

FINAL REPORT OF THE ELDER LAW SUBCOMMITTEE OF THE PRACTICE OF LAW BOARD

1. Specific legal tasks that a non-lawyer Legal Technician will perform within the practice area and why these tasks are appropriate for non-lawyer Legal Technicians.

The Elder Law Sub Committee of the Practice of Law Board recommends that legal technicians be authorized to perform certain basic legal tasks in the following areas, when a matter is uncontested: guardianship law, basic estate planning, probate law, and vulnerable adult proceedings. These areas were identified by the Sub Committee because the legal community has already developed model forms to perform many of the basic legal tasks in these areas. More complex or contested elder law issues do not lend themselves well to a form based practice and, therefore, should be handled by licensed attorneys.

Those model forms are used currently by pro se litigants with little or no instruction from attorneys; sometimes with success and sometimes with unexpected results. The frequency of unexpected outcomes can be reduced with improved access to legal professionals with elder law training.

The specific tasks to be performed by a legal technician in each area are as follows:

A. Guardianship:

- 1) Assisting with the establishment of an uncontested guardianship. If at any time the proceeding becomes contested, then the legal technician would be required refer the client to an attorney.
- 2) Assisting guardians with the completion and presentation of their initial inventory and personal care plans and annual, biennial, or triennial reports to the Court. If at any time the proceeding becomes contested, then the legal technician would be required to refer the client to an attorney.
- 3) Assisting guardians with providing required notices to the Court regarding changed circumstances.

B. Basic Estate Planning:

- 4) Preparing living wills or advance health care directives for clients.
- 5) Preparing powers of attorney for health care decision making for clients.
- 6) Preparing powers of attorney for financial decision making for clients.
- 7) Preparing revocations of powers of attorneys for clients
- 8) Preparing basic wills for clients.
- 9) Preparing basic community property agreements for clients.

C. Probate Law:

- 1) Advising a client as to whether a probate of a decedent's estate is necessary.
- 2) Assisting a client with the establishment and administration of an uncontested, nonintervention probate. If at any time the proceeding becomes contested or if non-intervention powers are removed, then the legal technician would be required to refer the client to an attorney.
- 3) Assisting a client with the closure of a non-contested non-intervention estate by way of a Declaration of Completion of Probate.
- 4) Assisting a client in probate and nonprobate matters such as:
 - e) Handling settlement of Creditor's Claims for Estates passing without Probate – RCW 11.42
 - f) Preparation of Affidavits of Successor of the necessary related documents under RCW 11.62 Small Estates – Disposition of Property.
 - g) Preparing and filing a creditor's claim and release of same
 - h) Preparing and filing request for special notice of proceedings in Probate, and withdrawal of such request.
 - i) Petition and Order to open safe deposit boxes.
 - j) Petition and Order adjudicating testacy or intestacy and heirship, and related notices.
 - k) Preparation of Court-approved forms related to probate and nonprobate proceedings.

D. Vulnerable Adult Proceedings:

- 1) Assisting a client with the preparation of the model forms to seek an order of protection for a vulnerable adult. If at any time the proceeding becomes contested, then the legal technician would be required to refer the client to an attorney.

E. Legal Technician / Client Forms:

- 1) Preparing forms regarding the legal technician / client relationship, including engagement letters.

F. Other Pre-Printed Information Material:

- 1) Prepare and distribute elder law information material that has been reviewed by an attorney.
- 2) Assist clients with forms that may be distributed by health care providers, the government, financial institutions, and insurance companies related to estate planning, guardianship, and probate matters (e.g. beneficiary designations forms, account ownership designation forms, transfer of ownership in personal property forms, and applications for benefits).

2. Limitations on the pilot project for these practice areas including, but not limited to: (a) time period limitations, and (b) geographic limitations, including

an explanation of why this limitation is necessary and what effect it will have on the pilot project.

A. Geographic Location

The committee does not recommend limiting the pilot project to a geographic location. It is possible that particular geographic locations may be better served by Legal Technicians. It is also possible that providing Legal Technician services may only be economically viable in certain geographic locations. But the committee believes there is insufficient evidence to make those conclusions and feels, if the project participants are allowed to practice statewide, empirical evidence could be gathered to make these determinations. For that reason, the committee recommends allowing practitioners to establish in a variety of geographic locations, based on their individual preference as well as market conditions.

