



The State Bar *of California*

OFFICE OF
PROFESSIONAL COMPETENCE

Date: January 22, 2020

To: Members, Board of Trustees

From: Randall Difuntorum, Office of Professional Competence

Subject: **Strategic Planning Presentation and Discussion Panel I:** Expanding Access Through Licensing Nonattorneys: Limited License Legal Technician (LLLT) Programs and Other Nonattorney Law-Related Services

The following materials are being provided by the Office of Professional Competence as background in connection with your consideration of Strategic Planning Panel 1:

1. Table of Authorized Law Related Service Providers;
2. Memorandum Regarding the History of the State Bar's Consideration of a LLLT Program; and
3. Table Comparing Licensed Paraprofessionals in Other Jurisdictions.

These materials will be referenced by the Office of Professional Competence staff during their portion of the presentation.

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).

AUTHORIZED LAW RELATED SERVICES PROVIDERS					
		Paralegal	Legal Document Assistant (LDA)	Unlawful Detainer Assistant (UDA)	Immigration Consultant
Exclusions		<p>A paralegal is prohibited from engaging in certain conduct, including, but not limited to:</p> <ul style="list-style-type: none">• Providing legal advice;• Representing a client in court;• Selecting, explaining, drafting, or recommending the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal;• Acting as a runner or capper, as defined in Sections 6151 and 6152;• Engaging in conduct that constitutes the unlawful practice of law;• Contracting with, or being employed by, a natural person other than an attorney to perform paralegal services. <p>Bus. & Prof. Code, § 6450, subds. (b)(1)-(8).</p>	<p>A LDA is prohibited from engaging in certain conduct, including, but not limited to:</p> <ul style="list-style-type: none">• Making false or misleading statements;• Making any guarantee or promise to a consumer unless in writing and supported by a “factual basis” for the guarantee or promise;• Providing assistance or advice which constitutes the unauthorized practice of law;• Retaining original documents of a client unless authorized otherwise;• Accepting compensation or entering into a contract for services at time of first client contact without first making required disclosures;• For LDAs only: providing assistance to a client that exceeds the definition of “self-help” services. <p>Bus. & Prof. Code, §§ 6411, 6409, 6410.5, 6401.6.</p>	<p>A UDA is prohibited from engaging in certain conduct, including, but not limited to:</p> <ul style="list-style-type: none">• Making false or misleading statements;• Making any guarantee or promise to a consumer unless in writing and supported by a “factual basis” for the guarantee or promise;• Providing assistance or advice which constitutes the unauthorized practice of law;• Retaining original documents of a client unless authorized otherwise;• Accepting compensation or entering into a contract for services at time of first client contact without first making required disclosures. <p>Bus. & Prof. Code, §§ 6411, 6409, 6410.5.</p>	<p>An immigration consultant is prohibited from engaged in certain conduct, including, but not limited to:</p> <ul style="list-style-type: none">• Making false or misleading statements to a client;• Making any guarantee or promise to a client unless in writing and supported by “some basis in fact;”• Stating or implying that special favors can be obtained or that they have special influence with the applicable agency;• Charging the client a referral fee;• Using with the intent to mislead, translations of “notary public,” “notary,” “licensed,” “attorney,” “lawyer,” or any other term that implies the person is an attorney;• Stating or implying the person is an immigration consultant without having filed a bond with the Secretary of State that is maintained <p>Bus. & Prof. Code, §§ 22444, 22441, subd. (d).</p>
Ethical Obligations		<p>Duty of confidentiality and privilege.</p> <p>Bus. & Prof. Code, § 6453.</p>	<p>Duties relating to written contracts, disclosures, advertisements and solicitations, false and misleading statements, and waivers, but none relating to confidentiality or privilege.</p> <p>Bus. & Prof. Code, §§ 6408 et seq., 6409, 6410 et seq., 6411, 6412.5.</p>	<p>Duties relating to written contracts, disclosures, advertisements and solicitations, false and misleading statements, and waivers, but none relating to confidentiality or privilege.</p> <p>Bus. & Prof. Code, §§ 6408 et seq., 6409, 6410 et seq., 6411, 6412.5.</p>	<p>Duties relating to written contracts, disclosures, advertisements and solicitations, false and misleading statements, and accounting, but none related to confidentiality or privilege.</p> <p>Bus. & Prof. Code, §§ 22444, 22442 et seq.</p>
Continuing Education Requirements		<p>All paralegals must complete 4 hours of legal ethics and 4 hours in general or specialized area of law every 2 years.</p> <p>Bus. & Prof. Code, § 6450, subd. (d).</p>	<p>To be eligible to renew registration, a LDA must complete 15 hours of CLE every two-years.</p> <p>Bus. & Prof. Code, § 6402.2.</p>	<p>To be eligible to renew registration, a UDA must complete 15 hours of CLE every two-years.</p> <p>Bus. & Prof. Code, § 6402.2.</p>	<p>None.</p>

