

## Comments on: Proposed Rule Regarding the Authorized and Unauthorized Practice of Law

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Comments to the  
**Committee on the  
Unauthorized Practice of  
Law**

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Consumers for a Responsive Legal System (“Responsive Law”) thanks the committee for the opportunity to present its comments on the proposed rule. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to the people. We support policies that expand the range of legal services available to meet people’s legal needs. In particular, we support loosening restrictions on who may provide assistance with legal matters so that people of all income levels can get the legal help they need. **The proposed rule makes small steps towards improving the availability of legal services in Wyoming, but in its current form does not go far enough to earn our full support. However, we would like to offer some improvements that could be made to the proposed rule, which would greatly benefit Wyomingites who need legal help.**

Access to justice is a problem of both supply and demand. Demand for legal services is relatively fixed. As long as we live in a nation governed by laws, people will need assistance in understanding those laws and resolving disputes over their application. With studies showing that 80% of the civil legal needs of low-income people go unmet, it is clear that the demand for such services greatly exceeds the supply.<sup>1</sup> Courts can alleviate some of the demand for legal assistance by simplifying procedures. But even if procedures are simplified, people will still face legal issues related to housing, employment, family law, and consumer issues—among others—and will continue to need assistance in understanding the substantive law that pertains to their situation.

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<sup>1</sup> Brennan Center for Justice, [Access to Justice: Opening the Courthouse Door](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_48493.pdf), pp. 6 (Available at [http://www.brennancenter.org/sites/default/files/legacy/d/download\\_file\\_48493.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/download_file_48493.pdf))

With little ability to change the demand side of the access-to-justice equation, we are left trying to fix the supply side. Under the “lawyers only” status quo, Wyoming’s citizens are increasingly unable to afford legal help. The average annual take-home pay in Wyoming is \$45,887.<sup>2</sup> The average person in Wyoming must therefore work an entire day to pay for just one hour of a lawyer’s time, assuming an hourly billing rate of \$200.<sup>3</sup> Put another way, a minor case might require a total of 10 hours of an attorney’s time; paying for such a case would require more than two weeks’ take-home pay for the average Wyomingite.

The prohibitive expense of legal assistance in effect denies many low- and middle-income citizens of Wyoming access to their legal system, and is in large part due to the government-supported monopoly attorneys have on providing legal help. Responsive Law urges the committee to bring much-needed relief to the people of Wyoming by improving the state’s UPL rules. The proposed rule increases clarity for providers of law-peripheral services, an important improvement on the existing rules. However, the proposal falls short in a few important ways, and it could be improved.

### **Impact of the Proposed Rule**

The proposed rule will increase Wyomingites’ access to their legal system, and should be adopted. The proposed rule will help lift the threat of UPL prosecution that hangs over non-lawyers whose services touch upon legal matters. While there is still much to do, *partly* protecting *some* service providers will result in a *marginally* increased supply of those services, with *slightly* lower prices and better value for consumers.

While the proposed rule will provide some relief from onerous UPL restrictions, the committee can do much better. Other commenters have pointed out some important issues, such as the tension

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<sup>2</sup> U.S. Bureau of Economic Analysis, “Table SA51-53, Disposable personal income summary,” <http://www.bea.gov/iTable/iTable.cfm?reqid=70&isuri=1&acrdn=4>, accessed March 18, 2014.

<sup>3</sup> The United States Consumer Law Attorney Fee Survey Report 2010-2011 estimates the average hourly rate for a consumer law attorney in Wyoming is \$187. <https://www.nclc.org/images/pdf/litigation/fee-survey-report-2010-2011.pdf>, accessed March 25, 2014.

between allowing non-lawyers to prepare certain forms while barring them from discussing said forms in any meaningful way. Another common complaint has been the call for similar UPL exemptions to be extended to various professional groups. Landmen and CPAs have been assertive in making their case for exemption to the committee, but if even they receive exemption, there is no guarantee that the list of exceptions will include everyone it should.<sup>4</sup> Quite the contrary: It is highly likely that some worthy professional group will be barred from providing their services, to the detriment of consumers. We would like to propose modifications to the rule to address these and other problems. For your convenience, we have attached a copy of Rule 7 with our proposed changes, as well as describing them below.

### **Remove the Prohibition on Counsel or Advice Concerning Standardized Forms**

The prohibitions on non-lawyers providing counsel, advice, or any meaningful discussion about the forms they can fill out for clients are contradictory and harmful, and we implore the council to remove them. With something as central to many of these law-related services as filling out forms, it would be better to start with broadly allowing advice on the form or issue at hand. As other commenters have pointed out, prohibiting non-lawyers from discussing the implications of forms they may fill out for clients is problematic both from a practical perspective and—in the case of real estate brokers—a legal one.

