FILED
September 16, 2024
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN SUPREME COURT

ADM19-8002

ORDER AMENDING RULES GOVERNING LEGAL PARAPROFESSIONAL PILOT PROJECT

In an order filed September 29, 2020, we established the Legal Paraprofessional Pilot Project (LPPP) to evaluate the delivery of legal services by legal paraprofessionals who are supervised by licensed Minnesota attorneys in certain areas of unmet legal needs. The Standing Committee for the Legal Paraprofessional Pilot Project (Pilot Committee)[1] filed its Final Report and Recommendations (Final Report) on January 12, 2024.[2] We provided a public comment period, which ended on April 30, 2024, during which twelve comments were received. We held a public hearing on June 13, 2024. At the hearing, remarks were made by a member of the Pilot Committee, representatives of the Minnesota State Bar Association

[1] In past orders, we have referred to the Pilot Committee as the "Standing Committee." Because the new Standing Committee for the Legal Paraprofessional Program created by this order is also a standing committee, we refer to the new committee as the Program Committee and the now dissolved committee as the Pilot Committee to avoid confusion.

[2] The Pilot Committee filed several interim reports during the pendency of the pilot. *See* Stand. Comm. for Legal Paraprofessional Pilot Project, *Interim Report and Recommendations to the Minnesota Supreme Court*, No. ADM19-8002 (Mar. 3, 2023); Stand. Comm. for Legal Paraprofessional Pilot Project, *Report and Training and Experience Recommendations to the Minnesota Supreme Court*, No. ADM19-8002 (Sept. 14, 2022); Stand. Comm. for Legal Paraprofessional Pilot Project, *Interim Report and Recommendations to the Minnesota Supreme Court*, No. ADM 19-8002 (Dec. 27, 2021).

(MSBA), Legal Assistance of Olmsted County, the Minnesota Paralegal Association, and attorney Peter Swanson.

Having carefully considered the Pilot Committee's recommendations, the comments filed, and the statements from the public hearing, we adopt the Pilot Committee's recommendations as modified below and amend the Minnesota Rules of Supervised Practice, Rules 12.01–12.04 (RSP). First, we adopt the Pilot Committee's recommendation to make the LPPP a permanent judicial branch program. The comments we received were overwhelmingly supportive of making the program permanent. We commend the Pilot Committee for its thoroughness in evaluating the pilot project and in soliciting, receiving, and synthesizing feedback from various stakeholders.[3] We hereby dissolve the Standing Committee for the Pilot Project and establish the Standing Committee for the Legal Paraprofessional Program (Program Committee), effective January 1, 2025. Appointments will be made to the Program Committee no later than December 1, 2024. The Program Committee is tasked with continuing the roles of the Pilot Committee. The Program Committee must file two reports: one report described in more detail below is due no later than July 1, 2025, and a second report is due no later than July 1, 2026. The second report will include an evaluation of the Legal Paraprofessional Program, including recommendations for changes to the administration, structure, and scope of the program.

[3] Like the public comments we have received, the feedback collected by the Pilot Committee was also positive. *See generally* Standing Comm. for Legal Paraprofessional Pilot Project, *Final Report and Recommendations to the Minnesota Supreme Court*, No. ADM19-8002 (Jan. 12, 2024) ("Final Report").

The Pilot Committee also recommended that we allow legal paraprofessionals to practice in Housing Court in the Fourth District. When we launched the pilot project, some stakeholders opposed allowing paraprofessionals to practice in housing court in that district, so we prohibited paraprofessional practice there. The Pilot Committee determined, based on conversations with stakeholders, that those concerns were no longer relevant and we did not receive any comments opposing expansion of the program into the Fourth District Housing Court. Accordingly, we amend Rule 12.01(a)(1), RSP, to allow paraprofessionals to practice in Housing Court in the Fourth District.

A few comments expressed concern with continuing to allow paraprofessionals to practice in cases involving harassment restraining orders and orders for protection under Rule 12.01(f), RSP. Because the Pilot Committee received limited data on those particular areas of practice, we ask that the Program Committee also evaluate and include recommendations as to the merits of allowing legal paraprofessionals to provide services under Rule 12.01(f), RSP, in its July 1, 2026, report. Paraprofessionals may continue to practice in cases involving harassment restraining orders and orders for protection under Rule 12.01(f), RSP, until we order otherwise.

