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The Elkins Family Law Task Force
Judicial Council of California
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Sent via facsimile and email

Re: Comment to Draft Recommendations

To Whom It May Concern:

The Alliance of Legal Document Assistant Professionals, Inc. (ALDAP) appreciates the invitation by the Elkins Family Law Task Force to comment on its Draft Recommendations. We thank you for the opportunity to familiarize each of you with the legal document assistant (LDA) profession and our association, and to voice our strong support of your efforts to simplify and standardize procedures in the family law courts of California.

About the Alliance of Legal Document Assistant Professionals

ALDAP is a non-profit association comprised of experienced non-attorney legal professionals who have joined forces to boost consumer protection and increase the professional integrity of the LDA and paralegal professions. In furtherance of these goals, the association provides educational and practical resources; materials to educate the public about resources for self-represented litigants; and an organized effort to combat the unfair and dangerous business practices of rogue "paralegals" and other unregistered legal document preparers who prey upon consumers and burden the courts with shoddy documents and their failure to properly educate their clients regarding court rules and procedures.

ALDAP offers consumers a complaint process with guidelines in place to aid in the resolution of disputes, acting as liaison between harmed consumers and the authorities. Under the leadership of its Director of Compliance & Ethics, ALDAP investigates complaints documenting fraud and illegal activities, and provides its investigative materials to the appropriate authorities. ALDAP has worked directly with consumers, the California State Bar UPL Project, San Diego City Attorney's Office, San Diego District Attorney's Office, the Tulare County Sheriff's Department and other state and local agencies to combat consumer fraud as it relates to non-attorney legal service providers.

In addition to the complaint resolution process, ALDAP's website provides consumers with information concerning LDA compliance and services, self-help articles regarding legal processes and procedures, links to free online legal resources and rules of court, and information regarding unbundled legal services. We are in the process of developing a directory of all California bonded and registered legal document assistants, which will be formally launched by December 31, 2009.

The LDA's Perspective

Legal document assistants are in the unique position of working directly with self-representing parties. We observe firsthand the mistakes made by self-represented litigants and recognize the need for simplification of California's family law courts.

ALDAP wants to introduce California's LDAs into the Superior Courts in an effort to educate and protect the public from fraud, acquaint consumers with competent non-attorney alternatives, and assist in relieving the burdens placed on the courts, self-help clinics and facilitators as they attempt to resolve the disparity between the "haves" and the "have-nots" when it comes to accessing the judicial system.

Because we walk in both worlds – as paralegals in traditional law offices and as self-help legal service providers – ALDAP's members recognize that a self-represented party's failure to successfully maneuver through the court system creates burdens on the courts, legal professionals, and the parties themselves. Rights go unrecognized and results are often unjust, merely because a party was not made aware of procedural requirements.

Comments on the Draft Recommendations

Recommendation 2.4: Expanding self-help services.

California Assembly Bill 590 signed into legislation earlier this year, will (in a few years) create an expansion of the court clinic facilities which will include *pro bono* attorney representation for self-representing parties who meet certain income standards. These clinics are targeted for low-income litigants who will be selected on a case-by-case basis. There has been a recent increase in legal aid clinics and law library seminars/clinics and services to help meet the needs of self-representing litigants.

In the *Statewide Action Plan for Serving Self-Represented Litigants*¹, the Judicial Council of California identifies the court-based self-help centers as being the most helpful service offered to litigants. More than 450,000 litigants utilize the clinics and the numbers will increase. Even with increased funding, the needs of California's self-representing parties cannot be met. Over 4.3 million court users are self-represented in California. For family law cases: 67% of petitioners at filing (72% for largest counties) are self-represented and 80% of petitioners at disposition for dissolution cases are self-represented. There are just too many people for the court clinics to serve.

¹ Task Force on Self-Represented Litigants, *Statewide Action Plan for Serving Self-Represented Litigants*, Judicial Council of California (February 2004) (available at <http://www.courtinfo.ca.gov/reference/documents/selfreplitsrept.pdf>).