AUTHORIZED LAW RELATED SERVICES PROVIDERS					
		Paralegal	Legal Document Assistant (LDA)	Unlawful Detainer Assistant (UDA)	Immigration Consultant
Compliance Enforcement	Financial Penalties	<p>A paralegal found guilty of violating Section 6451 or 6452 is subject to:</p> <ul style="list-style-type: none"> An infraction for the first violation, punishable by a fine of up to two thousand five hundred dollars (\$2,500) as to each affected consumer; A misdemeanor for the second and each subsequent violation, punishable by a fine of two thousand five hundred dollars (\$2,500) as to each affected consumer, or by both that fine and imprisonment; A paralegal convicted of a violation of this section shall pay restitution to the victim. <p>Bus. & Prof. Code, § 6455, subd. (b).</p>	<p>A failure to comply with the requirements of Section 6400 et seq. in acting as an LDA is a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) or more than two thousand dollars (\$2,000), as to each affected client, or imprisonment for not more than one year, or by both.</p> <p>Bus. & Prof. Code, § 6415.</p>	<p>A failure to comply with the requirements of Section 6400 et seq. in acting as an UDA is a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) or more than two thousand dollars (\$2,000), as to each affected client, or imprisonment for not more than one year, or by both.</p> <p>Bus. & Prof. Code, § 6415.</p>	<p>A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars (\$100,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation or in a civil action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney.</p> <p>Bus. & Prof. Code, § 22445, subd. (a)(1).</p>
	Criminal Remedies	<p>As stated above, misdemeanor for the second and each subsequent violation, punishable by a fine of two thousand five hundred dollars (\$2,500) as to each affected consumer, or by both that fine and imprisonment.</p> <p>Bus. & Prof. Code, § 6455, subd. (b).</p>	<p>See above.</p> <p>Bus. & Prof. Code, § 6415.</p>	<p>See above.</p> <p>Bus. & Prof. Code, § 6415.</p>	<p>A violation of this chapter is also a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) or more than ten thousand dollars (\$10,000), as to each affected client, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. A second or subsequent violation is a felony punishable by imprisonment in a state prison.</p> <p>Bus. & Prof. Code, § 22445, subds. (b), (c).</p>
	Consumer Redress	<p>Any consumer injured by a violation of Section 6450 may file a complaint and seek redress for injunctive relief, restitution, and damages. The prevailing plaintiff “shall be awarded” attorney fees.</p> <p>Bus. & Prof. Code, § 6455, subd. (a).</p>	<p>Any person injured by the unlawful act of a LDA shall retain all rights and remedies cognizable under the law. Any person injured by the unlawful act of a LDA may file a complaint and seek redress.</p> <p>Bus. & Prof. Code, § 6412.1, subds. (a), (b).</p>	<p>Any person injured by the unlawful act of a UDA shall retain all rights and remedies cognizable under the law. Any person injured by the unlawful act of a UDA may file a complaint and seek redress.</p> <p>Bus. & Prof. Code, § 6412.1, subds. (a), (b).</p>	<p>A person claiming to be aggrieved by a violation by an immigration consultant may bring a civil action for injunctive relief or damages, or both.</p> <p>Bus. & Prof. Code, § 22446.5, subd. (a).</p>
	Suspension & Revocation	<p>None.</p>	<p>The county clerk shall revoke the registration of a LDA when the LDA has been found guilty of UPL; a misdemeanor violation of applicable statutory chapter, has been found liable under Section 6126.6, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's negligent, reckless, or willful failure to properly perform his or her obligation as an unlawful detainer assistant.</p> <p>Bus. & Prof. Code, § 6413.</p>	<p>The county clerk shall revoke the registration of a UDA when the UDA has been found guilty of UPL; a misdemeanor violation of applicable statutory chapter, has been found liable under Section 6126.6, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's negligent, reckless, or willful failure to properly perform his or her obligation as an unlawful detainer assistant.</p> <p>Bus. & Prof. Code, § 6413.</p>	<p>The Secretary of State shall issue a cease and desist order to a person who has failed to comply with the bond requirements or does not pass a background check.</p> <p>Bus. & Prof. Code, § 22443.2.</p>



