



*The State Bar of California*

# **STRATEGIC PLANNING PRESENTATION AND DISCUSSION PANEL I:**

Expanding Access Through Licensing Non-Attorneys:  
Limited Legal License Technician (LLLT) Programs  
and Other Non-Attorney Law-Related Services

January 23, 2020  
Los Angeles, CA

ATLS Agenda Item A.4.  
[Staff Report]  
02-24-20 Meeting

# Authorized Law Related Services Providers

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- » Legal Document Assistants (LDA)
- » Unlawful Detainer Assistants (UDA)
- » Immigration Consultants
- » Paralegals

## LEGAL DOCUMENT ASSISTANTS (LDA)



- “Legal document assistants” provide “self-help” services for compensation to individuals who are representing themselves in a legal matter
- LDA’s include those who hold themselves out as persons offering or authorized to provide such services, but not those acting merely as secretaries or receptionists

## “Self-Help Service” Means the Following:

- » Provide general published factual information (written or approved by an attorney) pertaining to legal procedures, rights, or obligations to self-represented persons
- » Make available published legal documents to self-represented persons
- » Complete legal documents in a ministerial manner by typing or completing the documents at the person’s specific direction
- » File and serve legal forms and documents at the person’s specific direction

Bus. & Prof. Code, § 6400(d)

## UNLAWFUL DETAINER ASSISTANTS (UDA)



- “Unlawful detainer assistants” render assistance or advice for compensation to self-represented individuals in the prosecution or defense of an unlawful detainer claim or action.
- “Unlawful detainer claim” means a proceeding, filing, or action affecting rights and liabilities of any person arising under CCP §§ 1159 *et seq.* and contemplates an adjudication by a court.

# IMMIGRATION CONSULTANTS



- An “Immigration Consultant” is a person who gives non-legal assistance or advice on an immigration matter.

## Non-Legal Assistance or Advice Includes:

- » Completing forms provided by federal or state agencies without advising a person as to their answers on those form
- » Translating a person's answers to questions posed in those forms
- » Securing supporting documentation (such as birth certificates, etc.) which may be necessary to complete those forms
- » Submitting completed forms to the U.S. Citizenship and Immigration Services agency on a person's behalf and at the person's request
- » Making referrals to persons who could undertake legal representation activities in an immigration matter

## PARALEGALS



- “Paralegal” is a person who holds themselves out to be a paralegal, who is qualified by education, training, or work experience, and who either contracts with or is employed by an attorney, law firm, corporation, governmental agency or other entity, and who performs substantial legal work under the direction and supervision of an attorney.



## Permitted Activities Include:

- » Case planning, development, and management;
- » Legal research;
- » Interviewing clients;
- » Fact gathering and retrieving information;
- » Drafting and analyzing legal documents;
- » Collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney;
- » Representing clients before a state or federal administrative agency if permitted by statute, court rule, or administrative rule or regulation.