LDAs serve a primary role in the self-help arena and benefit the courts in a variety of ways.

In addition to other resources, ALDAP's statewide LDA Directory should be a court referral resource for those who fail to meet the income threshold to qualify for legal aid services, or for those who wish to self-represent and hire a legal document assistant to complete their legal documents. The high cost of family law litigation is a strong motivator creating a self-representation "movement" specific to the family law courts. There are millions of people in our state who do not qualify as low-income, yet cannot afford to retain an attorney. These are the people who to hire LDAs to ensure that their paperwork is completed properly.

ALDAP recommends inclusion of California's LDAs as a consumer resource by the court clinics. This may be accomplished by the introduction into the court clinic lobby of materials pertaining to the role of legal document assistants and the consumer protections afforded by California Business & Professions Code sections 6400 *et seq.*, as well as publication of a directory listing California's lawfully registered and bonded legal document assistants. Such informational materials could be placed near the attorney referral brochures offered in many courts.

Recommendation 2.5(D): Limited scope representation.

Since 2001, limited scope representation (LSR) has the endorsement and support of the California State Bar and the Administrative Office of the Courts, which have adopted LSR as one remedy to the access to justice crisis. In 2009, the California State Bar released its statement in support of limited scope legal services. ALDAP supports LSR as a means for the self-represented to meet their self-help legal needs in a manner that achieves their specific objectives while maximizing cost savings.

LDAs play an important part in LSR. Many attorneys who perform LSR do not maintain staff for use by a self-representing party. LDAs assist consumers by producing the documents recommended to the client by the attorney, thereby reducing cost to the consumer and the burdens placed on the courts by improperly prepared documents. LDAs are often required to advise a consumer that their needs may fall outside the scope of a LDAs authority.

Many LDAs – and their clients – enjoy a beneficial relationship with a lawyer offering unbundled services, which saves time and money, and alleviates concerns regarding the potential unauthorized practice of law. In addition to the recommendation that state and local bar associations encourage LSR, ALDAP urges the Task Force to also recommend that the courts inform consumers of the LSR option, and the availability of attorney services for advice and consultation, in concert with the self-help services provided by the registered and bonded LDA.

Recommendation 3: Caseflow Management.

The Task Force concerns regarding case flow management are shared by ALDAP. ALDAP believes that case management can help alleviate stalled cases, and realizes

the burden notices and failures to appear place on court personnel and upon the parties. ALDAP believes that including LDAs as a court referral resource would help move cases along to completion as an educated litigant is a successful litigant.

ALDAP also believes that notices from the court to self-representing parties are often ignored by the parties. This leads to additional court function and expense. We recommend that the courts employ a system to transmit a copy of the notice to the LDA identified on the self-represented party's documents. In that instance, the LDA would send reminders and ensure that all documents were in proper form and that the party is ready to proceed. This would also help alleviate burdens placed on the court.

Recommendation 3.13: Written orders after hearing.

Parties should be provided immediate legible Minute Orders and be directed to the court clinic or to a non-attorney legal document preparer to facilitate preparation and processing of the order in a timely manner. LDAs are quite capable of preparing appropriate court orders and in many instances, consumers are more than happy to pay for preparation of an important legal document.

Since the inception of the court-based legal self-help clinics, LDAs have encountered situations where a judge or court staff has directed the LDA's client to the court clinic for preparation of documents that the client has already paid the LDA to prepare and which, quite possibly, had already been prepared and were ready to be filed. ALDAP urges the Task Force to recommend that the courts direct an LDA's client to return to the LDA for completion of necessary paperwork. This will help ease the burden placed on the self-help clinic.

Recommendation 4: Providing Clear Guidance Through Rules of Court.

The ever evolving enhancement of technology is creating a smarter, more sophisticated litigant. Unfortunately, the current system allows each court to create and enforce its own local rules and forms, creating complicated processes and procedures resulting in confusion and diminishing much needed court and community resources. The courts should unify to create one process for administration of family law matters and reduce or eliminate local and department rules.

