

REPORT OF THE  
PUBLIC PROTECTION COMMITTEE

Office of Professional Standards  
State Bar of California  
555 Franklin Street  
San Francisco, California 94102

April 22, 1988

COPRAC AGENDA II 1 A

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## SUMMARY

The Public Protection Committee, following extensive investigation and analysis, has concluded that the dramatic growth in the numbers and types of services offered by non-lawyers to persons with law-related problems reflects society's response to needs not met by California lawyers. The providers of these services are many and varied, as are the identifications they use. In this report, we refer to them as "legal technicians."<sup>/1</sup> Because there is a demonstrated need for the types of services that legal technicians offer, our Committee concludes that there is a benefit to the public from their existence. At the same time, we also conclude that there is a risk of public harm from the uncontrolled activities of non-lawyers who provide legal assistance and advice to the public.

It is probable that a court of law applying established standards for what constitutes the practice of law would conclude that many legal technicians are engaged in the unauthorized practice of law. We have concluded, however, that "unauthorized practice of law" is a concept no longer capable of definition or enforcement. Moreover, specifically with respect to legal technicians, we believe it would be unwise for the State Bar to undertake under the guise of unauthorized practice the policing of activities that, if injurious to the public, are essentially consumer fraud.

We recommend that the State Bar actively support legislation that (1) makes it unlawful for a person who is not an active member of the State Bar to claim to be a lawyer, (2) requires the registration of legal technicians, (3) requires legal technicians to disclose that they are not lawyers, and (4) renders legal technicians liable, both civilly and criminally, for misfeasance and nonfeasance.

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/1 "Legal technician" has been used throughout this report and in the legislation contained in it to designate a non-lawyer who provides law-related services to members of the public. The Committee struggled to develop a phrase which would adequately describe these individuals and which would not be confused with those used to identify non-lawyers who provide services only to members of the State Bar. The term "legal technician" was chosen after much discussion. The Committee would particularly welcome comments or suggestions concerning this designation.

## BACKGROUND

As part of its own evaluation of the role of the State Bar in the area of the unauthorized practice of law and in response to concerns expressed by the Los Angeles County Bar Association, the Board Committee on Professional Standards (hereafter "BCOPS") recommended the creation of a Public Protection Committee (hereafter "Committee").

It was contemplated that the Committee would identify areas in which non-lawyers might provide legal services and the conditions under which these services might be provided, and develop recommended standards for the regulation of non-lawyers in the providing of such services. It was also contemplated that the Committee would have a broad-based membership comprised of lawyers and non-lawyers, including representatives of consumer groups.

### A. Selection of the Public Protection Committee

BCOPS particularly invited applications for appointment to the Committee from lawyers practicing in immigration, landlord-tenant, divorce and bankruptcy law; retired judges who had been involved in proceedings in landlord-tenant, divorce and bankruptcy law; legal academics; members of associations of court clerks; members of professions whose work arguably involves the practice of law (such as real estate brokers, bankers, certified public accountants, title companies, insurance professionals, and notaries public); members of paralegal associations and academics involved in paralegal education; members of landlord's associations and tenant's associations; representatives of consumer protection agencies or organizations; persons involved with administering legal service programs; and persons involved in local law enforcement.

The Board of Governors ultimately appointed four non-lawyers and four lawyers from those who submitted applications.

The non-lawyer members are Victor Salazar, Vice Chair, a consumer protection professional from Fresno County; Fran Chernowsky and Tim Pluma, self-employed paralegals who provide services to lawyers exclusively, both from Los Angeles County; and Michael D. West, a self-employed mediator and arbitrator from Santa Clara County.

The lawyer members are Joseph R. Austin, Chair, a business trial lawyer with the Los Angeles firm of Tuttle & Taylor; Stephen R. Elias, a writer and editor for Nolo Press; Aggie R. Hoffman, an immigration law specialist from Los Angeles County; and Stephen Evans Taylor, a Deputy District Attorney for San Joaquin County in charge of the District Attorney's Consumer and Business Affairs division.

Resumes of the individual Committee members are attached as Appendix A to this report.

### B. Charge to the Public Protection Committee

The Committee was charged to hold public hearings to obtain testimony from the bar and the public concerning: whether public harm was likely to result from the providing of legal services by those who are not members of the bar; whether such harm is substantial enough to warrant regulation; what form any such regulation might take; what entity or entities would be charged with the responsibility for such regulation; how the expense of such regulation could be funded; and what would be an appropriate timetable for consideration of the aforementioned issues.

The Board further charged the Committee to address specified areas of non-lawyer activities and to develop proposed standards under which such activities might be permitted. The Board Committee identified the areas of dissolution of marriage, bankruptcy and landlord-tenant law as the initial priority areas to be addressed. Immigration law was an additional area identified by the Board of Governors. Furthermore, the Board Committee indicated that it would consider charging the Committee with the task of developing a proposed public education program.

### C. Activities of the Public Protection Committee

In order to meet its responsibilities and its charge, the Committee took the following actions:

#### 1. Public Hearings

The Committee held three public hearings -- in Los Angeles on June 16, 1987, in San Francisco on September 15, 1987, and in Fresno on October 8, 1987. To focus testimony at the hearings, the Committee identified four questions derived from the Committee's charge:

- a. What is the "unauthorized practice of law" and should it influence our Committee's conclusions?
- b. Is public benefit or harm likely to result from the providing of law-related services by non-lawyers?
- c. Should providers of such services be regulated in any manner?
- d. If so, what form should this regulation take, what entity or entities should undertake such regulation, and how can the expense of regulation be funded?

Before each hearing, a press release was circulated notifying the public of all upcoming hearings. The distribution list for the press release included, among others, 150 daily newspapers, 50 legal dailies, and 30 minority papers. The first release was also forwarded to 260 bar leaders. Before the Los Angeles hearing, a Spanish translation of the press release was distributed.

In addition to the press releases, the Committee circulated more than 600 invitations offering individuals and organizations the opportunity to appear at the hearings or submit written comment. Among those receiving invitations were: (1) all California law schools, law libraries and bankruptcy judges listed in the 1987 Parker Directory of California Attorneys; (2) all paralegal training institutions (listing provided by Los Angeles Paralegal Association); and (3) legal aid foundations and governmental entities listed in the April 1987 California Consumer Protection Agencies Directory published by the Office of the Attorney General.

#### a. Oral Testimony

The Los Angeles hearing had 34 speakers, the San Francisco hearing 24 speakers, and the Fresno hearing 28 speakers, resulting in more than 770 pages of reporters' transcripts. In addition, many witnesses provided the Committee with exhibits and written summaries of their testimony. These also became part of the record of the Committee's proceedings.

b. Written Comment

In an effort to broaden access to the Committee, the Committee also solicited written comment. Since the solicitations for written comment were included in the press releases for the public hearings, they were received by the same media services and individuals earlier identified.

The Committee received a total of 74 written comments.

c. Scope of Information Received

The Committee received testimony at its public hearings and written comment from both the public and private sectors. In total, the record of the Committee's proceedings approaches 1500 pages (excluding surveys). Among those providing testimony or written comment were: individual lawyers and lawyers speaking on behalf of local and specialty bar associations and legal services organizations; judges of bankruptcy and family law courts; representatives of various law enforcement and consumer protection agencies; academics; professional paralegals; and members and representatives of organizations advocating court reform. The Committee received testimony or comment both from individuals who claimed they were victimized by legal technicians and from others who claimed they were benefited by legal technicians. (The Committee also received testimony from individuals who claimed that they had been victimized by lawyers, judges, or the legal system in general. These subjects were not within the purview of the Committee.)

Although the Committee had a full agenda of witnesses at each public hearing, it did not receive testimony or written comment from as broad a range of witnesses or in the detail it had anticipated. Specifically, the testimony and comment focused almost exclusively on those (most frequently "typing services") offering services primarily to lower-income persons. Little testimony or comment was received regarding providers, such as bankers, real estate brokers, and tax preparers, offering services to middle and upper-income persons.

2. Surveys

In a further effort to meet its charge, the Committee prepared and distributed two groups of surveys: one for consumer protection agencies in California and the second for all state bars in the country.

a. Consumer Protection Survey

The purpose of the consumer protection agency survey was to gather information on the extent of harm, if any, arising from the providing of legal services by non-lawyers, including a determination as to the substantive areas of law where the greatest number of complaints were received. An additional purpose of the survey was to determine how complaints alleging harm are currently processed in an effort to assess the effectiveness of existing complaint procedures. It was hoped that this would provide data that would assist the Committee in determining what form any regulation might take and who should be charged with responsibility for such regulation.

The consumer protection agency survey was sent to 126 agencies, including the consumer protection division of each local and statewide district attorney's office in California. The Committee was disappointed to receive only 31 responses. The 31 agencies that responded varied widely with respect to the type of agency and the type and size of the population it served. Almost half of those responding indicated that they received no complaints relating to the delivery of legal services by non-lawyers. More than half of those reporting that they did receive complaints indicated that at least 50% of the complaints received were situations in which non-lawyers offered law-related services, took money, but provided little or no service.

Many of the agencies who did receive complaints had no statistics concerning the type of complaint received. The 13 who did noted complaints in the areas of family law (8), immigration (5), landlord-tenant (4), credit repair, bankruptcy, business, consumer, employment, probate, personal injury, and workers' compensation law. A substantial majority of those reporting complaints indicated that most of the complaints received alleged monetary loss.

A summary of the consumer protection agency survey responses is attached hereto as Appendix C.

The Committee concluded that at present in California there is no adequate regulatory model and no agency staffed to assume management of a regulatory scheme if adopted.

b. Survey of Other State Bars

The purpose of the state bar survey was similar to that of the consumer protection agency survey to the extent that it sought information on the extent of harm, if any, arising from the providing of legal services by non-lawyers. In addition the survey sought information on how the practice of law is defined in each state, whether non-lawyers who provide law-related services are regulated in any state, and whether any state bars have studied the regulation of non-lawyers who provide law-related services.

The Committee sent a copy of the survey to the state bars of every state (including both voluntary and/or integrated bar associations where appropriate), the District of Columbia and Puerto Rico. Of the 54 surveys sent, the committee received 32 responses.

Just over half of those responding (17 of 32) indicated that they did not keep statistics on the number of complaints received. Of the 14 state bars keeping statistics, 10 stated that they received less than or equal to one complaint per month during the preceding 24-month period. Four states reported receiving more than one complaint per month.

Of the 17 states that said they did not keep statistics, 4 provided estimates of the number of complaints received. Two states estimated they received less than one complaint a month while a third state estimated they received 6 complaints per month. The fourth state in this category, Florida, stated that, "[A]t any one time we have 250-270 complaints being investigated. Of these complaints 15-20 represent litigation."

Sixteen states identified trends in the type of complaints received, noting complaints in the area of family law (10 states), bankruptcy (9 states), immigration (5 states), real property (5 states), landlord-tenant (4 states), wills (3 states) and collections (2 states). Six states indicated that the complaints received alleged monetary loss. Of these 6 states, 5 indicated that less than 50% of complaints received involved monetary loss.

Note that the survey did not request that complaints filed by lawyers be distinguished from those made by consumers.

A summary of the state bar survey responses is attached hereto as Appendix D.

### 3. Investigation and Research

The final element of the Committee's information gathering activities was its own investigation and research. At its first meeting the Committee divided into subcommittees, one of which was charged with an examination of the "unauthorized practice of law". With staff assistance, the full Committee received, reviewed and discussed an enormous volume of data on this subject, including law review and newspaper articles, cases, statutes and rules, and proposed statutes and rules from California and other jurisdictions. A partial bibliography of the materials reviewed by the Committee on this and other topics is attached hereto as Appendix E.

#### D. Data Relating to Immigration, Landlord-Tenant, Bankruptcy and Divorce.

The Committee, as charged, specifically investigated the four substantive law areas of immigration, landlord-tenant, bankruptcy and divorce. The Committee has concluded that there is no rational basis or analytic advantage to addressing the issues raised by legal technicians according to these four substantive law areas. Although the areas identified are "hot" areas in which claimed abuses have recently received notoriety, the activities of legal technicians are not limited to these areas. Moreover, the Committee's inquiry extended beyond these four substantive areas.

We have elected, therefore, to set forth our discussion of these four substantive areas in Appendix B rather than in the body of this report.



## FINDINGS

One of our most significant findings is that there are virtually no hard data concerning the subject matter of our Committee's charge. If there are any significant statistical data, we were unable to find them. Even our own investigation and surveys did not provide sufficient data for us to create meaningful statistical analyses. The Committee carefully considered all of the oral and written testimony received, the data contained in the survey responses, and the information obtained from its own research and analysis. Nevertheless, the Committee does not view its charge as limiting its consideration to the evidence received. Committee members have felt free to draw upon their own knowledge and experience. In the final analysis, our Findings and Recommendations reflect our judgment as to a system that is workable and fair, not necessarily one that is perfect or that will satisfy every constituency.

First. We find an overwhelming need on the part of the residents of the State of California for better access to the generally law-dominated processes of government, particularly the courts. Frequently, at the lower-to-mid levels of these processes, lawyers cannot provide, or are not interested in providing, this access. As a consequence, persons unfamiliar with the courts and court procedures turn to legal technicians who aggressively advertise their expertise in providing law-related services. These services in areas such as landlord-tenant, immigration, family law and bankruptcy now play as important a role at lower income levels as have more traditional legal technicians such as real estate brokers and tax preparers at higher income levels. On balance, the Committee finds that the overwhelming need to provide better access to legal services justifies some risk of individual harm.

Second. There are a number of highly qualified and dedicated legal technicians who deliver valuable assistance to individuals for fair consideration. Not all providers are, however, committed to the quality of the assistance they purport to provide or in actually delivering the services sold. We therefore find there is significant potential for public harm caused by the activities of legal technicians. Either because of demand or the current structure of the marketplace, unscrupulous services exist. These enhance the seriousness of the risk of public harm because unscrupulous services most frequently appeal to individuals when they are most vulnerable and offer services that could cause far-reaching, often disastrous, consequences if not performed in a timely and correct manner.

We also find that current enforcement mechanisms are inadequate to protect the public. To the extent there is any enforcement today, it is provided by public prosecutors who normally have the resources and energies to deal only with major frauds. This provides inadequate protection against the risk of public harm.

Third. Individual lawyers and law firms have come to rely on trained paraprofessionals to provide law-related services to the lawyer/law firm under the supervision of a lawyer. These paraprofessionals are frequently referred to as "paralegals" or as "legal assistants"; we refer to them here as "dependent paralegals". Dependent paralegals are either direct employees of individual lawyers/law firms or are independent contractors who contract to do work solely for lawyers/law firms. Since dependent paralegals do not provide services directly to the public, we find no risk of public harm from their activities. Such risk of harm as may exist is the risk that their lawyer-employers will cause injury to clients.

Fourth. The Committee's investigation of immigration focused for it the issue of notary public and immigration consultant abuses. It became acutely aware of the confusion caused by the deceptive use of the term "notary public" or "notario publico". In many countries worldwide, only licensed lawyers may serve as notaries and, in many other countries, appointment to the position of "notary" designates the elevated status of a lawyer. Consequently, the immigrant and less-knowledgeable segment of the population relies on the services of notaries and immigration consultants, falsely assuming that they are highly qualified lawyers capable of providing legal services. We have concluded that some further regulation of notaries is required to help alleviate the deceptive practices of some notaries.

Fifth. We find that the activities of many legal technicians could arguably be called the practice of law. We also find that at least some providers operate in fear of prosecution for unauthorized practice and have made efforts to structure or curtail their activities in light of this fear. We find this threat of prosecution for unauthorized practice of law unjustified, particularly in light of the virtually innumerable other services (real estate brokers, title companies, accountants, bankers, tax preparers, to identify only a few) that operate seemingly without risk of prosecution.

We find that the primary risk of harm from legal technicians is consumer fraud resulting from false and misleading advertising, false representations and promises, and intentional failures to perform. Negligence is a secondary, but significant, risk.

We believe the State Bar should not become directly involved in attempting to combat these risks for at least two reasons. First, the State Bar's responsibility is limited to the enforcement of the unauthorized practice of law. We find that the concept of unauthorized practice of law has only limited societal benefit. Secondly, it would be a serious political and public relations mistake for the State Bar to attempt to police consumer fraud in this area. This is because the public will not view the Bar's efforts as "public protection"; rather it will be viewed as an effort by the organized bar to protect the self-interests of its constituents. Since we find that most lawyers are not providing legal services in these areas, we believe the Bar would suffer a public relations disaster without any economic benefit to members of the State Bar.

## RECOMMENDATIONS

The Committee's recommendations take the form of a legislative program for the State Bar or others. For purposes of this report, we have not attempted to write the complete text of recommended legislation. Rather, we have attempted to provide a statement of the basic legislation in a summary form that is, hopefully, adequate to illustrate our recommendations.

1. Traditional "unauthorized practice of law" statutes should be replaced with legislation that would prohibit anyone who is not an active member of the State Bar from claiming to be an attorney.

The State Bar itself has, for some time now, not sought to enforce unauthorized practice of law statutes. One reason given is that there is no adequate definition of what constitutes the practice of law. From our own investigation, it seems clear that the courts have fairly broadly defined what constitutes the practice of law. The problem is that, in our law-dominated society, many fairly common activities fall within the traditional definition of what constitutes the practice of law. Thus, when the State Bar's "treaties" that permitted certain other professionals to practice law with impunity were invalidated, the concept of unauthorized practice became incapable of meaningful definition and therefore unenforceable. To date, at least, no one has been able to redefine what constitutes the practice of law in a manner that permits rational enforcement of unauthorized practice of law statutes. We have concluded that the solution is to amend "unauthorized practice of law" statutes so as to protect the public from persons who are not active members of the State Bar but are holding themselves out to be lawyers authorized to appear in court. We recommend that existing Business & Professions Code sections dealing with the unauthorized practice of law be amended along the following lines:

§6125. No person who is not an active member of the State Bar shall hold himself or herself out to be an attorney.

§6125a. No person shall appear before any court or tribunal of this State unless that person is an active member of the State Bar or is admitted to practice pursuant to rule adopted by the court or permitted by the tribunal.

§6126. Any person advertising or otherwise holding himself or herself out to be an attorney who is not an active member of the State Bar is guilty of a misdemeanor.

§6126a. (1) Any person appearing before any court of this State who is not an active member of the State Bar or admitted to practice before the court pursuant to court rule is guilty of a misdemeanor.

(2) Any person appearing before any tribunal of this State who is not an active member of the State Bar or permitted to appear by the tribunal is guilty of a misdemeanor.

§6127. The following acts or omissions are contempts of the authority of the courts:

(1) Holding oneself out to be an attorney while not an active member of the State Bar;

(2) Appearing before any court while not an active member of the State Bar or admitted to practice before the court pursuant to court rule.

The "court rule" language is intended to deal, not just with pro hac vice appearances, but knowingly to leave open the possibility that courts may at some time in the future desire to permit non-lawyers to appear as advocates in particular circumstances. Under the constitution, this appears to be a matter for the courts to decide, not the legislature.

2. Consumers should be protected from fraud on the part of legal technicians and notaries by legislation requiring such persons to register and to disclose that they are not attorneys and establishing civil and criminal remedies for nonfeasance and misfeasance.

From the evidence received by our Committee, it appears that most legitimate legal technicians currently advise their customers that they are not lawyers. We have, however, also seen advertisements and heard testimony that seem quite clearly to indicate that customers of less legitimate legal technicians are led to believe that they will be receiving legal advice and other assistance from a lawyer. The same is true for some notaries public.

While we considered numerous regulatory options, we ultimately concluded that licensing or other bureaucracy-laden regulation is not appropriate. First, on balance, this type of regulation tends to restrict competition rather than protect the consumer. Second, even if some regulation is ultimately called for, it is impossible to fashion wisely this regulation in advance given the large number of different activities that would be subject to it. Instead, we believe that legal technicians should only be required to register and to disclose that they are not lawyers. This registration and disclosure requirement will allow potential customers to know whether they are getting a lawyer or a legal technician and will provide a means for law enforcement agencies to locate and prosecute fraudulent legal technicians (who, the Committee believes, create the primary risk of harm). It would also, we believe, encourage greater education and self-certification efforts by legal technicians working in particular substantive areas.

The Committee also believes that incentives should be provided to encourage both public prosecutors and private citizens to police instances of consumer fraud.

It would seem that the following legislation would properly become part of the Business & Professions Code.

§1. A person engages in the business or acts in the capacity of a legal technician when that person gives legal assistance or advice to another for compensation and is not an active member of the State Bar or is not otherwise authorized by federal law to provide the legal assistance or advice for compensation. "Legal assistance or advice" includes, but is not limited to: (1) giving counsel or advice to others pertaining to their legal rights or obligations, (2) completing a form provided by a federal, state or local agency or federal or state court, (3) preparing a document required by law or by a federal, state or local agency or federal or state court, (4) submitting a form or document to a federal, state or local agency or federal or state court on behalf of another, and (5) appearing on behalf of another at or before any federal, state or local agency or federal or state court. A person does not engage in the business or act in the capacity of a legal technician when he or she (1) provides services to an active member of the State Bar and not to the public;

(2) appears as counsel pro hac vice pursuant to rule 983, California Rules of Court; (3) provides services as a Registered Foreign Legal Consultant pursuant to rule 988, California Rules of Court; or (4) provides services as a certified law student pursuant to the Rules Governing the Practical Training of Law Students.

§2. (a) Not less than 10 days prior to doing business in any county, a legal technician shall register with [the appropriate state agency] and pay a filing fee of fifty dollars (\$50).

The information required shall be submitted on a form provided by [the appropriate state agency] and shall be verified by a declaration signed by each principal under penalty of perjury.<sup>/2</sup>

(b) The [appropriate state agency] shall provide the registrant a certificate evidencing compliance with this section.

(c) The application, renewal, and information required thereon shall be public record for the purposes of Government Code §6252 and shall be available to the public to the extent permitted by law.

(d) The [appropriate state agency] shall provide a list of those persons registered pursuant to this section, together with such other information as may be deemed appropriate by the [appropriate state agency] to the office of the District Attorney in each county, and to the appropriate consumer affairs agency in each county on a regular basis.

(e) Registration of a legal technician shall be valid for one year from the effective date thereof and may be annually renewed by filing and paying a filing fee of fifty dollars (\$50).

(f) Whenever, prior to expiration of a legal technician's annual registration, there is a material change in the information required, the legal technician shall, within 10 days, file an addendum updating the information.

(g) A legal technician registered pursuant to this section shall post the certificate evidencing registration, or photocopies of the certificate, in each of his or her business locations in a place and manner conspicuous to the public. No legal technician shall make or authorize the making of any other reference to its compliance with this section in any advertising to any prospective or actual customer.

(h) Violation of any provision of this section is a misdemeanor.<sup>/3</sup>

§3. A legal technician may not represent that he or she is an attorney or an active member of the State Bar. It shall be presumed that no such representation was made if there is a contract in writing signed by the person to whom services are provided that states on the face of the contract in bold face print or capitalized typewriting of a 10-point size or larger: "I am not an attorney and I am not an active member of the State Bar of California; the same or similar legal assistance may be obtained from an attorney who is an active member of the State Bar." In the absence of a written contract containing the foregoing language, it shall be presumed that a representation was made that the legal technician is an active member of the State Bar.

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<sup>/2</sup> The Committee particularly welcomes comment concerning what information should be required in the registration form.

<sup>/3</sup> Committee member Mike West believes that registration is undesirable and dissents from the recommendation that §2 be considered.

§4. (a) Any person claiming to be injured by a legal technician may bring a civil action for damages in a small claims court or a court of general jurisdiction. If the court finds that the legal technician represented himself or herself to be an attorney or an active member of the State Bar, it shall, in addition to such other relief as the law may allow, award an amount equal to three times the amount of actual damages or one thousand dollars (\$1000), whichever is greater, per plaintiff. If the case is brought in a court of general jurisdiction, the court shall award the prevailing party reasonable attorneys' fees and costs.

