Court Administrator
- Tom Vasaly, First Assistant Director, Office of Lawyers Professional Responsibility
- Leslie Lynch, Legislative Chair, Minnesota Association of Legal Assistants