B. Operating Location

It is possible that this practice would lend itself to a variety of operating locations: in-house for a non-profit or other social service provider, at a hospital or senior center, or as a stand-alone practice from an office, shop-front or even as an at-home business.

Therefore, the committee recommends allowing the participants to freely select their operating locations. This will also allow an analysis of the economic viability of a variety of business models.

C. Restrictions Regarding Supervision

Because the committee contemplates these Legal Technicians providing services to the elderly as well as those under duress, it is recommended that the pilot project include safeguards to ensure practitioners comply with ethical duties and also provide quality services. It is suggested that the pilot project require additional supervision and/or reporting than contemplated by the Legal Technician rule. One idea is to identify reputable attorneys or leaders in the communities where the practitioners establish themselves and have them provide feedback to the committee and oversight of the practitioner.

3. The anticipated target populations for the service provided by the pilot project and how it will fulfill unmet legal needs.

A. The target population

The population will be individuals and families who are facing significant life changes involving diminished capacity, living arrangements, health, family composition and other situations wherein the type of services the technicians will provide are needed. The Subcommittee anticipates that those who will be served will have a variety of reasons for using the services of a legal technician instead of an attorney; cost, accessibility, and the routine nature of services sought being among them .

B. How unmet needs will be met

Providing greater access to qualified practitioners. Based on its community outreach research, many of these services are already being provided by non-lawyers throughout the state in locations including hospitals, senior centers and homes. Therefore, the committee anticipates that Legal Technicians could provide qualified services in those locations. Services could also be provided to people who are unable to leave their homes.

Providing the service at an affordable cost. The Subcommittee anticipates costs will be significantly lower than if the service was provided by an attorney. One reason is because the practice will use preprinted forms, thus saving the time of drafting and producing the necessary document(s). Another reason we are confident that the costs would be lower is the experience of other states, where legal technician fees are much lower than the fees lawyers charge for the same service.

4. What are the anticipated costs involved for Legal Technicians to offer the services during the pilot project and whether Legal Technicians should be able to provide cost effective service that will increase access to legal and law-related services, with an explanation of the basis for this determination.

A. Cost of Administering Program.

It is anticipated that the Legal Technician Rule, when fully implemented, will be self-supporting through license and exam fees. However, due to many unknown factors, it is not anticipated that the initial pilot program(s) will be self-sustaining, but will need to be subsidized by grants and other forms of financing. The primary reason for this is it will be difficult to charge license and exam fees, when it is unknown as to how long the Legal Technician will be able to operate. If the pilot program is successful, and becomes a permanent admission to practice rule, licensing and exam fees are expected to cover the cost of administering the program.

We can extrapolate some information from similar programs implemented in Washington and Arizona. In Washington APR12, the Limited Practice Officer Rule, has been administered through the Bar Association since 2005. Prior to that it the program was housed in the OAC, and it is the Committee's understanding that no financial records were kept concerning the cost of administering this program while at the OAC. The Bar Association has provided budget information for fiscal year 2006 (Oct 1 - Sept. 30). See Attachment 1. During this time period there were approximately 1310 Active and Inactive LPOs. (Active and Inactive pay the same license fee) and 398 took the exam during that time (10/2005 and 4/2006).

In 2003 the Arizona Supreme Court adopted rules and regulations governing Legal Document Preparers (LDP's), which became effective on July 1, 2003. During the 1st year

of implementation 588 LDP's were licensed. (Linda Grau, LDP Program Coordinator for the Court, Email dated 6/29/2004). As of July 1, 2004, after processing the renewal applications, the number dropped to 502 LDP's holding active certification, with 31 pending applications for new certification. The reason for the drop was partly due to noncompliance and disciplinary matters. There had been one suspension, a number of disciplinary hearings pending, and late filed applications, but this number was small, approximately 22 individuals. Attached is a Fee schedule effective for the 1st year of this program. (Linda Grau, Email of 7/6/2004). Attachment 2.