(b) Any person who, upon information and belief, claims that a legal technician is violating or threatens to violate §2 or §3 hereof may bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, shall recover reasonable attorneys' fees and costs.

(c) Actions brought under this section shall be set for trial at the earliest possible date and shall take precedence over all other cases, except for older matters of the same character and matters to which special preference may be given by law.

§5. Any person who violates any provision of §2 or §3 hereof shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by a district attorney or by a city attorney in any city or city and county having a full-time city prosecutor in any court of competent jurisdiction.

§6. (a) Any person who intentionally violates any injunction issued pursuant to this section shall be liable for a civil penalty not to exceed six thousand dollars (\$6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, or any city attorney without regard to the county or court from which the original injunction was issued. An action brought pursuant to this section shall take precedence over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

§7. A legal technician who receives money for the purpose of paying a filing or other fee to a federal, state, or local agency or federal or state court, and willfully fails to apply such money for such purpose by willfully failing to pay for the filing or other fee, and wrongfully diverts the funds to a use other than that for which the funds were received, shall be guilty of a public offense and shall be punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in the county jail not exceeding one year, or by both such fine and such imprisonment, if the amount diverted is in excess of one thousand dollars (\$1,000). If the amount diverted is less than one thousand dollars (\$1,000), the person shall be guilty of a misdemeanor.

§8. No person engaged in the business or acting in the capacity of a legal technician may bring or maintain any action in any court of this state for the collection of compensation for the performance of any act or contract for which registration is required, pursuant to §1 hereof, without alleging and proving that he or she was duly registered at all times during the performance of such act or contract.

§9. No person engaged in the business or acting in the capacity of a legal technician may willfully withhold from a customer original documents provided to or otherwise obtained by the legal technician. A legal technician shall provide all such documents requested by a customer upon demand whether or not money is owed to the legal technician. A violation of this section is a misdemeanor.

The following legislation should be enacted to follow current Government Code §8205.

§8205.1. Every notary public shall disclose that a notary public is not an attorney. Such disclosure shall be displayed under the title "notary public" in the same size letters or type as the title and in the same language and shall also be included in the advertising, including but not limited to letterheads, business cards, contracts and other printed materials. If a notary public is also an active member of the State Bar of California or if the notary public claims to be associated with an attorney, the name, address and telephone number of that attorney shall be included in all advertising.<sup>/4</sup>

3. This report should be circulated for comment prior to any final recommendation or action by the Public Protection Committee or the Board of Governors.

While few of the Committee's recommendations are new, some are untried in California and others reflect new applications of existing concepts. Moreover, our Committee was careful not to reach any conclusions, or to express even tentative views, prior to the conclusion of the public hearings. Therefore, the findings and recommendations contained in this report have not had the benefit of public scrutiny or comment. We believe that the subject matter of the report is sufficiently novel that public review and comment will be of benefit.

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<sup>/4</sup> Committee member Stephen E. Taylor believes that notaries public are already sufficiently regulated and dissents from the Committee's recommendation that a section such as Government Code §8205.1 be considered. The Committee would welcome comment concerning whether present regulation of notaries public is adequate.

## SPECIAL THANKS

The Public Protection Committee would be remiss if it did not express its appreciation and thanks to the excellent staff assistance provided it by Deborah Fulton and Elwood Bolton, and by Lorna Maynard, Committee Secretary, throughout the months of public hearings and Committee deliberation. We would also like to extend our sincere thanks to frank d. winston, Board liaison, for his excellent support and guidance. Finally, we would like to express our appreciation to the Board of Governors for providing us the opportunity to serve on the Public Protection Committee.



**APPENDIX A**

**RESUMES OF PUBLIC PROTECTION COMMITTEE MEMBERS**

RESUME

JOSEPH R. AUSTIN

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40th Floor  
Los Angeles, CA 90071  
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Residence: 1421 Ocean Drive  
Manhattan Beach, CA 90266  
(213) 546-2916

Born: Davenport, Iowa - March 25, 1939

Education: AB Coe College  
Cedar Rapids, Iowa

1961

Double major in American History and Political  
Science; Phi Beta Kappa; Student Body President;  
Outstanding Senior Man; Who's Who in American  
Colleges and Universities; Varsity Letter in  
Basketball

LLB Harvard Law School  
Cambridge, Massachusetts

1964

Emphasis in international law; Graduate Course  
in Economics, paper: Trade in Nigeria

Employment: Clerk, Hon. Wm. C. Mathes  
Chief United States District Judge  
Southern District of California

1964/1965

Lecturer in Law  
University of Nigeria, Nsukka

1965/1966

Attorney  
McCutchen, Black, Verleger & Shea

1966/1971

Attorney  
Tuttle & Taylor

1971/

Activities and Honors:

Rotary International Scholarship  
Los Angeles World Affairs Council  
Los Angeles Town Hall  
Los Angeles County Bar Association  
Barristers  
-- Executive Committee  
-- Secretary, Vice President, President  
-- Jails Study Committee  
-- Volunteers in Parole Committee

(Activities and Honors Continued)

Board of Trustees  
Municipal Courts Committee  
Law Schools Committee  
Lawyer Referral Service Committee  
Conference of Delegates Executive Committee  
Special Committee on Economical Litigation  
Special Committee on Unauthorized Practice of Law  
Committee on Unauthorized Practice of Law-Chair  
Sub-Committee on the Unauthorized Practice of Law  
Los Angeles County Bar Foundation-Trustee  
State Bar of California  
Conference of Delegates  
Conference Study Committee  
Volunteers in Parole, Statewide Steering Committee  
Association of Business Trial Lawyers  
Ninth Circuit Judicial Conference  
Conference of Bar Presidents  
President, Breakfast Club, 1979-1981  
Trustee, Coe College, 1976-1985  
Los Angeles Museum of Contemporary Art-General Counsel  
Brockman Gallery Productions, Ltd., Board of Artists  
and Directors, 1981-1984  
Los Angeles Contemporary Exhibitions, Inc. (LACE),  
Board of Directors, 1984-  
City Attorney's Attorney Advisory Committee  
District Attorney's Citizens' Advisory Committee  
Los Angeles Olympic Citizens' Advisory Commission

**FRAN CHERNOWSKY**  
**President,**  
**Litigation Resources & Consulting**

(818) 908-9228

**LEGAL EMPLOYMENT HISTORY:**

O'Melveny & Myers, Litigation Coordinator, May 1983 to May 1985.

Designed and implemented litigation support databases; evaluated case requirements; reviewed bids for computer services; negotiated and administered service contracts; trained users; drafted procedures manuals and established coding guidelines; supervised paralegals and staff in review and coding of litigation materials; negotiated cost-sharing agreements for multi-user databases, including discovery and trial databases for the Coordinated California Asbestos Insurance Litigation.

Lawler, Felix & Hall, Litigation Paralegal, August 1979 to May 1983.

Performed factual research and analysis; drafted fact summaries and correspondence; prepared and answered interrogatories, requests for admissions, requests for production, and routine motions; searched the public record; interviewed witnesses; created exhibits for trial and testified in order to authenticate them; participated in legal research; coordinated document productions and attended in lieu of attorney; assisted at trial and in preparation for trial; contributed ideas used in response and discovery; supervised paralegals and staff.

Informatics, Inc., Legal Services Manager, September 1978 to July 1979.

Managed paralegal and coding staff on litigation support project; performed on-line searches; developed method for abstracting testimony for compatibility with computer software; created procedures for on-site processing during document production at adversary's offices.

Free-Lance Paralegal, For firms engaged in complex business litigation, October 1977 to September 1978.

Summarized and cross-referenced testimony and documents; performed statistical and factual research; coordinated evidentiary materials for trial; supervised review and microfilming in large document productions; evaluated documents for responsiveness; keyworded documents for retrieval.

Clients included Kadison, Pfaelzer, Woodard, Quinn & Rossi; Pacht, Ross, Warne, Bernhard & Sears; McKenna & Fiting (now McKenna, Connor & Cuneo); Litton Industries, Mellonics Division (computerized litigation support projects).

**FRAN CHERNOWSKY**  
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EDUCATION:

Legal-Tech Conference, Various Seminars on Litigation Support and Microcomputers, June 1983, 1984, 1985 and 1986.

Microcomputers and the Law Office, Micro-Edge Legal Software Users' Group, October, 1984.

Certificate in Law Office Administration, University of San Diego, 1980.

University of California at Los Angeles, Various Courses in Information Retrieval Systems, Database Design, Management Information Systems, September 1978 to June 1979.

Certificate in Litigation, University of California at Los Angeles, Attorney Assistant Training Program, 1977.

B. A., Sociology, George Washington University, Washington, D.C., 1969.

NON-LEGAL EMPLOYMENT HISTORY:

Market Research Interviewer  
Los Angeles, California, 1976 to 1977.

Teacher  
New York City Public Schools, 1969 to 1976.

Data Analyst  
Washington, D.C. Government Consulting Firms, 1967 to 1969.

PROFESSIONAL ACTIVITIES:

Offices Held:

Los Angeles Paralegal Association: President, 1985 and 1986; Vice President, 1981 to 1984; Chair, Litigation Section, 1980 to 1981, 1983.

California Alliance of Paralegal Associations: Executive Director, 1983, 1984 and 1985; Director, 1981 to 1983.

National Federation of Paralegal Associations: Primary Representative for the Los Angeles Paralegal Association, 1980 to 1982.

**FRAN CHERNOWSKY**  
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Page Three

Advisory Board Positions:

University of California, Continuing Education for Paralegals, Advisory Board Member, 1985 to present.

University of California at Los Angeles, Attorney Assistant Training Program Advisory Board Member, 1983 to present.

Legal Assistant Today Magazine Advisory Board Member, 1984 to present.

**PUBLICATIONS:**

Los Angeles Paralegal Association Reporter, a monthly newsletter, Editor and Contributing Writer, 1983 to 1985.

Legal Assistant Today Magazine, "Through the Looking Glass: Paralegal Professionalism", Spring, 1984.

National Federation of Paralegal Associations Reporter, "What Makes a Good Paralegal Training Program", Autumn, 1982.

**PRESENTATIONS AND COURSES TAUGHT:**

University of Southern California, April 1986, Instructor, "Computerized Litigation Support Practices and Procedures".

State Bar of California, Law Office Management Section, October 1985 Annual Meeting, Panelist, "Increasing Productivity and Profitability" and "Law Office Automation".

University of California at Los Angeles, Attorney Assistant Training Program, August - September 1985, Instructor, "Discovery Workshop".

State Bar of California, Law Office Management Section, April 1985, Panelist, "Making It and Keeping It: Managing Your Law Office - A Basic Approach".

Loeb & Loeb, March 1985, "dBASE III Workshop".

California State University, Los Angeles, March 1985, "Computers and Litigation Support".

Santa Ana College Paralegal Program, February 1985, "A Code of Ethics for Paralegals".

Los Angeles Paralegal Association, October 1984, "Microcomputers and Litigation Support".

**FRAN CHERNOWSKY**

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California State University, Los Angeles, Paralegal Program, February, 1984, "Professionalism and Ethics for Paralegals".

University of California, Los Angeles, Department of Business & Management, Instructor, January 1984, "Inside Discovery: The Role of the Paralegal".

University of California, Los Angeles, Attorney Assistant Training Program, Instructor, November to December 1983, "Discovery Practice Workshop".

Los Angeles Paralegal Association, Panelist, November 1983, "How to Obtain More Challenging Paralegal Assignments".

University of Southern California, Paralegal Program, November 1983, "Depositions and Paralegals: Before, During and After".

University of Southern California, Paralegal Program, October 1983, "Paralegal Ethics and Professionalism".

National Association for Paralegal Education, October 1983, "Paralegals and Computer Literacy".

University of California, Los Angeles, Law Office Administration Program, May 1983, "Computers and Litigation Support".

Los Angeles Paralegal Association, November 1980, Panel Moderator, "Document Management for the Eighties".

Los Angeles Paralegal Association, June 1980, "Introduction to Computer-Aided Litigation Support".

# RESUME

NAME: Stephen R. Elias  
Address: 663 Joost Ave. S.F. Ca 94127  
Telephone: (415) 239-0451  
DOB: July 6, 1941

## Education:

A.B. Political Science, University of California, Berkeley, 1963  
J.D. University of California Hastings College of the Law, June 1969

## Bar Memberships:

Current: California (January 1970)  
Lapsed: Vermont (July 1972- January 1978)

## Legal and Professional Experience

### 1980 to present

Writer and editor for Nolo Press (publisher of self-help law books).

### 1981- 1983

Staff writer, Barclay's Law Monthly (summarizing appellate court opinions into Barclay's format)

### 1979-1980

Director of SRE Consultants (authored two training manuals for paralegals employed by Legal Services Corporation funded projects)

### 1979-1980



Private practice in landlord-tenant law

**1978-1979**

Directing attorney for Delano office of California Rural Legal Assistance (supervisory and litigation activity)

**1974-1977**

Public defender in Vermont (trial work, juvenile advocacy, supervisory activity)

**1972-1974**

Staff attorney, Vermont legal aid (full range of civil practice)

**1971-1972**

Staff attorney at Columbia Center on Social Welfare, Policy and Law (federal litigation in welfare law-reform area)

**1970-1971**

Deputy Director, Food Research and Action Center (research and litigation involving food law)

**1970**

Staff attorney, San Francisco Neighborhood Legal Assistance Foundation, law reform unit specializing in welfare law.

### Teaching Activities:

**1983 to present:**

Teach legal research to nonlawyers at Nolo Press Seminars

**1985 to present:**

Teach legal research and advocacy to paralegals for National Paralegal Institute (State Bar IOLTA funded)

## **1981-1983**

Instructor for Paralegal Training and Resource Center (later known as Heald Paralegal Institute); taught legal research, landlord-tenant law, criminal law and litigation assistance.

## **1975**

Instructor and Clinical Director for Ceta funded Paralegal school (Woodbury College) in Montpelier Vermont.

## **Publications:**

### **Books:**

#### **Sole Author Nolo Press:**

*Legal Research: How to Find and Understand the Law*  
*Dictionary of Intellectual Property Law*  
*Make Your Own Contract*

#### **Co-authored Nolo Press:**

*California Marriage and Divorce Law*  
*Billpayer's Rights* (Seventh Edition)  
*Legal Care for Software* (Third Edition)

### **Software:**

Co-author of *WillWriter*, a computer will program for the general public.

### **Periodicals:**

*A+ magazine* (computer magazine) articles on warranties, shrink-wrapped licenses, and customer recourse in mail order transactions.

*Nolo News* (a quarterly self-help law publication of Nolo Press), regular contributions on law and paralegal activities.

*San Francisco Chronicle* (numerous articles for former series titled "You and the Law")

**AGGIE R. HOFFMAN**  
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AGGIE R. HOFFMAN  
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**RESUME**

Member, State Bar of California, 1976

Specializing in Immigration and Nationality Law  
for over 10 years

Member, American Immigration Lawyers Association since 1980  
Affiliated with the American Bar Association

Chairperson, American Immigration Lawyers Association  
Southern California Chapter

Chairperson, American Immigration Lawyers Association  
Unauthorized Practice of Law Committee

Chairperson, American Immigration Lawyers Association  
Committee for Specialization in Immigration Law

Co-Chair, American Immigration Lawyers Association  
1984 National Conference Program Committee

Member, American Immigration Layers Association  
1988 National Conference Program Committee

Speaker, American Immigration Lawyers Association  
National Conference 1984, 1985 and 1988  
(Selected Topics in Immigration Law)

**M. TIM PLUMA IV.  
GLENDALE, CALIFORNIA**

**EXPERIENCE:**

**1982 to Present:** Paralegal-Plus Placement Services, Inc.  
Los Angeles, Century City, Irvine, California

**Position: President**

**1978 to 1982:** Law Offices of Hillsinger & Constanzo  
**Position: Paralegal**

Law Offices of Lytle & Sommers  
**Position: Paralegal**

Law Offices of Marc I. Zegar  
**Position: Legal Assistant**

Law Offices of Barry W. Fern  
**Position: Legal Assistant**

**PROFESSIONAL  
ASSOCIATIONS:**

Los Angeles Paralegal Association  
-President, 1987

Los Angeles Paralegal Association  
-Director at Large, 1985, 1986

**PERSONAL:**

D.O.B. 10-10-60, Los Angeles, CA

RESUME

NAME: Victor Ernesto Salazar  
4387 N. Thorne  
Fresno, Calif. 93704  
Home Phone: 229-8553  
Business Phone: 488-3860

PERSONAL  
DATA: Birthdate: November 25, 1946  
Health: Excellent  
Marital Status: Married, two children

EDUCATION: Washington State University 1976: Graduate Course  
Work, Public  
Administration  
California State University, Fresno 1972: B.A. Political  
Science  
Reedley High School 1964: Diploma

WORK EXPERIENCE:

1978 to Present: Fresno County Consumer Protection Program

Supervisor: Carolina Jimenez-Hogg, Division Manager \$2597/monthly  
Title: Community Development & Planning Division

Duties: Responsible for the management of the Fresno County  
Consumer Protection Program, development of program  
policies, supervision of staff and assignment of  
duties; process, mediate and settle complaints; conduct  
investigations, inspections and interviews related to  
complaints; investigate consumer fraud cases, prepare  
investigative reports for prosecution by the District  
Attorney's Office; conduct public presentations and  
represent the program before public and private groups;  
coordinate and develop working relationships with the  
business sector, community groups and governmental  
agencies; conduct ongoing research on applicable laws,  
ordinances and codes; administer the small claims court  
advisory program.

1981 to 1985 California State Consumer Advisory Council

Supervisor: Governor's Office Salary: Expenses

Title: Chairman

Duties: Appointed to the California State Consumer Advisory  
Council by the Governor of the State. The Consumer  
Advisory Council was established by the legislature as  
a part of the 1970 Consumer Affairs Act. The Council

is composed of 7 members representing business, labor, consumers, the public, one state assemblyman and one state senator. It is mandated to conduct public hearings, review legislative issues and to make recommendations on consumer issues to the Governor, Legislature and the Director of the State Department of Consumer Affairs.

1978 to 1980      Advisory Board of the State Bureau of Home Furnishings

Supervisor:      Governor's Office      Salary: Expense

Title:      Public Member

Duties:      Appointed by the Governor to represent the public on the Advisory Board. The Advisory Board of the Bureau of Home Furnishings of the State Department of Consumer Affairs is composed of public and industry representatives. The Board functions to assist the Bureau Chief in the development and implementation of the bureau policy and the licensing and regulation of the home furnishings industry in the State of California.

1976 to 1978      Fresno County Department of Weights, Measures and Consumer Protection

Supervisor:      James P. Copland, Coordinator      Salary: \$1,300 monthly

Title:      Consumer Protection Assistant

Duties:      Provide consumer services in the form of consumer information, consumer advice, process formal consumer complaints, and investigate consumer fraud activities; work with other governmental agencies in the delivery of consumer services to residents of Fresno County; conduct research develop informational materials; interview and counsel consumers; train and supervise trainees and student interns

COMMUNITY AND ORGANIZATION ACTIVITIES

1985 to present      Legal Services Trust Fund Commission of the State Bar of California, Member

1984 to present      Pacific Bell Regional Consumer Advisory Panel, Member

1984 to present      Chichuahua Foundation, Inc., Board of Trustees, President

1982 to present      San Joaquin Valley Community Housing Leadership Board, Program Plan Coordinator

1981 to 1982      Consumer Industry and Labor Committee of the California State Contractors License Board, Member

1976 to present      California Consumer Affairs Association, Member and Presi.

REFERENCES

Honorable John J. Gallagher  
Judge of the Municipal Court  
County Courthouse  
1100 Van Ness Ave.  
Fresno, California 93721

Honorable Ralph L. Putnam  
Judge of the Municipal Court  
County Courthouse  
1100 Van Ness Ave.  
Fresno, California 93721

Edward C. Williams  
Senior Deputy District Attorney  
Business Affairs Unit  
Fresno County District Attorneys Office  
2220 Tulare Street, 10th floor  
Fresno, California 93721



STEPHEN E. TAYLOR

August 1987

Education

HASTINGS COLLEGE OF THE LAW, J.D. May 1980.

San Francisco, California.

(Courses included Federal Income Tax, Federal Estate and Gift Tax, Agency/ Partnership, Consumer Protection, UCC Comm. Paper, UCC Creditor's Rights, and UCC Sales).

HOLY NAMES COLLEGE, B.A. May 1977.

Oakland, California.

Major: Business Administration and Economics.

MEMBER OF THE STATE BAR OF CALIFORNIA, admitted to practice before - U.S.

Supreme Court, U.S. District Court, Eastern District of California, U.S.

District Court, and Northern District of California.

Experience

Six years of practice of law with emphasis on White Collar and Regulatory Law Enforcement, Civil Litigation and Injunctive Relief. Experienced in Commercial Finance/Cash Management, Cost Accounting, Financial Analysis, and Corporate Computer System Support. Undergraduate work includes two years of accounting.

Employment

- CRIMINAL & CIVIL PROSECUTION    SAN JOAQUIN DISTRICT ATTORNEY'S OFFICE, Stockton, Ca.  
October 1981 to Present.  
Currently, Deputy District Attorney (IV) in charge of Consumer Protection, State & County Agency Prosecutions, responsible for significant increase in volume, diversity, and dollar recoveries in business affairs prosecutions. Trial experience includes Felony Securities Law prosecution.
- APPELLATE LAW    CALIFORNIA ATTORNEY GENERAL'S OFFICE, Sacramento, Ca.  
July 1981 to October 1981.  
Member of McNally Appellate Law team. Argued cases in the 3rd and 5th California District Courts of Appeal (in written briefs).
- COMMERCIAL FINANCE    ARLINGTON MEDICAL GROUP, INC., Oakland, Ca.  
November 1975 to May 1981.  
Closely held Corporation with 30 employees. Yearly gross in excess of \$1.2 million. I established Service-Bureau payroll and Cost Accounting General Ledger System (ADP) and converted from hand-kept ledgers. Physician Contracts were then written to link Physician benefits to Department Profit/Loss. Participated in purchase plans of \$60,000. Computer system and \$30,000 PBX system. Duties included: Bank Liaison for Credit Lines and Services, Formatting, Conversion, and Staff Training for the PBX, General Ledger, and Computer Projects.
- COMMERCIAL BANKING    FIRST ENTERPRISE BANK, Oakland, Ca.  
May 1974 to November 1975.  
Began as a Collector responsible for Overdraft Recovery/small claims Court Operations. Duties included: Skip-tracing, field calls and Small Claims Court filing/appearance. After first year handled loan interviewing and credit investigations for Revolving Credit (consumer). Position included limited loan approval responsibility.

Name: Michael D. West Signature: M. D. West

Available for: Commercial, Community, Consumer and Domestic Arbitration

In the space below, briefly provide information which can be submitted to persons requesting a panel of arbitrators, mediators, or factfinders.

<p>Proprietor, Arbitration West, Arbitration &amp; Mediation Services,          Los Gatos Business License No. 5612          San Diego Business License No. SD 84002583          Mediator, State of California, Department of Industrial Relations,          1972 to date.</p> <p>Arbitrator, American Arbitration Association National Panel,          1982 to date.</p> <p>Arbitrator, National Panel of Consumer Arbitrators,          Better Business Bureau, 1982 to date.</p> <p>Arbitrator, Cities of Hayward, Morgan Hill, and San Jose Rental          Arbitration Programs, 1979 to date.</p> <p>Arbitrator, Santa Clara County Bar Association Fee Arbitration Panel,          1982 to date.</p> <p>A.A., San Jose City College, Business &amp; Social Science, 1963.</p> <p>B.S., San Jose State University, Business &amp; Labor Relations, 1965.</p> <p>Consumer-Business Arbitration Training, BBB, 1982</p> <p>Judicial Arbitration Training, Somoma State University, 1982.</p> <p>Commercial &amp; Construction Arbitration Training, AAA, 1982 &amp; 1983.</p>
<p>Fee rates (1984)          \$420 per hearing day or portion. By contract with 1 day advance deposit.          \$420 per study/writing day (estimated 1-2 days per hearing day).          20¢ per mile. Over 50 miles; meals and motel as needed. From LG or SD.          \$420 cancellation fee within 10 days of scheduled hearing.</p>
<p>Memberships:          American Arbitration Association - AAA          Industrial Relations Research Association - IRRA          Society of Professionals In Dispute Resolution - SPIDR</p>



# ARBITRATION WEST

Arbitration & Mediation Services

20,000 Old Santa Cruz Hwy Los Gatos, Ca. 95030 (408) 395-5065

APPENDIX B  
DATA RELATING TO IMMIGRATION, LANDLORD-TENANT,  
BANKRUPTCY AND DIVORCE

1. Immigration

Seventeen individuals specifically mentioned this substantive area.