Recommendation 5: Children's Voices.

The court should adopt strict guidelines concerning children's rights to be heard. LDAs work closely with families who generally expect the court to mediate custody disputes. This expectation is on the rise. While the parties argue, the children are in the middle of the parents and have no voice. As the Task Force struggles with this issue, ALDAP's members observe many cases where the children wish to be heard, but only by the judge. They do not want their parents or attorney present as many of them feel constrained while speaking in their presence.

There are large numbers of children who wish to speak with the mediator and others who wish to write the judge a note. The efforts by the Task Force to limit parents from influencing the children's statements are supported by ALDAP. In our experience,

these children would be best served by providing them the election to either speak directly with the judge or the court mediator. Children should have a choice in selecting a comfortable style of communication without fear of recrimination.

We believe children should also be provided a court advocate so they can have unfettered input on custody and other child related issues which may arise in family court. ALDAP stresses the importance of allowing children independent contact with court personnel and, if necessary, they should be given an opportunity to address the judge either in writing or in chambers, on an as-needed basis determined by the mediator, advocate or judge.

Recommendation 11: Litigant Education.

Education is the key to success. ALDAP wholeheartedly supports the Task Force's position that additional educational resources should be provided to self-representing parties.

As indicated in our comment to Recommendation 3, above, we believe that including legal document assistants as a referral resource would help alleviate this burden on the courts, as many consumers are informed and educated about the family law process by an independent LDA.

ALDAP's members strive to provide consumers with legal resources in the form of procedural guide information and rules of court so that self-representing parties may make informed decisions concerning their cases. Our members also offer consumers referrals to other no-cost or low-cost resources such as *pro bono* court/law library clinics, attorneys, court and law school clinics, and other various legal service providers.

Recommendation 13: Streamlining Family Law Forms and Procedures.

Mandatory sole use of statewide forms specific to dissolution of marriage and other family law matters should be implemented and local forms should be abolished. The Judicial Council should review the required local forms of each court, and adopt for statewide use the forms which best suit the needs of the court and its users.

ALDAP recommends statewide use of a form of declaration required to be filed by all parties stating the identity (name, address, telephone and registration/license) of anyone who assisted the self-represented party with their legal matter. Institution of this practice by the Judicial Council and the courts would directly affect those who would cause harm to unwary consumers. This would be one more step toward combating consumer fraud and other illegal conduct by rogue document preparers and those who practice law without proper credentials and licensing. In the current economic climate, our state's budgetary crisis has resulted in a fraud-friendly environment, as policing is almost non-existent due to severe cutbacks of services customarily provided by government agencies. Requiring declaration from self-representing parties would help cure fraud at the gate – the clerk's counter. For your reference, a sample declaration, Nevada County local form FL3, is attached as Exhibit A.

ALDAP also recommends mandatory statewide use of a Family Law Certificate of Assignment to be filed with each new case. For your reference, a sample form, San Diego County local form SD-D490, is attached as Exhibit B.

Recommendation 15.1(B): Uniform default and uncontested process – full review of documents.

The Task Force recommends that documents be returned to the “attorneys or self-represented litigants.” ALDAP strongly urges the Task Force to amend this recommendation to also include LDAs. When documents are returned to a self-represented party, the rejection communication from the court is often not forwarded on to the LDA. This causes unnecessary delays, default hearings, and a waste of the court’s time, energy and resources to resolve a matter that can easily be handled by the LDA. The California Business & Professions Code requires that legal document assistants include identifiers and contact information on every document they prepare, so court personnel should have no trouble determining whether a legal document assistant is involved in the case, or where to send correspondence to the attention of the LDA. In some counties, such as San Diego, courts often return documents to the LDA, however this practice is not uniformly applied; in some instances it is the clerk who determines where the paperwork will be sent. This practice should be streamlined and applied uniformly in all courts throughout the state.

ALDAP further recommends that when a self-represented litigant appears for a Default hearing, the court should review the documents for the LDA identifier and if the party has received services from an LDA, the court should refer that party back to the LDA for further assistance, to avoid wasting the court’s resources (see also our comment to Recommendation 3.13, above).