As of March of 2004, the Legal Document Preparer Board had processed 675 applications, approximately 8% of which required significant research and review on the part of program staff. (Linda Grau, Email of 3/29/2004).

As of July 1, 2005 there were 457 LDP certifications. The approved budget for fiscal year 2005 (July 1, 2004 – June 30, 2005) was \$285,715, and this included a grant from the AZ State Bar in the amount of \$108,523. Total expenses were \$162,928. Attached is a report regarding the status of the LDP program as of September, 2005, sent by Nancy Swetnam from the Certification and Licensing Division of the Arizona Supreme Court on September 6, 2005. See Attachment 3.

The LDP Board worked on developing an exam which was completed in March of 2005, and available to take April 1, 2005. All LDP's were required to take the initial exam by September 1, 2005. The total cost of developing the exam was not specified, but it included hiring a professional test validation company to assist in the development of the exam at a cost of \$23,675. The Board also hired a vendor to administer the exam throughout the state. They charged \$50 per candidate, which cost was covered by the certification fees paid by existing LDP's. The exam fee for new applicants is \$50.

B. Cost of Legal Technician services.

Because there is no readily available information regarding potential amounts Legal Technicians may charge for their services, the Subcommittee gathered information online regarding fees charged by legal document services throughout the country. It is the Committee's perception that that Legal Document Preparer services are significantly lower than what Washington attorneys charge for similar services. Here is a sampling, *please note that not all of the services identified below are proposed by this subcommittee as potential services for the Elder Law Legal Technician:*

1. Online service: Legal Zoom (multi-state services)

| | | | |
|--|-----------|---------------|-----------------------|
| Standard Living Will Package Regularly | \$59.00 | Special Price | \$39.00 |
| Gold Living will Package | Regularly | \$79.00 | Special Price \$59.00 |
| Premium Living Will Package Regularly | \$99.00 | Special Price | \$79.00 |

A lawyer would charge approximately \$320.00 for the standard living will.*

Standard Power of Attorney Package Regularly \$55.00 Special Price \$35.00
 Gold Power of Attorney Package Regularly \$75.00 Special Price \$55.00
 Premium Power of Attorney Package Regularly \$95.00 Special Price \$75.00

A lawyer would charge approximately \$340.00 for the standard power of attorney.*

Divorce with no minor children Regularly \$299.00 Special Price \$249.00
 Divorce with minor children Regularly \$349.00 Special Price \$299.00
 Marital Settlement Agreement (Included \$200.00 value)

A lawyer would charge approximately \$1,880.00 to obtain a divorce if you have property but no minor children.*

*Based on an average hourly rate of \$240/hr. (2004 Survey of Law Firm Economics, Altman Well Pensa Publication), Lawyer fee includes U.S. Government application fee.

2. California – We the People - Top Selling Products (62 offices in California).

| | | |
|--------------------|---------------------|-----------------------------------|
| Living Trust | \$399.00 - \$599.00 | |
| Will | \$ 99.00 - \$199.00 | |
| Guardianship | \$349.00 - \$499.00 | |
| Power of Attorney | \$ 79.00 | |
| Affidavit of Death | \$ 89.00 | (Similar to Small Est. Affidavit) |
| Divorce | \$399.00 - \$599.00 | |

3. Idaho – We the People - Top Selling Products (2 offices)

| | Boise | Idaho Falls |
|----------------------|----------|-------------|
| Living Trust | \$499.00 | \$399.00 |
| Power of Attorney | \$ 79.00 | \$ 79.00 |
| Will | \$ 99.00 | \$ 99.00 |
| Probate – Small | \$389.00 | |
| Conservatorship | \$499.00 | |
| Divorce | \$399.00 | Unknown |
| Step-Parent Adoption | \$499.00 | \$499.00 |

4. Arizona:

Legal Resource Center, Certified Legal Document Preparers

| | |
|-------------------------------|----------|
| Living Trust – Individual | \$595.00 |
| Living Trust – Married Couple | \$795.00 |
| Will - Individual | \$150.00 |

| | |
|-----------------------------------|----------|
| Will – Married Couple | \$250.00 |
| Standard Probate Fee | \$700.00 |
| Guardianship – Adult | \$495.00 |
| Guardianship – Minor | \$295.00 |
| Standard Divorce without Children | \$325.00 |
| Standard Divorce with Children | \$395.00 |
| Quick Divorce without Children | \$395.00 |
| Quick Divorce with Children | \$450.00 |
| QDRO's | \$395.00 |
| Temporary Orders – Emergency | \$295.00 |
| Temporary Orders – Standard | \$195.00 |