AUTHORIZED LAW RELATED SERVICES PROVIDERS					
		Paralegal	Legal Document Assistant (LDA)	Unlawful Detainer Assistant (UDA)	Immigration Consultant
Regulatory Body		No regulatory body, but a paralegal must be supervised by a lawyer and lawyers are regulated by the State Bar (see rule 5.3)	No regulatory body, but any person injured by the unlawful act of a LDA retains all rights and remedies available under the law, in addition to a misdemeanor punishable by a fine  The county clerk must revoke the registration of a LDA under certain circumstances.	No regulatory body, but any person injured by the unlawful act of a UDA retains all rights and remedies available under the law, in addition to a misdemeanor punishable by a fine.  The county clerk must revoke the registration of a UDA under certain circumstances.	The Secretary of State.  In addition, any person claiming to be injured by an immigration consultant may bring a civil action for injunctive relief or damages, or both.
Authority		Bus. & Prof. Code, §§ 6450 et seq.	Bus. & Prof. Code, §§ 6400 et seq.	Bus. & Prof. Code, §§ 6400 et seq.	Bus. & Prof. Code, §§ 22440 et seq.
Qualification Requirements	Special Filing	None.	A LDA shall be registered by the county clerk in the county in which his or her principal place of business is located, and in which they maintain a branch office.  Bus. & Prof. Code, § 6402.	A UDA shall be registered by the county clerk in the county in which his or her principal place of business is located, and in which they maintain a branch office.  Bus. & Prof. Code, § 6402.	An immigration consultant shall file a disclosure form containing certain information with the Secretary of State.  Bus. & Prof. Code, § 22443.1, subd. (c)(1)-(5).
	Background Check Requirement	None.	Yes. Bus. & Prof. Code, § 6406, subds. (b)(1)-(5).	Yes. Bus. & Prof. Code, § 6406, subds. (b)(1) - (5).	Yes. Bus. & Prof. Code, § 22441.1, subds. (a), (b)(1)-(3).
	Financial Responsibility	None.	Yes. Bond requirement. Bus. & Prof. Code, § 6405, subd. (a)(1).	Yes. Bond requirement. Bus. & Prof. Code, § 6405, subd. (a)(1).	Yes. Bond requirement. Bus. & Prof. Code, § 22443.1.
	Education/ Experience	Required for eligibility. Bus. & Prof. Code, § 6450, subds. (c)(1)-(4).	Required for eligibility. Bus. & Prof. Code, § 6402.1, subds. (a)-(d).	None. But see, Bus. & Prof. Code, § 6402.1, subds. (a)-(d).	Required for eligibility. Bus. & Prof. Code, § 22440.
Scope of Permissible Activity		A paralegal may perform a wide variety of legal services for a consumer under the supervision and direction of an attorney, law firm, corporation, government agency, or other entity that employs the paralegal.  Bus. & Prof. Code, § 6450, subd. (a).	A legal document assistant may only provide "self-help service" assistance to a client. Bus. & Prof. Code, § 6400, subds. (d)(1)-(4).	An unlawful detainer assistant may render assistance or advice in the prosecution or defense of an unlawful detainer claim or action (this includes any bankruptcy petition that may affect the unlawful detainer claim or action).  Bus. & Prof. Code, § 6400, subds. (a), (b).	An immigration consultant may only give nonlegal assistance or advice on an immigration matter. Bus. & Prof. Code, § 22441, subds. (a)(1)-(5).



# The State Bar *of California*

## Questions?

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# History of the State Bar's Consideration of a LLLT Program

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- » Former UPL Treaties (revoked in 1979)
- » Public Protection Committee & Commission on Legal Technicians (1980's & 1990's)
- » Limited Licensing Working Group (2013)
- » Civil Justice Strategies Task Force (2015)

## Common Themes in the History of Consideration:

- » Close coordination with regulatory stakeholders, especially the Supreme Court.
- » Goal of enhancing consumer options and access to legal services.
- » Start with an initial program that implements a modest scope that can be monitored, evaluated and expanded as appropriate.
- » Consider establishment of a regulatory oversight committee or body.



# The State Bar *of California*

## Questions?

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# LLLT Programs In Other States

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Limited-Licensing in Utah:  
Licensed Paralegal Practitioners  
(LPPs)



Limited-Licensing in Other  
Jurisdictions:

- Arizona
- Oregon
- Montana
- New Mexico
- Colorado

## Following Washington's Lead

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In 2015, the Utah Supreme Court adopted a recommendation to authorize licensed paralegal practitioners to assist clients in family law, eviction, and consumer debt matters—a “market-based solution for the unmet needs of litigants.”

Utah State Courts, Supreme Court Task Force to Examine Limited Legal Licensing, Report and Recommendations (Nov. 18, 2015), 8 (“The supreme court should exercise its constitutional authority to govern the practice of law to create a subset of discrete legal services that can be provided by a licensed paralegal practitioner.”).

*“We recognize the valuable services that lawyers provide to their clients every day, in and out of court. But the data show that, even after years of effort with pro bono and low bono programs, a large number of people do not have a lawyer to help them. . . . The people facing these situations . . . need assistance.”*

Task Force Report and Recommendations (Nov. 18, 2015), 7.



## Utah's Licensed Paralegal Practitioner Program

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### Program Overview



- Rule 14-802 of the Rules Governing the Utah State Bar creates an exception to the authorization to practice law for a Licensed Paralegal Practitioner (LPP).
- The exception permits an LPP to assist a client in the practice areas for which an LPP is licensed.

## APPROVED PRACTICE AREAS



- Specific family law matters, such as temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, or name change;
- Forcible entry and detainer; and
- Debt collection matters in which the dollar amount at issue does not exceed the statutory limit for small claims cases.

*RGLPP 14-802(c)*

## Scope of Authorized Practice

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Under Rule 14-802, an LPP may:

- Enter into a contractual relationship with a natural person;
- Interview a client to determine the client's needs and goals;
- Assist a client with completing approved forms and obtaining documents to support those forms;
- Review documents of another party and explain those documents to a client;
- Inform, counsel, assist, and advocate for a client in a mediated negotiation;
- Complete a settlement agreement, sign the form, and serve the written settlement agreement;
- Communicate with another party or the party's representative regarding the relevant forms and matters; and
- Explain to a client the court's order and how it affects the client's rights and obligations.