The Pilot Committee recommended changing the title of the program from "legal paraprofessional" to "legal practitioner." We received comments that were critical of the proposed change. Some groups contend that the phrase "legal practitioner" might mislead a client to believe they are working with a licensed attorney. In addition, one comment requested that we wait to see what titles are adopted by similar programs in other states. We ask that the Program Committee provide a recommendation as to the program name as part

of its July 1, 2026, report. In addition, legal paraprofessionals currently are required to file, with each certificate of representation, a statement signed by the supervising attorney that describes the types of services the paraprofessional is authorized to provide. *See* Rule 12.01, RSP. To ensure that clients are not misled, we are amending the rule to require that retainer agreements clarify that paraprofessionals are not lawyers.

One comment suggested that paraprofessionals should be authorized to represent low-income or non-corporate landlords. We conclude that we need additional information before deciding whether to allow paraprofessionals to represent landlords (or some category of landlords) in housing cases. The Program Committee must file a report no later than July 1, 2025, providing recommendations on whether the purposes of the paraprofessional program would be served by allowing paraprofessionals to represent landlords such as those who own a limited number of units or based on the aggregate value of, or total income generated by, the rental units owned by the landlord. In its report, the Program Committee should consider and make recommendations concerning administrative burdens associated with eligibility requirements.

Another comment suggested that paraprofessionals should be authorized to sign pleadings and submit them through the courts' electronic filing system. The Program Committee, in coordination with the State Court Administrator's Office, must also provide a recommendation, no later than July 1, 2025, addressing whether paraprofessionals should be able to sign pleadings instead of, or in addition to, supervising attorneys.

Finally, commenters asked that we amend the Minnesota Rules of Professional Conduct to allow fee sharing between lawyers and legal paraprofessionals. Because the

question of fee sharing is a broader issue, we will separately refer it to the Office of Lawyers Professional Responsibility.

The pilot program to date has had ethics requirements to enter the program but no ongoing Continuing Legal Education (CLE) requirements. The ethics requirements are as follows: a paraprofessional candidate must (i) hold Certified Paralegal credentials from the Minnesota Paralegal Association; (ii) have completed 10 CLE credits, including two ethics credits, within the two years prior to seeking certification; or (iii) have completed a paralegal studies degree or certificate or juris doctorate within the two years prior to seeking certification, including an ethics component. The Pilot Committee recommended removing options (i) and (iii), making the 10 CLE credits a prerequisite. It also recommended requiring 10 CLE credits, including two ethics credits, every two years.

Comments generally supported this change. One comment sought clarification for current paraprofessionals. Because some paraprofessionals met the original ethics requirement by other means (e.g., completion of a paralegal studies degree or certificate), the comment asked that the new rules not remove eligibility for paraprofessionals who participated in the pilot program. We appreciate the services provided by paraprofessionals during the pilot program and amend Rule 12.02(b), RSP, to adopt the Pilot Committee's recommendations while also protecting paraprofessionals already participating in the program. Those paraprofessionals will, however, be required to obtain 10 CLE credits in the next two-year CLE cycle. We also direct that one diversity, equity, and inclusion credit may be approved in lieu of one ethics credit.

The Pilot Committee recommended that the permanent program continue to require attorney supervision for legal paraprofessionals. One comment opposed this requirement, noting that other states with similar programs either do not require any attorney supervision or do not require it after a training or probationary period. The comment also posited that the growth of the program will be limited by the number of attorneys willing to provide supervision.

We recognize these legitimate concerns. Absent the attorney supervision requirement, however, we would need other ways to verify that legal paraprofessionals are providing quality legal services. Other states typically require a mini bar exam and have instituted new oversight entities. These structures impose significant administrative burdens. Moreover, we hesitate to impose a model that has not been tested and evaluated in this State. Thus, we leave the attorney supervision requirement in place.

The Pilot Committee recommended that paraprofessionals be allowed to practice in several additional practice areas. For instance, the Pilot Committee recommended that legal paraprofessionals be authorized to appear in court and give legal advice regarding criminal expungements. Final Report 16. No comments were received discussing this expansion. Because we believe that allowing paraprofessionals to practice in this area furthers the goals of the program, we amend the Rules of Supervised Practice to include Rule 12.01(h).

The Pilot Committee recommended that paraprofessionals be allowed to provide advice and representation in conciliation court cases. Final Report 16–17. It also recommended that paraprofessionals be allowed to provide advice and representation in

consumer debt and student loan debt cases—even outside of conciliation court—where the amount in dispute is $15,000 or less. Several comments supported this expansion and no comments were opposed. *Id.* at 17. Because we believe that allowing paraprofessionals to practice in this area furthers the goals of the program, we amend the Rules of Supervised Practice to include Rules 12.01(i) and (j).