Eight commented that there is a large demand for low cost legal services in the immigration field, yet the demand goes unmet. For example, Sana Loue of the Legal Aid Society of San Diego stated, "I, at any given point, have a case load between 100 and 200 open files that are active. . . . When I have intake open fully, which means approximately three to four full mornings of seeing only new clients, my appointments are backed up from four to five months at any given time. We are the only non-profit agency that is not charging fees where someone can receive immigration services from attorneys. If we cannot meet that need the vast majority of those people do turn to immigration consultants." [San Francisco hearing transcript, p. 43.]

Ten of 17 commenting either expressed concern for those who had been actually harmed or those who might be harmed in the future. Some noted that the potential for harm was great since most clients cannot speak English and are vulnerable to deportation. For example, Ron Tasoff of the American Immigration Lawyers Association stated that:

Some of the individuals who are practicing immigration law, who are not attorneys, may be competent and honest; many, however, are not. And the problem is that the client can't tell the difference. . . . Many of them don't speak English. . . . Another problem is that most of these people are here illegally, and thus they are vulnerable to consultants in at least two ways. If it isn't done right, they are prey to complain to whatever authorities there are, because they fear that the police or the consumer protection agency or whatever will just turn them in to the immigration. And secondly, they're also in a sort of blackmail situation where if they do complain too much, the consultant or anybody who knows about their situation could happen to turn them in to the [Immigration and] naturalization service. [Los Angeles hearing transcript, pp. 216-217.]

Also note the testimony of Gloria Hernandez of California Rural Legal Assistance:

[S]ince the [new immigration] law came into being, I have heard a lot of horror stories . . . [A]nything from a consultant [or a non-attorney using the title "abogado"], charging \$500, telling the guy . . . he can go to Mexico and that the abogado will send him the permit up. That's the appointment for the worker to come in and talk to an INS official. Everybody knows that once you submit the application, you cannot leave until the INS tells you you can leave.

.....

[Immigration consultants] shouldn't even be around because they are doing a hell of a lot of mistakes out there. They have no training, they have no attorneys . . . We within legal services are having problems with the [new immigration] law and some of us helped negotiate that law. So you can

imagine what all these problems are happening. . .

.....  
I would say we get at least five calls a week [complaining about immigration consultants] . . . [W]e generally tell them . . . try to get your papers back, and go and talk to your DA, and the DA's aren't really interested in something like this because they have got other priorities.

.....  
[T]he only next chance they are ever going to get to immigrate is when their child, who is a United States citizen will be . . . 21 years old, living in the United States and speaking English and has a job to be able to immigrate their parents. 21 years from now in many cases . . . Immigration is something that shouldn't be handled very lightly. [Fresno hearing transcript, pages 164-170]

Of the 10 who addressed the issue of regulation, 4 referred to recently enacted AB 1729, entitled "Immigration Consultants" (amending Bus. & Prof. Code section 22441, et seq.), as a useful model for regulating non-lawyer legal service providers.

2. Landlord-Tenant

Twenty-seven individuals specifically mentioned this substantive area.

Twelve of the 27 commenting on landlord-tenant law noted that non-lawyers who are providing legal services in this area are causing harm to consumers either by providing incompetent advice or by offering services, taking money, but failing to provide the services. For example, in a written comment, T. C. Kimball of the California Apartment Association describes the problem as he sees it:

. . . Their [eviction services] method of operation is as follows: By going to each municipal court, they ascertain names and addresses of residents who are defendants in unlawful detainer actions. The residents are then solicited by a representative of these companies and given guarantees of delaying the eviction process. In order to effect the delay, they inform the resident of the claim of possession process (also known as the Arrieta claim), or of the availability of filing a "federal stay" (in reality a bankruptcy), or of the ability to file an answer or one of many pre-trial motions.

Residents may not realize the long-range effects a bankruptcy filing or other procedural delay might bring them. It is doubtful that they are being properly counseled before making such major decisions and, because of the pending eviction, are under time pressures to make a quick decision.

Even among the 12 individuals or agencies citing harm, 6 acknowledged and balanced against that harm the benefits arising from the providing of legal services by non-lawyers. For example, Barbara Blanco, a lawyer with the Los Angeles Legal Aid Foundation, responding to an inquiry, indicated: "I think it would greatly benefit my clients to have an affordable competent service who can assist them to prepare their own papers. I am reluctant to take a position that an attorney is the only person who can assist a client with a relatively simple legal document, and I don't take that position." [Los Angeles hearing transcript, p. 143.]

Ten others voiced similar sentiments and agreed with Ms. Blanco that non-lawyers who provide legal services to in pro per litigants should be regulated either by being held personally accountable or through some form of lawyer supervision. For example, Roderick T. Field, also with the Los Angeles Legal Aid Foundation, stated that:

[W]e [the Housing Law Unit of the Legal Aid Foundation of Los Angeles] propose that non-attorneys who conduct their business outside of a law office be required to be registered with an appropriate state authority and be bonded. Additionally, that the non-attorney's registration number appear on any and all solicitations. Failure to either register and/or publish solicitations without the registration number appearing thereon should be punishable as a misdemeanor.

Prior to the issuance of the registration number the applicant should be required to submit basic information such as proof of identity, place of business, proof of good character. The state authority should be required to verify the information provided and issue the registration number to be issued only upon satisfaction of the requirements.

We believe this proposal has the advantage of enabling law enforcement to control those who now defraud the public without seriously hampering the efforts of those groups and individuals who make a contribution. Most importantly law enforcement officials would be able to seek prosecution on the basis of failure to comply with the registration and solicitation requirements without waiting for the harm to occur. Immediate action could be taken with a high assurance of conviction once the solicitation came to the attention of the authorities. This would substantially [sic] shorten the response time and prevent the responsible parties from disappearing before their crime is discovered by the victim. . . . [Written comment.]

Two of the comments noted that the standardization of the law in the landlord-tenant area has blurred the distinction between what is the practice of law and what is permissible business and professional activity. The National Federation of Paralegal Associations, Inc., stated:

[C]ertain legal services have and will continue to become increasingly standardized. There is significant evidence indicating that certain legal services such as uncontested divorces, name changes, uncontested adoptions, simple wills and trusts, the preparation of income tax returns, probate services, certain real estate matters, simple personal bankruptcies, collections, the incorporation of small businesses and landlord/tenant rights are already described as standardized or routine.

The obvious consequence of these dramatic changes, is that "the line between what constitutes practicing law and what is permissible [sic] business and professional activity by non-lawyers is indistinct." Non-lawyers, such as title agents, real estate brokers, accountants, architects, escrow agents and estate and trust officers are and have been performing law-related services successfully, satisfactorily, efficiently and less expensively for years for the public's benefit. So common and standard have these services become, that non-lawyer practice in these areas is now woven into the socio-economic fabric of society. [Footnotes omitted.] [Written comment.]

### 3. Bankruptcy

Six of the 23 individuals specifically mentioning this substantive area did so in combination with the area of landlord-tenant law and their comments have been noted above.

Ten of the 23 commented that there are benefits to consumers when non-lawyers are permitted to provide legal services in the field of bankruptcy. This sentiment was expressed by Patrick L. McCrary, who operates a "do it yourself" agency which assists people in the area of divorce and bankruptcy:

The primary benefit of a scrivener agency specifically in the areas of divorce and bankruptcy, is that the agency provides access to the courts and for legal remedies to members of the public who otherwise could not afford such actions through attorneys. Further, these people are not capable of simply proceeding on their own knowledge to obtain the court forms and where attempts to proceed, without assistance, are a burden upon the court clerks. . . . [Written comment.]

Nine of the 23 expressed the concern that the consumer will be harmed by non-lawyers who are either incompetent or unethical. The experience of Judge Samuel L. Bufford of the U.S. Bankruptcy Court in Los Angeles shows the extreme of this concern:

There are no bankruptcy cases sufficiently simple that advisers untrained in law can satisfactorily assist debtors in the handling of their cases. Bankruptcy law is a complex and technical area of law, that is beyond the skill of most practicing lawyers. . . .

In addition . . . the unlicensed legal advisers cause the filing of enormous numbers of bankruptcy cases that have no business in bankruptcy court. [Written comment.]

The issue of regulation was directly raised by 5 of the 23 respondents. Patrick L. McCrary stated that: "While I feel very strongly that the public can benefit by scrivener agencies I feel even more strongly that it is necessary to set up standards for persons operating these agencies." [Written comment.]

### 4. Divorce

The Committee received 100 comments concerning family law (including areas such as child custody as well as dissolution of marriage).

Fifty-nine of those commenting expressed concern about the cost of lawyers and the need for alternative services. For example, Judge John Fitch of the Fresno County Superior Court, Family Law Department, said ". . . I am convinced that it's essential that we have typing services available to folks, to give the poor [including the working poor] access to our court systems." [Fresno hearing transcript, pp.111-112.] Lee Palmer of the Fresno County Clerk's Office noted the prevalence of the use of typing services in Fresno County:

In our fiscal year [1984-85] the Civil Code section 4511 [filings (section 4511 provides for proof of grounds by affidavit)] only constituted about .03 percent of our filings . . . [In fiscal year 1986-87] it's up to 74 percent. . . And of that 74 percent last year, we estimate between 70 and 80 percent of the litigants made use of the typing services. [Fresno hearing transcript, p.141.]

Note further the experience of Maria Romero:

I couldn't get a divorce because my husband wouldn't give me one and I didn't have the money to pay for a lawyer. I was only working part-time make [sic] like four or \$500 a month . . . So I went [to a non-profit organization which operates a typing service] and that was the only place I could find help that I could afford. . . . [Fresno hearing transcript, pp.35-36]

Thirty-eight of those commenting were individuals who had used the services of a typing service provided by a business or non-profit agency and indicated satisfaction with the services provided.

Fifteen of those commenting addressed the potential for harm from non-lawyer providers in the family law area. Some of those noted that such harm was not prevalent. Frances Maydon noted, "I have heard complaints from clients about I gave my money to this guy and I went back a week later and he moved. That happens . . . But it's certainly not the norm . . . I hear a lot of war stories about lawyers much more than I do about other typing services." [Fresno hearing transcript, p.150] (Ms. Maydon's testimony was not limited to family law matters; however, she indicated that the services she provided were "primarily family law and some probate law.") Others provided specific examples of potential harm. For example, Fred Crook described his experience:

I paid \$335 for a Dominican Republic divorce. . . . On October 8 [1985] I received my papers back stating that my divorce was granted. On November 9 of that same year, I was married. On October 24, 1986, I had a little girl born to that marriage. Just after my baby was born, I was notified by the Navy -- my wife is in the Navy -- that the validity of such divorce was doubtful. . . .

What I want is regulation . . . . These people have ruined my life. They're selling Dominican Republic divorces like crazy, and I don't think the people really realize they're not legal unless one of the parties is domiciled in the Dominican Republic. [Los Angeles hearing transcript, pp.112-115]

The Committee received 19 comments from individuals who mentioned family law and who specifically addressed the question of regulation. Their comments about regulation ranged from general statements about the need for regulation to general statements about the problems with regulation. Others specifically cited forms of regulation that the Committee ought to consider. These specific recommendations ranged from licensing to registration. For example, Howard Watkins stated: "If they are regulated, one of the regulations may be that a typing service has maybe not direct attorney supervision but some liaison with an attorney or where they go to some type of review or the courts may set up a program every six months . . . ." [Fresno hearing transcript, p.85]

Also consider the comments of Linda E. Roye:

[L]icensure for paralegals working for attorneys either as employees or as independent contractors is not in the best interest of the public nor of paralegals themselves. It is simply not necessary, for these paralegals are working under attorney supervision or direction.

If non-lawyer paralegals were authorized to perform services directly to the consumer, and if there were a demonstrated need for some form of regulation, such regulation might be in the form of limited licensure (as recommended by

the ABA's Commission on Professionalism) or mandatory registration. Were licensure to be implemented, it should clearly be done through The Department of Consumer Affairs and not by the Bar or by paralegals themselves. And certainly not without comprehensive study. [Written comment.]

Finally, others believe it is premature to regulate the unsupervised paralegal. As Deanna Wilcox stated, "[I]t is premature to consider regulation of a profession before it has been adequately defined. Based on observations of our own membership and the paralegal "community" in general, we do not believe the paralegal profession is sufficiently defined to be regulated." [Written comment.]

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APPENDIX C  
SUMMARY OF CONSUMER PROTECTION AGENCY SURVEY RESULTS

One hundred twenty-six (126) surveys were distributed to consumer protection entities selected from the April 1987 California Consumer Protection Agencies Directory published by the Office of the Attorney General.

Only 31 responses were received. The 31 agencies that responded varied widely with respect to the type of agency and the type and size of the population it served. For example, entities as diverse as the Better Business Bureau of Colton, California, and the San Francisco District Attorneys' office (Consumer/Environmental Protection Unit) responded to the survey. A brief analysis of important features of the survey results follows:

1. Numbers of Complaints Received

Almost half of those responding indicated that they received no complaints relating to the delivery of legal services by non-lawyers. Of the remaining 17 responses, 11 received less than 3 complaints a month. The other 6 reported receiving 5-15 complaints a month.

2. Types of Complaints Received

Of the 17 agencies reporting that they received more than one complaint per month relating to the delivery of legal services by non-lawyers, 10 responded that at least half of the complaints received were situations where non-lawyers offered legal services, took money, but provided little or no service. In addition, 9 agencies reported some complaints alleging incompetent delivery of services, with estimates ranging from 5%-100% of complaints received.

3. Distribution of Complaints by Substantive Fields

Of the 13 respondents who kept such statistics, 4 reported that nearly 100% of the complaints received were in the area of family law, 2 reported that nearly 100% were in the area of immigration law, 2 reported a significant number in the area of landlord-tenant law, and the remainder reported some complaints in the areas of credit repair, bankruptcy, business, consumer, employment, and workers' compensation law.

4. Distribution of Complaints by Types of Providers of Law Related Services

Of the 9 respondents who kept such statistics, 3 reported complaints against consulting services, 5 reported complaints against typing services, 5 reported complaints against paralegals or legal assistance clinics, 1 reported complaints against divorce services, 1 reported complaints against financial consulting services, and 1 reported complaints against rental property owners management services.

5. Monetary Loss

Of the 17 agencies reporting that they received more than 1 complaint per year, 15 reported that the majority of these complaints alleged monetary losses. The range of the losses reported was between \$100 and \$3,000.

APPENDIX D  
SUMMARY OF STATE BAR SURVEY RESULTS

A survey form was forwarded to the state bar of every state, the District of Columbia and Puerto Rico (including both voluntary and/or integrated bar associations where appropriate). Of the 54 surveys sent, the Committee received 32 responses. A brief analysis of important features of the survey results follows:

1. Number of Complaints Received

Just over half of those responding (17 of 32) indicated that they did not keep statistics on the number of complaints received in the last 24 months. Of the 14 state bars keeping statistics, 10 stated that they received less than or equal to one complaint per month during this 24-month period. Four states reported receiving more than one complaint per month.

Of the 17 states that said they did not keep statistics, 4 provided estimates of the number of complaints received. Two states estimated they received less than one complaint a month during this period while a third state estimated they received 6 complaints per month. The fourth state in this category, Florida, stated that, "[A]t any one time we have 250-270 complaints being investigated. Of these complaints 15-20 represent litigation."

The State Bar of California receives approximately 50 written complaints per month. (Complaints received by telephone are referred to law enforcement before a written complaint is made.)

2. Types of Complaints Received

Of the 4 states reporting that they received more than one complaint per month relating to the delivery of legal services by non-lawyers, 2 reported that a majority of the complaints received were situations where a non-lawyer incompetently delivered legal services. One reported that a majority of the complaints they received were in reference to the fact that a non-lawyer was practicing law without a license (complaints which did not specify harm). One reported that a majority of the complaints they received were not situations in which a non-lawyer offered legal services, took money, but provided little or no service.

3. Distribution of Complaints by Substantive Fields

The 15 states providing information on the distribution of complaints received by substantive field reported the following:

- (1) With respect to both non-lawyers who offer legal services, take money, but provide little or no services, and non-lawyers who incompetently deliver legal services, whether or not money is paid, 9 states categorized their complaints according to the following substantive areas: landlord-tenant (1 state), family law (8 states), bankruptcy (7 states), wills (2 states), immigration (5 states), and real property (2 states).

- (2) With respect to non-lawyers who practice law without a license, whether or not money is paid, 11 states categorized their complaints according to the following substantive areas: landlord-tenant (3 states), family law (5 states), bankruptcy (3 states), wills (2 states), immigration (2 states), real property (3 states), collections (2 states), other professions, including accounting (1 state), tax (1 state), insurance (1 state), and clergymen (1 state).

4. Distribution of Complaints by Types of Providers of Law Related Services

The states providing information on the distribution of the types of services as to which complaints are received reported the following:

- (1) With respect to complaints relating to non-lawyers who offer legal services, take money, but provide little or no service and complaints relating to incompetent delivery of legal services by non-lawyers, whether or not money is paid, 10 states categorized their complaints across a range of services, including typing services, paralegal services, and consulting services.
- (2) With respect to complaints relating to non-lawyers practicing law without a license, whether or not money is paid, 12 states categorized their complaints across a range of services, including typing services, paralegal services, consulting services, notaries public, bank officers, savings and loan officers, and other professions.

5. Monetary Loss

Five of the 6 states providing the approximate percentage of complaints relating to the delivery of legal services by non-lawyers that alleged monetary loss found that less than 50% of the complaints they received alleged monetary loss.

APPENDIX E

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***Report of the State Bar of California  
Commission on Legal Technicians***

***July 1990***

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Points of view or opinions expressed in this document are those of the author(s). They have not been adopted or endorsed by the State Bar's Board of Governors and do not constitute the official position or policy of the State Bar of California.

**Report of the State Bar  
Commission on Legal Technicians  
July 1990**

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## EXECUTIVE SUMMARY

The Commission on Legal Technicians recommends that:

1. The State Bar Board of Governors propose that the Supreme Court adopt a Rule of Court authorizing non-lawyer individuals to engage in the practice of law in specified areas (initially in the areas of bankruptcy, family law, and landlord-tenant law);
2. The Board sponsor legislation establishing a regulatory program for independent paralegals under the direct supervision and administration of the Director of the Department of Consumer Affairs, through a career executive level Administrator and a seven-member Standards of Practice and Technical Advisory Committee, and that
  - a. Regulations should be adopted by the Director subject to Supreme Court approval.
  - b. The Advisory Committee should be established as follows: three members appointed by the Supreme Court [two licensed (post-licensure) independent paralegals and one active member of the State Bar]; two public members appointed by the Governor (one must be a consumer activist); two public members, one each appointed by the President of the Senate and the Speaker of the Assembly. At no time can there be more than two independent paralegals and one attorney on the Advisory Committee. Terms shall be staggered. The initial independent paralegal positions will be filled by persons who would meet the proposed qualifications for licensing.
  - c. The licensee population should be defined as Independent Paralegals.
3. Licensing requirements should consist of the following:
  - a. Applicants should submit fingerprints.
  - b. Applicants should meet minimum levels of education and/or experience, as recommended by the Advisory Committee. However, as of the date of implementation of the enabling legislation, persons who have practiced in the field for two years should have the right to

take the examination without additional entry requirements.

- c. Applicants should be at least 18 years of age.
  - d. All applicants should take and pass a two-part written examination: (1) a general knowledge examination, including an ethics section, and (2) a specialty exam in an area of practice. In order to be licensed, an applicant must take and pass both the general and specialty examinations within a two year time period.
  - e. License renewal should be subject to completing annual continuing education requirements.
  - f. Complaints and investigations should be handled by the Department of Consumer Affairs' centralized services.
  - g. A client security fund should be established to provide compensation to victims of independent paralegal thefts. The initial annual fee should be \$25.00 per licensee and the Advisory Committee should develop recommended guidelines for disbursement, including an appropriate cap to be placed on each claim paid by the fund.
  - h. Standards for denial of licensure and for discipline should be established.
4. Upon recommendation of the Advisory Committee, the Director should submit for Supreme Court approval a code of professional conduct for licensed independent paralegals. In addition, the Court should be requested to consider rules of court or legislation: (a) expanding the attorney-client and work product privileges to cover licensed independent paralegals; (b) regulating independent paralegals who operate as independent paralegals or lawyer referral services; (c) prohibiting "running and capping"; (d) governing referral fees; and (e) addressing profit sharing with lawyers.
5. Any system for regulating independent paralegals should include provisions for professional discipline and for mediation and arbitration. In addition, there should be a provision to cite and fine licensees for less severe violations. Discipline should be in accordance with the Administrative Procedures Act. The Director should be given authority to impose recovery of all investigation

and prosecution costs incurred by the agency up to the hearing date as a condition of probation or reinstatement.

6. The unauthorized practice of law should be vigorously prosecuted and a variety of remedies for enforcement against the non-licensee population should be implemented.

A minority report by Commission member Myra Van Norman appears following section XV of this report.





## I. FOREWARD

Without question, the phenomena of both self-help and help from non-lawyers in addressing basic needs for legal services are increasing. While California has conducted perhaps the most sustained review of legal technicians, it is by no means the only state to address the issue. For some years, the Washington Supreme Court has authorized an expanded pool of providers to perform services which formerly were regarded as the practice of law (see section XI.A., infra). On June 8, 1990, a bill was introduced in the Illinois legislature authorizing licensed independent paralegals, inter alia, to draft wills and trusts (see Appendix 1). Recently a Nevada court promulgated guidelines for what it termed "scrivener services" in the areas of family law and bankruptcy (see Appendix 2). An unsuccessful "legal scriveners" bill was introduced in the Oregon legislature a few years ago (see Appendix 3). A bill which would have permitted licensed paralegals to perform substantive legal work for the general public was recently defeated in Maryland (see Appendix 4).

In California, Senator Robert Presley has sponsored a pre-print of a bill drafted by HALT, a national legal consumer organization, which would require legal technicians in fourteen specialty areas either to be registered with or be licensed by a Board of Legal Technicians in the Department of Consumer Affairs, at the Board's option (see Appendix 5). The Commission spent considerable time reviewing and criticizing the pre-print. The Commission understands that Senator Presley plans to hold hearings on the pre-print following issuance of the Commission's report. In addition, some legal technicians who believe that the HALT proposal is unduly restrictive are discussing drafting their own bill, or possibly an initiative measure, to authorize their practice.

Despite, or perhaps because of, the complexities inherent in any attempt to design a program which both protects the public yet expands the authorized providers of legal services, the Commission believes that the State Bar should remain a participant in the public dialogue on this issue.