The State Bar of California

DATE: January 23, 2020

TO: Members, Board of Trustees

FROM: Randall Difuntorum, Office of Professional Competence

SUBJECT: History of the State Bar's Consideration of a Regulatory Program to License Nonlawyer Paraprofessionals to Provide Legal Services

EXECUTIVE SUMMARY

Over the years, the Board of Trustees (Board) has explored the development of a program similar to the [Washington State](#) Limited Licensed Legal Technician (LLLT) program. This memorandum summarizes the history of that consideration. Provided as Attachment A is a draft Rule of Court to establish a LLLT pilot program that was considered by the Board in 1991.

DISCUSSION

1) Current Status of State Bar Consideration

The Board is actively considering the licensing of individual paraprofessional providers to aid in increasing access to legal services. The State Bar's 2017-2022 Strategic Plan (updated November 2019)¹ includes Goal 4, Objective f which provides that:

Goal 4

Support access to legal services for low- and moderate-income Californians and promote policies and programs to eliminate bias and promote an inclusive environment in the legal system and for the public it serves, and strive to achieve a statewide attorney population that reflects the rich demographics of the state's population.

Objective f

No later than December 31, 2020, explore options to increase access through licensing of paraprofessionals, limited license legal technicians, and other paraprofessionals.

¹ The Board's strategic plan is posted at:

<https://www.calbar.ca.gov/Portals/0/documents/bog/Updated-2017-2022-Strategic-Plan.pdf>

In addition, the State Bar's Task Force on Access Through Innovation of Legal Services ([ATILS](#)) is considering a recommendation for an exception to unauthorized practice of law (UPL) restrictions for regulated nonlawyer paraprofessionals.

2) 2015 Board Action on the Report and Recommendation of the Civil Justice Strategies Task Force

The [Civil Justice Strategies Task Force](#) was appointed in November 2013 as a special committee of the Board. In part, it was charged with evaluating the role of the legal profession in addressing the access crisis. It was specifically assigned to study creative solutions and to recommend an action plan. In its final report to the Board, the concept of a LLLT proposal was endorsed:

The State Bar should study the design of a pilot program, in one subject matter area, and, with input from the Supreme Court, address how the governance, oversight, and "licensing" would be handled. It is important to allow the time for the Court to have input at the early stages, rather than after design is complete. (Board Agenda Item 165 JULY 2015, at pp. 6 – 7.)

Specifically, the Civil Justice Strategies Task Force presented the following recommendation for Board adoption:

Recommendation: Refer to the Stakeholders and Access to Justice Committee for further study and exploration, including consultation with the Supreme Court.

At the Board's July 24, 2015 meeting, the following resolution was adopted:

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the Board of Trustees accept the report prepared by the Civil Justice Strategies Task Force and adopt the implementation recommendations contained in the memorandum, and create a working group to implement the law school debt recommendations. (July 24, 2015, Board Minutes at p. 9.)

3) 2013 Limited Licensing Working Group

The [Limited License Working Group](#) was created on March 6, 2013 as a subcommittee of the Board Committee on Regulation, Admissions and Discipline Oversight (RAD). The working group was assigned to research and report back to RAD regarding the feasibility of developing and implementing standards for creating a limited license to practice law and/or the licensing of legal technicians, for those not fully admitted to the State Bar as attorneys. The goal was to enable certified individuals to provide limited, discrete legal services to consumers in defined legal subject matter areas.

In its July 18, 2013 report to RAD, the Limited License Working Group recommended further exploration of a limited license program and observed that the licensing of legal technicians has been a subject of State Bar discussion for over 20 years.