Conclusion

California’s LDAs are a valuable resource to both the courts and consumers. LDAs save time in the courtroom, reduce inaccurate paperwork, diminish inappropriate filings, minimize unproductive court appearances, lower continuance rates, expedite case management and dispositions, promote settlement of issues, and assist the court to increase its overall ability to handle its caseload.

ALDAP intends to continue with its efforts to educate and protect consumers by promoting professional integrity and absolute compliance with the laws governing non-attorney legal document preparers.

Your consideration of our recommendation to include ALDAP and California’s LDAs into your mission is greatly appreciated. Please feel free to contact us should you have comments or wish additional information. Attached to this correspondence are a sample LDA declaration form (Exhibit A), a sample case assignment form (Exhibit B), and ALDAP’s *LDA Client’s Bill of Rights and Responsibilities* (Exhibit C) and *Legal Document Assistant Code of Ethics and Professional Responsibilities* (Exhibit D).

We look forward to working with the courts and court personnel to develop a family court system which meets the needs of consumers and the courts with processes that increase efficiency, while at the same time, providing appropriate relief to the parties who place their trust and families into the judicial system. We appreciate the opportunity to work with the Elkins Family Law Task force and the Administrative Office of the Courts to resolve the current access to justice crisis and to serve California's consumers with dignity and respect.

Very truly yours,

Gail Hahn

Gail Hahn, LDA
Education Director, Alliance of Legal Document Assistant Professionals, Inc.

EXHIBIT A

NEVADA COUNTY SUPERIOR COURT 201 Church Street, Suite 5 Nevada City, CA 905959	
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	
OTHER PARENT:	
DECLARATION RE: LEGAL DOCUMENT ASSISTANT (Business and Professions Code §6400 et seq.)	CASE NUMBER:

A legal document assistant **did** **did not** for compensation give advice or assistance with the pleadings and/or forms I have filed in this action. *If the party has received any help or advice for pay from a legal document assistant or paralegal, (other than a person acting in the capacity of an employee of a California licensed attorney, or other exempt person) state:*

- a. Assistant's name: _____ b. Telephone No. _____
- c. Street address, city, and ZIP: _____
- d. County of registration: _____ e. Registration No.: _____ f. Expires on (date): _____

VERIFICATION

I am a party to this proceeding and have read the foregoing. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(Signature)

(Printed Name of Party)

EXHIBIT C

LDA Client's Bill of Rights and Responsibilities

By the Alliance of Legal Document Assistant Professionals, Inc.

Legal Document Assistants (LDAs) are bonded and registered professionals whose conduct is governed by the California Business & Professions Code. LDAs are required to maintain high professional standards and refrain from unethical

conduct, including the unauthorized practice of law. Accordingly, clients who chose to retain the document preparation services of an LDA are guaranteed certain rights, and are obligated to fulfill key responsibilities in the handling of their legal matters.

Every client has the right to:

- Upfront pricing.
- A fully-executed copy of the Legal Document Assistant Contract, as set forth in 16 CCR § 3950, at the beginning of the LDA-client relationship.
- Clear communication regarding the scope of LDA services available, and the meaning of "self-help service" within the context of the LDA-client relationship.
- Professionally prepared legal documents that accurately reflect the information provided by the client; and any errors being addressed quickly and equitably.
- Referrals to attorneys, legal aid, or other legal service providers to answer specific legal questions regarding the client's particular situation.
- Exclusively control and direct his or her legal case, strategy, argument and implementation.
- Access to published legal materials to assist him or her in making informed decisions.
- Confidentiality, to the fullest extent permitted by law.
- Be presented with a copy of the LDA's registration credentials.
- Information about how to resolve any disputes that may arise out of the LDA-client relationship.
- Reasonable and timely responses to all communications.
- Complete access to the entire client file maintained by the LDA, and immediate return of documents upon request.