## II. INTRODUCTION

### A. Background

The Board of Governors of the State Bar of California is charged under Business and Professions Code section 6030 with the enforcement of the unauthorized practice of law ("UPL") provisions set forth in Business and Professions Code sections 6125, 6126 and 6127. However, in January 1985, in light of the questionable effectiveness of the Bar's UPL program, the Bar suspended its investigation of complaints involving alleged UPL activities pending development of an effective program to regulate this conduct. In January 1987, as part of an evaluation of the role of the State Bar in this area, the State Bar Board of Governors appointed the Public Protection Committee, composed of four lawyers and four public members, and charged it with holding public hearings to obtain testimony from the bar and the public concerning whether public harm was likely to result from the provision of legal services by those who were not members of the bar; whether such harm was substantial enough to warrant regulation; what form any such regulation might take; what entity or entities would be charged with the responsibility for such regulation; how such regulation could be funded; and an appropriate timetable for consideration of those issues. The Board further charged the Committee to address specified areas of non-lawyer activities and to develop proposed standards under which such activities might be permitted. The areas of bankruptcy, family law, immigration, and landlord-tenant law were identified as the initial priority areas to be addressed.

After soliciting and receiving oral testimony (at public hearings in San Francisco, Los Angeles and Fresno) and written comment on these issues, the Public Protection Committee submitted its findings and recommendations in the form of a report to the State Bar Board Committee on Professional Standards in May 1988 (see Appendix 6). The report contained the following three recommendations:

1. Traditional "unauthorized practice of law" statutes should be replaced with legislation that would prohibit anyone who is not an active member of the State Bar from claiming to be an attorney.
2. Consumers should be protected from fraud on the part of so-called legal technicians and notaries by legislation requiring such persons to register and disclose that they are not attorneys, and establishing civil and criminal remedies for nonfeasance and misfeasance.

3. The report should be circulated for comment prior to any final recommendation or action by the Public Protection Committee or the Board of Governors.

In October 1988, the Board, while not approving the content of the report, authorized its distribution for a public comment period, seeking written comment both on the report and on alternative solutions to concerns raised in the report. The report was also the subject of three days of Board public hearings.

#### B. Creation of Commission on Legal Technicians

At its August 1989 meeting, the Board considered the comment received and 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." The resolution also authorized the creation of a ten-member Commission charged with determining guidelines for practice by legal technicians which would insure the protection of the public, including standards for training, licensing and regulation; the entity which should be responsible for their registration; and the areas of practice and scope of tasks, if any, which legal technicians might carry out.

At the October 19-22, 1989 Board of Governors Planning Meeting, the Board agreed on the direction and the scope of work for the Commission on Legal Technicians and generated additional questions. The Commission was asked to render a report to the Board by July 1990. See Appendix 7 for the text of that charge.

The Commission on Legal Technicians was appointed by the Board in November 1989. Its non-voting chair is Robin Paige Donoghue, a lawyer member of the Board of Governors. Other members of the Commission include three lawyers (Luis A. Cespedes, a sole practitioner in Sacramento; Patricia Denise Lee, Directing Attorney of the Legal Aid Society of Santa Clara County; and Regina A. Petty, a lawyer practicing with a law firm in San Diego); two judges (Hon. Mitchel Goldberg, U.S. Bankruptcy Court for the Central District of California, and Hon. Melinda Lasater, San Diego Superior Court); two non-lawyer providers of legal services (Robert Johnson, a paralegal with a law firm, and Myra Van Norman, an independent paralegal); two consumer representatives (Dr. Regene Mitchell<sup>1</sup>, President, Consumer Federation of California, and Laurel Pallock, Consumer Protection Unit, San Francisco District Attorney's Office); and Claudia Foutz, Chief Deputy Director,

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<sup>1</sup>Dr. Mitchell was appointed to the Commission in March to replace Delores Bonner, President of CalJustice, who resigned from the Commission in February.

California Department of Consumer Affairs.

At its first meeting in November 1989, the Commission determined to focus on the following issues: whether there is a "need" for a new category of non-lawyers to render legal services and, if so, the quantification of that need; the nature and extent of any "harm," actual and potential, resulting from legal services rendered by non-lawyers; and the determination of an appropriate form of regulation.

### C. Methodology

Early on the Commission decided not to attempt to provide a new definition of "the practice of law." Due to time constraints, members focused on the same four areas of law that the Public Protection Committee had addressed. The Commission determined not to attempt to "fix" things which did not appear to be "broken" (for example, although the Commission is not recommending in-court representation by independent paralegals, it advocates no change in the myriad regulations, referenced in Appendix 8, governing lay representation before administrative agencies). Similarly, the Commission specifically decided not to investigate or make recommendations in other related fields, such as real estate closings, that were not part of the Board's charge.<sup>2</sup>

The Commission discussed the advantages and feasibility of holding public hearings. Having reviewed the volumes of material accumulated by the Public Protection Committee through their public hearings and the responses to that report during the comment period, the members felt that further public hearings would be duplicative and too time consuming in light of the Commission's schedule. In addition, members received information continually from a variety of interested sources. Finally, the Commission anticipated that certain surveys would fill any gaps in the background information.

In order to attempt to quantify whether there is a need on the part of California consumers for non-lawyer provision of legal services and, if so, to determine how that need is currently being met, the Commission developed and distributed five different surveys targeting separate groups:

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<sup>2</sup> For example, the Commission reviewed language proposed by the State Bar Labor and Employment Law Section to the effect that it does not intend to restrict the longstanding practice of non-lawyers who provide counsel and advice to employers, unions and employees, and who represent them in certain administrative proceedings and arbitrations concerning the employment relationship, and agrees that it does not intend to restrict that practice.

1. California bar association sections and committees: 319 surveys were distributed to all local, minority, specialty and women's bar associations. Whenever possible, the surveys were sent directly to the chairs of sections and committees dealing with bankruptcy, immigration, landlord/tenant and family law.
2. Legal services providers: 230 surveys were distributed statewide to agencies providing direct legal services to the poor and to groups concerned with access to the delivery of legal services to the poor. The surveys were sent to the director and designated staff members of each agency and to the director and board chair of each group.
3. "Legal technicians": 183 surveys were distributed to all members of the California Association of Independent Paralegals, individuals listed in telephone books as offering paralegal or legal typing services, and individuals who advertised paralegal services in newspapers. In addition, 2,000 surveys were distributed or made available at filing windows in the Central, Northern, Southern and Eastern U.S. Bankruptcy Courts.
4. California judges: 2,414 surveys were distributed to members of the California Judges Association.
5. Persons filing in pro per: A total of 27,450 surveys in four languages (Chinese, English, Spanish and Vietnamese) were sent to municipal and superior courts in five targeted counties (Humboldt, Kern, Los Angeles, San Diego and San Francisco), the Central, Northern, Southern and Eastern U.S. Bankruptcy Courts, and the Immigration and Naturalization Service Offices of Immigration Review, to be distributed or made available to persons filing in pro per. A pre-addressed and stamped return envelope was provided with each survey.

Pro per filings in certain courts during specific time periods were also reviewed. The results of this investigation are discussed in section III-A.

The Commission also researched the existing 40 regulatory agencies within the Department of Consumer Affairs and the licensing of various occupations. Research included an analysis of the regulatory schemes, their efficacy, budgets and funding sources (see Appendix 9). The Commission also focused its attention on the State of Washington's Limited Practice Board, which oversees "Limited Practice Officers" who are authorized by Court rule to select and prepare certain legal documents incident to closing real and personal property transactions (see section X-A of this report for a further discussion of this program).

In addition, four consulting groups in the areas of bankruptcy, family law, immigration, and landlord/tenant law were formed, each chaired by a Commission member. Their charge was to respond to a "Sunrise Questionnaire" (see Exhibit 6) used by the Department of Consumer Affairs to analyze occupational regulatory legislation, and to develop a theoretical regulatory model for non-lawyer providers of legal services. The recommendations of the four consulting groups appear in section V below. (See Exhibits 7-10 for each group's responses to the questionnaire and lists of consulting group members.)

Finally, the name chosen by the Commission to describe its proposed licensees warrants some explanation. Throughout many of its meetings, the Commission used the term "legal technician" to describe a non-lawyer who provides legal services directly to the public without any lawyer supervision. However, as the details of a licensing proposal began to take shape, Commission members wanted to distinguish the new potential licensees from those who today advertise themselves as legal technicians and do not meet the requirement of proposed licensure. Today, legal technicians may be engaged in the unauthorized practice of law and, as such, may be criminally prosecuted. Tomorrow, licensed independent paralegals may engage in the limited, authorized practice of law. As the Commission envisions it, those who practice within law firms under lawyer supervision would continue to be known as paralegals, and those who contract to work for various lawyers would continue to be known as free-lance paralegals. Only "independent paralegals" would be subject to a licensure requirement.

The amount of opposition from some paralegals to this change in nomenclature surprised the Commission. For example, the California Alliance of Paralegal Associations recommended continued use of the term "legal technician." (See Appendix 10.) Nonetheless, the Commission remains supportive of the term "licensed independent paralegal," which term is also utilized in the pending Illinois bill.





### III. CONSUMERS ARE PRESENTLY ACCESSING THE LEGAL SYSTEM WITHOUT ASSISTANCE FROM LAWYERS

#### A. Results of Surveys Conducted by the Commission

##### 1. Pro Per Filings

The Commission first endeavored to determine the number of pro per filings in designated fields and courts during the period of October and November 1989. The Bankruptcy Courts reported as follows: In the Central District of California, 34.6% of the total filings were in pro per; in the Eastern District of California, 20.8%; in the Northern District of California, 14.2%; in the Southern District of California, 10.8%. (See Appendix 11.) Sufficient data for analysis were not obtainable from the immigration courts or offices.

The Commission next assessed pro per filings in the areas of family law and landlord/tenant law in five counties: Humboldt, Kern, Los Angeles, San Diego and San Francisco. James Murphy, a law clerk in the State Bar's Office of Professional Standards, traveled to the applicable courthouses and obtained the following data. Pro per family law petitioner filings in the Humboldt County Superior Court constituted 57.39% of total filings, while pro per landlord/tenant plaintiff filings in Eureka Municipal Court were 33.33% of the total. For Kern County, 62.23% of the family law petitioner pleadings were filed in pro per, while 75.71% of the landlord/tenant plaintiff filings in Bakersfield Municipal Court were in pro per. These findings belie any assumption that affordable legal help is a problem only in the large urban areas.

In Los Angeles, due to the volume, filings in only one month, October 1989, were reviewed. For family law filings, 35.34% of petitioner's filings were in pro per, and 21.18% of respondent's filings were in pro per. In Municipal Court, 21.11% of plaintiff filings in landlord/tenant were in pro per, while 45.70% of defendants' filings were in pro per.

For San Diego, at least 36.22% of family law petitioners filed in pro per and landlord/tenant pro per filings comprised 22.03% of complaints filed. Finally, in San Francisco, 60.94% of petitioner's family law filings were in pro per, and 14.70% of landlord/tenant plaintiffs filed in pro per. (See Appendix 12 for Mr. Murphy's memoranda.)

##### 2. Surveys

Exhibits 1-5 of this Report contain the results of the

five surveys conducted by the Commission: of persons filing in pro per, legal technicians, legal services providers, bar associations, and judges. The data they contain should be carefully reviewed.

It is apparent, at the least, that today's legal technicians are in demand. Those surveyed provide services in 41 of California's 58 counties. The vast majority provide family law and bankruptcy services, followed by landlord/tenant and immigration services. The vast majority bill by the case or project rather than hourly, with 68% providing some dissolution of marriage services for \$200 or less. In the bankruptcy field, 38% charge between \$100 to \$200 per project. As for landlord/tenant, 15% of technicians provide services for between \$100 and \$200; for those who charge hourly, no one charged more than \$100 an hour and most charged less than \$50 an hour. Due to the small amount of immigration data received, percentages would not be statistically reliable and could not be generalized at this time. Most technicians serve 26 to 50 clients a month, but 14% serve over 100 clients a month. (See Exhibit 1.)

Persons filing in pro per who filled out the Commission's survey form provided some interesting answers. While 64% of those who received some assistance from lawyers were happy overall with the service and 67% would use a lawyer again, of those who received assistance from a legal technician, typing service or paralegal, 76% were happy with the service and would use such a provider again. Cost was the number one factor in choosing one service over another and was identified by 69% of those responding. For those who filed in pro per, only 21% had a monthly income exceeding \$2000. For those who received assistance from a lawyer, 30% paid no fee, but 8% paid over \$750. For those using another kind of provider, 42% paid between \$100 and \$250, and 4% paid over \$750. (See Exhibit 2.)

Interestingly, 48% of the legal services providers made referrals to non-lawyers. Referrals generally resulted where a service was not within the provider's case guidelines (41%), the program lacked resources (31%), or the applicant was outside the income guidelines (14%), which for most agencies constituted 125% of the federal poverty level. Twenty-eight percent of respondents had a one week or longer waiting period for an initial client interview. (See Exhibit 3.)

Bar associations which responded to the Commission's survey, while generally not supportive of the concept of licensed independent paralegals absent a requirement of lawyer supervision, cited ranges for attorneys' fees in their area which generally exceeded those quoted by legal technicians. Due to the small number of surveys returned, however,

percentages would not be statistically reliable. (See Exhibit 4.)

Finally, of judges surveyed, 49% felt there was need for pro per assistance in landlord/tenant work, 43% thought there was such a need in family law, and 11% saw such a need in bankruptcy. Judges were fairly evenly split as to whether independent paralegals should be licensed but, of those who supported licensure, the recommended areas cited were landlord/tenant (72%), family law (67%), probate (28%) and bankruptcy (27%). (See Exhibit 5.)

## **B. Results of Other Relevant Surveys**

Others have commented on the need for more affordable legal assistance. For example, the Executive Summary of the Draft Report of the Judicial Council Advisory Committee on Gender Bias in the Courts at pages 19-20 notes that "representation in family law is grossly inadequate to serve the needs of the citizenry" and urges "the State Bar to recognize that there is a crisis in representation in family law matters and to create a task force to focus on solutions to this problem."

A research study conducted by the University of California at Irvine recently concluded that the Legal Aid Society of Orange County turned away 6,000 people in 1987 - only six percent of whom were able to afford, and thus retain, a private attorney. The study found that many Orange County attorneys charged \$175 to \$200 an hour, and that the vast majority of people turned away by Legal Aid could not even afford \$135 an hour, charged by some lawyers. (See Appendix 13.)

The American Bar Association Consortium on Legal Services and the Public issued a 1989 Nationwide Pilot Assessment of the Unmet Legal Needs of the Poor and of the Public Generally, wherein almost 40% of the nationwide sample reported that they had a civil legal problem for which they did not have legal assistance in the past year. (See Appendix 14.) Other state bar associations have reached similar conclusions; see, for example, the Illinois Legal Needs Study, culminating in an action plan adopted in 1989 (Appendix 15); a 1987 Report on Legal Needs of the Poor in Maryland (Appendix 16); and a 1989 New York Legal Needs Study, which initially recommended mandatory pro bono services by lawyers (Appendix 17).

In light of these various reports, the findings of the Commission's surveys should come as no surprise.



#### IV. THE UNREGULATED PRACTICE OF LAW HAS HARMED THE PUBLIC

Throughout the course of its work, the Commission received some mail and phone calls from judges, lawyers and clients describing actual or perceived harm resulting from the services of legal technicians. These reports were anecdotal; one such letter and an article are attached as Appendix 18 as samples of the type of information received. In addition, the Commission reviewed the comment received by the Public Protection Committee and the State Bar Board of Governors, which detailed additional anecdotes and exemplars of inadequate legal technician service. The Public Protection Committee itself found that currently "there is significant potential for public harm caused by the activities of legal technicians." (See Appendix 6, page 7.)

The surveys conducted by the Commission provide further evidence of harm. Nine percent of the legal services providers who made referrals to non-lawyers became aware of resulting harm (although 79% were unaware of such harm.) Examples of harm cited included fraud, inadequate advice, boilerplate orders, and missed issues, defenses and remedies. (See Exhibit 3.)

Bar associations and judges also cited instances of harm, including improper support waivers or claims; missed assets, false claims of possession, inadequate immigration advice, lack of follow-through, and missed exemptions. Some pro per respondents indicated that they were misled by some legal technicians into believing they were lawyers. (See Exhibits 2, 4 and 5.)

The Commission believes that training, experience, examinations, and a client security fund will greatly relieve the harm currently experienced from some legal technicians. An "above-ground" licensed profession, coupled with stronger enforcement mechanisms for those who continue to practice without licensure, will provide necessary legal assistance and discourage consumers from using unscrupulous providers.



**V. CONSULTING GROUPS CONCLUDED THAT, WITH APPROPRIATE SAFEGUARDS, INDEPENDENT PARALEGALS CAN ASSIST WITH DESIGNATED TASKS IN CERTAIN FIELDS OF LAW**

Summaries of the consulting group reports are set forth below. They do not necessarily represent the opinions of the Commission members.

**A. Report of Bankruptcy Consulting Group<sup>3</sup>**

The bankruptcy consulting group was comprised of four sub-groups, each representing one of the four Federal districts in California. Twenty-three individuals were involved. Each sub-group responded independently to the Sunrise Questionnaire. The reports of the four bankruptcy consulting groups showed many striking similarities. All agreed that the present Unauthorized Practice of Law statutes do not effectively regulate the practice and that harm has occurred to the public's health, safety and welfare. The groups agreed that licensure of independent paralegals will give further choices to the consumer. Uncertainty exists as to the impact licensure will have on regulating unlicensed individuals who prey on the needs of people in financial distress. Hopefully, strong legislation would be implemented to discourage the practice of law except by either attorneys or licensed independent paralegals.

The consensus of the group was that proper education, experience and testing was essential to licensure. No dispute exists that understanding bankruptcy is complex and necessitates not only knowledge of proper completion of forms, but a working knowledge of tax, state law requirements regarding exemptions, and a degree of budget management to assist the debtor in determining whether to proceed in filing a petition under Chapter 7 or Chapter 13 of the Federal bankruptcy code.

The tasks targeted for independent paralegals are limited to Chapter 7 and Chapter 13 consumer bankruptcy cases only. They include:

1. Client interviews to determine the necessity of bankruptcy and/or alternate methodology to resolve financial stress, including but not limited to issue spotting of possible problem areas under the bankruptcy code, or negotiating with creditors as appropriate.

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<sup>3</sup> See Exhibit 7 for the full report and a list of consulting group members.

2. If filing is justified, determination of filing under Chapter 7 or Chapter 13 [11 U.S.C. 707 (b)].
3. Completion of all necessary and relevant documents for proper filing and service upon appropriate parties.
4. Advising the consumer of anticipated court procedures, inquiries that will be conducted at the "341 hearings," and any other proceedings that may be filed.
5. Referring the consumer to an attorney when complexity exists.

The bankruptcy independent paralegal must have knowledge in the following areas, all of which dramatically affect consumer debts:

1. Bankruptcy Code, Bankruptcy Rules, and local bankruptcy rules and procedures.
2. Foreclosure law and landlord/tenant law as they may relate to bankruptcy issues, preferential transfers, fraud as defined by the Code, state exemptions, and methodology for retention or disposition of assets.
3. Interview techniques, issue spotting, understanding tax issues affected by bankruptcy, income and expense statements, and budgeting.

#### B. Report of Family Law Consulting Group<sup>4</sup>

The family law consulting group supported the concept of independent paralegals providing some level of legal services to the public, and saw the development of a regulatory system as appropriate and necessary to expand access to affordable legal services for the public.

The group recognized that independent paralegals currently function under a variety of titles and that the scope of services provided varies widely. The group also recognized that independent paralegals indeed practice law and that the creation of a regulatory system would formally recognize this fact. Members hoped that creation and implementation of a full regulatory system would provide the public with a choice between the "fly-by-night"

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<sup>4</sup> See Exhibit 8 for the full report and a list of consulting group members.



services and licensed independent paralegals; would afford the public minimum standards of skill, knowledge and experience; and would give members of the public viable options for recourse in the event of harm.

The tasks that are performed by independent paralegals in the family law area include:

1. initial client interviews;
2. investigation and information gathering;
3. filling out and typing all forms;
4. filing forms;
5. service of process; and
6. negotiations and preparation of marital settlement agreements.

There should be no in-court representation by independent paralegals.

The group agreed that these tasks were more appropriate for the independent paralegal in "uncontested" situations (where neither party is represented by a lawyer). However, in contested situations (where the other party is represented by a lawyer), concerns were raised regarding the role of the independent paralegal in negotiating with the opposing attorney.

Concerns were also raised by members of the group regarding the ability of independent paralegals to handle cases involving complex property interests (e.g., pensions, family residence, other retirement benefits, tax implications of property division) and whether a training program could be developed to guarantee sufficient knowledge to address these issues.

The group emphasized that the regulatory agency should take these concerns into consideration in developing the licensing examination and the experience and training requirements for licensing.

Basic areas designated for training include:

1. civil procedure, including court procedure;
2. family law act provisions;
3. family law rules;
4. local court rules;

5. ethics;
6. basic legal research and writing.

Additional areas for training in complex issues include pensions, social security, retirement benefits, and family residence. Finally, the areas of tax law, real estate and immigration should be included to the extent that they relate to family law.

The consulting group agrees that the regulatory system should be administered by the Department of Consumer Affairs and should include the following components: educational requirements; experience requirements; a licensing exam, required for all applicants, including a practical section testing the paralegal's ability to prepare the proper forms and provide the correct advice to clients; continuing legal education; financial responsibility of some sort short of required malpractice coverage (since lawyers are not required to have coverage); a code of ethics or code of professional conduct; and stronger enforcement roles, perhaps for the district attorney's office or the regulatory body.

Finally, although the group recognizes that training costs and licensing fees will be required under the system discussed, the group cautions that the system not be overly cumbersome and/or cost-prohibitive, resulting in increased costs to the independent paralegal and increased fees to the public.

### **C. Report of Landlord/Tenant Consulting Group<sup>5</sup>**

The landlord/tenant consulting group consisted of a statewide group and a San Diego local group. Each was composed of attorneys for landlords and tenants, including legal services counsel, paralegals and legal technicians, staff for paralegal educational programs, judges, a professor, and clients, including both a landlord and a tenant. The local group with this cross section representation initially reviewed the subject matter and proposed answers to the Department of Consumer Affairs Sunrise Questionnaire. This response was synopsised, reviewed and modified by the statewide group.

The practice of law in the landlord/tenant area is not as simple as many believe. Complexities are easily missed by those untrained or unfamiliar with this specialized area. The ramifications of incompetent practice may be devastating to those involved, although there generally is not the loss of large dollar amounts; rather, people lose the roof over their heads with an ever

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<sup>5</sup> See Exhibit 9 for the full report and a list of consulting group members.

decreasing chance of finding another.

Independent paralegals presently prepare complaints and answers after some form of interview with the client. Usually these documents are filed on behalf of the client. There is also a growing problem associated with bankruptcies filed which are utilized for delay but also ruin any chance of establishing a positive credit history.

The abuses at present far outshadow the benefits derived from those who are competent practitioners. Although they are practicing law without a license, there is a group of legal technicians who do provide a service to people who believe they cannot afford an attorney. The goal is to license those who are competent to perform the services. Elimination of the irresponsible, untrained "practitioner" is not a realistic expectation unless there is a new mechanism for enforcement which is appropriately funded.

The tasks targeted for independent paralegals are limited to residential cases only and include:

1. Interviewing the client to obtain the full factual background of the case;
2. Deciding which legal papers need to be filed;
3. Completing the complaint, answer, cross-complaint, or cross-answer only, including issue spotting and identifying causes of action and/or defenses;
4. Filing necessary moving and/or responding papers;
5. Advising the client of court procedures, preparing evidence lists, and reviewing theories of the case as presented in all moving papers;
6. Referring the case to an attorney when needed.

Basic knowledge would require the following:

1. Civil procedure;
2. The substantive area of landlord/tenant law, as well as aspects of real estate law;
3. Related tort, contract, and real property subjects;
4. Training in issue spotting;
5. Constitutional law and relevant civil rights statutes as they apply to landlord/tenant and real

estate issues;

6. Rules of Evidence;
7. Interview techniques;
8. Preparation of complaint and answer, including knowledge of tactical considerations if the case goes to trial;
9. Ethical standards (including standards for litigation).

"Grandparenting," as it pertains to exempting people from compliance with any of the entry standards, is not justified. In some instances, experience could take the place of educational requirements but should not take the place of any testing requirements.