At the Board's July 19, 2013 meeting, the Board responded to recommendations of the State Bar's Limited License Working Group by adopting the following resolution:

WHEREAS, the availability of low cost legal services has continued to decline and the numbers of unrepresented persons appearing in California's courts and justice system has continued to

grow, particularly in the areas of family law, elder law, creditor and debtor law, landlord and tenant law, and immigration law, resulting in a broadening of the “justice gap;” and

WHEREAS, there appears to be no viable alternatives from the past and existing efforts in California that have adequately addressed the justice gap;

WHEREAS, the Regulation, Admissions & Discipline Oversight Committee has approved the recommendations of its Limited License Working Group which supports the concept of a limited license program in California as part of an overall solution to address the Justice Gap;

RESOLVED, that upon the recommendation of the Regulation, Admissions & Discipline Oversight Committee, the Board of Trustees hereby directs staff to work with the Chair and the President and, if appropriate, any task force to develop proposals, in consultation with relevant stakeholders, to examine and address the causes, effects and possible solutions to the various access to justice challenges in California, including but not limited to the concept of the Limited License, and collaborate with the Access to Justice Commission and other branch partners in connection with its research. (July 19, 2013, Board Minutes at p. 2.)

4) Consideration in the Late 1980’s and Early 1990’s

The early consideration by the Board in the 1980’s and 1990’s included the following.

- **Public Protection Committee (1987)**

In 1987 the Board appointed a Public Protection Committee and charged it with studying nonlawyer practice of law activities and developing proposed standards under which such activities might be authorized. The areas of bankruptcy, family law, immigration and landlord-tenant law were identified as priority areas for consideration.

Following a study that included surveys of consumers and other state bars, the Public Protection Committee recommended, in part, that the State Bar actively support legislation that requires the registration of legal technicians, requires such registrants to disclose that they are not lawyers, and creates legal technician liability, both civilly and criminally, for malfeasance and nonfeasance.

The Board considered the report and recommendations of the Public Protection Committee in October 1988. Although the Board did not approve the content of the report or the recommendations, it issued them for public comment. Following consideration of the public comment received, the Board formed a Commission on Legal Technicians to conduct further study. (See: Report of the State Bar of California Commission on Legal Technicians, July 1990, at pp. 7 – 8.)

- **Commission on Legal Technicians (1990)**

In creating the Commission on Legal Technicians in 1990, the Board adopted a resolution finding that “there is an overwhelming unmet need of California residents for better access to the legal process, and that ‘legal technicians’ may provide greater access so long as their activities do not pose an unreasonable risk of harm to the public.”

In August 1990, the Board received the report and recommendations of the Commission on Legal Technicians that included a recommendation that: “The State Bar Board of Governors propose that the Supreme Court adopt a Rule of Court authorizing non-attorney individuals to engage in the practice of law in specified areas (initially in the areas of bankruptcy, family law and landlord-tenant law).”

In April 1991 and in consideration of the Commission on Legal Technician’s report and recommendations, the Board’s Committee on Admissions and Competence determined to prepare a draft Rule of Court regarding a pilot program for legal technicians.

In August 1991, the Board considered the proposal for a Rule of Court regarding a pilot program but the proposal was defeated. The pilot program would have authorized performance of non-courtroom legal services for landlord/tenant matters. The recommendation contemplated regulation by the Department of Consumer Affairs and formation of an oversight committee composed of attorneys, paralegals and public members. At the Board’s meeting, over fifteen legal technicians and consumer advocates appeared and asserted that the pilot program would in effect reduce access to affordable legal services. After attempts to modify the proposal, the pilot program was rejected by a Board vote of 16 to 4. (See: October, 1991, California Lawyer Magazine, State Bar Report at p. 85.)

- Board Task Force on Legal Technicians (1993)

In March 1993, Assemblymember Gwen Moore introduced Assembly Bill No. 1287 which sought to create a new Department of Consumer Affairs registration program for “Legal Technicians” with that term defined as “any non-attorney who holds himself or herself out to the public as a legal technician, or any non-attorney who offers to provide or provides legal information and assistance services directly to consumers for compensation.” To assist the Board in considering this proposal a Task Force on Legal Technicians was appointed.

In August 1993, the Task Force submitted a final report to the Board, in part, recommending that the Board: (1) oppose AB 1287 unless amended to include consumer protection safeguards; and (2) work with the Judicial Council in conducting (i) a survey of pro per clients to determine the quality of legal technicians’ work, scope of services, fees charged and (ii) a survey of legal technicians to determine their geographical location, education, experience and training backgrounds and subject areas and scope of services and fees charged. (See: California Regulatory Law Reporter, Vol. 14, No. 1 (Winter 1994), at pp. 176 – 177.) Subsequently, the Board approved “in concept” the proposals recommended by the Task Force for increasing affordable legal services. (October 7, 1993, Board Minutes at pp. 5 - 6.)