It is unreasonable to assume that someone with the professional expertise required to fill out a particular form lacks the expertise to explain the form to his or her client. Prohibiting such advice prevents non-lawyer service providers from offering the best service possible to their clients. Certainly the bar would challenge a rule that prevented Wyoming's attorneys from offering zealous representation to their clients, merely because it might interfere with another profession's claim to exclusive domain. From consumers' perspective, the prohibition on advice from non-lawyers

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<sup>4</sup> Proposed Rule and comments, for example by Boyd Nelson of the WAPL and Renee Brower of the WYOCPA.  
[http://www.wyomingbar.org/pdf/UPL\\_Proposed\\_Rule\\_and\\_Comments.pdf](http://www.wyomingbar.org/pdf/UPL_Proposed_Rule_and_Comments.pdf), accessed March 25, 2014.

does the same thing this hypothetical rule would—deny them the best service available.

Certainly, there may be a line at which advice and counsel must be handled by an attorney. However, it falls well short of that line to allow a professional who fills out a standardized form for clients to describe the form and its implications. The prohibition on discussion of standardized forms forces non-lawyers to deliver subpar service. This part of the rule is detrimental to consumers and therefore should be dropped.

### **Supplement the Proposed UPL Exemptions with a General Rule Describing What Sets Them Apart**

Several common threads run through the proposed exemptions, and these point towards the construction of a general rule. First, a UPL-exempt transaction must be either “merely incidental” or “related to” the lawful business of the non-lawyer. Second, the transaction must arise in the usual course of business for that service provider. Finally, documents prepared by non-lawyers must be on standardized forms with blanks to fill in. The committee is right to acknowledge that much of the standard business of title insurance companies, real estate agents, and financial service providers meets these requirements and is beneficial to consumers. Commenters are also correct in pointing out that various other professions, among them landmen and CPAs, also offer law-related services within their competency, and that such services should also be exempted from UPL restrictions.

But surely there are other services worthy of such exemption. A plumber or electrician is clearly competent to tell a client whether a building is up to code. A social worker is likely to be knowledgeable—more so than many attorneys—about domestic violence or housing issues. While such a professional may not be allowed to represent a client in court, he or she is certainly competent to provide general information about the legal options available. These and other professionals should be allowed to provide their services without violating UPL rules. Synthesizing the common aspects of the given exemptions would give consumers increased access to law-related services offered by competent professionals.

We propose to amend the list of not-prohibited activities in section (c). Our proposed section (c)(13) would specifically permit “a person or entity” to provide “services relating to their lawful business, as long as such services are within the professional competence of that person or entity.” Specifically included in the definition of “professional competence” is the act of “completing forms, the use of which arises in the usual course of [the person or entity’s] business.” This exemption would include, but not be limited to, the existing specific exceptions in the proposed rule, for example in sections (c)(1) and (c)(2). Using a general rule to describe the specific exemptions will have two salutary effects. First, it clarifies the intent of the rule, by distilling why certain actions of title companies, real estate brokers, and financial institutions are not prohibited. Second, it protects consumers’ access to similar services by landmen, CPAs, and others.

### **Exempt Services Rendered Without Compensation**

There is another type of activity which should be permitted: the provision of services for free. The current rule, where even free law-related services are subject to the UPL prohibition, is presumably intended to ensure that consumers receive an attorney’s expertise with any legal matter. However, prohibiting non-lawyers from offering free services makes the perfect the enemy of the good and consumers the victims of regulation intended to protect them.

Opponents of non-lawyer assistance sometimes claim that it is problematic to allow non-lawyers to do work that has traditionally been performed by attorneys. Such an argument falsely assumes that Wyomingites are choosing between representation by a lawyer and representation by a non-lawyer. In reality, this is seldom the case.

As we have seen, the cost of an attorney is prohibitive for the average citizen of Wyoming, who likewise will fail to qualify for a free lawyer.<sup>5</sup> Denying them the aid of friends, family, and good Samaritans does not force the average citizen to hire an attorney; it forces them to forgo assistance entirely. For these citizens, the real

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<sup>5</sup> The Wyoming Supreme Court’s Access to Justice Commission notes that, “If a person makes more than \$10.00 per hour and works full time they will not qualify for LAWyo [Legal Aid of Wyoming]’s services.” AJC White Paper, 2008. Available at <http://www.courts.state.wy.us/AJC/ATJWhitePaper.pdf>.

choice is not between a lawyer and a non-lawyer, but between a non-lawyer and no help at all.

It is also incorrect to assume that non-lawyers cannot competently perform law-related work. In many cases, familiarity with the specifics of a particular field could count for more than a general-purpose law degree in the quality of services rendered. Why would an intellectual property lawyer be better able to aid someone in a housing dispute than a social worker with years of relevant experience? Even legal assistance that does not rise to the level of that provided by an attorney is more useful than no help at all, which is what most people can afford.

