

Paraprofessionals And Legal Services (PALS)
Subcommittee
Preliminary Report (May 2021) Outlining
Proposed Components of Program for Licensed
Legal Paraprofessionals

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 provide limited legal services to the 75% of family law litigants who now appear in court without lawyers.¹ Several other states have implemented or are considering similar proposals.² The Court has asked the PALS Subcommittee to develop a proposal for consideration by the Advisory Committee and the Colorado Supreme Court.³

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

¹ 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%. The updated numbers for 2020 show that this challenge for unrepresented litigants is continuing.

² Utah and Washington State are the primary models for this program, offering different options and opportunities for licensure. Other states considering or moving forward with 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.

³ 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. ⁴

- 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.⁵ 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.⁶ 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 a licensed legal paraprofessional.

⁴ Colorado Supreme Court Justice Melissa Hart (Liaison Justice), Judge Daniel Taubman (COA, Retired), Judge Angela Arkin (18th 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.

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

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

- We have been and are continuing to solicit 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 is welcome on all aspects of the proposed program components set forth in this preliminary report.

Proposed Program Components:

1. **Title:** These professionals will be titled “Licensed Legal Paraprofessionals (LLPs).”
2. **Licensure:** LLPs would be licensed by the Colorado Supreme Court to engage in the limited practice of domestic relations law.
3. **Independence:** LLPs could engage in this limited practice either with a law firm or with their own legal paraprofessional firm (see the ethics rules, below).
4. **Scope:** The scope of practice of LLPs would be limited to uncomplicated domestic relations matters.
5. **A. Task limits of an unsupervised LLP⁷:**

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

Task	Description of LLP Role
Client Interview	<i>Interview client to determine needs & goals of client & whether LLP 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, & motions for contempt citations under C.R.C.P. 107.⁸</i>
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 & 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 & pattern discovery	<i>Assist client with gathering disclosure information, completing SFS & Certificate of Compliance with Mandatory Disclosures.⁹</i>
Direct client to parenting class & other resources as necessary	<i>Provide client with co-parenting education class info & 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.¹⁰</i>

⁸ Cases involving alleged contemnors charged with punitive contempt, trusts, common law marriage, marital agreements, and contested jurisdiction must be referred to a lawyer.

⁹ All non-pattern discovery, including drafting or review of questions or responses, must be referred to a lawyer. Depositions also must be handled by a lawyer. However, LLPs can issue and respond to pattern discovery, and assist in non-pattern discovery authorized by the Court, or under a lawyer's supervision. A lawyer's representation of the LLP's client may be on an unbundled basis. The PALS subcommittee urges the Civil Rules Committee to consider studying an amendment to C.R.C.P. 16.2 that would require leave of court to issue discovery.

Task	Description of LLP Role
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 to ISC, provide emotional support, answer factual questions to LLP by judge, court facilitator, or opposing counsel, take notes, help client understand proceeding.¹¹</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>
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.¹²</i>
Pretrial work, including pretrial conferences	<i>Draft or review joint trial or trial management certificate, proposed parenting plan, C.R.C.P. 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 Court or OC, take notes, help client understand proceeding and orders.¹³</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 Court or OC, take notes, help client understand proceeding and orders.</i>

¹⁰ 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 LLP's authority.

¹¹ Only lawyers can advocate for clients in court.

¹² An LLP can negotiate on a client's behalf at mediation, but not in court. LLPs 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.

¹³ Only lawyers can represent clients in court.

B. Financial Limits:

For an LLP to represent a party in a domestic relations matter, the parties must have **no more than \$200,000 combined net marital assets**.¹⁴

1. If the case has net marital assets in excess of \$200,000, the LLP 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 simplicity and uncontested nature of the case, and whether the financial limits were only nominally exceeded).

The district court may also consider the extent to which the party seeking to employ an LLP does not have direct access to the equity in a marital asset, such as equity in a home or in a pension, even though that party has an ownership interest in such assets.

6. Qualifications, Education and Training:

- a. **General Degree Requirement.** A Colorado LLP 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;

¹⁴ 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.).

- 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;¹⁵
 - ii. Complete required classes¹⁶:
 - 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 LLPs (law degree exempt);
and
 - iii. Pass Licensing Examinations:

¹⁵ The subcommittee strongly recommends that new LLPs be engaged with individual mentors and a mentoring group, to support and enhance their practice in this new profession. The subcommittee recommends that a mentoring relationship, whether required or simply encouraged, continue through at least the LLP's first full year of practice. The implementation phase of this proposal, if approved by the Court, could include discussions with community colleges about mentorship programs, as well as exploring whether the Colorado Attorney Mentoring Program could provide a platform for LLP mentoring.