5) 1979 Revocation of UPL “Treaties” among the State Bar and other Professional Service Providers

Although not directly related to the consideration of legal technicians, in November 1979, the Board revoked the so-called “treaties” with other associations of service providers in California. These agreements were entered into by the State Bar with various lay groups in order to “provide guidelines and enforcement in gray areas that exist between the practice of law and the activities of certain lay industries that perform services closely akin to the practice of law.” (See: State Bar of California, October 1980, Report and Recommendation of the Office of General Counsel on Proposed Rule and Legislation on the Regulation of the Unauthorized Practice of Law, at p. 36.) Treaties were entered into with: Automobile Associations; the California Bankers Association; the California Conference Committee on

Adjusters; the California State Association of Life Underwriters; and the California Land Title Association. (The full text of these agreements is published in 41 Journal of the State Bar of California 140 (March-April, 1966.) Notwithstanding the termination of the treaties, these service providers continued their respective law-related business activities without a threat of UPL prosecution. (See: January, 1991, California Lawyer Magazine, State Bar Report, "President's Message" at p. 63.) The former treaties' longstanding impact on the concept of UPL in California can render it difficult to articulate a simple list of acts constituting the practice of law when the actor is a nonlawyer and this creates challenges in defining the acts permitted under a LLLT program. In doing so, specifying the context of permitted conduct will be important.

ATTACHMENT(S) LIST

- A. 1991 Draft Rule of Court to Establish a LLLT Pilot Program**

AGENDA ITEM

AUGUST 141

Proposed Rule of Court
Regarding Legal Technicians

DATE: August 1, 1991

TO: Members of the Board of Governors

FROM: Members of the Board Committee on Admissions and Competence

SUBJECT: Proposed Rule of Court Regarding Legal Technicians

ENCLOSURE 1: Proposed Rule of Court

ENCLOSURE 2: Memorandum of the Board Committee on Admissions and Competence from Legal Technicians Subcommittee dated June 27, 1991

BACKGROUND

The Board Committee on Admission and Competence ("Board Committee") has been examining the issue of whether non-lawyers should be permitted to perform legal services. In an effort to help focus the discussion, Mr. Talcott, Chair of the Board Committee, appointed a Legal Technicians Subcommittee of the Board Committee consisting of Ed Kallgren, Catherine Sprinkles, and Dorothy Tucker ("Subcommittee").

After consideration of the history of this matter, the comments received on the Report of the Commission on Legal Technicians ("Commission"), and the views expressed by various members of the Board, the Subcommittee determined that simply presenting the Report of the Commission for a vote would not be particularly useful. (Copies of the Report of the Commission are available from the Office of Professional Competence, Planning and Development at (415) 241-2112.)

As the Commission stopped short of drafting a rule of court or other specific guidelines, the Subcommittee felt that something more concrete was needed to focus the debate on the numerous complex issues presented by the Report. The Subcommittee submitted a report

ATTACHMENT A
1991 Draft Rule of Court to Establish a LLLT Pilot Program

(Enclosure 2) to the Board Committee that included a draft rule of court that would authorize creation of a pilot program permitting non-lawyers to perform limited legal services in the area of landlord-tenant law.

The Board Committee considered the report and draft rule of court at its regular July meeting and at a special meeting. After hearing from several interested persons and discussing the matter extensively, the Board Committee determined to recommend that the Board approve an amended version of the rule of court (see Enclosure 1 for the rule of court as recommended) and forward it to the Supreme Court for adoption.

FISCAL AND PERSONNEL IMPACT

No additional funds or personnel are needed to submit the rule of court to the Supreme Court. As the proposed rule of court provides for the pilot program to be administered by the Department of Consumer Affairs, no additional funds or personnel are needed to administer the pilot program. However, the rule of court does include a provision requiring the State Bar to pay the expenses of the eight members of the Board of Legal Technicians to be appointed by the Board of Governors. No reasonable estimate is available as to how much this will cost and when the cost will be incurred.