Minimum education and financial responsibility are necessary. Testing should be mandatory for everyone, covering both the general legal concepts and procedures as well as the specific substantive law.

The hope of the consulting group is to distinguish the licensed professional from the incompetent "fly-by-night" services for the benefit of the consumer as well as the paralegal profession. The licensing standards should protect the public and provide them with a less expensive option when they wish to represent themselves in court and/or cannot afford the services of an attorney.

Other alternatives include mediation services, a procedure to notify tenants of responsible resources available, restriction of the use of court records for client lists, and establishment of a hotline for basic information.

The consumer in this area is extremely vulnerable. This consumer may not be viewed with the same degree of concern and respect as those with better financial resources and, therefore, political clout. Advocates who fail to recognize that there are drawbacks to establishing a two-tiered system of representation may be more concerned with money than with service to the client. Competent assistance by an independent paralegal is better than no assistance, but incompetent "assistance" is disastrous and definitely worse than no assistance. For these people the loss is more than money and should not be treated lightly.

Finally, it is difficult to delineate the true function of the independent paralegal. Is this person a professional and officer of the court? Is this person's function to meet the immediate needs of the client, which may equate to delay, no matter what the

cost, long-term ramifications, or ethical considerations?

Caution needs to be exercised in assuming that licensing is a panacea. The group believes that education, testing, and financial responsibility are extremely important and need to be enforced. Many of the group believe that licensing in reality is not workable and would open a Pandora's box, making the less fortunate its victims. Although a requirement of attorney supervision is not a panacea either, many of the group believe that this is a better approach, analogous to physicians assistants and nurse practitioners.

**D. Report of Immigration Consulting Group<sup>6</sup>**

At present there is widespread documented harm done to highly vulnerable consumers by unaccredited private immigration consulting services. However, Federal statutes and regulations may currently preempt and preclude state regulation of independent paralegals performing services for a fee in this field. The following options are available: (1) recommend no action and have Federal authorities and district attorneys continue current law enforcement practices, together with civil actions under state law (see Business & Professions Code section 22446.5); (2) simply outlaw the practice by repealing Business and Professions Code sections 22440 to 22446.5 relative to "immigration consultants," and define such consulting as the unauthorized practice of law; (3) develop in concert with appropriate Federal bodies a comprehensive regulatory scheme by amending the Code of Federal Regulations (8 CFR section 1.1 and 8 CFR section 292) relative to lawful appearances before the Immigration and Naturalization Service and Board of Immigration Appeals (BIA); or (4) some combination of the first three suggestions.

**E. Special Recommendations of Commission Regarding Field of Immigration Law**

The Commission recommends that options two and three above be pursued by the Board of Governors to provide meaningful reform in this complex area of law. In addition, the Commission strongly recommends that the Board of Immigration Appeals assist in the development of objective standards for accreditation as the basis for any state licensing scheme. In the interim, the BIA should be encouraged to permit existing accredited nonprofit religious, charitable, social service or similar organizations to increase the amount of their "nominal charges" for services in order to meet the growing and unmet demands for competent and quality low-cost immigration assistance.

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<sup>6</sup> See Exhibit 10 for the full report and a list of consulting group members.

**F. Identification of Other Potential Fields of Law**

The Commission believes that, if licensure is approved, other fields of law beyond the four studied by the Commission should be considered for licensure. Probate would appear to be particularly worthy of review. Several legal technicians surveyed noted that they provide services in probate, including drafting wills and trusts. Of the judges surveyed who supported licensure, 28 percent believed that probate services should be licensed. "Estate problems" were also cited by those filing in pro per. Other areas which may be worthy of study include government benefits, small business incorporation, and adoptions/guardianships/name changes (if not subsumed within family law licensure). (See Exhibits 1, 2 and 5.)

**VI. AS THE ARM OF GOVERNMENT CHARGED WITH REGULATING THE PRACTICE OF LAW, THE SUPREME COURT SHOULD OVERSEE INDEPENDENT PARALEGALS, PREFERABLY BY DELEGATION TO THE DEPARTMENT OF CONSUMER AFFAIRS**

**A. Discussion of Court Authority**

The Supreme Court of California has long recognized and exercised its exclusive and inherent power to regulate the practice of law. Soon after adoption of the State Bar Act in 1927, the Court upheld the constitutionality of that legislative action only because the Act provided that the ultimate decision as to who may be admitted to practice law or who may be disbarred or suspended from such practice lies exclusively with the Supreme Court. See State Bar of California v. Superior Court (1929) 207 Cal 323 and In re Disbarment of Shattuck (1929) 208 Cal Rpts 6. In recent times, an effort by the Legislature to open the practice of law to non-lawyers was ruled unconstitutional as violating Article III, Section 3, the separation of powers provision of the California Constitution. See Merco Construction Engineers, Inc., v. Municipal Court (1978) 21 Cal 3rd 724 (attempt by Legislature to permit corporations to be represented in municipal court proceedings by non-lawyers). Similarly, a legislative enactment that purported to give the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before that Board was declared a violation of the separation of powers provision. See Hustedt v. Workers' Compensation Appeals Board (1981) 30 Cal 3rd 329.

Many of the services that independent paralegals would perform pursuant to the Commission's proposal would constitute the practice of law. For this reason, authority to perform such acts should be granted by the Supreme Court if constitutional problems are to be avoided. Similarly, legislative authority to establish administrative agencies and provide for their funding should be recognized as well, as the executive authority that must be exercised if such an agency is to be part of the Department of Consumer Affairs. (The State Bar as a constitutional agency pursuant to Article VI, Section 9 of the California Constitution, is a judicial branch agency. As such, it is not subject to executive branch control and powers granted to it by the Legislature are subject to the Supreme Court's ultimate control.)

Because the Commission believes that independent paralegals should not be regulated by the State Bar, it suggests that there be a program established by the Legislature in the Department of Consumer Affairs, subject, however, to oversight by the Supreme Court, which must have ultimate authority to approve or disapprove any regulations that authorize independent paralegals to perform services for the public.

All three branches of government must operate in concert to achieve regulation, to wit:

1. Judicial: Supreme Court delegates regulation to the Department of Consumer Affairs;
2. Legislature: passes enabling legislation;
3. Executive: implements the program.

**B. Role of the State Bar**

The Commission recommends that the State Bar Board of Governors propose that the Supreme Court adopt a Rule of Court authorizing independent paralegals to engage in the practice of law in specified areas, and that the Board of Governors then sponsor legislation establishing a regulatory program for independent paralegals to be administered by the Director of the Department of Consumer Affairs, as proposed in this report.

**C. Discussion of Model Regulation Within Department of Consumer Affairs**

The Commission recommends that independent paralegals be regulated under the direct supervision and administration of the Director of the Department of Consumer Affairs. The Director should appoint a civil service administrator at the "career executive" level ("Administrator"). Regulations should be adopted by the Director, subject to Supreme Court approval. The Director's administrative powers should include:

1. contracting for consultants and experts for exam preparation, review and enforcement;
2. employing personnel;
3. developing and administering examinations;
4. implementing licensing standards;
5. initiating and enforcing the discipline system;
6. establishing and administering the client security fund.

A Standards of Practice and Technical Advisory Committee ("Advisory Committee") should be established, consisting of seven members, to advise the Director. The appointments to the Advisory Committee should be made as follows:



1. The California Supreme Court should appoint three members: two licensed (post-licensure) independent paralegals and one active member of the State Bar;
2. the Governor should appoint two public members, one of whom must be a consumer activist;
3. the President of the Senate should appoint one public member;
4. the Speaker of the Assembly should appoint one public member.

At no time should there be more than two independent paralegals and one attorney on the Advisory Committee. The term for the Advisory Committee should be staggered. The initial independent paralegal positions should be filled by persons who would meet the proposed qualifications for licensing. The licensee population is defined as Independent Paralegals.

The duties of the Advisory Committee should include recommending regulations; recommending standards of practice and disciplinary guidelines; and providing technical consultation to the Director concerning examination, licensure, and disciplinary matters.

Licensing requirements should consist of submission of fingerprints and attainment of minimum levels of education and/or experience. Applicants should be at least 18 years of age. The level of education/experience will be recommended by the Advisory Committee. Applicants should take and pass both a general and a specialty exam. Renewal should be subject to completing annual continuing education. Standards for denial of licensure and discipline are found in section VIII of this report. Complaints and investigations should be handled by the Department's centralized services. A client security fund should be established to provide compensation to victims of paralegal fraud (thefts).



**VII. REGULATION OF INDEPENDENT PARALEGALS SHOULD PROVIDE PROTECTION AGAINST UNPROFESSIONAL, INCOMPETENT, OR DISHONEST CONDUCT**

**A. Evidence of Initial and Continuing Competence**

The Commission, in an effort to make certain that its recommendations assure initial and continuing competence, solicited the opinions of 206 paralegal educators and other parties who had expressed an interest in the subject. All known paralegal schools in the State of California were solicited; 76 replies were received and considered by the Commission in making the recommendations that follow. The Commission also heard a presentation by the Department of Consumer Affairs on examination formulation and administration. The Commission looked in depth at the "Limited Practice Officer" program in place in the State of Washington (see section XI of this report). After considering all of the information available, the Commission makes the following recommendations:

**1. Examinations**

The Commission recommends that every person wishing to practice as an independent paralegal be required to take and pass a written examination.

The examination should consist of two parts: a general knowledge examination, including questions common to all fields and an ethics section, and an examination in the approved specialty area(s) of practice. In order to be licensed, both the general examination and at least one specialty examination must be taken and passed within a two-year period.

Once a license is obtained, additional specialty examinations may be taken without retaking the general examination.

The Department of Consumer Affairs should be authorized to formulate a testing plan and an examination after conducting an occupational analysis. The products from the occupational analysis will consist of a list of tasks performed by the practitioner and the knowledge, skills and abilities that are required to carry out the tasks.

**2. Educational and/or Experience Requirements**

An examinee should be required to present evidence that he or she has fulfilled an appropriate combination of education and/or experience, to be determined by the Director upon the advice of the Advisory Committee, in

pursuit of the policy goals of maximizing consumer protection without creating artificial barriers to entry to the profession. However, persons who have practiced in the field for two years or more, as of the date of the implementation of the Act, should have the right to take the examination without additional entry requirements.

Any experience that was gained prior to the effective date of the Act, which could be deemed the unauthorized practice of law, should constitute qualifying experience and should not be used to deny a license, absent some other disqualifying factor.

After implementation of the Act, applicants for licensure should be high school graduates or hold a valid GED certificate as a minimal requirement. If a paralegal certificate is considered as qualifying education, it should represent at least 30 continuous semester hours from an institution approved by the Director. If only experience is considered, no less than two years of relevant verifiable legal experience should be required prior to examination. The Director should have the authority to grant exemptions during the first two years of implementation, consistent with the goals of the Commission.

### 3. Continuing Legal Education

An independent paralegal should be required to obtain at least ten hours of continuing legal education each year in order to obtain renewal of his or her license.

## B. Code of Professional Conduct and Related Statutory Changes

The Commission believes that independent paralegals should adhere to rules of professional conduct. We propose the following:

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<sup>7</sup> The Commission raised this issue with the State Bar Committee on Professional Responsibility and Conduct (COPRAC) and requested assistance in developing a proposal. COPRAC appointed a subcommittee, consisting of members Joseph Bell and Leslie Minkus and Karen Betzner, the State Bar's Director of the Office of Professional Competence, Planning and Development, to work with the Commission. Ms. Betzner submitted an analysis of those attorney rules which appeared to be either clearly applicable or inapplicable to legal technicians, as well as those rules which fell into a "gray area." The Commission reviewed that analysis and met with Ms. Betzner.

The Director, upon the recommendation of the Advisory Committee, should submit for Supreme Court approval a code of professional conduct for licensed independent paralegals. Assuming that the Court does not authorize court appearances by independent paralegals, the Commission identifies the following issues which should be addressed in such a code. Parallel references to California Rules of Professional Conduct governing lawyer conduct are noted in parentheses.

The Code should address acting in a competent matter (Rule 3-110); business transactions with a client (Rule 3-300); conflicts of interest (Rules 3-310 and 3-320); communication with a client (Rules 3-500 and 3-510); returning client files (Rule 3-700(D)(1); trust accounts (Rule 4-100); the duty of confidentiality (Business and Professions Code section 6068(e); written fee agreements (Business and Professions Code sections 6147 and 6148); agreements restricting right to practice (Rule 1-500), communication with a represented party (Rule 2-100); objectives of employment (Rule 3-200); advising the violation of law (Rule 3-210); limiting liability to the client (Rule 3-400); threatening criminal, administrative or disciplinary action (Rule 5-100); suppression of evidence (Rule 5-220); general duties (Business and Professions Code section 6068(a), (b), (c), (f), (g) and (h); assisting another in violating the rules (Rule 1-120); false statement regarding licensure (Rule 1-200); unauthorized practice (Rule 1-300); splitting fees (Rule 2-200); sale of practice (Rule 2-300); organization as client (Rule 3-600); payment of personal or business expenses (Rule 4-210); gifts from clients (Rule 4-400); advertising (Rule 1-400); fees (Rules 3-700(D)(2), 4-200 and 4-100(B) (4); and withdrawal from employment (Rule 3-700).

In addition, the Court should be requested to consider rules of court or legislation expanding the attorney-client and work product privileges to cover licensed independent paralegals, regulating independent paralegals who operate as either paralegals or lawyer referral services, prohibiting "running and capping," governing referral fees, and addressing profit sharing with lawyers. Fee disputes should be governed by the mediation/arbitration systems referred to in section VIII of this report.

Codes of ethics and professional responsibility of the National Association of Legal Assistants, Inc. ("NALA") and the National Federation of Paralegal Associations ("NFPA") currently exist (see Appendix 19). Many states have attorney rules of professional conduct which govern relations with and work by paralegals. However, the Commission believes that independent paralegals who will provide legal services directly to the public must have a specific code, the violation of which can subject them to discipline. The members further believe that it is appropriate for the Supreme Court of California to approve such rules.

**C. Evidence of Fiscal Responsibility**

The Commission reviewed various bonding and insurance requirements (e.g., for Washington Limited Practice Officers) and the Client Security Fund of the State Bar. The Commission concluded that, due to issues of expense and availability of bonding and insurance, licensees should instead be required to provide some financial security in the form of a client security fund (see Appendix 20). The initial annual fee should be \$25.00 per licensee. The Advisory Committee should develop guidelines for disbursement, including an appropriate cap to be placed on each claim paid by the fund.

**VIII. REGULATION OF INDEPENDENT PARALEGALS SHOULD INCLUDE  
A RESPONSIBLE SYSTEM OF PROFESSIONAL DISCIPLINE**

Any system for regulating independent paralegals must include provisions for professional discipline and should include provisions for mediation and arbitration. To be effective, a disciplinary system should provide for a range of disciplinary penalties and for speedy resolution of complaints where possible.

**A. Citation and Fine Authority**

The ability to cite and fine for less severe violations should be one component of a disciplinary system. This type of penalty provides a speedy yet fair alternative to the proceedings set out in the Administrative Procedure Act (Government Code sections 11500 et seq.). It can be used efficiently to impose discipline in cases involving less severe violations, or violations which are of such a nature that suspension or revocation of the license is not really warranted. Business and Professions Code section 125.9 contains one possible model. Among other things, that section sets a maximum possible fine and provides for a hearing where a licensee contests the citation.

**B. Proceedings under the Administrative Procedure Act**

Disciplinary action against independent paralegals should be taken in accordance with the Administrative Procedure Act (Government Code sections 11500 et seq.). That act prescribes a method by which administrative agencies can conduct adjudicatory hearings. It is a complete statutory scheme which provides for notice and opportunity to be heard prior to revoking, suspending, limiting or placing conditions on a license, or denying a license on grounds of fitness. Most licensing laws contain an article describing the grounds for denial or discipline which also includes a section that provides as follows: "The proceedings conducted under this article shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Director shall have all the powers granted therein."

The Director shall have the authority to impose, as a condition of probation or reinstatement, the recovery of all investigation and prosecution costs incurred by the agency up to the date of hearing in accordance with applicable Business and Professions Code provisions.

### C. Grounds for Denial or Discipline

Generally, the causes which would warrant denial of a license will be the same as those which warrant license discipline. Denial or discipline of a license is usually based upon acts of unprofessional conduct, examples of which are usually contained in the statute and sometimes also in regulations. The application form should include questions requiring disclosure of all convictions (other than infractions), and any license discipline. Voluntary resignation from the practice of law while under investigation or license revocation shall be grounds for license denial. The following is draft language for a statutory provision on denial or discipline of a license for independent paralegals:

The Administrator may refuse to issue a license or may suspend or revoke a license or place a licensee on probation under various terms and conditions if the licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Negligence or incompetence in the practice of an independent paralegal.

(b) Conviction of a crime substantially related to the qualifications, functions and duties of an independent paralegal. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section. Any action which the director is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) Fraud or misrepresentation in obtaining a license under this chapter.

(d) Commission of any dishonest, corrupt or fraudulent act which is substantially related to the qualifications, functions or duties of the license.

(e) Violation of any of the provisions of this chapter or of any regulation adopted by the Administrator thereunder.

(f) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a customer or prospective customer in confidence.

(g) Performing or holding one's self out as being able to perform any professional services beyond the scope of the license authorized by this chapter.

(h) Performing or holding one's self out as able to perform



professional services beyond one's field or fields of competence as established by the person's education, training and/or experience.

(i) Suspension, revocation or other disciplinary action imposed on any license issued by another state or territory on grounds which would be the basis of discipline in this state, or on any other license, including without limitation a license to practice law.

(j) Advertising in a manner which is false, misleading or deceptive.

(k) Any action or conduct which would have warranted the denial of the license.

(l) Prior to the commencement of services, failing to disclose to the customer or prospective customer the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(m) Using any controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4211) of Chapter 9 of the Business and Professions Code, or alcoholic beverages or other intoxicating substances, to an extent or in a manner dangerous or injurious to himself or herself, to any other person, or to the public; or to the extent that such use impairs his or her ability to conduct with safety and competence the practice authorized by the license.

(n) Misrepresentation as to the type or status of license held by the person.

(o) Failure to return all customer files and documents within 30 days after a request by the customer.

(p) Failure to arbitrate a dispute with a customer or to comply with an arbitrator's decision in a matter arising out of the duties or functions of the license.

#### **D. Mediation**

When a regulatory agency disciplines a licensee, that act of discipline is one method by which the agency provides protection for consumers. However, disciplinary action does not usually help the consumer get any financial satisfaction. One way to address this situation is to give the Director specific authority informally to adjust or mediate complaints. This type of informal complaint resolution can be very beneficial to consumers. One model for complaint mediation which could be used for independent paralegals is set forth in Business and Professions Code sections 9860 through 9863. Those provisions:

1. Require the director to establish procedures for accepting complaints from the public and to advise a complainant if the complaint does not state a

violation;

2. Require the director to notify the licensee of the complaint, give the licensee a reasonable opportunity to reply to the complaint, and make a summary investigation of the facts; and
3. Authorize the director to suggest measures to compensate the complainant for the damages suffered as a result of the alleged violation and to give due consideration to whether the measures were performed in any subsequent disciplinary proceedings.

**E. Arbitration**

Another method by which consumers might obtain financial satisfaction quickly and at relatively little expense is by arbitration of civil disputes upon their demand. The State Bar Act contains provisions for arbitration of fee disputes between attorneys and clients. A licensing act for paralegals should adapt these provisions (Business and Professions Code sections 6200-6206) to provide for arbitration of civil disputes, including mandatory arbitration of fee disputes on request of the client.

## IX. ENFORCEMENT OF THE UNAUTHORIZED PRACTICE OF LAW SHOULD BE IMPROVED

The enforcement of the unauthorized practice of law currently rests with local law enforcement agencies. As a practical matter, due to the nature of these prosecutions, most police agencies do not investigate. Investigation is left to the prosecution agencies themselves.

District Attorney and City Attorney offices are not adequately funded to investigate and prosecute individuals involved in unlicensed activity in the state. Resources are only allocated to prosecute a few cases where substantial consumer harm is demonstrated.

Since this is basically a local funding and prioritization issue, the establishment of a professional license for independent paralegals will not necessarily improve this situation. However, as the competent independent paralegals are recognized, those who are not licensed will be patronized less, reducing the potential for harm. The cost of enforcement cannot be realistically borne by the members of this new profession.

Attempts to change the definition of the practice of law will do more harm than good. At the present time, statutory and decisional law adequately define the unlawful practice of law. Enforcement under our statutory scheme is feasible, but is lacking due to financial limitations. Changes to the present statutory definitions will greatly compromise current enforcement efforts against unscrupulous and "fly-by-night" operators.

Implementation of civil remedies against those who do practice without a license is one alternative. Initially, a prohibition against collecting, through the court, any money owed to a non-licensed independent paralegal should have some impact. In addition, the establishment of statutory causes of action against unlicensed independent paralegals with some provision for enhanced damages may have some success. The proposed licensing process identifies areas within the practice of law where either an attorney or a licensed independent paralegal may provide legal services. The Commission recommends the following statutory language:

### A. Prohibited Acts

1. It is unlawful for any person to perform, attempt to perform, or contract or agree to perform, any service covered by this chapter unless that person holds a valid license under this chapter at the time those services are performed or are attempted to be performed, and at the time any contract or agreement to perform those

services is entered into. (See Business & Professions Code section 17200.)

2. It is unlawful for any person to advertise his or her availability to perform services covered by this chapter unless that person holds a valid license under this chapter at the time the advertisement is disseminated.
  - a. Any advertisement to perform a service covered by this chapter which is disseminated by a person who does not hold a valid license under this chapter at the time the advertisement is disseminated is false and misleading.
  - b. "Advertise" as used in this chapter includes, but is not limited to, disseminating or issuing any card, sign, device or statement by any means to any person, or disseminating, causing, permitting or allowing any card, sign, device or statement in any building or vehicle, or in any magazine, newspaper, or airwave transmission, or in any directory under a listing for services covered by this chapter. "Statement" as used in this paragraph includes both oral and written statements. (See Business & Professions Code section 17200 et seq.)
3. It is unlawful for any person to sue on a contract or agreement for services rendered which are covered by this chapter unless that person holds a valid license under this chapter at all times during the performance of that service or contract and at the time the person brings the action.

**B. Requirements for Bringing Action on Contract or Agreement**

No person who provides services covered by this chapter may bring or maintain any action, or recover in law or equity in any action, in any court of this State for the collection of compensation for the performance of any service or contract for which a license is required by this chapter unless that person alleges and proves that he or she held a valid license under this chapter at all times during the performance of that service or contract and at the time that person brings the action.

Proof of licensure required by this section shall be made by production of a verified certificate of licensure from the Committee which establishes that the person bringing the action was duly licensed at all times as required by this section.

**C. Misdemeanor Provisions**

1. It is a misdemeanor for any person to advertise in violation of section [A.2.]. A violation of that section is punishable by a fine of not more than \$5000, or by imprisonment in the county jail for not more than six months, or by both such a fine and by imprisonment. Payment of restitution to a client shall take precedence over payment of a fine. A second or subsequent violation is punishable as a felony.

2. It is a misdemeanor for any person to perform services covered by this chapter, or to contract or to agree to provide such services, unless that person holds a valid license under this chapter at the time those services are performed and at the time such contract or agreement is entered into. A violation of this section is punishable by a fine of not more than \$5000, or by imprisonment in county jail for not more than six months, or by both such a fine and imprisonment. Payment of restitution to a client shall take precedence over payment of a fine. A second or subsequent violation is punishable as a felony.