*RGLPP 14-802*

## Exclusions

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- LPPs may not appear in court; and
- LPPs may not charge contingency fees.

## Regulatory Requirements

### Ethical Obligations

- » LPPs are held to the ethical standards set forth in the Licensed Paralegal Practitioner Rules of Professional Conduct, which are similar to those that govern attorneys.
- » The Office of Professional Conduct is charged with investigating and, if necessary, prosecuting complaints against LPPs.

### Safeguarding Client Property

- » Client Trust Accounts (“IOLPPTA Account”) (RGLPP 15-1001)  
(requiring LPPs to create and maintain an interest-bearing trust account for all client funds)
- » Establishment of Client Security Fund (RGLPP 14-902)  
(“The Fund is established to reimburse clients for losses caused by the dishonest conduct committed by” LPPs.)

### Continuing Legal Education Requirements

- » Every two years, active status LPPs must complete a minimum of 12 hours of Utah Accredited CLE, which must include a minimum of three hours of accredited ethics or professional responsibility. (RGLPP 15-404(a).)

# How to Become a Licensed Paralegal Practitioner in Utah

## Educational Requirements

An applicant must have one of the following degrees:

- A degree in law from an accredited law school;
- An Associate degree in paralegal studies from an accredited school;
- A Bachelor's degree in paralegal studies from an accredited school; or
- A Bachelor's degree in any subject from an accredited school, plus a paralegal certificate, or 15 hours of paralegal studies from an accredited school.

*RGLPP 15-703*

## Examinations Requirements

An applicant must pass:

- ✓ A professional ethics examination;
- ✓ Licensed Paralegal Practitioners Examination for each practice area for which the applicant seeks to practice.

*RGLPP 15-703*

## Certifications Requirements

An applicant must have one of the following certifications:

- Certified Paralegal (CP) or Certified Legal Assistant (CLA) by the National Association of Legal Assistants (NALA);
- Professional Paralegal (PP) Certification from the National Association of Legal Professionals (NALS); or
- CORE Registered Paralegal (CRP) designation from the National Federation of Paralegal Associations (NFPA).

*RGLPP 15-703*

## Experience Requirements

An applicant is required to:

- › Complete 1,500 hours of substantive law-related experience within the 3 years prior to the application. These hours must include:
  - › 500 hours of substantive law-related experience in family law; or
  - › 100 hours of substantive law-related in debt collection or forcible entry and detainer.

*RGLPP 15-703*



## Initiatives in Arizona

“Changes in technology, the legal profession, and the economy call for a reassessment of the delivery of legal services to consumers more broadly. Across the nation, judicial and legal community leaders are examining this issue and experimenting with new models . . . . It is timely to review the regulation of the delivery of legal services in Arizona.”

*Supreme Court, Order No. 2018-111 at 1.*

## Task Force on Delivery of Legal Services

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- **Oct. 2019:** The Task Force on Delivery of Legal Services recommended that the Supreme Court adopt the following proposals:
  - › Develop a tier of non-lawyer legal service providers, qualified by education, training, and examination, to provide limited legal services to clients, including representation in court and at administrative proceedings.
  - › Initiate the Licensed Legal Advocate Pilot program developed by the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law.

## Limited License Legal Practitioners (LLLPs) in Arizona

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- **Approved Subject Matter Areas:**

The task force recommended an early focus on family law as an approved subject matter area, in addition to the following:

- › All limited jurisdiction civil practice matters;
- › Limited jurisdiction criminal matters that carry no prospect for incarceration;
- › Matters within administrative law.

- **Scope of Practice:** The task force recommended that the scope of the new tier include the ability to provide legal advice and to make appearances in court on behalf of clients.

- **Education, Examination & Licensing:** Considerations for the future steering committee:

- › Whether a minimum number of academic credits in legal ethics be required;
- › Whether only ABA-accredited legal training be accepted;
- › Whether training should require an experiential learning component;
- › Whether to create a separate path to certification for existing LDPs and paralegals.



## Licensed Legal Advocate Pilot for Survivors of Domestic Violence (2019)

### Program Overview



- Students in the Innovation for Justice Program (i4j) at the University of Arizona designed a one-year pilot program to help domestic abuse survivors navigate the civil legal system.
- The pilot would transform Lay Legal Advocates—persons who already provide information to domestic abuse survivors at the Emerge! Center Against Domestic Abuse—into Licensed Legal Advocates (LLAs)—persons authorized to handle survivors' specific legal needs.

