

# Paraprofessionals And Legal Services (PALS)

## Subcommittee

### Preliminary Report (November, 2020)

The Colorado Supreme Court created the Paraprofessionals and Legal Services Subcommittee (PALS) of its Advisory Committee to study whether licensed paralegals specializing in domestic relations matters could represent the 75% of family law litigants who now appear in court without lawyers.<sup>1</sup> Several other states have implemented or are considering similar proposals.<sup>2</sup> The Court has asked The PALS Subcommittee to develop a proposal for consideration by the Advisory Committee and the Colorado Supreme Court.<sup>3</sup>

- The subcommittee is comprised of current and former trial and appellate judges, family law lawyers, an experienced family law paralegal/mediator, a

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<sup>1</sup> According to the Colorado Judicial Branch’s “Cases and Parties without Attorney Representation in Civil Cases FY2018,” the number of domestic relations cases across all judicial districts totaled 34,364. Of that number, 23,810 cases had no attorney, and the case level pro se rate was set at 67%. The number of parties totaled 69,021, of which 51,646 parties were without attorneys. The party level pro se rate was at 75%.

<sup>2</sup> Utah and Washington State are the primary models for this program, offering different options and opportunities for licensure. Other states considering similar proposals include Arizona, Illinois, Minnesota, and California. In mid-2020, the State of Washington decided to “sunset” its LLLT program, but there are still LLLTs practicing in Washington State.

<sup>3</sup> The Supreme Court entered an order creating this second PALS Subcommittee on February 27, 2020. The Court did so after considering the recommendations of the first PALS subcommittee in 2019 for a pilot program for nonlawyer advocates in landlord-tenant cases. The Supreme Court agreed that assistance the unrepresented litigants would be helpful, but it decided to prioritize such assistance in domestic relations cases.

family court facilitator, Attorney Regulation Counsel, and the Chair of the Supreme Court Advisory Committee. <sup>4</sup>

- The subcommittee’s purpose is to substantially decrease the number of self-represented litigants in domestic relations cases as part of an effort to address what is commonly referred to by the bar as “the justice gap.”

According to a 2017 study by the Legal Services Corporation, in 2016, low income Americans received inadequate or no legal help for 86 percent of their civil legal problems.<sup>5</sup> These individuals are unable to obtain representation from Colorado Legal Services or similar programs that provide free legal assistance to low-income individuals. Pro bono representation has been unable to meet the legal needs of self-represented litigants, especially in family law cases, where pro bono lawyers are often reluctant to represent clients outside of their usual practice areas.

- Most of these folks would not qualify for Colorado Legal Services, but still cannot afford a lawyer at regular market rates.<sup>6</sup> We hope to give them another choice. They should not have to choose between a lawyer and no lawyer. They should be able to choose between representing themselves and getting help from an LPP.

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<sup>4</sup> Colorado Supreme Court Justice Melissa Hart (Liaison Justice), Judge Daniel Taubman (COA, Retired), Judge Angela Arkin (18<sup>th</sup> JD, Retired; Co-Chair), Judge Adam Espinosa (Denver County Court), Maha Kamal, Esq. (Co-Chair), Rebekah Pfahler, Esq., Colleen McManamon, (Paralegal/Mediator), Heather Lang (Family Court Facilitator), Jessica Yates, Esq., and David Stark, Esq.

<sup>5</sup> Legal Serv. Corp., *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* 6 (2017).

<sup>6</sup> Colorado Legal Services does not represent all indigent family law litigants. It only represents indigent family litigants in certain categories of cases.

- We are soliciting input from family law practitioners, judicial officers, family court facilitators (FCFs), self-represented litigant coordinators (Sherlocks), experienced and new paralegals, community college and legal educators, and the public to develop this proposal.

**Feedback:**

1. **Title:** These professionals will be titled “Licensed Paralegal Professionals (LPPs).”
2. **Licensure:** LPPs would be licensed by the Colorado Supreme Court to engage in the limited practice of domestic relations law.
3. **Independence:** LPPs could engage in this limited practice either with a law firm or with their own paralegal firm (see the ethics rules, below).
4. **Scope:** The scope of practice of LPPs would be limited to uncomplicated domestic relations matters.
5. **A. Task limits of an unsupervised LPP<sup>7</sup>:**

Task	Description of LPP Role
Client Interview	<i>Interview client to determine needs &amp; goals of client &amp; whether LPP services are appropriate or if matter should be referred to a lawyer. Determine appropriate motion or petition to file with the court: dissolution of marriage or civil union, legal separation, allocation of parental responsibility (APR), invalidity of marriage, parentage (in context of dissolution or APR) petition, and/or protection orders, modification of APR, child support and/or maintenance.<sup>8</sup></i>

<sup>7</sup> An “unsupervised” LPP is an LPP acting independently of attorney supervision. We are not suggesting any change to the current role of a paralegal under attorney supervision.