D. Citations and Fines

1. The Director is authorized to issue citations containing orders of abatement and civil penalties against any person who is performing, attempting to perform, contracting or agreeing to perform, or advertising the performance of, any services covered by this chapter in this state without holding a valid license under this chapter.
2. If the Director has probable cause to believe that any person is performing, attempting to perform, contracting or agreeing to perform, or advertising the performance of, any services covered by this chapter in this state without holding a valid license under this chapter, the Director shall issue a citation to that person.
  - a. Probable cause shall be established upon investigation or inspection, either on complaint or otherwise.
  - b. The citation shall be in writing and shall describe with particularity the basis of the citation. The citation shall contain an order of abatement and an assessment of a civil penalty of not more than \$5000.
  - c. The Advisory Committee shall adopt regulations covering the assessment of civil penalties which shall give due consideration to the gravity of the violation, and any history of any previous violations. The Advisory Committee shall recommend to the Director procedures for issuance of citations under this section.
  - d. The sanctions authorized under this section shall be separate from, and in addition to, all other remedies provided by law.
3. The Director shall adopt rules for implementing this provision including but not limited to the following: service of citation, time for issuance of citation, administrative appeal of citation, finality of citation, time period for notice of intent to appeal, hearing on citation, issuance of decision; procedure, judgment for amount of civil penalty, order for compliance with order of abatement. Appeal of the final decision shall be governed by the Administrative Procedures Act.

4. Notwithstanding any other provision of law, the Director may waive part of the civil penalty if the person against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a license under this chapter. Any outstanding injury to the public shall be settled satisfactorily prior to issuance of a license.

E. Injunction

1. The Director may apply to the Superior Court in the county where any person performs, attempts to perform, contracts or agrees to perform, or advertises the performance of, any services in violation of this chapter or any regulation promulgated pursuant to this chapter, and the court shall issue an injunction or other appropriate order restraining such conduct.
2. The proceedings under this section shall be governed by Chapter 3 (commencing with section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the Director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable injury.
3. Upon issuing an injunction or other order pursuant to this section, the court shall award the Director any costs of investigation incurred for the purpose of applying for the injunction or other appropriate restraining order, from the time the investigation is commenced until the date of the hearing.

F. Civil action

1. Any consumer who suffers any damage as a result of the performance or attempted performance of services covered by this chapter by any person who does not hold a valid license under this chapter at the time those services are performed or are attempted to be performed may bring an action against that person and may recover or obtain any one or more of the following:
  - a. Actual damages plus \$300, and if the court finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the person's conduct, and that an additional award is appropriate, an additional award of up to three times actual damages;
  - b. An order enjoining the person from performing services covered by this chapter without holding a valid license under this chapter;
  - c. Restitution of money, property, papers or any other item of value;
  - d. Any other relief which the court deems proper.
2. The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section. The court may award reasonable attorney's fees to a prevailing defendant upon a finding by the

court that the plaintiff's prosecution of the action was not in good faith.

3. Any other party who, upon information and belief, claims a violation of this subsection has been committed may bring an action for injunctive relief on behalf of the general public and damages and, upon prevailing, shall recover reasonable attorneys' fees and costs.

G. Remedies Cumulative

The remedies or penalties provided by sections C, D, E and F are cumulative to each other and to the remedies or penalties available under all other laws of this state.





## X. CONSUMER BILL OF RIGHTS

Consistent with the Commission's concern for consumer protection, the following concepts should be implemented in the establishment of this profession. Consumers have a right to:

1. full disclosure in bold typeface regarding the occupational status of the independent paralegal as a non-lawyer providing services;
2. a written contract specifying the services to be performed and a written explanation of how fees and other costs are calculated, with an estimate of the fees and other costs to be charged;
3. protection against court action by an unlicensed practitioner;
4. legal redress;
5. access to a summary of the independent paralegal's qualifications, including education, training, experience, and possession of malpractice liability insurance or bonding, if any, upon request;
6. availability of mediation and arbitration to resolve civil disputes; and
7. a sign posted in the place of business with appropriate consumer protection information, of a size that is easily read, and which displays the telephone number of the regulatory agency.



**XI. THE COMMISSION'S PROPOSAL IS CONSISTENT WITH RELATED  
OR COMPARABLE REGULATORY APPROACHES**

**A. Washington's Limited Practitioners**

The Commission met with Susan Curtwright, the Executive Director, and Nancy Sullins, Staff Attorney, for the Limited Practice Board of the State of Washington. On January 1, 1983, the Washington Supreme Court adopted Rule 12 of its Admission to Practice Rules, which authorizes non-lawyers known as Limited Practice Officers to select and prepare certain legal documents incident to closing real and personal property transactions. Such a program had initially been attempted through legislation, which was struck down by the Supreme Court as unconstitutional. The Court then implemented the program by Rule.

Washington's Rules and Regulations are set forth in full in Appendix 21. In summary, the Washington Supreme Court appoints a nine-member Limited Practice Board charged with overseeing the program. An applicant must be at least 18 years old and of good moral character. He or she must pass an examination and background investigation which includes a fingerprint check. There are no initial educational requirements but there is a ten hour per year mandatory continuing education requirement.

The Rules call for proof of financial responsibility. Initially, Officers were required to be bonded, but that was abandoned. The Board now accepts an individual errors and omissions insurance policy in the amount of \$100,000.00, an agency policy, or a financial responsibility form from a corporate surety. Individual policies are difficult to obtain and very expensive; few have been obtained. Many Officers practice with companies which have such coverage; in that case all that is required is an Officer endorsement available for \$500.00. Officers are held to the standard of care of attorneys.

Since 1984, 1200 licenses have been issued. Although the Board is empowered to investigate complaints and take disciplinary action, only twelve complaints were received through 1989, resulting in a few license revocations or voluntary cancellations.

There is a \$100.00 application fee, a \$50.00 examination fee, and an annual fee of \$75.00. Reapplication fees vary. The fees are relatively low because the Office of the Administrator for the Courts pays much of the program's overhead costs.

## **B. Allied Health Professionals**

The Commission's approach is related to the regulatory approach of allied health professionals to physicians. The Commission proposes to regulate a paraprofessional class which would have a scope of practice which is included within the scope of practice of an established professional group. That is, a newly regulated class referred to as independent paralegals would be established, whose scope of practice would include specified services which constitute the practice of law and are currently authorized to be provided by attorneys.

By analogy, from the 1950's to the present a variety of allied health professionals whose scope of practice in part also constitutes the practice of medicine have been regulated. Under the Medical Practice Act, a licensed physician and surgeon may diagnose and treat all physical and mental conditions. (Cf. Business and Professions Code sections 2051 & 2052.)

A physician's license is considered plenary in nature; that is, a physician is authorized to diagnose and treat any and all physical and mental conditions. Even though most physicians ultimately specialize in a given area of medicine, physicians are not licensed, regulated or examined by the State in specialty areas. Allied health professionals are permitted a scope of practice which overlaps portions of the physician's broad scope of practice. These include acupuncturists, audiologists, dispensing opticians, hearing aid dispensers, physical therapists, physician assistants, podiatrists, psychologists, research psychoanalysts, and speech pathologists. The authorized practice of all of these allied health professionals also constitutes the practice of medicine by definition.

## **C. Other Regulated Professions**

The Commission's regulatory approach is comparable to the regulation of other classes of practitioners which share a scope of practice with another professional group.

Optometrists have a scope of practice which also overlaps the practice of medicine by physicians. Optometrists are authorized to diagnose and treat certain conditions of the human eye. The practice of medicine also includes these practices authorized to be performed by optometrists.

As a professional group, optometrists are subject to full licensure and regulation. There are established minimum qualifications for licensure, including successful completion of professional training and licensing examinations. There are standards for practice and provisions for the administrative enforcement of those standards.

Independent paralegals, proposed to be regulated within the same departmental structure, would also have minimum qualifications for licensure, a licensure examination, and enforced standards of practice.



**XII. THE COMMISSION ENDORSES ADDITIONAL MEANS OF IMPROVING ACCESS TO JUSTICE**

Although time constraints led the Commission to focus its attention on the specific charge announced in the Board's August 1989 resolution, members did discuss potential additional means of improving access to affordable legal services. The Commission:

1. endorses the Board's pending legislation to increase the jurisdictional limit of small claims courts to \$5,000.00;
2. endorses efforts to implement a courthouse information office (or else expressly authorize court clerks) to provide basic information about required forms and court procedures, similar to the advisory service afforded to small claims court litigants;
3. endorses expansion of neighborhood justice centers and other methods of alterative dispute resolution, including active referrals by courts, lawyers and independent paralegals to mediation and other alternative methods;
4. recommends that the State Bar explore possible mandatory pro bono assistance, either in the form of direct services or a monetary contribution to legal services providers, by all active members of the State Bar, and/or create incentives for voluntary pro bono work;
5. regardless of whether an independent paralegal licensing program is created, recommends exploring the establishment of a telephone hotline for consumer complaints;
6. recommends further exploration of increasing the jurisdictional limit of municipal courts to \$100,000;
7. recommends considering a requirement that service of an unlawful detainer complaint include service of information on how to obtain responsible legal assistance; and
8. recommends exploring possible exemptions to the California Public Records Act or other relevant statutes to preclude the use of

defendants'/respondents' names in targeted direct mail solicitations by so-called "mills."

The Commission is aware that some of these approaches are already being explored by various committee of the Bar. Regardless of whether independent paralegals are licensed, provision of reliable, affordable legal services should remain a priority of the State Bar, particularly in light of the empirical data showing that access to legal services is unavailable to so many consumers.



### XIII. CONCLUSION

Issues of whether there is any role for those who are not attorneys to play in providing legal services directly to the public and, if so, the limits of that role, are obviously complex and susceptible to a variety of viewpoints. Public protection is, of course, paramount. At the same time, one may question whether the public is currently protected sufficiently under a system which results in some members seeking "unauthorized" assistance and encourages, or at least facilitates, unauthorized providers who operate outside the law.

Ultimately the Commission concluded that limited licensure of non-lawyers is a reasonable and worthwhile approach. We believe that the proposed guidelines will protect consumers, serve the public's expanding needs for affordable legal assistance, and foster the growth of well-trained, dedicated paraprofessionals to serve those needs.

It is impossible to convey within these pages the depth of research, discussion and debate that the Commission pursued during the past eight months. The expected dialogue on this report will surely serve to refine its proposals.

The Commission hopes and believes that its recommendations will assist the State Bar in carrying out its mission to improve the quality of legal services to the people. .



#### XIV. ACKNOWLEDGEMENTS

The Commission gratefully acknowledges the assistance and input of the following people and organizations: State Bar staff members, Karl E. Zellmann, Associate Senior Executive, Education and Competence; Truitt A. Richey, Consultant, Office of General Counsel; Karen Betzner, Director, and Randall Difuntorum, Staff Attorney, Office of Professional Competence, Planning and Development; David Long, Director, Office of Research; Gael Infante-Weiss, Senior Assistant General Counsel; and Patricia Edith, Administrative Secretary, and Merilyn McClure, Senior Clerk Typist, Public Protection Programs. In particular, the Commission wishes to thank Phyllis J. Culp, Director, James Murphy, Law Clerk, and Lorna Maynard, Administrative Assistant, Public Protection Programs, for their superhuman efforts in guiding and facilitating its work.

In addition, the Commission acknowledges the guidance provided by the State Bar Board of Governors and, in particular, by Board liaisons Edward E. Kallgren and Catherine C. Sprinkles. Gary Duke's (California Department of Consumer Affairs) word processing wizardry made it possible for the Commission to complete its report on schedule. Gary Pomeroy, also of the California Department of Consumer Affairs, provided important background information, as did Susan Curtwright, Executive Director, and Nancy Sullins, Staff Attorney, for the Limited Practice Board of the State of Washington, and Judge Dana Keener, Immigration and Naturalization Service.

The Commission valued the information submitted by Karen Dunn and the National Association of Legal Assistants; Katie Houghton and Merle Isgett of the National Federation of Paralegal Associations; Richard Lubetzky of CalJustice; Eric Vega of HALT; the California Alliance of Paralegal Associations; Therese Cannon, American Bar Association Standing Committee on Paralegals, and those bar associations which sent representatives to Commission meetings. In addition, members received informative and thought provoking letters, publications and phone calls from a variety of consumers, lawyers, judges, paralegals, and legal technicians throughout the course of its work.

Carolyn Palmer and Paul Holm of the Charlton Research Company produced valuable data analyses within extremely tight time frames. That data could not have been collected without the generosity of the many judges, court clerks, lawyers, legal technicians and consumers who participated in the survey effort.

Finally, the Chair commends the members of the Commission, as well as former member Delores Bonner, for their unflinching dedication to a most difficult task. Their enthusiasm,

contributions at and between meetings, and sheer hard work made the Chair's job easy and the challenging assignment a pleasure.

## XV. EXHIBITS AND APPENDICES

### Exhibits

1. Legal Technicians Mail Survey -- Summary of Findings
2. Pro Per Mail Survey -- Summary of Findings
3. Legal Service Providers Mail Survey -- Summary of Findings
4. Bar Association Sections and Committees Mail Survey -- Summary of Findings
5. Judges Mail Survey -- Summary of Findings
6. Department of Consumer Affairs "Sunrise Questionnaire"
7. Report of Bankruptcy Consulting Group
8. Report of Family Law Consulting Group
9. Report of Landlord/Tenant Consulting Group
10. Report of Immigration Consulting Group

### Appendices

1. State of Illinois Senate Bill No. 2314
2. State Bar of Nevada v. Johnson, et al
3. Excerpt from "An Overview of Recent Developments in Various States With Respect to the Utilization of Legal Assistants" by Diane Suskin, CLA
4. Maryland House of Delegates Bill No. 1029
5. California Preprint Senate Bill No. 9
6. Report of the Public Protection Committee (April 22, 1988)
7. Board of Governors Charge to Commission on Legal Technicians
8. Research -- CFR (Code of Federal Regulations) Provisions re Representation and/or Provision of Legal Services in Connection with Federal Tribunals

9. Analysis of Regulatory Agencies (renewal cycles, fees, etc.)
10. Letters from: Kathleen M. Keefe, President, California Alliance of Paralegal Associations (June 28, 1990); Afroditi K. Price, President, California Association of Freelance Paralegals (July 6, 1990)
11. Pro Per Filings in California Bankruptcy Courts (October and November 1989)
12. Statistical Data on Pro Per Filings in Municipal and Superior Courts in San Francisco, Kern, Humboldt, Los Angeles and San Diego Counties
13. "Study: Legal Aid aids few" -- Orange County Register (June 7, 1990)
14. 1989 Pilot Assessments of the Unmet Needs of the Poor and of the Public Generally -- American Bar Association Consortium on Legal Services and the Public
15. Illinois Legal Needs Study (1989) -- commissioned by the Chicago Bar Association and the Illinois State Bar Association
16. Legal Needs of the Poor in Maryland (July 1987) -- Mason-Dixon Opinion Research, Inc.
17. New York Legal Needs Study Draft Final Report (October 11, 1989) -- prepared by The Spanenberg Group for the New York State Bar Association
18. Letter from Frances E. Stivers-Huffaker (February 8, 1990); "Services add cost, aid little in evictions" -- Orange County Register (March 5, 1990)
19. Code of Ethics and Professional Responsibility of the National Association of Legal Assistants, Inc.; Affirmation of Professional Responsibility of the National Federation of Paralegal Associations
20. Research -- Bonding
21. State of Washington Limited Practice Board Rules and Regulations

THE COMMISSION ON LEGAL TECHNICIANS

MINORITY REPORT

MYRA A. VAN NORMAN

July 16, 1990

I concur with the Commission's recommendations as set forth in its report, and, in particular, the recommendation that Independent Paralegals should not be regulated by the State Bar. I concur with the Commission's recommendation that the regulation of Independent Paralegals be effected through an independent agency established by the Legislature in the Department of Consumer Affairs. However, with all due respect to my fellow Commission members, and after great consideration, I must decline to concur with that portion of the Commission's recommendation which would place oversight of the Department of Consumer Affairs under the Supreme Court by giving the Court the ultimate authority to approve or disapprove any regulations promulgated by the Department of Consumer Affairs authorizing Independent Paralegals to perform services for the public.

I have reached this conclusion for several reasons. First, I believe that such an arrangement could constitute a possible violation of the doctrine of separation of powers, rendering such an arrangement constitutionally infirm.

More particularly, the Department of Consumer Affairs, which would be designated the regulatory body for Independent Paralegals, is an administrative agency in the executive branch of government. To give the Supreme Court essentially what amounts to a veto power over the regulations proposed by the Department of Consumer Affairs would place the Court in the

position of controlling the operation of the Department of Consumer Affairs through such a veto power. Additionally, since the proposed legislation would ultimately be funded by appropriation by the Legislature, it would seem inappropriate for the Supreme Court to control the operation of the Department of Consumer Affairs. Furthermore, it would appear that by giving the Supreme Court such a veto power, the State Bar Association could be placed in an inherently unfair position of being able to influence the Supreme Court in its determination of which regulations proposed by the Department of Consumer Affairs should or should not be approved. It is the feeling of many consumer groups that the Supreme Court has historically demonstrated a predisposition to adopt recommendations of the State Bar Association on matters related to the practice of law and that consumers would be left out of any such dialogue.

Moreover, the notion that the Supreme Court could veto a proposed regulation promulgated by the Department of Consumer Affairs is inherently contradictory in nature to the concept espoused by this Commission that the regulation of Independent Paralegals should be effected by an "independent agency". If the Department of Consumer Affairs is to truly act as an independent agency in its regulation of Independent Paralegals, the Supreme Court should allow the Department of Consumer Affairs to rely upon the expertise and experience of its staff in promulgating appropriate regulations.

Based on the foregoing analysis, it is my recommendation that the Rule of Court to be proposed by the State Bar request that the Supreme Court



authorize the Department of Consumer Affairs to promulgate appropriate regulations without the necessity of seeking approval of the Court.

Respectfully submitted,

*Myra A. Van Norman*

MYRA A. VAN NORMAN

**FINAL REPORT  
OF THE BOARD OF GOVERNORS TASK FORCE  
ON LEGAL TECHNICIANS**

**AUGUST 1993**

**STATE BAR OF CALIFORNIA  
555 FRANKLIN STREET  
SAN FRANCISCO, CA 94102**

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# BOARD OF GOVERNORS TASK FORCE ON LEGAL TECHNICIANS

## FINAL REPORT

### BACKGROUND

#### Bills Reviewed by Task Force

##### 1993 Assembly Bill 1287 - Legal Technicians

At its June 1993 meeting, upon recommendation of this Task Force and the Board Committee on Courts and Legislation, the Board determined to oppose AB 1287 (as amended May 4, 1993). That bill provided for a registration program under the jurisdiction of the Department of Consumer Affairs of "self-help legal services providers." See Second Interim Report of the Task Force for the chronology of its activities related to AB 1287.

Since the June Board meeting, AB 1287 has been amended twice (July 7 and July 16, 1993). (See Appendix A.) The amended bill (a) dropped the registration program, (b) added an identification and study program and (c) still contained many of the original objections of the Task Force. The principal objections included:

- Strong opposition to the title "self-help legal services providers," since "legal services" has attained a clear public identification with pro bono services provided to the indigent. The title implies or can easily lead to the belief that the providers are authorized to practice law.

- Lack of bonding requirement or other source of recovery for defrauded consumers.
- Gives Department of Consumer Affairs the authority to determine who is or is not a provider.
- Does not make it sufficiently clear that participants are not being authorized to practice law.
- Provides little or no incentive to participate; a misdemeanor penalty, without a specified (and substantial) fine, is not a substantial incentive.

At its conference call meeting on August 16, 1993, the Task Force considered further amendments to the bill submitted by the California Legal Access Coalition on behalf of the author Assembly Member Gwen Moore. (See Appendix B.) Participating in that call was the Legislative Director of the Coalition. After lengthy discussion the Task Force remained opposed to the bill as drafted since the amendments did not address the Task Force's prior objections. However, the Task Force does support in principle the collection of information with regard to legal technicians for purposes of consumer protection. But it does not believe legislation is required to collect the data. <sup>1</sup>

---

<sup>1</sup>Data collected could include such items as: geographical area served; type of services provided; subject areas; fees charged for types of services; education level of provider, including whether legal, nonlegal or other special education or training; work experience of provider, etc.

### 1993 Assembly Bill 1573 - Unlawful Detainer Assistants: Registration

The second bill the Task Force has reviewed is AB 1573 introduced by Assembly Member Burton (Principal Coauthor: Senator Kopp; Coauthor Assembly Member Willie Brown). A consumer fraud bill, it is an attempt to curb the practices of unscrupulous individuals who are operating "eviction mills." They purport to offer help to tenants subject to eviction but really do nothing more than defraud tenants and tie up the legal system with fraudulent pleadings and procedures aimed at delaying evictions rather than assisting tenants in presenting meritorious legal defenses.

In its discussion, the Task Force noted that the bill in current form (as amended July 12, 1993) incorporates suggestions by the Judicial Council as well as the State Bar General Counsel to clarify that the bill does not sanction, authorize or encourage the practice of law by nonlawyers. (See Appendix C.)

### Proposals for Increasing Affordable Legal Services

Since its appointment ten months ago, in addition to its work on legislative proposals, the Task Force has been reviewing alternative methods of access to legal services for persons of limited, modest or moderate means.

Its study has included looking at draft proposals for a rule of conduct authorizing pro per clinics with attorney-supervised paralegals assisting the pro pers, as well as programs in other jurisdictions that allow nonlawyer advisors to assist pro per litigants.

In order to make the delivery of quality legal services more affordable to persons

of limited, modest or moderate means, the Task Force recommends the following concepts for formulation, adoption and implementation by the Board. Many of these recommendations come from ideas of the Legal Services Section, the Section's Standing Committee on the Delivery of Legal Services to Middle Income People and the Beverly Hills Bar Association.

1. Work with the Judicial Council in conducting:
  - a) a survey of pro per clients to determine quality of legal technicians' work, subject areas and scope of services given, fees charged and
  - b) 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;
2. Sponsor legislation to amend the state and federal tax laws to provide incentives (e.g., tax credits) to attorneys who donate in excess of 200 hours of pro bono time either to organized pro bono programs or to a Lawyer Referral Service ("LRS") modest means panel to provide services on a reduced fee basis to persons of limited, modest or moderate means;
3. Sponsor legislation to amend the state and federal tax laws to provide incentives for the formation and operation of California based prepaid group and individual legal services plans offered by employers, unions, bar associations or other organizations;

4. Sponsor legislation to amend the attorneys' fee statute to expressly permit recovery of fees for paralegal services delivered under attorney supervision;
5. Provide State Bar technical assistance to LRSs with the goal that all certified LRSs by the end of 4 years will have a pro bono program and one or more reduced fee panels with particular focus on family law, tenant/landlord, consumer law, and bankruptcy;
6. Encourage courts, law schools and local bar associations with State Bar technical assistance to set up advice only, pro per and/or substantive law clinics (e.g. family law) on a sliding fee scale according to income and to use supervised paralegals and law students;
7. Encourage LRSs' modest means panels and local bar clinic programs to advertise the availability of affordable legal services and the fee schedules of their reduced fee or clinic programs to the public;
8. Work with local bar associations to develop regular public forums through radio or television (quarterly or monthly):
  - a) to inform the public on how to shop for an affordable attorney and how to retain an attorney to minimize fee disputes;
  - b) to educate the public about use of alternative dispute resolution ("ADR") before and after filing of lawsuits;
9. Continue State Bar efforts to educate the public and legal community to use ADR as an alternative and less costly method of resolving disputes,



**including but not limited to:**

- a) **work with legal services providers to develop pre-filing ADR programs and neighborhood dispute centers through the California Legal Corp.,**
  - b) **work with local bar associations and legal service providers to set up pre-filing ADR and mediation clinics to assist pro per clients on a no-fee or sliding fee scale;**
10. **Continue State Bar efforts to increase funding for legal services for the poor and to fund Legal Corp fellows;**
  11. **Support the long-term work of the Access to Justice Working Group to propose recommendations for fundamental improvements in the system of providing representation to those of limited means;**
  12. **Circulate these proposals to appropriate State Bar Sections (e.g., Family Law, Legal Services, Real Property, Litigation, etc.) for their interest in working on any of the proposals or in the development of a Section project which increases access to affordable legal services for persons of limited, modest or moderate means.**

**SUMMARY**

This constitutes the final report of this Task Force.