The Pilot Committee recommended expanding the program to allow advice and representation in petty misdemeanor cases where there are no other offenses charged in the same case. Final Report 17–18. It recommended allowing paraprofessional advice and representation only if the paraprofessional has two years of relevant experience and the supervising attorney "substantially practices" in criminal defense. The MSBA opposed this expansion, raising two arguments. First, the MSBA argued that petty misdemeanors can have unforeseen collateral consequences, including consequences for housing, immigration, health care, federal benefits, and professional licensing. Second, it noted that petty misdemeanors can involve complex procedural and constitutional issues. In response, we observe that paraprofessionals will continue to work under the supervision of lawyers, and the paraprofessional and the lawyer can determine whether the issues raised in a particular case are within the competence of the paraprofessional. We think that these concerns have merit, which is why we will allow paraprofessionals to practice in petty misdemeanor cases only if, every two years, they complete as part of the required 10 hours of CLEs at least three credit-hours of CLEs related to petty misdemeanors and the practice areas in which collateral consequences may arise. Accordingly, we amend Rule 12.02(b)(3), RSP, and add Rules 12.01(k), 12.02(f)(4), and 12.03(f), RSP.

The Pilot Committee also recommended that paraprofessionals be allowed to practice in less-complex probate and estate administration proceedings. Final Report 18–19. Specifically, the Pilot Committee recommended that paraprofessionals be authorized to provide advice to and appear in court or in judicial or administrative proceedings on behalf of clients in probate and estate administration cases which (i) do not involve real estate, (ii) are administered through an informal estate administration process, (iii) are uncontested, or (iv) involve estates valued at $75,000 or less. *Id.* The Pilot Committee recommended that as a condition of providing advice and representation in these cases, paraprofessionals must have two years of demonstrated relevant experience. *Id.*

Multiple comments supported this change and no comments opposed it. The MSBA recommended a few clarifying edits to the proposed rule, which we adopt. The $75,000 figure appears to be drawn from Minn. Stat. § 524.3-1201 (2022), which provides a procedure for collection of personal property by affidavit for estates that are valued at or below $75,000. We adopt the proposed rule—with the modification that estates be valued at or below the amount specified in the statute and clarifying edits in the wording of the rule—as Rules 12.01(l) and 12.02(f)(5), RSP.

The Pilot Committee further recommended allowing paraprofessionals to provide advice and representation in proceedings before the Office of Administrative Hearings (OAH) involving individuals who must obtain a professional license or certification as a condition of practicing their job and have had a license or certification denied or revoked. Final Report 19. The OAH expressed interest in allowing paraprofessionals to appear

before it and noted that many individuals who appear in those proceedings are currently unrepresented. The MSBA opposed this recommendation because it does not believe there is sufficient need and further inquiry into the potential need should be conducted first. If paraprofessionals choose not to practice in the area, there is no harm. Either way, allowing paraprofessionals to practice in this area will allow the Program Committee to gauge interest. Accordingly, we adopt Rule 12.01(m), RSP.

The Pilot Committee separately recommended allowing paraprofessionals to represent individuals challenging denial of unemployment benefits before the Department of Employment and Economic Development and denial of benefits administered by the Minnesota Department of Human Services. Final Report 19–20. No one expressed opposition to this change. Accordingly, we adopt Rules 12.01(n) and 12.01(o), RSP.

We see the need for continued evaluation of the program to ensure that it is serving the goals of the program, including expanding access to justice. To that end, the Program Committee must include in its July 1, 2026, report an evaluation of the use of legal paraprofessionals in the practice areas designated by Rules 12.01 (h)–(o), RSP.

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Supervised Practice are promulgated effective January 1, 2025. The Pilot Program will continue until December 31, 2024, and be administered by the Pilot Committee. The Pilot Committee may take steps it deems necessary to prepare for the administration of the expanded Legal Paraprofessional Program.

2. The Legal Paraprofessional Program, as a successor to the Legal Paraprofessional Pilot Project, will be administered by the Legal Paraprofessional Program Standing Committee, to which appointments will be made by December 1, 2024. Among other tasks, the Program Committee must oversee implementation of the program, review applications for certification submitted by paraprofessional candidates, and track continuing legal education requirements for legal paraprofessionals.

