

ACCESS

A Publication of the California Association of Legal Document Assistants



JULY 15, 2003



PRESIDENT'S MESSAGE

Well here we are in the middle of Summer and the Conference is only three months away. Your Board has been working hard to make this one of our best conferences ever. We have a wide variety of classes to offer with many new instructors. David Stein, Esq. will be presenting an in-depth advanced Family Law session. Commissioner Foland will be presenting Guardianships and Commissioner Vogl will be presenting Judgments. Several of our members will also be presenting, including Lynne Stein on QDRO's and Helen Belamy on Beginning Family Law. Watch your mail for more details in the coming month. (We need an instructor for Probate. If you know of an attorney in the area, please contact me.)

I marvel at the speed that we get news. Almost the instant we send a message to the Talklist, it gets to all the members. This is such an important benefit for all of us; I feel I must sing it's praises again. Where else could LDA's get instant information about their profession and network at the same time? In the old days (before email) we had to wait until there was a workshop or the annual conference to meet the other people in our profession. I, for one, feel I know many more members simply by their participation on the Talklist.

We had a few bumpy rides with messages these past few months, but I feel that everyone eventually worked it out and handled it in a professional manner. I would hope that everyone continue to understand the Talklist is OPEN and EVERYONE is encouraged to ask any question no matter how trivial it may seem. We have a wide variety of members with different backgrounds, education and years in the business. We all need to bear with the newer members and help them as much and as often as we can. The older members need to be more open to changes and listen to the younger ones. That makes all of us more consistent in our business product and increases *esprit de corp*. All in all the Talklist is a wonderful tool for all of us and should be touted as one of the most important perks with membership.

So everyone enjoy your Summer and we will see you at Asilomar in October!



Early Bird
Discount Ends
9/1/03

REGISTER ONLINE
www.calda.org

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Special Offer

CALDA offers instant messages to all voting and non-voting members. If you want to be a part of the Talk list and have an E-mail address (or if your address has changed), please send it to dpwade@lightspeed.net

ATTENTION

ALL MEMBERS: EACH YEAR YOU MUST SUBMIT A COPY OF LDA, UD OR IMMIGRATION REGISTRATION; OR A LETTER FROM YOU STATING UNDER PENALTY OF PERJURY THAT YOU AREN'T REQUIRED TO CONFORM TO STATE LAW. EVERYONE MUST COMPLETE ALL 4 PAGES OF APPLICATION

WHEN AN LDA ASKS "WHY SHOULD I JOIN CALDA?"

Tell them, the benefits are:

1. Increased professional knowledge and networking opportunities.
2. Awareness of events and developments pertaining to the LDA profession.
3. Subscription to the newsletter, *ACCESS*.
4. A voice in decisions affecting the profession at the local, state and national levels.
5. Discounts on educational seminars and workshops.
6. Setting a higher standard of professionalism

The ACCESS is a publication of the California Association of Legal Document Assistants (CALDA).

The opinions expressed in ACCESS are those of the writers and are not necessarily those of CALDA. All articles are based solely on materials submitted in writing. The act of submitting editorial contributions shall constitute an express warranty by the contributor that the material is original and in no way an infringement upon the rights of others. CALDA assumes no responsibility for verification of the information submitted.

NEWSLETTER GUIDELINES

Materials may be submitted as follows: E-Mailed, 3.5 Diskette
E-Mail china@longscourtforms.com or mail to:

China Long
27780 Jefferson Ave. Suite M
Temecula, Ca. 92590
Fax: 909-694-4460

If sending on diskette: Contents should be in final form.
Computer System used PC only, Software used, **MS Word or Word Perfect 9 or lower ONLY.**

Do not indent or use all caps in headlines or text. Prefer alignment to be justified

Treasurer's Report

Listed below is our Profit and Loss Report Compared to Budget for our first fiscal quarter. So far, we are very close to budget with a net income/excess of \$2,301, which is \$210 over budget. This is great; let's keep up the good work, and keep on increasing our membership, buying our products and enrolling for the conference. We all benefit by making this possible.