PROPOSED RESOLUTION

The Board Committee determined to recommend that the Board approve the rule of court and forward it to the Supreme Court for adoption. Should the Board concur, it would be appropriate to adopt the following resolution:

RESOLVED that the Board hereby approves the proposed California Rule of Court regarding a pilot program to license legal technicians, in the form attached to these minutes and made a part hereof, and directs that it be forwarded to the Supreme Court of California with a request that the Court adopt the same.

enclosures

ATTACHMENT A
1991 Draft Rule of Court to Establish a LLLT Pilot Program

PROPOSED CALIFORNIA RULE OF COURT
REGARDING LEGAL TECHNICIANS

Rule _____. Pilot program to license legal technicians

- a. **[Purpose]** The purpose of this rule is to authorize the establishment of a pilot regulatory program to permit certain persons not licensed to practice law in California to provide limited legal services in the area of landlord/tenant law directly to the public.
- b. **[Authority to license legal technicians]** A pilot program licensing Legal Technicians is authorized, contingent upon enactment of legislation requiring the Director of the Department of Consumer Affairs, through a career executive level administrator, to administer the pilot program.
- c. **[Definition]** A Legal Technician is a person who has been issued a current license by the Supreme Court to provide limited legal services in the area of landlord/tenant law directly to the public and who is not supervised by an active member of the State Bar of California.
- d. **[Board of Legal Technicians]** A fifteen (15) member Board of Legal Technicians shall be established in the Department of Consumer Affairs as follows:
 - (1) eight active members of the State Bar appointed by the State Bar Board of Governors;
 - (2) three Legal Technicians appointed by the Director of the Department of Consumer Affairs (provided, that the initial appointees shall be from among potential applicants for licensure who appear to have the requisite qualifications for licensure);
 - (3) two public members appointed by the Governor;
 - (4) one public member appointed by the President of the Senate; and
 - (5) one public member appointed by the Speaker of the Assembly.

Members of the Board of Legal Technicians shall serve terms of three years, provided the initial appointees shall divide themselves by lot, as evenly as practicable among the several types of appointees, into three classes which shall serve for one, two and three years, respectively. No member of the Board of Legal Technicians shall receive any other compensation than his or her necessary expenses connected with the performance of his or her duties as a member of the Board. Such expenses shall be paid by the authority appointing the member in accordance with procedure or policy adopted by that authority.

ATTACHMENT A
1991 Draft Rule of Court to Establish a LLLT Pilot Program

e. [Activities of the Board of Legal Technicians]

- (1) The Board of Legal Technicians shall recommend to the Supreme Court the admission or rejection of each applicant for licensure as a Legal Technician.
- (2) Prior to recommending to the Supreme Court the admission or rejection of any applicant, the Board of Legal Technicians shall establish standards necessary for implementation of the pilot program, including the following:
 - i. comprehensive list of the specific legal tasks Legal Technicians are authorized to perform;
 - ii. standards for admission as a Legal Technician, including minimum levels of education and/or experience and passage of a written examination;
 - iii. Code of Professional Conduct for Legal Technicians;
 - iv. standards for the professional discipline of Legal Technicians;
 - v. continuing education requirements;
 - vi. Client Security Fund to provide compensation to victims of Legal Technicians theft;
 - vii. mechanism for monitoring the effectiveness of the pilot program, including development of standards by which the success or failure of the pilot program will be assessed and a mechanism for accomplishing this assessment;
 - viii. fee schedule, including penalties; and
 - ix. such other standards consistent with the foregoing as may be reasonably necessary to implement the pilot program.
- (3) The Board of Legal Technicians shall monitor the effectiveness of the pilot program utilizing the standards established pursuant to section (e)(vii).
- (4) The Board of Legal Technicians shall submit a final report to the Legislature, the Judicial Council and the State Bar not less than one year prior to the end of the pilot program. The final report shall contain an assessment of the effectiveness of the pilot program based on standards established pursuant to section (e)(vii) and a recommendation regarding the continuation or termination of the Legal Technician program.

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1991 Draft Rule of Court to Establish a LLLT Pilot Program

- f. **[Effect of licensure]** Only Legal Technicians shall be entitled to perform the services designated by the Board of Legal Technicians, except that nothing in this rule shall affect the provisions of the Rules Regulating Admission to Practice Law in California or the ability of active members of the State Bar to practice law in the subject matter area addressed by this rule.
- g. **[Expiration of authority for pilot program]**
 - (1) If no license has been issued pursuant to this rule by (insert date, three years after operative date of this rule of court), the authority for the pilot program shall expire.
 - (2) The pilot program and the authority for Legal Technicians to perform the services designated by the Board of Legal Technicians shall end five years after the date the first license is issued pursuant to this rule.

