



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

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(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

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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.

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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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- 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.