We are really looking forward to our conference this year at Asilomar at a greatly reduced cost from the mainstream hotels where we have always held our conferences. To date, there are about 20 people who have signed up for the conference, so get your registrations in soon. You can make payments and I'll send you a monthly statement to help keep you on track. We really do have a limited amount of rooms, so make your reservations now.

Just a bit about my class, which is being offered in two parts on Friday and Saturday mornings: *How to Operate a Successful LDA Business*. The first morning, we will review how to set up your LDA business

and concentrate on the things to do and not to do; try to have a "mock" interview with a potential client to help us keep on track, and review client files, tickler systems, etc. And in the second session on Saturday morning, we will start working on your business plans, look at some marketing ideas, and help you price your business so that you can enjoy a nice (huge???) profit in your business. So I hope you will sign up for the class, either both sessions or just one session, whatever you need, I promise you'll will learn something new.

As you all know, however, the key to a successful conference is PARTICIPATION, PARTICIPATION!!! So we hope to see everyone at Asilomar!!

If anyone has any questions regarding CALDA's financial status, please give me a call (510-523-7290), or e-mail

Cindy Elwell
(Dwdignity@aol.com).

LANCASTER WORKSHOP

Calda held a workshop at Marie Callendar's in Lancaster on June 11, 2003 given by attorney Suzanne Richter who spoke about Living Trusts.

Ms. Richter was an interesting, animated and knowledgeable speaker and spoke about some of the more interesting cases she has handled over the years. She suggested LDA's stay away from A-B trusts, which I have always thought to be a good idea. If a trust seems too complicated, the people

should probably see an attorney.

Our group at the workshop was small but happy to see each other and meet new people. Diana was there also, which I very much appreciated, as this was my first workshop.

Hinda Lucas
Education

CALDA's Profit & Loss Compared to Budget

	Actuals			
	Apr - Jun 03	Budget	\$ Over Budget	% of Budget
Income				
Annual Conf. Income	0.00			
Dues	3,435.00	3,795.00	-360.00	90.51%
Education Products	188.00			
Fundraising Products	389.71	450.00	-60.29	86.6%
Interest Inc	11.73	15.00	-3.27	78.2%
Newsletter	0.00	10.00	-10.00	0.0%
Workshops	94.17	300.00	-205.83	31.39%
Total Income	4,118.61	4,570.00	-451.39	90.12%
Expense				
Administrative Assistant	64.12	300.00	-235.88	21.37%
Bank Charge	89.86	213.00	-123.14	42.19%
Board Meetings	222.12	251.00	-28.88	88.49%
Fund Raising Committee	0.00	249.00	-249.00	0.0%
Legal & Accounting	0.00	75.00	-75.00	0.0%
Membership Committee	0.00	105.00	-105.00	0.0%
Newsletter Expense	0.00	154.00	-154.00	0.0%
Office Expense's	79.92	60.00	19.92	133.2%
Post Office	216.00	220.00	-4.00	98.18%
Public Relations	800.00			
St. Bd. of Equalization	26.00			
Telephone	122.70	102.00	20.70	120.29%
Website	0.00	600.00	-600.00	0.0%
Workshop	196.75	150.00	46.75	131.17%
Total Expense	1,817.47	2,479.00	-661.53	73.32%
Net Income	2,301.14	2,091.00	210.14	110.05%



SECRETARY NEWS

Our next board meeting is scheduled for July 19, 2003, at the Picadilly Inn, 2305 W. Shaw, in Fresno, California. Since this will be the last board meeting prior to conference, it would be a good time for anyone considering a board position or even a committee member to attend and see what we do. Contact me or Diana Wade and we can provide you with directions, hotel information, or whatever you will need.

As you have probably seen on the Talklist, we need some volunteers to help at the conference with various duties. If you are willing to help, please contact Tamara Parker directly at (831) 469-8470, or via e-mail at Cruzbluz@aol.com.