LICENSED PARAPROFESSIONALS (LLTs): UTAH – OREGON – ARIZONA COMPARISON				
		Utah Licensed Paralegal Practitioner (LPP)	Oregon Licensed Paraprofessional (LP)	Arizona Licensed Legal Advocate (LLA)
Regulatory Body		The Utah State Bar administers all aspects of the LPP profession.	The Oregon State Bar.	The State Bar of Arizona.
Authority		RGLPP 14-802, 15 <i>et seq.</i>	TBD	TBD
Type of License		License with the Utah State Bar	License with the Oregon State Bar	License with the Arizona State Bar
Qualification Requirements	<i>Background Check Requirement</i>	Yes. RGLPP 15-707(b)(1).	TBD	n/a
	<i>Education Requirements</i>	<p>An applicant must possess one of the following:</p> <ul style="list-style-type: none"> • A degree in law from an accredited law school; • An Associate’s degree in paralegal studies from an accredited school; • 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. <p>If the applicant does not possess a degree in law, the applicant must also:</p> <ul style="list-style-type: none"> • Have taken a specialized course in professional ethics for LPPs; • Have taken a specialized course in each specialty area in which the Applicant seeks to be licensed; and • Have obtained either of the listed credentials from a certified paralegal course (see below). <p>RGLPP 15-703(b).</p>	<p>An applicant must possess the following:</p> <ul style="list-style-type: none"> • An Associate’s degree or higher; and • A paralegal certificate from an ABA-approved or accredited paralegal studies program. 	Each applicant must complete the LLA Education Course through the University of Arizona.
	<i>Experience Requirements</i>	<p>An applicant must complete 1,500 hours of substantive law-related experience within the 3 years prior to the application, consisting of:</p> <ul style="list-style-type: none"> • 500 hours of substantive law-related experience in family law if the applicant is to be licensed in that area; or • 100 hours of substantive law-related experience in forcible entry and detainer or debt collection if the applicant is to be licensed in those areas. <p>RGLPP 15-703(a)(5).</p>	Each applicant must complete 1,500 hours of substantive law-related experience under the supervision of an attorney.	<p>Each applicant must:</p> <ul style="list-style-type: none"> • Complete 2,000 hours of work at Emerge! to be eligible to participate in the pilot project. • If accepted into the pilot, and upon completion of all licensing requirements, LLAs must be supervised by a licensed attorney for the first 100 hours of LLA work.

LICENSED PARAPROFESSIONALS (LLTs): UTAH – OREGON – ARIZONA COMPARISON				
		Utah Licensed Paralegal Practitioner (LPP)	Oregon Licensed Paraprofessional (LP)	Arizona Licensed Legal Advocate (LLA)
	<i>Examination Requirements</i>	<p>An applicant must pass:</p> <ul style="list-style-type: none"> • The Licensed Paralegal Practitioner Ethics Exam; and • The Licensed Paralegal Practitioner Examination(s) for the practice area(s) in which the applicant seeks licensure. <p>RGLPP 15-703(a)(6)-(7).</p> <p>An applicant must also possess one of the following certifications:</p> <ul style="list-style-type: none"> • Certified Paralegal or Certified Legal Assistant credential from the National Association of Legal Assistants; • Professional Paralegal Certification from the National Association of Legal Professionals; or • CORE Registered Paralegal designation from the National Federation of Paralegal Associations. <p>RGLPP 15-703(b)(3).</p>	<p>(The task force did not recommend requiring that applicants pass a licensing exam. Should the Board of Governors require that applicants pass an exam, however, the task force recommended requiring applicants take a national paralegal certification exam.)</p>	<p>Each participating LLA must take and pass an LLA Licensing Exam created and administered by the State Bar of Arizona.</p>
	<i>Waiver Options</i>	<p>A paralegal with seven or more years of experience may apply for a limited-time waiver, which waives the minimum education requirements.</p> <p>The person seeking a waiver must also show proof of having met the minimum experience requirements in each area in which the applicant seeks to be licensed.</p> <p>RGLPP 15-705.</p>	<p>Highly experienced paralegals and applicants possessing a degree in law would be exempt from the requirement that the applicant graduate from a paralegal studies program.</p>	<p>Not available.</p>
Approved Practice Area(s)		<p>LPPs may render legal services in the following approved practice areas:</p> <ul style="list-style-type: none"> • Temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support; • Forcible entry and detainer; and • Debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims. <p>RGLPP 14-802(c).</p>	<p>LPs would be permitted to render legal services in family-law and landlord-tenant cases.</p>	<p>Matters involving domestic violence only.</p>