## Pilot Program Highlights

### Practice Area & Scope of Practice

- » Licensed legal advocates would provide legal advice to survivors of domestic abuse only through the Emerge! Center Against Domestic Abuse. LLAs would be authorized to:
  - › Identify urgent legal needs at intake and provide advice regarding next steps of action with respect to those needs;
  - › Assist self-represented DV survivors with the completion of DV and family law forms and provide legal advice necessary to adequately complete those forms;
  - › Provide advice regarding preserving potential court evidence and preparing for court hearings and mediations; and
  - › Assist survivors at court hearings by being able to sit with the survivor and quietly advise them as requested by the survivor or the court.

# How to Become a Licensed Legal Advocate

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## Eligibility Requirement



LLAs must:

- Complete 2,000 hours (or roughly one year of work) at Emerge! to be eligible to participate in the pilot project.

## Education Requirements



An applicant must:

- ✓ Complete the seven-week LLA curriculum, which combines both online and in-person training, at the University of Arizona Law.

## Examinations Requirements



An applicant must:

- › Take and pass six three-hour exams in each area of coursework;
- › Pass the LLA Licensing Exam created and administered by the State Bar of Arizona.

## Work Experience Requirement



Newly licensed LLAs would be supervised by a licensed attorney for the first 100 hours of LLA work.

## Licensing & Regulation

- » LLAs would be subject to the Licensed Legal Advocates Rules of Professional Conduct, adapted from the Arizona Rules of Professional Conduct.
- » The regulation and discipline of LLAs would also closely parallel that of attorneys. Complaints could be filed with the State Bar of Arizona by the general public. If the complaint warranted action, an LLA could face discipline, suspension, or revocation of his or her license.

## Anticipated Costs & Funding

- » The pilot would be funded through research foundation funding secured by the University of Arizona College of Law and Emerge!.
- » The total cost of the LLA pilot is projected at \$195,966, factoring in expenses for education and testing, instruction during LLA training, project design, launch, and evaluation.



## **Initiatives in Oregon**

### **Paraprofessional Licensing**

On September 27, 2019, the Oregon State Bar's Board of Directors voted to approve a program for licensure of paraprofessionals, based on the recommendations of the Oregon State Bar's Futures Task Force (June 2017).

## Program Highlights

### Practice Area & Scope of Practice

- » Licensed paraprofessionals would be authorized to provide limited legal services, without attorney supervision, to self-represented litigants in (1) family law and (2) landlord-tenant proceedings.
- » Licensees would be authorized to:
  - › Select, prepare, file, and serve forms and other documents in an approved proceeding;
  - › Provide information and advice relating to the proceeding;
  - › Communicate and negotiate with another party;
  - › Provide emotional and administrative support to the client in court.
- » Licensees would be prohibited from representing clients in depositions, in court, and in appeals, and certain inherently complex proceedings would be excluded from the scope of the limited license.

## Minimum Qualifications

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An applicant would be required to:

- › Be at least 18 years of age and of good moral character;  
(Suspended or disbarred attorneys would not be eligible for a paraprofessional license.)
- › Possess an Associate's degree or higher and have graduated from an ABA-approved or institutionally-accredited paralegal studies program, including approved coursework in the subject matter of the license;  
(Highly experienced paralegals and applicants possessing a degree in law would be exempt from these requirements.)
- › Complete at least one year (1,500 hours) of substantive law-related experience under the supervision of an attorney.

## Regulatory Requirements for Licensees

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- » Licensees would be required to carry liability insurance in an amount to be determined.
- » Licensees would be required to comply with professional rules of conduct modeled after the rules for attorneys.
- » Licensees would be required to use written agreements with mandatory disclosures. Licensees would also be required to advise clients to seek legal advice from an attorney if the licensee knows or reasonably should know that a client requires services outside the scope of the licensee's practice.
- » Licensees would be required to meet continuing legal education requirements.



## Initiatives in Other Jurisdictions

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### Colorado



In March of 2015, the Supreme Court Advisory Committee formed a subcommittee to study whether Colorado should implement a Limited License Legal Technician Program.

The subcommittee delivered its report in January of 2016.

At the time, a Court Navigator-type program garnered more support than a LLLT program.

### Montana



In April of 2017, the Supreme Court established a work group to study the idea of Limited License Legal Technicians in Montana.

### New Mexico



In November of 2018, the Supreme Court announced the formation of a work group to consider the authorization of a new non-lawyer to provide civil legal services to people unable to afford an attorney. A report is expected this year.



# The State Bar *of California*

## Questions?

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