At our last board meeting, we received our MCLE approval. What that means is we can provide attorneys and paralegals credits for attending our conferences and workshops, so share with your attorney and paralegal friends the good news. You can provide them a board members phone number or e-mail address, or direct them to our website for information on our next workshop and the upcoming conference.

And talking about website, didn't Evalsko do an awesome job? As a CALDA member, you are now not **ONLY** listed on our cool looking website, **BUT** you are also in their search engines. More exposure can only mean more business for all of us.

If you haven't already received it, you should be receiving our conference brochure soon. Evalsko has also worked very hard at an online registration page on our website, which is now up and running. Go to our website at www.calda.org and check it out for yourself. Look around while you are there, it really looks great.

If you have been to our webpage, you have seen the minutes from our last board meeting, if not, we had a Public Relations presentation put on by Karen Graff who is just out of this world. She will be at our conference, so make sure to look for her.

There will also be a surprise at the conference for some unsuspecting person, so make sure to make your reservations and see what it is. I can't give you any more information, as I have been sworn to secrecy, and I have probably given too much away already.

As always, if you have any questions, comments or suggestions, feel free to contact me.

Cara Gould
Dcg24@fresno.com
(559) 298-5582

Anyone prepare deeds for consumers? Well if you lived in Georgia and prepared deeds without attorney supervision you would be charged with UPL. The State Bar recently issued this ruling despite the DOJ and others insisting that preparing deeds would lower the legal costs of real estate closings. Currently attorneys charge \$400.00 per closing which they think is VERY cheap.

Sure glad I don't live in Georgia.

Diana
dpwade@lightspeed.net

AUTO LAWSUITS

Dear Members:

Remember when 11 of our members were sued by that lawyer in San Bernardino? The infamous "Davis Case"? He sued ALL "independent Paralegals" (2500 DOES) under the same statute that the Trevor Law Firm in Beverly Hills is using to sue auto repair shops. If memory serves me, some of the defendants paid him to go away while others signed statements they would not operate an IP/LDA business in the future. It is legal, but AB 69, that will abolish the statute (consumer protection) is pending in the legislature. Your support for this bill is very important. If this bill is defeated, LDA's could be next! Suppose you forgot to give the disclaimers required in the new law...what about forgetting to give a signed copy of the contract to the consumer before you accepted payment...what about not putting your LDA county number & expiration date on all your documents. We all could be a target!

Auto Lawsuits

ARCADIA — Thousands of auto repair shops in the Southland are being sued. The businesses say they are targets of an extortion campaign by a Beverly Hills law firm. But, the lawyers say they are doing nothing wrong. Imagine being sued because you failed to sign a piece of paper. Mechanics in Orange and Los Angeles Counties say that's exactly what's happening to them. A state law, that's been on the books since the depression, is allowing anyone to sue on behalf of the public. But, the auto repair shops say it's gone too far.

A busy street in Arcadia is lined with small auto repair shops and recently, many of these businesses were sued not by a disgruntled customer or a government agency, but by three Beverly Hills attorneys who claim to represent a consumer group. They're named in a massive suit that involves more than two thousand car repair shops across L.A. and Orange Counties.

The reasons: They've appeared on the state's "Bureau of Automotive Repair" website or if they've had any type of complaint lodged against them, even for a minor infraction like failing to have a repair estimate signed, they made the hit list.

Attorney Damian Trevor says, "It is pretty evident that the industry itself is running rampant with incorrect estimates failing to estimate their parts and labor on their invoices and generally conducting themselves in the manner the public deserves."

The three Beverly Hills lawyers with the Trevor Law Group dismiss accusations they're filing frivolous lawsuits. In fact, they say the Orange County District Attorney supports their work.

"Not only did I go to law school for this, but I received -- just on Thursday -- a call from the Orange County District Attorney complimenting our lawsuit and asking if we

need any support whatsoever be happy to help us," said Trevor.