LICENSED PARAPROFESSIONALS (LLTs): UTAH – OREGON – ARIZONA COMPARISON				
		Utah Licensed Paralegal Practitioner (LPP)	Oregon Licensed Paraprofessional (LP)	Arizona Licensed Legal Advocate (LLA)
Authorized Scope of Practice		<p>A LPP may render the following limited legal assistance:</p> <ul style="list-style-type: none"> • Establish a contractual relationship with a client; • Interview the client to understand the client’s objectives and obtain facts relevant to achieving that objective; • Complete forms approved by the Judicial Council; • Inform, counsel, advise, and assist in determining which form to use and give advice on how to complete the form; • Sign, file, and complete service of the form; • Obtain, explain, and file any documents needed to support the form; • Review documents of another party and explain them; • Inform, counsel, assist, and advocate for a client in mediated negotiations; • Fill in, sign, file, and complete service of a written settlement agreement form in conformity with the negotiated agreement; • Communicate with another party or party's representative regarding the relevant form and matters reasonably related thereto; and • Explain a court order that affects that clients rights and obligations. <p>RGLPP 14-802(c)(1)(A)-(L).</p>	<p>Licensees would be authorized to:</p> <ul style="list-style-type: none"> • Select, prepare, file, and serve model 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. 	<p>A LLA may render the following limited legal assistance:</p> <ul style="list-style-type: none"> • Identify legal needs at intake; • Assist self-represented DV survivors with the completion of DV and family law forms; • Assist with the preservation of evidence in preparation for court hearings; and • Assist survivors at court hearings and help them prepare for mediation.
Exclusions		<p>An LPP may not appear in court with a client, nor may an LPP charge contingency fees.</p>	<p>Inherently complex proceedings in family-law and landlord-tenant cases would be excluded from the permissible scope of practice.</p> <p>Additionally, licensees would be prohibited from representing clients in depositions, in court, and in appeals.</p>	<p>A legal lay advocate may perform only those tasks specifically authorized by the Supreme Court of Arizona.</p>
Financial Responsibility		<p>No. (However, LPPs must contribute to a Client Security Fund. RGLPP 14-902.)</p>	<p>Yes. Professional Liability Insurance.</p>	<p>None.</p>

LICENSED PARAPROFESSIONALS (LLTs): UTAH – OREGON – ARIZONA COMPARISON				
		Utah Licensed Paralegal Practitioner (LPP)	Oregon Licensed Paraprofessional (LP)	Arizona Licensed Legal Advocate (LLA)
Ethical Obligations		LPPs are held to the ethical standards set forth in the Licensed Paralegal Practitioner Rules of Professional Conduct.	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.	LLAs would be subject to the Licensed Legal Advocates Rules of Professional Conduct, adapted from the Arizona Rules of Professional Conduct.
Client Trust Account		All LPPs must maintain a client trust account. RGLPP 15-1001(a).	TBD	n/a
Continuing Education Requirements		Each LPP must complete 12 hours of MCLE every two years, including at least 3 hours in ethics. RGLPP 15-404(a).	Licensees would be required to meet continuing legal education requirements.	TBD
Compliance Enforcement	<i>Financial Penalties</i>	Regulations for Licensed Paralegal Practitioner Discipline and Disability set forth in Article 5. Standards for Imposing Licensed Paralegal Practitioner Sanctions set forth in Article 6. The Office of Professional Conduct is charged with investigating and, if necessary prosecuting complaints against LPPs.	TBD	(See below).
	<i>Criminal Remedies</i>	(See above.)	TBD	(See below).
	<i>Consumer Redress</i>	(See above.)	TBD	(See below).
	<i>Suspension & Revocation</i>	(See above.)	TBD	Regulation and discipline of LLAs would closely parallel that of attorneys. Complaints could be filed with the State Bar of Arizona by the general public, and if the complaint warranted action, an LLA could face discipline, suspension, or revocation of their license.