¹⁶ We anticipate all classes will be offered through continuing education at a community college(s) (and we hope to offer all classes online).

1. the Colorado LLP Professional Ethics Examination.
2. the Colorado LLP Family Law Examination.

c. **Transition Period (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 LLP 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 500 hours of substantive law-related experience in Colorado family law.

d. **Character and Fitness.** 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.

e. **“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 LLPs, for waiver of individual eligibility requirements, while still ensuring their basic competence by requiring them to pass the licensure examinations.¹⁷

7. **Annual Registration:** LLPs would pay an annual registration fee.
8. **CLE.** The LLPs must meet CLE requirements of 30 hours in each three-year compliance period (including five credit hours devoted to professional responsibility as provided in Rule 205.2 C.R.C.P.).
9. **Malpractice insurance.** Malpractice insurance is another area being researched, and it is possible some kind of malpractice coverage will be required.¹⁸
10. **Ethics Rules.** The Colorado Rules of Professional Conduct for lawyers would be generally applicable to LLPs as recommended here, with modifications depending on the scope of activities ultimately approved by the Colorado Supreme Court for LLPs. Those Rules will be titled The Colorado Rules of Professional Conduct for LLPs:
 - a. We recommend two general principles: (1) ethics rules for LLPs should specify that they parallel the Colorado Rules of Professional Conduct for lawyers and that case law and ethics opinions interpreting those

¹⁷ Unlike the standardization of law school education, there currently are not standardized educational programs for preparing individuals for licensure as LLPs, and there may be individuals who are very well-qualified due to their professional experience. By waiving educational eligibility requirements in such cases, these individuals would be encouraged to apply for licensure, but they still would be required to pass a competence exam and ethical exam.

¹⁸ Currently, there is no requirement that attorneys in Colorado have malpractice insurance coverage. The subcommittee recommends that LLPs be required to have malpractice insurance if attorneys are required to have malpractice insurance.

rules would provide guidance for LLPs; and (2) a link to the Colorado Rules of Professional Conduct for LLPs 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 LLP and a lawyer.

- b. The One Series – We recommend:
- i. changes that reflect the limited scope of the LLP’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 LLPs may not represent organizations.
 - iv. that LLPs be precluded from filing guardianship and conservatorship actions.
 - v. that LLPs only be allowed to purchase the practice of another LLP.
 - vi. using Colorado’s Rule 1.18 with the modification that any disqualification will apply to any other lawyer or LLP in the firm, unless the affected clients give informed consent or the lawyer or LLP is screened as provided by Colorado Rule 1.18 (d).
- c. The 2 series – We recommend that Colorado adopt rules that allow LLPs to provide information to third parties and to serve as mediators.

LLPs 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 LLPs.
- 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. LLPs should have no direct supervisory authority over any lawyer. Similarly, LLPs should support the efforts of lawyers with managerial authority to ensure firm-wide compliance with the rules of professional conduct.
 - ii. LLPs, as nonlawyers, should have the authority to own minority interests in law firms as well as establish their own LLP firms.
 - iii. Prohibiting the temporary practice by out-of-state LLPs in Colorado.
 - iv. Colo. RPC 5.7 concerning law-related services be adopted for Colorado LLPs. 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.” LLPs 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, LLPs should be held to the same ethical standards as lawyers in providing such services.

- f. The 6 Series – We recommend that LLPs provide pro bono legal services.
 - g. The 7 Series – We recommend that:
 - i. LLPs have an affirmative obligation to state that they have only a limited license and only for family law, and to avoid implying that the LLP has a broader license.
 - ii. An LLP in private practice and not part of a law firm must use the words "Licensed Legal Paraprofessional" in the firm name.
 - h. The 8 Series – We recommend similar requirements for LLPs as there are for lawyers regarding misconduct and disciplinary action.
11. **Program Evaluation.** The subcommittee recommends that an evaluation plan be adopted as part of a broader implementation plan, so that relevant data could be collected and tracked starting at the time the initial LLPs are licensed and commence their work. Key measures could include: the number (or percentage) of litigants receiving LLP services in domestic relations matters; the satisfaction of judges presiding over such matters about the performance of LLPs and the efficiency of the matters with LLPs; surveys of LLP clients; and surveys of attorneys working with LLPs.