As indicated above and for the reasons stated above, the Task Force recommends that the Board of Governors not change its position on AB 1287 unless and until the concerns enumerated by the Task Force herein and in its First and Second Interim Reports are met.

In addition the Task Force recommends that the Board adopt for formulation and implementation the concepts listed on pages 4 to 6, infra.

August 23, 1993

Respectfully submitted,

Task Force on Legal Technicians

Pauline Gee, Chair  
Edward "Ned" B. Huntington  
Judy Johnson  
Peter F. Kaye  
Peter G. Keane  
Margaret M. Morrow

AMENDED IN ASSEMBLY JULY 16, 1993  
AMENDED IN ASSEMBLY JULY 7, 1993  
AMENDED IN ASSEMBLY MAY 4, 1993  
AMENDED IN ASSEMBLY APRIL 12, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1287**

**Introduced by Assembly Member Moore**

**March 3, 1993**

An act to add and repeal Chapter 13.5 (commencing with Section 8200) of Division 3 of the Business and Professions Code, relating to legal services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1287, as amended, Moore. Self-help legal services providers.

Existing law provides that no person shall practice law in California unless the person is an active member of the State Bar.

This bill would, until January 1, 1997, enact a comprehensive scheme for the identification, study, and regulation of self-help legal services providers, as defined, under the jurisdiction of the Department of Consumer Affairs.

The bill would establish a participation fee, as specified, and create a Self-Help Legal Services Provider Identification and Study Fund.

A violation of various provisions of the bill would be a misdemeanor, thereby imposing a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated

by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 13.5 (commencing with Section  
2 8200) is added to Division 3 of the Business and  
3 Professions Code, to read:

4  
5 CHAPTER 13.5. SELF-HELP LEGAL SERVICES  
6 PROVIDERS IDENTIFICATION AND STUDY PROGRAM  
7

8 Article 1. General Provisions  
9

10 8200. The purpose of the Identification and Study  
11 Program is the following:

12 (a) To identify the population and geographic  
13 locations of ~~nonlawyer providers of legal information and~~  
14 ~~assistance services self-help legal services providers in~~  
15 California.

16 (b) To identify and assess the types of services that  
17 ~~nonlawyer providers of legal information and assistance~~  
18 ~~services self-help legal services providers~~ offer to  
19 consumers.

20 (c) To provide data and other objective information  
21 which could serve as a basis for the development and  
22 implementation of a ~~knowledge registration, licensure, or~~  
23 ~~other regulatory~~ program to be submitted to the  
24 Legislature.

25 8201. "Self-help legal services provider" as used in  
26 this chapter means any nonlawyer who holds himself or  
27 herself out to the public as a self-help legal services  
28 provider, or who offers self-help legal services for  
29 compensation, ~~or under the direction of a nonprofit~~  
30 organization. Self-help legal services means the  
31 providing of information to a consumer who is

1 representing himself or herself in a legal matter;  
2 selection, completion, preparation, or submission of a  
3 legal form, pleading, or other legal form for a consumer  
4 who is representing himself or herself; and appearing,  
5 only as permitted by law, before any federal, state, or  
6 local administrative hearing or court to help a consumer  
7 who is representing himself or herself.

8 8202. This chapter does not apply to the following:

9 (a) Persons who are active members of the State Bar  
10 of California.

11 (b) Persons who are supervised or work under the  
12 direction of an active member of the State Bar of  
13 California.

14 (c) Certified law students providing services pursuant  
15 to Rules Governing the Practical Training of Law  
16 Students.

17 (d) Persons who are authorized by state or federal law  
18 to provide legal assistance or to appear before any  
19 federal, state, or local administrative hearing or court.

20 (e) Persons who act as neutral parties while providing  
21 conciliation, mediation, or arbitration services.

22 (f) Persons who provide only clerical, transcribing, or  
23 scrivener services.

24 (g) Persons who author, publish, or market self-help  
25 written, computerized, audio, or video legal information  
26 or forms for use by consumers.

27 (h) Persons acting under Rule 983 or Rule 988 of the  
28 California Rules of Court.

29 (i) Persons who are not active members of the State  
30 Bar of California who provide services solely in personal  
31 injury or workers' compensation law.

32 (j) Persons who provide legal assistance as an  
33 incidental part of other nonlegal services and who are  
34 certified by the Department of Consumer Affairs,  
35 pursuant to regulations adopted by the department, as  
36 regulated under federal or state law.

Article 2. Identification and Study Program

8220. Effective January 1, 1994, there is established in the Department of Consumer Affairs a Self-Help Legal Services Providers Identification and Study Program.

8221. Commencing April 1, 1994, and annually thereafter, every self-help legal services provider, as defined in Section 8201, shall participate in the department's Identification and Study Program, and shall pay a fee of no more than one hundred dollars (\$100), as determined by the director. Self-help legal services providers who are employed by a nonprofit organization may request the director to waive or reduce program fees.

8222. (a) In order to notify every self-help legal services provider of the requirements of this chapter, the department shall take any steps it deems necessary, including distribution of the bulletin described in subdivision (b) to the following groups, to the extent that the department has knowledge of their existence:

- (1) An organization which represents self-help legal services providers.
- (2) A nonprofit organization which employs self-help legal services providers.
- (3) All federal, state, and county court clerks located in California.
- (4) All district attorneys located in California.
- (b) The department shall publish a bulletin describing the Identification and Study Program and containing the following information:
  - (1) That each self-help legal services provider shall participate in the Identification and Study Program.
  - (2) That each self-help legal services provider should provide the department with his or her name and address.
  - (3) That any person may provide the department with the name and address or telephone number of a self-help legal services provider.
  - (c) The department shall engage in a systematic effort

to locate self-help legal services providers and organizations which represent or employ self-help legal services providers through advertisement in newspapers, telephone directories, and other publications.

(d) If the department obtains information through any of the channels described in subdivision (a) or (c) which indicates that an individual is a self-help legal services provider, it shall forward a copy of the survey described in paragraph (1) of subdivision (b) of Section 8230 to the person.

(e) For the purposes of this chapter, a 'participant' means an individual who is a self-help legal services provider and who commences responding to the survey described in paragraph (1) of subdivision (b) of Section 8230 with the intention of returning it to the department.

8223. (a) Participants in the Identification and Study Program under this chapter shall reside in California and be at least 18 years of age.

(b) Notwithstanding subdivision (a), any person who has been disbarred from any state bar; has resigned with charges pending from any state bar; is on probation or suspension from any state bar; or has been enjoined from providing services pursuant to this chapter shall be ineligible for participation in the Identification and Study Program.

Article 3. Responsibilities of the Department of Consumer Affairs and the Judicial Council

8230. (a) The director shall administer and enforce this chapter and any rules and regulations adopted pursuant to this chapter. In so doing, the director may exercise any power conferred under Division 1 (commencing with Section 100) or Division 1.5 (commencing with Section 475).

(b) Specifically, the department shall do all of the following, in consultation with the Judicial Council:

(1) Prescribe the information which each participant in the Identification and Study Program shall provide the department, including, but not limited to, the following:

1 (A) Name of the participant.  
 2 (B) Any work address of the participant.  
 3 (C) Types of self-help legal services provided in the  
 4 past by the participant, and the types of services the  
 5 participant envisions providing.  
 6 (D) Typical fees the participant has charged for  
 7 self-help legal services rendered in the past, and  
 8 revisions charging for work performed while  
 9 participating in the Identification and Study Program.  
 10 (D) How fees are calculated and the typical fees the  
 11 participant charges for self-help legal services.  
 12 (E) Average number of clients served per month.  
 13 (F) Total length of time the participant has provided  
 14 self-help legal services.  
 15 (G) Any type of education and legal or nonlegal  
 16 training the participant has received.  
 17 (2) Determine whether to issue an identification  
 18 number to a self-help legal services provider or to deny  
 19 participation in the Identification and Study Program, as  
 20 provided in this chapter.  
 21 (3) On and after January 1, 1995, initiate appropriate  
 22 action against self-help legal services providers who do  
 23 not participate in the Identification and Study Program.  
 24 The department shall inform all self-help legal services  
 25 providers who do not participate in the Identification and  
 26 Study Program that they are in violation of Section 8242  
 27 and offer them an opportunity to comply with the law  
 28 and participate in the program before the department  
 29 proceeds against them.

30 (c) On or before January 31, 1996, the department, in  
 31 consultation with the Judicial Council, shall report to the  
 32 Legislature on their activities and findings regarding the  
 33 implementation of this chapter. The report shall include  
 34 recommendations regarding the adequacy of public  
 35 protection provided by this chapter and whether a  
 36 licensure program or any other regulatory program is  
 37 appropriate for self-help legal services providers. If the  
 38 department recommends that a licensure or any other  
 39 regulatory program is needed, the report shall include  
 40 suggestions regarding the structure and requirements for

1 the program. , at a minimum, include the following:  
 2 (1) Specific recommendations on whether there is a  
 3 consumer need for the state to regulate self-help legal  
 4 services providers through a registration, certification,  
 5 licensure, or other regulatory program, and what agency  
 6 or organization should be responsible for the program.  
 7 (2) Recommendations regarding the appropriate  
 8 level of education, training, or experience that each  
 9 self-help legal services provider should possess, the need  
 10 for testing, and the type of examinations that should be  
 11 required in order to provide an adequate level of  
 12 consumer protection and competence among self-help  
 13 legal services providers.

14 (3) Recommendations regarding the scope of services  
 15 under a regulatory program that a self-help legal services  
 16 provider could offer.

17 (4) Recommendations regarding the need for  
 18 bonding, malpractice insurance, or a customer security  
 19 fund by self-help legal services providers.

20 (5) Recommendations regarding methods of  
 21 disciplining self-help legal services providers and means  
 22 of consumer redress under a regulatory program.

23 (6) Recommendations regarding the need for a code  
 24 of ethics for self-help legal services providers under a  
 25 regulatory program.

26 8231. (a) There is hereby established a Self-Help  
 27 Legal Services Provider Identification and Study Fund.

28 (b) All moneys received by the department and the  
 29 Judicial Council under this chapter from any source and  
 30 for any purpose shall be accounted for and reported  
 31 monthly to the Controller and at the same time the  
 32 moneys shall be remitted to the State Treasury to the  
 33 credit of the Self-Help Legal Services Provider  
 34 Identification and Study Fund.

35 8232. The following shall constitute grounds for the  
 36 denial or revocation of participation in the Identification  
 37 and Study Program under this chapter:

38 (a) Any of the following acts:

39 (1) Knowingly making a false statement of material  
 40 fact, or knowingly omitting a material fact, in an

1 application for any state regulatory program, or in any  
2 response to a request for information by the department  
3 or the Judicial Council.

4 (2) Conviction of a crime, if the crime is substantially  
5 related to the functions or duties of the self-help legal  
6 services provider.

7 (2) Any act involving dishonesty, fraud, or deceit with  
8 the intent to substantially benefit himself or herself or  
9 another, or substantially injure another.

10 (b) A conviction within the meaning of this section  
11 means a plea or verdict of guilty or a conviction following  
12 a plea of nolo contendere. The department may rule any  
13 self-help legal services provider ineligible for  
14 participation in the Identification and Study Program  
15 following the establishment of a conviction when the  
16 time for appeal has elapsed, the judgment of conviction  
17 has been affirmed on appeal, or when an order granting  
18 probation is made suspending the imposition of a  
19 sentence, irrespective of a subsequent order under the  
20 provisions of Section 1202.4 of the Penal Code.

21 8238. The department may deny, revoke, or suspend  
22 the participation in the Identification and Study Program  
23 of a self-help legal services provider after a hearing held  
24 in accordance with Chapter 5 (commencing with Section  
25 11500) of Part 1 of Division 3 of Title 2 of the Government  
26 Code, and which results in the finding of a violation by  
27 any self-help legal services provider of any provision of  
28 this chapter.

30 Article 4. Application of Chapter

31  
32 8241. (a) No participant shall A participant shall not  
33 specify his or her valid identification number in any  
34 advertisement or when advertising, as defined in this  
35 section, or held himself or herself out as advertise that he  
36 or she is a participant in the Self-Help Legal Services  
37 Providers Identification and Study Program.

38 (b) For purposes of this section, an "advertisement"  
39 includes business cards, or any sign, classified ad, or  
40 directory listing or other device which would indicate to

1 the public that the advertiser is a self-help legal services  
2 provider.

3 (c) For purposes of this chapter, "advertise" includes,  
4 but is not limited to, the issuance or display of any card,  
5 sign, or device to any person, or the directing or  
6 permitting of the dissemination of any information in any  
7 newspaper, magazine, airwave transmission, or in any  
8 directory, indicating that one is a self-help legal services  
9 provider, as defined.

10 8242. On and after December 31, 1994, it is unlawful  
11 and shall constitute a misdemeanor for any person who is  
12 not a participant in the department's Self-Help Legal  
13 Services Providers Identification and Study Program to  
14 do either of the following:

15 (a) Use the words self-help legal services provider or  
16 Identification and Study Program in connection with his  
17 or her name or place of business, or to represent, in any  
18 way, orally, in writing, in print or by sign, directly or by  
19 implication, that he or she is a self-help legal services  
20 provider or a participant in the Self-Help Legal Services  
21 Providers Identification and Study Program.

22 (b) Offer to provide or provide legal information and  
23 assistance services directly to the public for  
24 compensation.

25 8243. Anyone who charges or obtains any fee or  
26 payment from another by fraud or misrepresentation  
27 that he or she is a participant in the Identification and  
28 Study Program pursuant to this chapter or otherwise  
29 licensed by the department is guilty of a misdemeanor.

30 8244. Any consumer injured by the unlawful or  
31 criminal act of a self-help legal services provider shall  
32 retain all rights and remedies cognizable under law, and  
33 nothing in this chapter shall be construed to limit an  
34 injured consumer's right to bring a civil action for  
35 damages and any other relief as may be appropriate in a  
36 court of law.

37 8245. Any person participating in the Self-Help Legal  
38 Services Providers Identification and Study Program  
39 shall respond fully and promptly to all requests from the  
40 department or the Judicial Council relating to complaints

1 from or disputes with consumers. Failure to comply shall  
 2 constitute a basis for denial, revocation, or suspension of  
 3 participation in the Identification and Study Program.  
 4 8246. Participation in the department's Identification  
 5 and Study Program pursuant to this chapter shall not  
 6 constitute nor be represented to constitute state sanction  
 7 or approval of the services of participants.

8 (a) Participants shall not be immune from civil  
 9 actions based upon, among other things, fraud,  
 10 negligence, or upon the unsatisfactory quality of services,  
 11 or from criminal actions for fraudulent provision of  
 12 services.

13 (b) The affirmative act of participation in the  
 14 Identification and Study Program ~~and providing self-help~~  
 15 ~~legal services as defined pursuant to this chapter does not~~  
 16 constitute a basis for any prosecution pursuant to Section  
 17 6125 or 6126. Information collected from consumers,  
 18 participants, or others for this purpose shall not be used  
 19 against a participant for the purpose of prosecution under  
 20 Sections 6125 and 6126.

21 (c) No provision of this chapter shall be construed to  
 22 authorize program participants to offer or provide  
 23 services that require licensing by the State Bar of  
 24 California.

25 8247. The identification number of a self-help legal  
 26 services provider shall be entered on all legal forms  
 27 submitted to any state court by any person utilizing the  
 28 services of a self-help legal services provider.

29  
 30 Article 5. Sunset Provision

31  
 32 8250. This chapter shall be repealed on January 1,  
 33 1997, unless a later enacted statute which is chaptered on  
 34 or before that date deletes or extends that date.

35 SEC. 2. No reimbursement is required by this act  
 36 pursuant to Section 6 of Article XIII B of the California  
 37 Constitution because the only costs which may be  
 38 incurred by a local agency or school district will be  
 39 incurred because this act creates a new crime or  
 40 infraction, changes the definition of a crime or infraction,

1 changes the penalty for a crime or infraction, or  
 2 eliminates a crime or infraction. Notwithstanding Section  
 3 17580 of the Government Code, unless otherwise  
 4 specified in this act, the provisions of this act shall become  
 5 operative on the same date that the act takes effect  
 6 pursuant to the California Constitution.



## CALIFORNIA COALITION FOR LEGAL ACCESS

Post Office Box 1104  
Sacramento, CA 95812-1104Jonathan Bromson  
August 12, 1993

AUGUST 12 DRAFT AMENDMENTS TO JULY 16, 1993 VERSION OF AB 1287:

[Words that are underlined like this would appear italicized in official bill form -- they are additions in this draft.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 13.5 (commencing with Section 8200 is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 13.5 SELF-HELP LEGAL SERVICES  
PROVIDERS IDENTIFICATION AND STUDY PROGRAM

## Article 1. General Provisions

8200. (a) The Legislature finds that there is a critical need to increase and protect consumer access to the legal system. Recent studies and reports by the American Bar Association, the State Bar of California, and public interest organizations confirm that a majority of lower and middle income persons are shut out of the legal system because they cannot afford the costs of an attorney. This lack of representation has led to thousands of persons overwhelming the court system by filing in "pro per" without any assistance. The Legislature recognizes the essential need to provide consumers with alternative ways to access the legal system so that their rights are not forfeited, while at the same time protecting the rights of consumers who choose such alternatives.

(b) Alternatives now exist that are increasing legal access, including the self-help law movement which encompasses self-help law books, software, and nonlawyer services to consumers. These nonlawyers either offer pro per services as a business, or work in nonprofit organizations. However, currently there is no state regulation of nonlawyers who provide services directly to the public. As a result of the absence of regulation, the total number of these nonlawyers in California is unknown, as are the services they provide. Similarly, the extent of consumer harm by unscrupulous providers in California is not officially documented. The threat of prosecution for the unauthorized practice of law impairs the ability of honest, competent nonlawyers to offer pro per services openly to the public, and offers no direct protection or effective redress for consumers against unscrupulous providers.

(c) Interim hearings conducted in 1990 by the Legislature and Department of Consumer Affairs, and studies completed between 1988 and 1992 by commissions of the State Bar and public interest organizations, have concluded that many nonlawyers provide competent and honest pro per services to consumers. These studies recommended varying degrees of regulation under the Department of Consumer Affairs to decriminalize pro per services as a means to

increase legal access and provide enforcement against unscrupulous providers who harm the public. These studies have been subjected to some criticism as not sufficiently comprehensive or representative of all nonlawyers, their services, and clients, to determine the requirements of an effective regulatory program.

(d) As a result, the legislature finds that a three-year, comprehensive, mandatory state-wide program attempting to identify all nonlawyers and assess their services is the necessary first step in determining whether regulation is needed and what form it should take. Recommendations shall be presented to the legislature for consideration at the end of the study program.

(e) By enacting this chapter, the legislature is taking no position on how nonlawyers should be regulated, other than to establish the framework for collecting accurate information and making recommendations.

(f) Competent and honest nonlawyers are fearful of coming forward to participate in a mandatory program if the mere offering or providing of pro per services can be interpreted as the unauthorized practice of law. Obtaining complete and accurate information from all self-help legal services providers across the state is critical in developing recommendations for regulations which will provide effective consumer protection and increase legal access. To ensure their participation and complete cooperation, honest and competent providers need some assurance that by coming forward they will not be prosecuted as a result of participating in this three-year study program. To this end, it is not the intent of the legislature by enacting this chapter to cause any action pursuant to Sections 6125 and 6126 of this Code against participants during the three-year study program. It is also not the intent of the legislature by enacting this chapter to create a defense for, or a moratorium of any criminal or civil action against, any participant who provides negligent, fraudulent or unsatisfactory services to a customer.

8200.5 The purpose of the Identification and Study program is the following:

- (a) To identify the population and geographic locations of self-help legal services providers in California.
- (b) To identify and assess the types of services that self-help legal services providers offer to consumers.
- (c) To provide data and other objective information which could serve as a basis for the development and implementation of a registration, licensure, or other regulatory program to be submitted to the Legislature.

8201. (a) For the purposes of this identification and study program, a nonlawyer who is required to participate shall be referred to under this chapter as a "self-help legal services provider." This title does not represent the permanent provider title for any regulatory program that may be recommended to the legislature. "Self-help legal services provider" as used in this chapter means any nonlawyer who holds himself or herself out as the

public as a self-help legal services provider, or who offers self-help legal services for compensation, or under the direction of a nonprofit organization. Self-help legal services person who is not licensed by the State bar and who offers or provides self-help legal services, as defined in this chapter, for compensation or as an employee of a self-help legal services provider or nonprofit organization.

(b) For the purposes of this identification and study program, the pro per services currently offered or provided by a self-help legal services provider shall be referred to under this chapter as "self-help legal services." "Self-help legal services" means the providing of information to a consumer who is representing himself or herself in a legal matter; nonlawyer assistance to a pro per in the selection, completion, preparation, or submission of a legal form for a consumer who is representing himself or herself; and that will be assessed and studied pursuant to this chapter; or appearing, only as permitted by law, before any federal, state, or local administrative hearing or court to help a consumer who is representing himself or herself provide assistance to the pro per. These services do not represent the scope of services for any regulatory program that may be recommended to the Legislature.

8202. This chapter does not apply to the following:

- (a) Persons who are active members of the State Bar of California.
- (b) Persons who are supervised or work under the direction of an active member of the State Bar of California.
- (c) Certified law students providing services pursuant to Rules Governing the Practical Training of Law Students.
- (d) Persons who are authorized by state or federal law to provide legal assistance or to appear before any federal, state, or local administrative hearing or court.
- (e) Persons who act as neutral parties while providing conciliation, mediation, or arbitration services.
- (f) Persons who provide only clerical, transcribing, or scrivener services.
- (g) Persons who author, publish, or market self-help written, computerized, audio, or video legal information or forms for use by consumers.
- (h) Persons acting under Rule 983 or Rule 988 of the California Rules of Court.
- (i) Persons who are not active members of the State Bar of California who provide services solely in personal injury or workers' compensation law.
- (j) Persons who provide legal assistance as an incidental part of other nonlegal services and who are certified by the Department of Consumer Affairs, pursuant to regulations adopted by the department, as regulated under federal or state law.

## Article 2. Identification and Study Program

8220. Effective January 1, 1994, there is established in the Department of Consumer Affairs a Self-Help Legal Services Providers Identification and Study Program.

8221. Commencing April 1, 1994, and annually thereafter, every self-help legal services provider, as defined in Section 8201, shall participate in the department's Identification and Study Program, and shall pay a fee of no more than one hundred dollars (\$100), as determined by the director. Self-help legal services providers who are employed by a nonprofit organization may request the director to waive or reduce program fees.

8222. (a) In order to notify every self-help legal services provider of the requirements of this chapter, the department shall take any steps it deems necessary, including distribution of the bulletin described in subdivision (b) to the following groups, to the extent that the department has knowledge of their existence:

(1) An organization which represents self-help legal services providers.

(2) A nonprofit organization which employs self-help legal services providers.

(3) All federal, state, and county court clerks located in California.

(4) All district attorneys located in California.

(b) The department shall publish a bulletin describing the Identification and Study Program and containing the following information:

(1) That each self-help legal services provider shall participate in the Identification and Study Program.

(2) That each self-help legal services provider should provide the department with his or her name and address.

(3) That any person may provide the department with the name and address or telephone number of a self-help legal services provider.

(c) The department shall engage in a systematic effort to locate self-help legal services providers and organizations which represent or employ self-help legal services providers through advertisement in newspapers, telephone directories, and other publications.

(d) If the department obtains information through any of the channels described in subdivision (a) or (c) which indicates that an individual is a self-help legal services provider, it shall forward a copy of the survey described in paragraph (1) of subdivision (b) of Section 8230 to the person.

(e) For the purposes of this chapter, a "participant" means an individual who is a self-help legal services provider and who commences responding to the survey described in paragraph (1) of subdivision (b) of Section 8230 with the intention of returning it to the department.