Every client has the responsibility to:

- Educate himself or herself of the potential legal options applicable to his or her particular situation or objectives.
- Seek qualified legal counsel if the LDA determines that he or she requires the services of an attorney.
- Refrain from requesting or expecting that the LDA provide legal advice (i.e. asking the LDA to apply the law to the facts of the client's specific situation)
- Provide clear and complete written instructions to direct the LDA in the preparation of legal documents.
- Provide reasonable and timely responses to all communications from the LDA.
- Carefully review any document prepared by the LDA before the document is signed and filed, recorded or served.
- Present any questions or concerns prior to final documents being prepared.
- Make all payments according to the terms stated in the contract.

*Professional Integrity
Consumer Protection*



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Legal Document Assistant Code of Ethics and Professional Responsibility

By the Alliance of Legal Document Assistant Professionals, Inc.

Every ALDAP member agrees to abide by the canons of the Alliance of Legal Document Assistant Professionals, Inc.'s Code of Ethics and Professional Responsibility. Violations of the Code may result in termination of membership.

Since ALDAP's inception in 2007, the canons have served as the foundation of ethical practices for

the legal document assistant profession.

The canons below were adopted by the Alliance of Legal Document Assistant Professionals, Inc. to protect consumers and serve as a guide to aid LDAs, paralegals and the public in the delivery of professional legal document preparation and self-help legal services.

***Laws include:**

- **Business & Professions Code § 6400, et seq.**
- **Business & Professions Code § 6450, et seq.**
- **Business & Professions Code § 6125, et seq.**
- **11 U.S. Code § 110**
- **California State Bar Rules of Professional Conduct**

Canon 1

A Legal Document Assistant shall strictly comply with all laws* governing the practices of non-attorney legal service providers, and shall closely follow the accepted standards of legal ethics and general principles of proper conduct.

Canon 2

A Legal Document Assistant shall achieve and maintain a high level of competence through continuing education and training with respect to professional responsibility, legal ethics, and court rules, forms and procedures.

Canon 3

A Legal Document Assistant shall maintain a high level of personal and professional integrity and conduct.

Canon 4

A Legal Document Assistant shall serve the public interests by delivering quality legal document preparation services that satisfy all requirements of the California Business & Professions Code and any rules and regulations established by the courts or any administrative agency.

Canon 5

A Legal Document

Assistant shall preserve all confidential information provided by the client or acquired from other sources, to the extent the law permits, before, during and after the course of the professional relationship. An LDA may reveal confidential information only after full disclosure and with the client's written consent; or when required by a law or court order.

Canon 6

A Legal Document Assistant shall not engage in the unauthorized practice of law, and shall refrain from providing

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legal recommendations, suggesting remedies, selecting forms or applying the law to the facts of a client's particular situation.

Canon 7

A Legal Document Assistant shall disclose his or her status as a non-attorney, self-help legal service provider at the outset of any LDA-client relationship.

Canon 8

A Legal Document Assistant shall act prudently in determining whether

the client's needs exceed the definition of "self-help services" as set forth in Business & Professions Code § 6400(d); and if such a determination is made, the LDA shall immediately inform the client that he or she requires the services of an attorney.

Canon 9

A Legal Document Assistant shall avoid impropriety and the appearance of impropriety, and shall not engage in any conduct that would adversely affect his or

her fitness to practice, including, but not limited to, the following: the unauthorized practice of law, violence, dishonesty, and/or abuse of a professional position or public office.

Canon 10

A Legal Document Assistant shall support and participate in efforts to improve consumer protection, access to justice, the judicial system, and the LDA and paralegal professions.



Professional Integrity
Consumer Protection

Our Mission

- *Promote and support the integrity of the Legal Document Assistant profession*
- *Generate awareness of the availability of non-attorney legal service providers*
- *Protect the public by educating consumers about self-representation resources and the unauthorized practice of law*
- *Promote continuing legal education and the LDA's commitment to professional responsibility*
- *Act as a forum for the exchange of information*
- *Integrate our services with the legal community and the general public*