But we called the OC District Attorney's office and checked. They faxed over a letter to us and to the Trevor Law Group that says:

It has come to our attention that your firm is using our office's name to show support for your lawsuit. Please understand that the Orange County District Attorney's office does not approve of this. Please accept this letter as a warning to stop using this office's name to further your lawsuit in any way.

Another problem shop owners have with the lawsuit is that they've been offered a chance to settle for thousands of dollars instead of going to court in a legal battle. The shop owners call it a legal shakedown.

Donald Johnson of Johnson Machine Service says, "They called down there and said if you send us \$2500 we'll drop the suit." When asked what do you think of that? Johnson responded, "I think that's ridiculous."

The attorney for the auto repair shops Katie Jacobs says, "They are using it, which is a good law, but they're really pushing it and saying you can't afford to fight us so pay us and go away."

Some of the individuals interviewed for this story thought that this was legalized extortion.

"In terms of legal extortion, I think anybody would be really upset and defensive and definitely start hurling remarks that are negative to other people that are starting to investigate and really expose this industry for what it is," says Trevor.

And even if the owner of a shop has just one complaint filed against them the Trevor Law Group says they're justified in filing a lawsuit.

Just before this story aired, Attorney Damian Trevor asked us not to report on the comments he made to us about the Orange County District Attorney.

Meantime, an investigator for the State Bar Association contacted Eyewitness News about Damian Trevor's comments and the Orange County District Attorney, and she asked us several questions about the matter.



LEGISLATIVE CHAIR NEWS

After spending hours searching the Internet for information to bring you news relative to changes in laws that affect our profession as Legal Document Assistants, I have found that out of necessity more and more states are seeking changes in their laws to provide equal access to the law for middle to low income people. I also noticed that more and more courts are providing user friendly websites with not only forms and local court rules but references to informational websites to help the self-represented. The courts are also responding to the increased numbers of pro se litigants by providing such help as conferences

- a. **Limit preparation of documents for which the preparer is competent;**
- b. **Require a written disclaimer to the consumer stating that they are not a lawyer;**
- c. **Require educational and experience criteria;**
- d. **Require an examination for admission;**
- e. **Mandate continuing education courses; and**
- f. **Establish a Code of Ethics.**

However, it appears that Arizona's laws are much stricter than those we have here in California. In a press release by HALT (a legal reform group) in October, 2002, entitled "Arizona Lawyers Try To Corner Market For Legal Services; State Bar Seeks to Curb Non-Lawyer Competition, HALT Senior Counsel, Thomas M. Gordon, is quoted saying: *"One of the main reasons the average consumer cannot afford legal help is that archaic rules against the 'unauthorized practice of law' stifle competition and preserve a lawyers' monopoly on providing legal services."*

Some very thought-provoking points were made in HALT's presentation, and I quote them here (emphases added) for your consideration:

"Consumers have a **continuum of legal needs**, and should therefore have access to a continuum of legal services, including traditional representation, a variety of nontraditional alternatives to lawyer representation, and various mixes of the two."

"Fifty percent [of the client population] can be served through very low-cost interventions such as self-help legal publications and software, self-help legal videos, cable-access television, and multi-lingual brochures. **Thirty-five** percent need low-cost intervention involving a trained nonlawyer (for example, a domestic violence shelter worker or a legal forms preparer). Ten percent require some help from an attorney, but the legal

Family Law Facilitators and by holding educational

California appears to be one of the states leading the passage of laws to provide the public with non-lawyer assistants to help them in their self-representation. Now, Arizona has also passed a new law, effective July 1, 2003. The new law permits "Certified Legal Document Preparers" to prepare legal documents but does not permit them to provide legal advice or to otherwise engage in the practice of law. The regulatory system for Certified Legal Document Preparers will:

Representation involved is low-cost and may be supplemented with paralegal or non-lawyer support. Only five-percent require full-range, high-cost lawyer representation to address their more complex legal needs." [cite omitted]

"The proposed rules are at best an overreaction to a minor problem, and at worst are blatant protectionism. . . . The State Bar of Arizona, in its Petition . . . refers (without documentation) to four hundred complaints that it received last year . . . According to a national study, only two percent of complaints against non-lawyer practice involved an allegation of injury **by a consumer**; the rest are brought by competing lawyers, unauthorized practice committees, state bar associations, and others." [cite omitted].