8223. (a) Participants in the Identification and Study Program under this chapter shall reside in California and be at least 18 years of age.

(b) Notwithstanding subdivision (a), any person who has been

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disbarred from any state bar, has resigned with charges pending from any state bar, is on probation or suspension from any state bar, or has been enjoined from providing services pursuant to this chapter shall be ineligible for participation in the Identification and Study Program.

(c) These requirements do not represent the requirements of any future regulatory program that may be recommended to the Legislature.

**Article 3. Responsibilities of the Department of  
Consumer Affairs and the Judicial Council**

8230. (a) The director shall administer and enforce this chapter and any rules and regulations adopted pursuant to this chapter. In so doing, the director may exercise any power conferred under Division 1 (commencing with Section 100) or Division 1.5 (commencing with Section 475).

(b) Specifically, the department shall do all of the following, in consultation with the Judicial Council and other appropriate agencies and public interest organizations, as needed:

(1) Prescribe the information which each participant in the Identification and Study Program shall provide the department, including, but not limited to, the following:

(A) Name of the participant.

(B) Any work address of the participant.

(C) Types of self-help legal services provided in the past by the participant, and the types of services the participant envisions providing.

(D) How fees are calculated and the typical fees the participant charges for self-help legal services.

(E) Average number of clients served per month.

(F) Total length of time the participant has provided self-help legal services.

(G) Any type of education and legal or nonlegal training the participant has received.

(H) Any action brought against the participant under Sections 6125 and 6126 of this Code and a brief description of the circumstances regarding any such action, and the effect of Sections 6125 and 6126 on the providing of self-help legal services of the participant.

(2) Determine whether to issue an identification number to a self-help legal services provider or to deny participation in the Identification and Study Program, as provided in this chapter.

(3) On and after January 1, 1995, initiate appropriate action against self-help legal services providers who do not participate in the Identification and Study Program. The department shall inform all self-help legal services providers who do not participate in the Identification and Study Program that they are in violation of Section 8242 and offer them an opportunity to comply with the law and participate in the program before the department proceeds against them.

(c) On or before January 31, 1996, the department, in

~~consultation with the Judicial Council; other appropriate agencies and public interest organizations, as needed, shall report to the Legislature on their activities and findings regarding the implementation of this chapter. The report shall, at a minimum, include the following:~~

(1) Specific recommendations on whether there is a consumer need for the state to regulate self-help legal services providers through a registration, certification, licensure, or other regulatory program, and what agency or organization should be responsible for the program.

(2) Recommendations regarding the appropriate level of education, training, or experience that each self-help legal services provider should possess, the need for testing, and the type of examinations that should be required in order to provide an adequate level of consumer protection and competence among self-help legal services providers.

(3) Recommendations regarding the scope of services under a regulatory program that a self-help legal services provider could offer, and an appropriate title for providers under a regulatory program.

(4) Recommendations regarding the need for bonding, malpractice insurance, or a customer security fund by self-help legal services providers.

(5) Recommendations regarding methods of disciplining self-help legal services providers and means of consumer redress under a regulatory program.

(6) Recommendations regarding the need for a code of ethics for self-help legal services providers under a regulatory program.

8231. (a) There is hereby established a Self-Help Legal Services Provider Identification and Study Fund.

(b) All moneys received by the department and ~~the Judicial Council~~ under this chapter from any source and for any purpose shall be accounted for and reported monthly to the Controller and at the same time the moneys shall be remitted to the State Treasury to the credit of the Self-Help Legal Services Provider Identification and Study Fund.

#### Article 4. Application of Chapter

8241. (a) A participant shall not specify his or her valid identification number in any advertisement or when advertising, as defined in this section, or advertise that he or she is a participant in the Self-Help Legal Services Providers Identification and Study Program.

(b) For purposes of this section, an "advertisement" includes business cards, or any sign, classified ad, or directory listing or other device which would indicate to the public that the advertiser is a self-help legal services provider.

(c) For purposes of this chapter, "advertise" includes, but is not limited to, the issuance or display of any card, sign, or device to any person, or the directing or permitting of the dissemination of any information in any newspaper, magazine,



airwave transmission, or in any directory, indicating that one is a self-help legal services provider, as defined.

(d) The identification number of a self-help legal services provider shall be entered on all legal forms submitted to any state court by any person utilizing the services of a self-help legal services provider.

8242. On and after December 31, 1994, it is unlawful and shall constitute a misdemeanor for any person who is not a participant in the department's Self-Help Legal Services Providers Identification and Study Program to do either of the following:

(a) Use the words self-help legal services provider or Identification and Study Program in connection with his or her name or place of business, or to represent, in any way, orally, in writing, in print or by sign, directly or by implication, that he or she is a self-help legal services provider or a participant in the Self-Help Legal Services Providers Identification and Study Program.

(b) Offer to provide or provide legal information and assistance services directly to the public for compensation.

8243. Anyone who charges or obtains any fee or payment from another by fraud or misrepresentation that he or she is a participant in the Identification and Study Program pursuant to this chapter or other wise licensed by the department is guilty of a misdemeanor.

8244. Any consumer injured by the unlawful or criminal act of a self-help legal services provider shall retain all rights and remedies cognizable under law, and nothing in this chapter shall be construed to limit an injured consumer's right to bring a civil action for damages and any other relief as may be appropriate in a court of law.

8245. Any person participating in the Self-Help Legal Services Providers Identification and Study Program shall respond fully and promptly to all requests from the department or the ~~Judicial Council~~ relating to complaints from or disputes with consumers. Failure to comply shall constitute a basis for denial, revocation, or suspension of participation in the Identification and Study Program.

8246. Participation in the department's Identification and Study Program pursuant to this chapter shall not constitute nor be represented to constitute state sanction or approval of the services of participants.

(a) Participants shall not be immune from civil actions based upon, among other things, fraud, negligence, or upon the unsatisfactory quality of services, or from criminal actions for fraudulent provision of services.

(b) The To encourage the participation and full cooperation of honest and competent nonlawyers, the affirmative acts and requirements of participation in the Identification and Study Program pursuant to this chapter does shall not constitute a the basis for any prosecution action against any participant pursuant to Section 6125 or 6126. Information collected from consumers, participants, or others for this purpose government agencies or any

other source during the three-year study program shall not be used against a participant for the purpose of prosecution under any action pursuant to Sections 6125 or 6126. The name of any participant shall not be disclosed to any individual not associated with the Identification and Study Program.

(c) No provision of this chapter shall be construed to authorize program participants to offer or provide services that require licensing by the State Bar of California.

~~3247. The identification number of a self-help legal services provider shall be entered on all legal forms submitted to any state court by any person utilizing the services of a self-help legal services provider.~~

#### Article 5. Sunset Provision

3250. This chapter shall be repealed on January 1, 1997, unless a later enacted statute which is chaptered on or before that date deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 5 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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AMENDED IN SENATE JULY 12, 1993  
AMENDED IN SENATE JUNE 24, 1993  
AMENDED IN SENATE JUNE 15, 1993  
AMENDED IN ASSEMBLY APRIL 14, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1573**

**Introduced by Assembly Member Burton**  
**(Principal coauthor: Senator Kopp)**  
**(Coauthor: Assembly Member Willie Brown)**

March 4, 1993

An act to add Chapter 5.5 (commencing with Section 6400) to Division 3 of the Business and Professions Code, relating to unlawful detainer.

LEGISLATIVE COUNSEL'S DIGEST

AB 1573, as amended, Burton. Unlawful detainer assistants: registration.

Existing law provides for unlawful detainer proceedings with respect to a tenant of real property.

This bill would require unlawful detainer assistants, as defined, to register with the county clerk of the county in which he or she resides, ~~or has his or her principal place of business; or maintains a branch office and of each county in which he or she performs acts for which registration is required.~~ The bill would, among other things, do the following:

(1) Require a certificate of registration to be accompanied by a bond in the amount of \$25,000, or, in lieu of a bond, a cash deposit in the same amount.

(2) Require the county clerk to maintain a register of

unlawful detainer assistants, assign a registration number to each registrant, and issue an identification card to each one, thus imposing a state-mandated local program by imposing new duties on a local government official.

(3) Require the registrant's registration number and county of registration to appear on the registrant's work product, as specified, and on any solicitation or advertisement.

(4) Specify various requirements for acting as an unlawful detainer assistant and prohibited acts.

Since a violation of these requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that for certain costs no reimbursement is required by this act for a specified reason. However, the bill would provide that if the Commission on State Mandates determines that this bill contains other costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be payable from the State Mandates Claims Fund.

The bill would state legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares that  
2 there currently exist numerous unscrupulous individuals  
3 and associations of individuals who purport to offer  
4 protection to tenants from eviction. These unscrupulous  
5 individuals and associations represent themselves as  
6 legitimate tenants' rights associations, legal consultants,  
7 professional legal assistants, paralegals, attorneys, or  
8 typing services. In fact, these individuals and associations  
9 act to defraud tenants of both their funds and their rights  
10 under the law. While allegedly acting to assist

1 unsuspecting tenants, these individuals have filed  
2 thousands of frivolous or fraudulent legal pleadings in  
3 both state and federal courts. In most instances, the  
4 nature of the legal pleadings filed or the very fact of their  
5 filing has not been disclosed to the tenant. The acts of  
6 these unscrupulous individuals and associations are  
7 particularly despicable in that they target low-income  
8 and non-English-speaking Californians as victims for  
9 their fraudulent practices.

10 In several counties, including the largest, Los Angeles,  
11 the problem has reached epidemic proportions resulting  
12 in the defrauding of thousands of tenants, severe  
13 economic losses to landlords, and the clogging of both  
14 state and federal courts with frivolous or fraudulent  
15 proceedings. This has resulted in unnecessary financial  
16 burdens and delays in the judicial system. Further, the  
17 acts of these individuals and associations, purporting to  
18 assist tenants, have brought discredit to the state and  
19 federal judicial systems, law enforcement, the State Bar,  
20 and to legitimate tenants' rights' organizations and legal  
21 assistants.

22 Law enforcement officials have been frustrated in their  
23 attempts to prosecute these unscrupulous individuals due  
24 to the transient nature of their operations. Frequently,  
25 these individuals and associations literally disappear  
26 overnight making prosecution impossible. A registration  
27 requirement for unlawful detainer consultants and the  
28 printing of a registration number on all advertisements  
29 and prepared pleadings will assist law enforcement in  
30 locating and prosecuting unscrupulous individuals and  
31 associations. Further, the requirement of the posting of a  
32 bond will make funds available to those tenants who have  
33 been defrauded.

34 In order to ensure the protection of tenants and  
35 landlords, and the esteem of the judicial system, law  
36 enforcement, members of the State Bar, and legitimate  
37 tenants' rights organizations, the Legislature finds and  
38 declares that it is necessary to enact the "Unlawful  
39 Detainer ~~Consultants~~ Assistants Act."

40 SEC. 2. Chapter 5.5 (commencing with Section 6400)

1 is added to Division 3 of the Business and Professions  
2 Code, to read:

3 CHAPTER 5.5. UNLAWFUL DETAINER ASSISTANTS

4 Article 1. General Provisions

5 6400. (a) "Unlawful detainer assistant" means any  
6 person individual who for compensation engages in the  
7 business or acts of rendering nonlegal renders assistance  
8 or advice in the prosecution or defense of an unlawful  
9 detainer claim or action, including any bankruptcy  
10 petition that may affect the unlawful detainer claim or  
11 action. That assistance or advice includes, but is not  
12 limited to, completing a form provided by a federal or  
13 state court or agency, but does not include advising a  
14 person as to their answers on these forms or nonlegal  
15 preparation of a pleading, brief, affidavit, declaration,  
16 document, petition, or form pertaining to an unlawful  
17 detainer claim or action.

18 (b) "Unlawful detainer claim" means proceeding,  
19 filing, or action affecting rights or liabilities of any person  
20 which arises under Chapter 4 (commencing with Section  
21 1159) of Title 3 of Part 3 of the Code of Civil Procedure  
22 and which contemplates an adjudication by a court.

23 (c) "Compensation" means money, property, or  
24 anything else of value.

25 6401. This chapter does not apply to any of the  
26 following:

27 (a) Any government employee who is acting in the  
28 course of his or her employment.

29 (b) A member of the State Bar of California, or his or  
30 her employee or agent, or an independent contractor  
31 while acting on behalf of a member of the State Bar.

32 (c) Any employee of a nonprofit, tax-exempt  
33 corporation who assists clients free of charge.

34 6401.5. Every person engaged in the business or  
35 acting in the capacity of an unlawful detainer assistant  
36 shall only offer nonlegal assistance or advice in an  
37 unlawful detainer claim or action.

6401.5. Nothing in this chapter shall be construed to  
sanction, authorize, or encourage the practice of law by  
nonlawyers. Registration under this chapter shall not  
serve in any way to insulate or immunize any person from  
prosecution pursuant to Section 6125 or 6126.

7 Article 2. Registration Procedures

8 6402. An unlawful detainer assistant shall be  
9 registered pursuant to this chapter by the county clerk of  
10 the county in which he or she resides or has his or her  
11 principal place of business, and in which he or she  
12 maintains a branch office and of each county in which he  
13 or she performs acts for which registration is required. No  
14 person who has been disbarred or suspended from the  
15 practice of law pursuant to Article 6 (commencing with  
16 Section 6100) of Chapter 4 shall, during the pendency  
17 period of any disbarment or suspension, register as an  
18 unlawful detainer assistant.

19 6403. (a) The application for registration of a natural  
20 person shall contain all of the following statements about  
21 the applicant:

22 (1) Name, age, address, and telephone number.

23 (2) Whether he or she has been convicted of a felony,  
24 or of a misdemeanor under Section 6126.

25 (3) Whether he or she has been held liable in a civil  
26 action by final judgment or consented to the entry of a  
27 stipulated judgment, if the action alleged fraud, or the  
28 use of untrue or misleading representations, or the  
29 or the use of an unfair, unlawful, or deceptive business  
30 practice.

31 (b) The application for registration of a partnership or  
32 corporation shall contain all of the following statements  
33 about the applicant:

34 (1) The names, ages, addresses, and telephone  
35 numbers of the general partners of officers.

36 (2) Whether the general partners or officers have ever  
37 been convicted of a felony.

38 (3) Whether the general partners or officers have ever  
39 been held liable in a civil action by final judgment or have  
40

1 consented to the entry of a stipulated judgment. If the  
 2 action alleged fraud, whether it involved the use of  
 3 untrue or misleading representations, or the use of an  
 4 unfair, unlawful, or deceptive business practice.  
 5 6404. An applicant shall pay a fee of one hundred  
 6 seventy-five dollars (\$175) to the county clerk at the time  
 7 he or she files an application for initial registration or  
 8 renewal of registration. An additional fee of ten dollars  
 9 (\$10) shall be paid to the county clerk for each additional  
 10 identification card.

11 6405. (a) A certificate of registration shall be  
 12 accompanied by a bond of twenty-five thousand dollars  
 13 (\$25,000) which is executed by a corporate surety  
 14 qualified to do business in this state and conditioned upon  
 15 compliance with this chapter. The total aggregate  
 16 liability on the bond shall be limited to twenty-five  
 17 thousand dollars (\$25,000). The bond may be terminated  
 18 pursuant to Section 995.440 of, and Article 13  
 19 (commencing with Section 996.310) of Chapter 2 of Title  
 20 14 of Part 2 of, the Code of Civil Procedure.

21 (b) The county clerk shall, upon filing of the bond,  
 22 deliver the bond forthwith to the county recorder for  
 23 recording. The recording fee specified in Section 27361 of  
 24 the Government Code shall be paid by the registrant.  
 25 The fee may be paid to the county clerk, who shall  
 26 transmit it to the recorder.

27 (c) The fee for filing, canceling, revoking, or  
 28 withdrawing the bond is seven dollars (\$7).

29 (d) The county recorder shall record the bond and any  
 30 notice of cancellation, revocation, or withdrawal of the  
 31 bond, and shall thereafter mail the instrument, unless  
 32 specified to the contrary, to the person named in the  
 33 instrument and, if no person is named, to the party  
 34 leaving it for recording. The recording fee specified in  
 35 Section 27361 of the Government Code for notice of  
 36 cancellation, revocation, or withdrawal of the bond shall  
 37 be paid to the county clerk, who shall transmit it to the  
 38 county recorder.

39 (e) In lieu of the bond required by subdivision (a), a  
 40 registrant may deposit twenty-five thousand dollars

1 (\$25,000) in cash with the county clerk.

2 (f) If the certificate is revoked, the bond or cash  
 3 deposit shall be returned to the bonding party or  
 4 depositor subject to subdivision (g) and the right of a  
 5 person to recover against the bond or cash deposit under  
 6 Section 6412.

7 (g) The county clerk may retain a cash deposit until  
 8 the expiration of three years from the date the registrant  
 9 has ceased to do business, or three years from the  
 10 expiration or revocation date of the registration, in order  
 11 to ensure there are no outstanding claims against the  
 12 deposit. A judge of a municipal or superior court may  
 13 order the return of the deposit prior to the expiration of  
 14 three years upon evidence satisfactory to the judge that  
 15 there are no outstanding claims against the deposit.  
 16 6406. A certificate of registration shall be effective for  
 17 a period of two years. Thereafter, a registrant shall file an  
 18 application for renewal of registration and pay the fee  
 19 required by Section 6404.

20 6407. (a) The county clerk shall maintain a register  
 21 of unlawful detainer assistants, assign a unique number to  
 22 each unlawful detainer assistant, and issue an  
 23 identification card to each one. Additional cards for  
 24 employees of unlawful detainer assistants shall be issued  
 25 upon the payment of ten dollars (\$10) for each card.  
 26 Upon renewal of registration, the same number shall be  
 27 assigned, provided there is no lapse in the period of  
 28 registration.

29 (b) The identification card shall be a card 3 1/2 inches  
 30 by 2 1/4 inches, and shall contain at the top, the title  
 31 "Unlawful Detainer Assistant" followed by the  
 32 registrant's name, address, registration number, date of  
 33 expiration, and county of registration. It shall also contain  
 34 a photograph of the registrant in the lower left corner.  
 35

### 36 Article 3. Conduct of Business and Prohibited Acts

37  
 38 6408. The registrant's registration number and  
 39 county of registration shall appear on any solicitation or  
 40 advertisement, and on the registrant's work product,

1 including, but not limited to, letterhead, correspondence,  
 2 documents, forms, claims, petitions, checks, receipts,  
 3 money orders, and other papers relating to unlawful  
 4 detainer claims or actions.

5 **6409.** No person engaged in the business or acting in  
 6 the capacity of an unlawful detainer assistant shall retain  
 7 **6409.** No unlawful detainer assistant shall retain in his  
 8 or her possession original documents of a client who is not  
 9 a member of the State Bar.

10 **6410.** (a) Every person engaged in the business or  
 11 acting in the capacity of an unlawful detainer assistant  
 12 **6410.** (a) Every unlawful detainer assistant who  
 13 enters into a contract or agreement with a client either  
 14 than a member of the State Bar to provide services shall,  
 15 prior to providing any services, provide the client with a  
 16 written contract, the contents of which shall be  
 17 prescribed by regulations adopted by the Department of  
 18 Consumer Affairs.

19 (b) The written contract shall include provisions  
 20 relating to the following:

21 (1) The services to be performed.

22 (2) The costs of the services to be performed.

23 (3) There shall be printed on the face of the contract  
 24 in 10-point boldface type a statement that the unlawful  
 25 detainer assistant is not an attorney and may not perform  
 26 the legal services that an attorney performs.

27 (c) The provisions of the written contract shall be  
 28 stated both in English and, if the client is  
 29 non-English-speaking, in the language of the client.

30 (d) Failure of an unlawful detainer assistant to  
 31 comply with the provisions of subdivisions (a), (b), and  
 32 (c) shall make the contract or agreement for services  
 33 voidable at the option of the client.

34 (e) The client shall have the right to rescind the  
 35 contract within 72 24 hours of the signing of the contract.  
 36 Upon the voiding or rescinding of the contract or  
 37 agreement for services, the unlawful detainer assistant  
 38 shall immediately return to the client any unused portion  
 39 of the client's fee. The requirements of this subdivision  
 40 shall be conspicuously set forth in the written contract in

1 both English and, if the client is non-English-speaking, in  
 2 the language of the client.

3 **6411.** It is unlawful for any person engaged in the  
 4 business or acting in the capacity of an unlawful detainer  
 5 assistant to do any of the following:

6 (a) Make false or misleading statements to a client  
 7 while providing services to that client.

8 (b) Make any guarantee or promise to a client, unless  
 9 the guarantee or promise is in writing and the unlawful  
 10 detainer assistant has some basis for making the  
 11 guarantee or promise.

12 (c) Make any statement that the unlawful detainer  
 13 assistant can or will obtain special favors or has special  
 14 influence with a court, or a state or federal agency.

15 (d) Provide assistance or advice which constitutes the  
 16 unlawful practice of law pursuant to Section 6125 or 6126.

17 **6412.** (a) Any owner or manager of residential or  
 18 commercial rental property, tenant, or other person who  
 19 is awarded damages in any action or proceeding for  
 20 injuries caused by the acts of a registrant while in the  
 21 performance of his or her duties as an unlawful detainer  
 22 assistant may recover damages from the bond or cash  
 23 deposit required by Section 6405.

24 (b) Whenever there has been a recovery against a  
 25 bond or cash deposit under subdivision (a), the registrant  
 26 shall file a new bond or deposit an additional amount of  
 27 cash within 30 days to reinstate the bond or cash deposit  
 28 to the amount required by Section 6405. If the registrant  
 29 does not file a bond, or deposit this amount within 30  
 30 days, his or her certificate of registration shall be revoked.

31 **6413.** The county clerk shall revoke the registration of  
 32 an unlawful detainer assistant upon receipt of an official  
 33 document or record stating that the registrant has been  
 34 found guilty of the unauthorized practice of law pursuant  
 35 to Section 6125 or 6126, has been found guilty of a  
 36 misdemeanor violation of this chapter, or that a civil  
 37 judgment has been entered against the registrant in an  
 38 action arising out of the registrant's failure to properly  
 39 perform his or her obligation as an unlawful detainer  
 40 assistant. The county clerk shall be given notice of the

1 disposition in any court action by the city attorney,  
2 district attorney, or plaintiff, as applicable. A registrant  
3 whose registration is revoked pursuant to this section  
4 may reapply for registration after one year.

5 6414. A registrant whose certificate is revoked shall  
6 be entitled to challenge the decision in a court of  
7 competent jurisdiction.

8 6415. A failure, by a person who engages in acts of an  
9 unlawful detainer assistant, to comply with any  
10 requirement of this chapter of the requirements of  
11 Section 6402, 6408, 6409, or 6411 is punishable as a  
12 misdemeanor punishable by a fine of not less than one  
13 thousand dollars (\$1,000) or more than two thousand  
14 dollars (\$2,000), as to each client with respect to whom  
15 a violation occurs, or imprisonment for not more than one  
16 year, or by both fine and imprisonment. Payment of  
17 restitution to a client shall take precedence over payment  
18 of a fine.

19 SEC. 3. No reimbursement is required by this act  
20 pursuant to Section 6 of Article XIII B of the California  
21 Constitution for those costs which may be incurred by a  
22 local agency or school district because this act creates a  
23 new crime or infraction, changes the definition of a crime  
24 or infraction, changes the penalty for a crime or  
25 infraction, or eliminates a crime or infraction.

26 However, notwithstanding Section 17610 of the  
27 Government Code, if the Commission on State Mandates  
28 determines that this act contains costs mandated by the  
29 state, reimbursement to local agencies and school  
30 districts for those costs shall be made pursuant to Part 7  
31 (commencing with Section 17500) of Division 4 of Title  
32 2 of the Government Code. If the statewide cost of the  
33 claim for reimbursement does not exceed one million  
34 dollars (\$1,000,000), reimbursement shall be made from  
35 the State Mandates Claims Fund.