The Divorce Store:

| | |
|-------------------------------------|-------------------------------------|
| Healthcare Power of Attorney | \$ 70.00 |
| Durable/Financial Power of Attorney | \$ 70.00 |
| Living Trusts – Individual | \$495.00 |
| Living Trusts – Married Couple | \$695.00 |
| Wills – Individual | \$149.00 |
| Wills – Married Couple | \$249.00 |
| Guardianship – Minor | \$299.00 |
| Guardianship – Adult | \$499.00 |
| Default Divorce – No Children | \$299.00 |
| Default Divorce with Children | \$399.00 (Incl. 1 court appearance) |

5. The National Association of Legal Document Preparers (NALDP) provided the subcommittee with the following information which was gathered during the period August 20, 2007 through August 24, 2007:

Below are the findings of our unscientific survey of NALDP membership regarding the fees they charge for their services. I broke down the services based on the four areas Washington state is considering and added other general services that I know Legal Document Preparers handle across the nation. The prices vary quite a bit and there was no regional correlation between the fees charged. Also, the services I listed were general and many responded with ranges of fees, depending on what the service included (ex: dissolution with or without children). Rather than give the ranges, we found the median of the range and then calculated the average price of the services listed. We received some responses from members who serve all 50 states, but primarily our responses came from California, Arizona, Florida, New York, Kansas and Oklahoma.

Elder Law

Power of Attorneys: \$66

Advance Directives/Health Care Directives: \$63

Wills: \$134

Family Law

Non-Parental Custody: \$290

Dissolution: \$360

Step-Parent Adoptions: \$449

Guardianship: \$499

Name Change: \$224

Modification of Child Support/Custody: \$225

Housing Law

Residential Unlawful Detainer Actions: \$265

Eviction Notices & Service: \$125

Contracts (Deed, Lease): \$60

Buy-Sell Agreements: \$249

Immigration Law

Adjustment of status: \$100

Citizenship: \$150

Other

Living Trust: \$430

Incorporation: \$320

LLC: \$375

Contracts (Agreements, Notes): \$50

Copyright/Trademark: \$149

Prom. Note w/ Deed of Trust: \$189

I hope this will be useful in your proposal. Please let me know if we can provide further information.

Lizanne Sadlier

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6. HALT published a white paper entitled "Helping Unrepresented Litigants with Legal Documents: Consumer Satisfaction with Legal Document Assistants in California's Bay area and an Overview of Relevant Laws in Arizona, 8/17/2005. "Halt . . . hired 3 students from UC Hastings College of Law to develop and conduct an exploratory and comparative survey of the emerging legal document preparation profession in the United States (HALT Report, pg. 2). The study was conducted between May 2004 and May 2005. The students reviewed 3,000 divorce cases from three different counties in California. Ultimately the students interviewed 24 consumers in San Francisco County and 23 consumers in Alameda and Santa Clara Counties. All interviewed had been provided services by a Legal Document Assistant

(LDA). Here are some of the survey results:

San Francisco County:

Out of the 24 interviewed 21 cited the lower cost of an LDA as being the primary reason for choosing not to hire an attorney. (2 people indicated they were concerned about the risk of polarizing the situation by an attorney.) 19 out of the 24 interviewed found out about LDA's through word of mouth. (Halt Report Pg. 15)

The type of help offered by the LDA's was similar. Fees paid by clients ranged from \$100 to \$600 with the median being \$400, not including court filing fees. 21 out of the 24 interviewed said they thought the fees were "just right," "very reasonable," "fair" or "okay." 1 person did not pay for the services, and one was dissatisfied with the service. All but one thought an attorney would be more expensive (Halt Report Pg. 16)

Alameda & Santa Clara Counties:

74% cited cost as a reason for choosing an LDA, 50% of these responses cited no other reason. 26% cited they did not need a lawyer because it was a simple matter. 13% cited not wanting a lawyer. 13% said they used an LDA because they tried, but could not complete the paperwork on their own. (Halt Report Pg. 16)

Similar type of services rendered, with some reporting more complex services. The average cost was \$475. The lowest was between \$100-350 and the highest was \$800. 83% indicated the cost was "just right," "fair," or "reasonable." 2 consumers (9%) felt the cost was low. Two consumers thought it was high, but one did not have very much money, and felt this was the cheapest available. 96% were satisfied with the quality of service. 57% said they were very satisfied. 1 consumer made negative comments such as "a little chaotic", but she said the fee was fair given the quality of services, as did 17 others. (Halt Report Pg. 17)

There is much more information contained in the Halt Report relating to interviews of LDA's and consumer satisfaction. Unfortunately the survey sampling is very small.

C. Conclusion.

Based on the information gathered, the subcommittee concludes that an Elder Law Legal Technician program has the potential to be self-supporting from licensing and exam fees, although any pilot project would more likely need to be subsidized by outside funding.

The subcommittee also concludes, based on comparisons with prices charged by document preparers nationwide, that an Elder Law Legal Technician could provide a lower cost options for pro se litigants. The subcommittee anticipates that this would create greater access to

qualified legal services for lower-income individuals.

5. Specific resources already existing to provide likely candidates to act as Legal Technicians for the pilot project and identify existing resources for providing training for these candidates.

There are, presently, a number of public and private educational institutions in the state offering paralegal training programs. These institutions are located throughout the different geographic locations of the state and include five which are approved by the American Bar Association. These programs offer a variety of degree and certificate options and prepare students for employment as professional paralegals in the diverse legal settings in which paralegals are employed.

The curriculum for these programs is carefully proscribed by the various accrediting bodies that accredit these institutions. Typically, the curriculum consists of a core curriculum of required classes which would apply to general legal concepts as well as a body of course electives from which students elect courses. "Elder Law" is such an elective course that is, or could be, offered by these institutions. Most institutions do not limit enrollment in these types of courses to current students, but they typically will allow others with an interest in the field to enroll. This would allow an option for those who might be interested in becoming a legal technician and who meet the requirements but who would like to enroll in such a specialty course.

The existing educational institutions would be fertile areas for the identification of those interested in participating in the pilot project. Most of these institutions maintain contact with their graduates who would be qualified candidates for the technician pilot project.

An additional source of existing candidates for the pilot project would be those professionally employed paralegals or other legal professionals who qualify under the rule. Utilizing the various professional organizations in the state that draw membership from these individuals, recruitment of candidates interested could be facilitated. Both the Washington State Paralegal Association ("WSPA") and the National Association of Legal Secretaries (now a professional organization for all legal professionals) ("NALS") would be organizations from whom candidates could be drawn.

Training for candidates for the pilot program can be accomplished by the educational institutions as well as by workshops, seminars and continuing legal education opportunities offered by the professional organizations. The educational institutions and the professional organizations could additionally partner in the sponsorship of training opportunities for interested candidates.

ATTACHMENT 1 TO ELDER LAW SUBCOMMITTEE REPORT

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ATTACHMENT 2 TO ELDER LAW SUBCOMMITTEE REPORT

Arizona Section 7-208: Legal Document Preparers Appendix B Fee Schedule

Initial Certification

| | |
|--|----------|
| Individual Certification | \$300.00 |
| Renewal of Initial Individual Certification | \$300.00 |
| Business Entity Certification | \$300.00 |
| Renewal of Initial Business Certification | \$300.00 |
| Standard Certification | \$250.00 |
| Individual Certification | \$500.00 |
| Renewal of Standard Individual Certification | \$250.00 |
| Business Entity Certification | \$500.00 |
| Renewal of Standard Business Certification | \$500.00 |
| Late Renewal Fee | \$ 50.00 |

Examination Fee for Standard Individual Certifications

| | | |
|---|-------|----|
| Certified Legal Document Preparers (No fee is required for legal document preparers who hold a valid certificate at the time of application for examination.) | 00.00 | \$ |
| Noncertified Legal Document Preparers (For applicants who do not hold a valid Arizona legal document preparer certificate at the time of application for the examination.) | 50.00 | \$ |
| Reexaminations (For any applicant who does not pass the examination on the first attempt. The \$50.00 fee applies to each reexamination.) | 50.00 | \$ |