"Whether the number of legitimate complaints against lay service providers for unauthorized practice is eight or four hundred, this number needs to be put in perspective. For example, in 2000, the State Bar of Arizona received 2,524 complaints against its members alleging various infractions. [cite omitted] As a consumer problem, unauthorized practice pales in comparison to the problems lawyers cause their clients. No matter what the extent of the harm caused by unauthorized practice, the proposed Rules reach too far in trying to prevent it."

"All of these proposed rules combine to make it nearly impossible for consumers to use the services of independent paralegals for simple tasks in the civil justice system."

Debbie Driver

IS BANKRUPTCY BAD?

In Calendar year 1999, approximately 1.3 million individual sought the relief from debts and claims of creditors by filing for bankruptcy, down slightly from the 1.4 million in calendar 1998. More than 1.5 million filed in 2002. With that huge number of people seeking relief from their debts and the claims of their creditors, much of the stigma of “going bankrupt” has gone away.

CAN A CREDITOR ASK A DEBTOR TO REAFFIRM THE DEBT?

Yes, this means that the creditor is asking that the debtor pay the debt anyway, even after it has been discharged. A debtor may be willing to do this if there is a co-signer or guarantor of the debt (such as a family member, friend or employer) that the debtor does not wish to leave saddled with the debt. Also, a debtor may want to reaffirm a debt in order to avoid having a secured creditor take the collateral provided for the debt. A creditor may also ask a debtor to reaffirm the debt before he (the creditor) will agree to do business with the debtor again.

WHAT IS A CHARGE OFF?

When a consumer becomes very delinquent on an account, the creditor will probably charge it off. This means that the creditor will write the debt off as a loss for tax purposes. This does not mean that they have given up collecting on the debt. The creditor is now likely to either sell the debt or send it to collections. In general, charge offs stay on a credit report for seven years. The seven years usually starts on the date of the last activity on the debt. However, unless the debt is discharged by a bankruptcy, the creditor can continue to attempt to collect on the debts for even longer than seven years.

China Long
Newsletter Chairperson

WELCOME NEW CALDA MEMBERS!

By Robin Schumacher, Membership Chairperson

A warm WELCOME to our newest CALDA Members:

Luis Huapaya	Oxnard, CA
Debra Finney	Orange, CA
Michael Thrasher	Kern County
Lynn Zawrotny	Riverside County
Norma Guerrero	San Bernardino County
Victoria Orellana	Los Angeles, CA

Keynote Speaker at Asilomar

KAREN GRAFF

In the last issue of the Access, I told you I had scheduled Karen Graff of Info-Media to be the keynote speaker at the October conference, which I hope you all will attend!

Karen Graff has over 25 years in the marketing and public relations industries with an emphasis on developing strategic marketing and public relations plans for professionals and owners of small businesses.

She is the vice president of Personalized Info-Media, a full service marketing and public relations firm based in the greater Fresno area.

Ms. Graff has received numerous awards during her professional career, including recognition in “Who’s Who of California”, “Who’s Who In The West”, “2000 Notable American Women”, and “Who’s Who of American Women”. In 1981, she was named an Outstanding Young Woman In America.

She is a graduate of the National “Leadership America” program, and is a recipient of the “Distinguished Leadership Award” presented by the National Association of Community

Leadership Organizations. Ms. Graff is a well recognized public speaker and a published author on the necessity of public relations and marketing for today’s small business owner.

Active in the community, Ms. Graff is a member of the Fresno Rotary Club. She is a past president of the Central California Chapter of the Public Relations Society of America.