<sup>8</sup> Common law marriage, marital agreements, and contested jurisdiction matters must be referred to a lawyer.

Task	Description of LPP Role
Determine jurisdiction and venue, complete petition, summons, and case information sheet or post-decree motion or complaint for temporary protection order (TPO) & supplementing documents	<i>Assist client in gathering information &amp; completing state approved forms. May need to add additional simple state forms.</i>
File documents with the court	<i>File forms in person or electronically on behalf of the client.</i>
Case management order	<i>Assist client in understanding and complying with case management order.</i>
Obtain service of process	<i>Arrange for service of documents (may complete and file a motion for publication or substituted service if needed).</i>
Complete sworn financial statement (SFS) & disclosures	<i>Assist client with gathering disclosure information &amp; completing SFS &amp; Certificate of Compliance with Mandatory Disclosures.<sup>9</sup></i>
Direct client to parenting class & other resources as necessary	<i>Provide client with co-parenting education class info &amp; file certificate of completion with court; help clients process what they learned in class.</i>
Review of documents of other party (OP)	<i>Review documents of OP and explain documents to client. Refer to lawyer for complex issues.<sup>10</sup></i>
Speak with OP or opposing counsel (OC)	<i>Communicate with OP or OC regarding case status, potential agreements, and relevant forms. Refer to a lawyer for complex issues.</i>
Accompany client to initial status conference (ISC)	<i>Accompany client, provide emotional support, answer factual questions to LPP by judge, court facilitator, or opposing counsel, take notes, help client understand proceeding.<sup>11</sup></i>
Assist client in reaching agreements; prepare documents	<i>Assist client with forming parenting plan, separation agreement, stipulation for modification, support worksheets, uncontested proposed orders, non-appearance affidavit, etc.</i>

<sup>9</sup> All discovery, including drafting or review of questions or responses, must be referred to a lawyer. Depositions also must be handled by a lawyer. However, LPPs can assist in discovery under a lawyer's supervision, and the lawyer's representation of the LPP's client during that phase may be on an unbundled basis. LPPs also can send discovery requests to a client who wishes to complete them pro se and explain how to complete discovery.

<sup>10</sup> In Utah, only lawyers can prepare documents that are not court-approved forms. Drafting documents without court-approved forms is outside the scope of an LPP's authority. **We are seeking input from feedback groups on this issue.**

<sup>11</sup> Only lawyers can advocate for clients in court.

<b>Task</b>	<b>Description of LPP Role</b>
Assist with the selection of a mediator & scheduling	<i>Work with OP or OC to identify and schedule mediation.</i>
Accompany client to mediation	<i>Inform, counsel, assist, and advocate for a client in mediation.<sup>12</sup></i>
Pretrial work, including pretrial conferences	<i>Draft or review joint trial or pretrial management certificate, proposed parenting plan, Rule 16.2 pretrial submissions, exhibit lists, witness lists.</i>
Accompany client to temporary orders hearing	<i>Stand or sit with client, provide emotional support, answer factual questions as needed that are addressed to client by judge or OC, take notes, help client understand proceeding and orders.<sup>13</sup></i>
Accompany client to permanent orders hearing	<i>Stand or sit with client, provide emotional support, answer factual questions as needed that are addressed to client by judge or OC, take notes, help client understand proceeding and orders.</i>

**B. Financial Limits:**

For an unsupervised LPP to represent one party in a domestic relations matter, the parties could have **no more than \$200,000 combined net marital assets.**<sup>14</sup>

1. If the case has net marital assets in excess of \$200,000, the LPP could not handle the case without a licensed lawyer, absent good cause shown.
2. “Good cause shown” would be a finding by the district court, with specific factors to be considered (factors would be generally related to the

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<sup>12</sup> An LPP can negotiate on a client’s behalf at mediation, but not in court. LPPs are allowed to review settlement agreements or MOUs drafted by an attorney or mediator, and explain them to their client before the client enters into the agreement.

<sup>13</sup> Only lawyers can represent clients in court.

<sup>14</sup> Net marital assets are cash assets, net marital equity in a marital residence (whether the home is separate or marital); and/or net marital retirement assets in a defined contribution plan (401(k), IRA, 457, etc.).

simplicity and uncontested nature of the case, and whether the financial limits were only nominally exceeded).

**6. Qualifications, Education and Training:**

a. **General Degree Requirement.** A Colorado LPP applicant must have one of the following degrees:

- i. A degree in law from an accredited law school;
- ii. An associate's degree in paralegal studies from an accredited school;
- iii. A bachelor's degree in paralegal studies from an accredited school; or
- iv. A bachelor's degree in any subject from an accredited school, plus a paralegal certificate, or 15 hours of paralegal studies from an accredited school.

b. **Training and Experience.** In addition to those degree requirements, an applicant is required to:

- i. Complete 1,500 hours of substantive law-related experience within the three years prior to the application, including 500 hours of substantive law-related experience in Colorado family law.
- ii. Complete required classes<sup>15</sup>:

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<sup>15</sup> We anticipate all classes will be offered through continuing education at a community college(s) (and we hope to offer all classes online).