3. The Program Committee is directed to work with the State Court Administrator's Office to monitor and evaluate the program.

a. The Program Committee must file a report no later than July 1, 2025, providing recommendations on whether the purposes of the paraprofessional program would be served by allowing paraprofessionals to represent certain categories of landlords such as those who own a limited number of units, or based on the aggregate value of, or total income generated by, the rental units owned by the landlord. In its report, the committee should consider and make recommendations concerning administrative burdens associated with eligibility requirements.

b. The Program Committee, in coordination with the State Court Administrator's Office, must also provide a recommendation, no later than July 1, 2025, addressing whether paraprofessionals should be able to sign pleadings instead of, or in addition to, supervising attorneys.

c. In its July 1, 2026, report, the Program Committee must evaluate and include recommendations on whether we should adopt different titles for legal paraprofessionals and the use of legal paraprofessionals in the practice areas

designated by Rules 12.01(f), (h)–(o), RSP. Paraprofessionals will retain their authority to continue to practice in the areas designated by Rules 12.01(f) and (h)–(o), RSP, unless good cause is shown on or before July 1, 2026, to eliminate one or more authorized practice areas.

Dated: September 16, 2024

BY THE COURT:

Natalie E. Hudson
Chief Justice

GAÏTAS, J., not having been a member of the court at the time of the public hearing, took no part in the consideration or decision of this order.

AMENDMENTS TO THE SUPERVISED PRACTICE RULES

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

Rule 12. Authorized Practice ~~by~~in Legal Paraprofessionals ~~in Pilot Project~~ Program

Rule 12.01 Scope of Work

An eligible legal paraprofessional may, under the supervision of a member of the bar, provide the following services:

(a) Provide advice to and appear in court on behalf of tenants in housing disputes as defined in Minnesota Statutes Chapter 504B and Minnesota Statutes § 484.014~~, except that eligible legal paraprofessionals shall not appear in Housing Court in the Fourth Judicial District~~.

* * *

g) In any family law proceeding in which the pleadings include allegations of domestic abuse or child abuse, or in any case under Rule 12.01(f), the legal paraprofessional shall provide the client with victim-survivor agency contact information.

(h) Provide advice to and appear in court on behalf of clients seeking expungement of their criminal records under Minn. Stat. ch. 609A or any successor statute.

(i) Provide advice to and appear on behalf of clients in conciliation court.

(j) Provide advice to and appear in court on behalf of debtors in consumer debt and student loan debt cases, provided that the amount owed by the debtor is not greater than $15,000.

(k) Subject to Rules 12.02(b)(3), 12.02(f)(4), and 12.03(f), provide advice to and appear in court on behalf of defendants in petty misdemeanor cases, except if there are other charges in the case that are not petty misdemeanor offenses.

(l) Subject to Rule 12.02(f)(5), provide advice to and appear in court or judicial or administrative proceedings on behalf of clients in probate and estate administration cases which:

- (i) do not involve real estate, and
- (ii) are administered in an informal estate administration process, and
- (iii) involve either:
  - (A) uncontested probate matters, or
  - (B) estates with a value less than or equal to the amount specified in Minn. Stat. § 524.3-1201(a)(1).

(m) Provide advice to and appear in proceedings before the Office of Administrative Hearings on behalf of persons who, under state statute, must obtain a professional license or certification from a board or agency as a condition of practicing their jobs or professions and have been denied a license or certification or had a license or certification revoked by the board or agency.

(n) Provide advice to and appear in proceedings before the Department of Employment and Economic Development on behalf of persons who are challenging denial of unemployment benefits.

(o) Provide advice to and appear in proceedings before the Department of Human Services on behalf of persons who have been denied benefits administered by the Department of Human Services.

~~(h)~~ (p) With authorization from the supervising attorney, prepare and file documents which include but are not limited to the documents identified in Appendix 1 to these rules.

* * *

Rule 12.02 Eligible Legal Paraprofessionals

An eligible legal paraprofessional must meet the following requirements:

(a) Education and Work Experience Requirements. To participate in the ~~pilot project~~ program, a legal paraprofessional must have the following education or work experience:

* * *

(b) Ethics and Continuing Legal Education Requirements. To participate in the ~~pilot project~~ program, a legal paraprofessional must satisfy the following ethics and continuing education requirements:

(1) ~~hold Minnesota Certified Paralegal credentials from the Minnesota Paralegal Association; or~~

~~(2)~~ either have been admitted as a rostered paraprofessional prior to December 31, 2024, or provide proof that the legal paraprofessional has earned ten continuing legal education credits, including two credit hours in ethics, within the two years prior to seeking certification under Rule 12.04(a); ~~or~~ and

~~(3) provide proof that the legal paraprofessional has obtained a paralegal studies degree or certificate, or a juris doctorate within the two years prior to seeking certification under Rule 12.04(a). Such a program must include an ethics component.~~

(2) provide proof every two years that the legal paraprofessional has earned ten continuing legal education credits, two of which must be in ethics. One diversity, equity, and inclusion credit may be approved in lieu of one ethics credit.