Please take the time to attend the conference this year. It would be a great opportunity for you to see and meet her and discuss the public relations packet that she could develop for you and your business. The packet will be provide through CALDA at a discounted rate and will improve your professional and personal lifestyle.

If you have any questions, feel free to call me at (559) 673-6006.

Anita D. Parga
Public Relations

Don't miss out...if you are not getting email from the Talklist, please contact Diana at dpwade@talklist.com

VERY IMPORTANT

The only email addresses used for the Talklist are the ones listed on the membership directory. You will need to post any message and respond to any messages directly from that address. If you use any other address you will get a message that you cannot post to the talklist. You cannot send from any others. Any changes to the email address MUST be made on the web site. www.calda.org.

I would suggest that each of you check your web site listing to make sure it is correct.

“U P L”

Sometimes it's black. Other times, it's white. But most of the time, it's a murky, muddy gray. The unauthorized practice of law (UPL), say lawyers, legal educators and paralegals alike, is often hard to identify and still harder to define.

Some cases of UPL are easily recognizable: The person without a license to practice law who advises his or her so-called clients on how to avoid bankruptcy proceedings, or the one who - absent statutory or rule authority - appears at a court proceeding as an advocate for a client. But it's much less clear when the practitioner is what has come to be known as a traditional legal assistant - someone trained and educated in the paralegal profession, often with years of experience, who works under the supervision of licensed attorneys. Can traditional paralegals tell a client in a litigation matter what to expect procedurally without crossing the line into giving legal advice? Can you observe a deposition without a supervising attorney being present? Can you handle real estate closings outside the presence of an attorney? Can your name be included on firm letterhead and, if so, are there restrictions?

These are the types of questions paralegals at all experience levels face on a regular basis. The answers, however, are not always obvious and may vary from jurisdiction to jurisdiction. The American Bar Association (ABA), the National Association of Legal Assistants (NALA), National Federation of Paralegal Associations (NFPA), state and local legal assistant organizations and most states have developed guidelines, ethical canons or statutes to help define the practice of law. But even those who deal daily with the issue of UPL admit that it can be tough to pin down what does and doesn't constitute the practice of law.

"It's nearly impossible to draw a line between what is and isn't UPL when a paralegal is working under the supervision of an attorney," said Thomas E. Spahn, a partner at McGuire Woods in McLean, Va., who spends the bulk of his time advising his 550-attorney firm on issues of ethics and conflicts and lecturing on those subjects to others. "It's a very quirky area."

The Law, the Rules and the Guidelines

Limitations on the practice of law in the United States date back more than 200 years. A proliferation of untrained practitioners during colonial times "caused local courts to adopt rules requiring attorneys who appear before them to have a license granted by the court," according to "The Concise Guide to Paralegal Ethics," published by Aspen Law & Business, 2001 and written by lawyer and educator Theresa A. Cannon. These rules were adopted in part to "stop incompetence that harmed not only the clients but the administration of justice and dignity of the courts."

According to Cannon's book, UPL is a misdemeanor in more than 30 states and subjects a person to civil contempt proceedings in more than 25 states. But criminal prosecution is reserved for the most egregious cases. "[Criminal] prosecutions generally arise only if someone, like a disgruntled customer or a lawyer, complains," explained Cannon, consultant to and former member of the ABA's Standing Committee on Legal Assistants. "There have been some [prosecuted] in Florida, California, Tennessee and Illinois but not in many other places."

State Variations

Today, there is wide variation of UPL regulations. "Control over the practice of law is vested in the states, not the federal government, so naturally there are different views on areas like UPL," Cannon said. "The regulations are usually in the form of state statutes that prohibit the unauthorized practice of law. They are fairly uniform."