Reregistration

(For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)

50.00 \$

ATTACHMENT 3 TO ELDER LAW SUBCOMMITTEE REPORT

INFORMATION ON THE ARIZONA LEGAL DOCUMENT PREPARER PROGRAM SEPTEMBER 2005

PROVIDED ON REQUEST OF THE WASHINGTON STATE PRACTICE OF LAW BOARD

Number of Certified Legal Document Preparers (“LDPs”): as of July 1, 2005 there were 457 LDP certifications; 343 of these were individual certifications and 114 were for businesses.

“Report Card:” no outside entity has done a review or report on the Program to date.

Revenues and Costs: the program is expected to be self supporting, as are other regulatory programs operated by our office. However, it is recognized that in the initial stages of implementation, there are a considerable number of unknowns – for example, how many people will apply for certification; how many will be denied and request a hearing, how many complaints will be received; how many will go to formal hearing, etc. There are also start up costs – for example, the costs of developing and administering the initial examination that all currently certified LDPs must take and pass.

Revenues: For fiscal year ‘05 (July 1, 2004 – June 30, 2005), the approved budget was \$ 285,715, based on revenues from certification fees from LDPs and a grant of \$ 108,523 from the State Bar of Arizona. Total expenses were \$ 162,928.

Costs: Besides staff costs, one of our largest initial costs was connected to the hearings requested by individuals denied certification. In comparison to other programs we operate, the LDP Program had a disproportionately high number of individuals who were denied certification, and of those, a number requested hearings.

From July 2003 through June 30, 2005 we issued 93 denials of certification; 53 of these requested hearings, and as of June 30, 2005 we had conducted 50 of these hearings with 3 pending. These hearings are presided over by a volunteer hearing officer, we incur costs for the staff time and the court reporter. The Program is

represented by an Assistant Attorney General; we do not pay the Attorney General's Office separate fees for this representation.

Now that the initial "wave" of certifications has been completed, the number of initial applications has declined significantly and our work has shifted to processing the complaints. From July 1, 2003 through June 30, 2005, we received 612 complaints; 235 against certificate holders and 377 against non-certificate holders (alleging the individual was practicing as an LDP without certification). Again, in addition to staff time, the primary expenditure here is for the court reporter costs for the hearing; these can be significant. We can and do charge the disciplined LDP for the costs associated with the investigation and hearing process, and can also impose fines; however, collection of these monies is not guaranteed.

Complaints: Because the program is still relatively new, it is premature to identify "common" disciplinary actions due to the small number of complaints that have completed the entire process. Common allegations include failure to properly file a required document, the unauthorized practice of law (e.g. gave legal advice), conflict of interest, and practicing without certification. To date, we have filed formal charges in 21 complaints regarding certificate holders and held 19 formal hearings. We have dismissed a number of the complaints against certificate holders as there was no finding of violation, issued Letters of Concern (the lowest level of discipline available) and revoked 4 certificates. The non certificate holder complaints typically result in: (1) a dismissal, as it is determined the individual is not practicing as an LDP, (2) the individual seeks certification, or, (3) in some cases, the Board issues a cease and desist order to prohibit the individual from continuing to practice.

Examination: All currently certified LDPs were required to take the initial examination by September 1, 2005. To date, we have had 332 LDPs take the exam, 39 have failed, which provides a pass rate of 88.3%. Scores have ranged from a low of 34% to a high of 97%. The average passing score is 80.4%, the average failing score is 56.6%. Overall, the mean score is 77.6% and the median score is 79%.

The implementation of the exam has gone very smoothly, although development of the exam is staff intensive. We hired a professional test validation company to assist in the development of the exam, that cost was \$ 23,675. We also hired another vendor to actually administer the exam throughout the state, they charge \$50 per candidate; this cost is covered by the certification fees paid by existing LDPs. Individuals who take the exam who are not currently certified pay a \$50 exam fee to cover the costs of the administration.