(3) Legal paraprofessionals providing advice or representation in petty misdemeanor cases must, as part of those ten credits, also complete three credits relating to petty misdemeanors or areas that may be impacted by petty misdemeanors, including housing, immigration, health care, federal benefits, and professional licensing.

(c) Written Agreement with a Supervisory Attorney. To participate in the ~~pilot project~~ program, a legal paraprofessional must enter into a written agreement with a licensed Minnesota attorney who agrees to serve as the legal paraprofessional's supervisory attorney. The written agreement must set forth the scope and types of work the legal paraprofessional may undertake consistent with the scope of the ~~pilot project~~ program and the steps the supervisory attorney will take to ensure that the legal paraprofessional is serving the client's interests.

(d) Required Language for Retainer Agreements. For all representations initiated on or after January 1, 2025, the retainer agreement must provide a disclaimer conveying that (i) legal paraprofessionals are authorized by the Minnesota Supreme Court to provide legal advice and representation to clients in certain types of cases; and (ii) a legal paraprofessional is not a lawyer.

(~~d~~e) Roster of Approved Legal Paraprofessionals. To participate in the ~~pilot project~~ program, a legal paraprofessional must remain in good standing on the roster of approved legal paraprofessionals established and maintained by the Standing Committee on the Legal Paraprofessional ~~Pilot Project~~ Program.

(~~e~~f) Training or Experience Requirements for Certain Cases.

(1) Training Requirements in Family Law Cases in which the Pleadings Include Allegations of Domestic Abuse or Child Abuse. * * *

The training must have been completed within two years prior to seeking certification under Rule 12.04(a). The training must be approved by the Standing Committee for Legal Paraprofessional ~~Pilot~~ Program.

(2) Training for Cases Under Rule 12.01(f). * * *

* * *

(b) either (i) three hours continuing education on evidentiary hearings in order for protection and harassment restraining order cases which must include a mock evidentiary

hearing; or (ii) shadowing the supervising attorney at one evidentiary hearing for an order for protection under Minn. Stat. § 518B.01 and one evidentiary hearing for a harassment restraining order under Minn. Stat. § 609.748.

The training must have been completed within two years prior to seeking certification under Rule 12.04(a). The training must be approved by the Standing Committee for Legal Paraprofessional ~~Pilot~~ Program.

* * *

(4) To provide advice and representation to clients in petty misdemeanor cases, as provided in Rule 12.01(k), the legal paraprofessional must have two years of demonstrated relevant experience.

(5) To provide advice and representation to clients in estate administration and probate cases, as provided in Rule 12.01(l), the legal paraprofessional must have two years of demonstrated relevant experience.

Rule 12.03 Supervisory Attorney

The attorney who supervises a legal paraprofessional authorized to participate in the ~~pilot project~~ program shall:

* * *

(f) substantially practice in criminal defense law if the legal paraprofessional is providing services in petty misdemeanor cases.

Rule 12.04 Standing Committee for Legal Paraprofessional ~~Pilot Project~~ Program.

The Standing Committee for the Legal Paraprofessional ~~Pilot Project~~ Program shall establish, in collaboration with the State Court Administrator, procedures as follows:

(a) for certifying legal paraprofessionals as authorized to participate in the ~~pilot project~~ program and establishing and maintaining a public roster of legal paraprofessionals eligible to participate in the ~~pilot project~~ program;

(b) for evaluating the results and outcome of the ~~pilot project~~ program and making further recommendations to the Supreme Court; and

(c) for submitting, reviewing, investigating, and resolving complaints made against legal paraprofessionals and supervising attorneys, including removing legal paraprofessionals from the roster and prohibiting supervising attorneys from participating in the ~~pilot project~~ program if there is a good cause to do so. Rostered legal paraprofessionals and supervising

attorneys shall cooperate with standing committee investigations and failure to cooperate may be the basis for removal from the ~~pilot project~~ program; and

(d) for approving continuing education credits required under Rule 12.02(~~e~~f).