1. ETHICS CLASS – All applicants, including those with a law degree, will be required to take this class.
  2. FAMILY LAW CLASS – Required for all applicants applying to become licensed LPPs (law degree exempt).
- iii. Pass Licensing Examinations:
1. the Colorado LPP Professional Ethics Examination.
  2. the Colorado LPP Family Law Examination.

c. **“Grandfathering Provision” (for waiver of educational requirements only):**

- i. The Colorado Supreme Court may grant waiver of minimum educational requirements **for three years from the date the Court begins to accept LPP applications for licensure.** Applicants must show, within two years from the waiver request, that they:
  1. have filed the Application for a limited time waiver and paid prescribed fees.
  2. are at least 21 years old.
  3. have completed three years of full-time substantive law-related experience within the five years preceding the application, including experience in family law:

a. 500 hours of substantive law-related experience in Colorado family law.

ii. All applicants must undergo a character and fitness review and bear the burden of proving that the applicant is of good moral character and has a proven record of ethical and professional behavior.

d. **“Safety Valve” rule similar to C.R.C.P. 206:** a similar rule would need to be drafted to allow individual petitions to the Colorado Supreme Court by aspiring LPPs, for waiver of individual eligibility requirements.

7. **Annual Registration:** LPPs would pay an annual registration fee.

8. **CLE.** The LPPs must meet CLE requirements of 30 hours every three years (including five ethics credits).

9. **Malpractice insurance.** Malpractice insurance was another area being researched, and it is possible some kind of malpractice coverage will be required.

10. **Ethics Rules.** The Colorado Rules of Professional Conduct for lawyers would be generally applicable to LPPs as recommended here, with modifications depending on the scope of activities ultimately approved by the Colorado Supreme Court for LPPs. Those Rules will be titled The Colorado Rules of Professional Conduct for LPPs:



- a. We recommend two general principles: (1) ethics rules for LPPs should specify that they parallel the Colorado Rules of Professional Conduct for lawyers and that case law and ethics opinions interpreting those rules would provide guidance for LPPs, and (2) a link to the Colorado Rules of Professional Conduct for LPPs be provided to the client at the outset of the representation. This second principle could facilitate a discussion about the difference between representation by an LPP and a lawyer.
- b. The One Series – We recommend:
  - i. changes that reflect the limited scope of the LPP’s authority to practice law.
  - ii. the requirement of a written agreement at the outset of representation and a prohibition on contingency fees.
  - iii. that LPPs may not represent organizations.
  - iv. that LPPs be precluded from filing guardianship and conservatorship actions.
  - v. that LPPs only be allowed to purchase the practice of another LPP.
  - vi. using Colorado’s Rule 1.18 with the modification that any disqualification will apply to any other lawyer or LPP in the firm, unless the affected clients give informed consent or the lawyer or LPP is screened as provided by Colorado Rule 1.18 (d).

- c. The 2 series – We recommend that Colorado adopt rules that allow LPPs to provide information to third parties and to serve as mediators. LPPs would have limited opportunities to function in those categories, but they should be authorized to do so.
- d. We recommend adapting the 3 Series and the 4 Series to LPPs.
- e. The 5 Series -- The Rule 5 series of the Colorado ethics rules covers a variety of issues relating to eligibility to practice law in Colorado: supervisory responsibilities, ownership and fee-sharing restrictions, responsibilities around professional independence, and right to practice. We recommend:
  - i. LPPs should have no direct supervisory authority over any lawyer. Similarly, LPPs should support the efforts of lawyers with managerial authority to ensure firm-wide compliance with the rules of professional conduct.
  - ii. LPPs, as nonlawyers, should have the authority to own minority interests in law firms as well as establish their own LPP firms.
  - iii. Prohibiting the temporary practice by out-of-state LPPs in Colorado.
  - iv. Colo. RPC 5.7 concerning law-related services be adopted for Colorado LPPs. Examples of “law-related services,” include the provision of “financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social

work, psychological counseling, tax preparation, and patent, medical or environmental consulting.” LPPs will have a limited scope of practice, and it is anticipated that they likely will not be involved in providing law-related services. However, to the extent they are, LPPs should be held to the same ethical standards as lawyers in providing such services.

v. The 6 Series –

f. The 6 Series – We recommend that LPPs provide pro bono publico legal services.<sup>16</sup>

g. The 7 Series – We recommend that:

i. LPPs have an affirmative obligation to state that they have only a limited license and only for family law, and to avoid implying that the LPP has a broader license.

ii. An LPP in private practice and not part of a law firm must use the words "Licensed Paralegal Practitioner " in the firm name.

h. The 8 Series – We recommend similar requirements for LPPs as there are for lawyers regarding misconduct and disciplinary action.

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<sup>16</sup> We would like feedback on the recommended pro bono commitment for LPPs.