Take the case of Katie Vickers, a 70-year-old Florida retiree who was sued by the Florida Bar for helping a member of her church fill out a petition for worker's compensation benefits.<sup>6</sup> It was Ms. Vickers' friend's opponent—not the friend himself—who sought to punish her activity.<sup>7</sup> Ms. Vickers did not provide subpar services: She provided services that were of such high quality that the opposition opted to push her out of the case by using UPL rules. We should praise, not prevent, efforts to provide access to justice by those like Ms. Vickers.

Those who provide services for free should be exempted from UPL restrictions, unless those people falsely claim to be a lawyer.<sup>8</sup> A women's shelter should be permitted to offer free assistance in getting an injunction against an abuser. A veteran receiving benefits should be able to walk an old army buddy through the process for securing them. The bottom line is that Wyoming should not prevent good Samaritans from offering their aid to those in need.

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<sup>6</sup> "More Strapped Litigants Skip Lawyers in Court," Wall Street Journal, July 22, 2010.  
<http://online.wsj.com/news/articles/SB10001424052748704229004575371341507943822>.

<sup>7</sup> "Defiant Jacksonville retiree charged with practicing law without license," The Florida Times-Union, June 16, 2010.  
<http://jacksonville.com/news/crime/2010-06-16/story/defiant-jacksonville-retiree-charged-practicing-law-without-license>

<sup>8</sup> Such fraudulent claims are already illegal under the Wyoming Consumer Protection Act, specifically WY Stat § 40-12-105(a)(ii)

## Conclusion

In any industry, consumers are best served when a range of services are available to meet the continuum of needs they have. For example, doctors, physical therapists, exercise instructors, diet consultants, and pharmacists all offer health-related services. The consumer decides who will serve her best based on what type of service she needs and what she is willing to pay; she is not forced to go to an M.D. for all services related to her health. Legal service over-regulation denies consumers this same range of options, but the proposed rule is a step towards rectifying this problem.

We urge the adoption of the proposed rule, which will benefit Wyoming's consumers of legal services by clarifying the status of their non-lawyer legal service providers. However, the rule could be drastically improved in three ways, and we offer these proposed changes: First, allow non-lawyers to provide a basic level of advice or explanation about the documents they are permitted to prepare. Second, outline a general professional-expertise exemption derived from the specific exemptions already offered. Finally, exempt services rendered without compensation. Our suggested version of the proposed rule is included below.

Consumers of legal services would be the greatest beneficiary of our proposed changes to the rule. They could get an explanation of the forms their broker hands them to sign, draw on the specific expertise of Wyoming's landmen, or seek a word of advice from a friend. Those in need of assistance with basic legal matters could go to good Samaritans or knowledgeable professionals, thus avoiding both the pitfalls of their own inexperience and the prohibitive expense of an attorney. If our proposals are adopted into the rule, Wyoming's consumers will gain access to a freer market in law-related services: a market with more choices, lower costs, and better value.

We take this opportunity to encourage the committee to alter the proposed rule in the interests of consumers. Implementing these changes would be a great boon to the goal of true access to justice for all Wyoming's citizens, who deserve better access to legal services.

# Suggested Changes to the Proposed New Rule

Underlined matter is added, ~~strikethrough~~ is removed.

## Rule 7. Authorization to practice law

- (a) The following persons are authorized to practice law in Wyoming:
- (1) Members of the Wyoming State Bar, as more fully delineated and subject to the limitations set forth in the Bylaws of the Wyoming State Bar;
  - (2) Attorneys who have been granted pro hac vice admission as provided in Rule 8, subject to the limitations set forth in that rule;
  - (3) Clinical law professors meeting the qualifications of Rule 9, subject to the limitations set forth in that rule;
  - (4) Law students meeting the qualifications of Rule 10, subject to the limitations set forth in that rule; and
  - (5) Attorneys meeting the qualifications of Rule 5.5(d) of the Wyoming Rules of Professional Conduct, subject to the limitations set forth in that rule.
- (b) “Practice law” means providing, for compensation, any legal service for any other person, firm or corporation, ~~with or without compensation~~, or providing, for compensation, professional legal advice or services where there is a client relationship of trust or reliance, including appearing as an advocate in a representative capacity; drafting pleadings or other documents; or performing any act in a representative capacity in connection with a prospective or pending proceeding before any tribunal.
- (c) Whether or not they constitute the practice of law, the following are not prohibited:
- (1) Title insurance companies authorized to do business in the State of Wyoming and their licensed agents, real estate rental agencies, licensed real estate brokers and their affiliated licensees, and employees of such entities, preparing certain documents that would normally involve the practice of law subject to the following:
    - (A) The transaction involved is merely incidental to their lawful business as a title insurance company or licensed agent thereof, rental agency, real estate broker, or affiliated licensees of a real estate broker.
    - (B) The transaction arises in the usual course of business for the title insurance company issuing title insurance, the rental agency as agent for the lessor or the lessee, the broker who is the listing or selling broker, or the real estate licensee affiliated with the broker.
    - (C) Licensed real estate brokers and their affiliated licensees, as agents for the seller and/or buyer, may prepare purchase agreements and contracts of sale.
    - (D) Real estate rental agencies representing the lessor and/or lessee may prepare residential, commercial, or farm leases.



- (E) In closing a real estate sale, licensed real estate brokers and title insurance companies and their licensed agents may prepare deeds, releases which do not affect judgment liens, deeds of reconveyance, title affidavits, closing statements, and related documents.
- (F) The documents referred to in subsections (c)(1)(iii), (iv) and (v) to be prepared by nonlawyers shall be on standardized forms which contain various blanks to be filled in, the completion or selection of which does not require the knowledge, judgment, or skill of one trained as a lawyer.
- ~~(G) No counsel or advice shall be given with respect to the meaning, validity, or legal effect of the document or regarding the rights and obligations of the parties.~~
- (2) Financial institutions and their nonlawyer employees, preparing documents relating to transactions, if all of the following conditions are met:
- (A) The transaction involved is related to the lawful business of the financial institution;
- (B) The transaction arises in the usual course of business for the financial institution;
- (C) The transaction requires the preparation of security agreements, financing statements, assignments, termination statements, releases, deeds of reconveyance, promissory notes, deeds of trust, mortgages, and similar types of financial documents; and
- (D) The documents shall be on standardized forms which may contain various blanks to be filled in, the completion or selection of which does not require the knowledge, judgment, or skill of one trained as a lawyer.
- ~~(E) No counsel or advice shall be given with respect to the meaning, validity, or legal effect of the document or regarding the rights and obligations of the parties.~~
- (3) Title insurance companies authorized to do business in the State of Wyoming and their licensed agents, real estate rental agencies, licensed real estate brokers and their affiliated licensees, and employees of such entities may prepare documents other than those specifically set forth above at the request of a lawyer duly authorized to practice law in the State of Wyoming provided, however, that the lawyer requesting the document shall be responsible for the content thereof as if he or she drafted the document.
- (4) Abstractors preparing or extending abstracts in compliance with W.S. § 33-2-101 without rendering opinions as to the character of a title. A title insurance company authorized to do business in the State of Wyoming, including its licensed agents, may review public records and specify any curative work or describe conditions which must be fulfilled before it will issue a title insurance policy in connection with a proposed real estate transaction, but may not render opinions, counsel, and advice to others regarding the marketability of status or titles.
- (5) Nonlawyers appearing as an advocate in a representative capacity before any body, board committee, or commission constituted by law, if that body, board, committee or commission is functioning as an adjudicative body

- when such conduct is authorized by Wyoming Supreme Court rule, federal statute, state statute, county, or city resolution or ordinance, federal administrative regulation, or state administrative regulation.
- (6) Nonlawyers serving in neutral capacities as mediators, arbitrators, conciliators, or facilitators.
  - (7) Nonlawyers participating in labor negotiations, employee discipline hearings, employment grievances, arbitrations, mediations, or conciliations arising under collective bargaining rights or agreements or state or federal law, provided, however, that neither the Wyoming nor Federal Rules of Evidence apply.
  - (8) Nonlawyers acting as lobbyists.
  - (9) Nonlawyers selling legal forms in any format, ~~so long as they do not advise or counsel another regarding the selection, use, or legal effect of the forms.~~ so long as the forms clearly and conspicuously state that the forms are not a substitute for the advice of an attorney.
  - (10) With respect to tax laws:
    - (A) Nonlawyers preparing tax returns.
    - (B) Nonlawyers representing other persons, entities, or organizations before the Internal Revenue Service or any other state or local taxing authority in Wyoming to the extent permitted by such agency or taxing authority.
    - (C) Nonlawyers practicing before the U.S. Tax Court in conformity with its rules.
  - (11) Provision of tax advice by certified public accountants who are authorized to practice accountancy in the State of Wyoming.
  - (12) Nonlawyers engaging in any other activity which the Supreme Court determines, upon the report and recommendation of the Committee on the Unauthorized Practice of Law, does not constitute the unauthorized practice of law.
  - (13) A person or entity providing services relating to their lawful business, as long as such services are within the professional competence of that individual or entity. A person or entity completing forms, the use of which arises in the usual course of their business, shall be presumed to be within their professional competence.
- (d) Any person may act pro se in a matter in which that person is a party.