The California Business and Professions Code, for example, states, "No person shall practice law in California unless the person is an active member of the state bar." Further, "[A]ny person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the state bar, is guilty of a misdemeanor" (Calif. Business and Professions Code, §§6125-6140.05). Similarly, the law in the Commonwealth of Virginia states that those who hold a license or certificate to practice law under the laws of the commonwealth and have paid the license tax prescribed by law may practice law there, but violators could face a misdemeanor penalty (Va. Code §§ 54.1-3900 and 54.1-3904). A handful of states, including Arizona and Iowa, are without any UPL statutes. But according to Fran Johansen, UPL counsel for the State Bar of Arizona, some of those states deal with UPL through a state Supreme Court rule.

"The variation [in state statutes] comes in when these laws are applied to actual instances of UPL that are the subject of criminal prosecution or civil lawsuits," Cannon explained. "Since the courts can only decide what comes before them, there will always be some variation."

The ABA's View

Like the states, the ABA is loath to adopt a narrow definition of the practice of law. Its Model Code of Professional Responsibility EC 3-5 states, "[I]t is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law."

Spahn noted the ABA rules also acknowledge lawyers, in their practice of law, may rely on paralegals, but must avoid assisting others - including paralegals - in the unauthorized practice of law. "ABA Model Rule 5.5(b) states that, 'A lawyer shall not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law,'" he said.

The Black and White Prohibitions

Most bar or state definitions of the practice of law generally prohibit the following activities by non-lawyers:

Establishing an attorney-client relationship. Lawyers' relationships with clients are governed by statutes and ethics rules that hold them to a high standard of care in serving those clients. Communications between attorney and client are protected by the attorney-client privilege. Many courts have ruled that privilege extends to non-lawyers only when they are acting under the direct supervision of a lawyer (see discussion of HPD Laboratories, Inc., v. Clorox Co., below)

Setting fees. Fee setting is considered part of establishing the attorney-client relationship. Consequently, only an attorney can contract with the client for legal services and determine the fees charged for those services.

Representing a client in court or acting as an advocate in a representative capacity. Court appearances, taking or defending depositions or engaging in substantive negotiations with adversaries typically require the skills and knowledge that only a trained, educated and experienced lawyer can provide. However, paralegals can provide valuable assistance at trials, hearings and depositions by reviewing relevant documents, identifying areas of questioning, helping to prepare witnesses and assisting with the introduction of evidence.

Providing legal advice. Like appearing in court on behalf of a client, providing legal advice can be undertaken only by someone who has the necessary knowledge of law gained through education, training and experience. While Cannon noted that the concept of giving legal advice is complex and has a lot of gray areas, generally, it consists of directing or recommending a course of action that might have legal consequences; explaining to a client his or her legal rights and responsibilities; evaluating the probable outcome of a matter; and interpreting the law.

The Struggle Over Legal Advice

Cannon said the biggest potential UPL problem for paralegals working under attorney supervision may be drawing the line when it comes to giving legal advice when they communicate with clients. "They have to evaluate whether explaining something to a client constitutes legal advice or not," she said.

Drawing the Line

In some instances, legal advice has even been construed as giving legal presentations. In *Doe v. Condon*, 532 S.E.2d 879 (4th Cir., 2000), WL 718448, the question of UPL arose in the context of a paralegal teaching a seminar without an attorney being present.

The court held that a paralegal can't make unsupervised public presentations (in this case, the topic was estate planning) or conduct initial client interviews in which the paralegal answers legal questions. But the court made no distinction between general and specific legal questions, ruling that paralegal may not give legal advice, period.

Pamela Jo Packard, chair of NFPA's Ethics Board, advised paralegals struggling with whether they were engaging in UPL to think about the questions they were being asked and the answers they were giving.

"They need to ask themselves whether their answers sound like advice only an attorney could give," she said. In her own practice, her rule of thumb is this: "If the information is strictly procedural, I feel comfortable providing it to a client". But sometimes clients will ask me something that can only be answered by a lawyer, because it requires a legal judgment. In those cases, I tell the client that I'll convey the question to the lawyer and one of us will get back to him or her."

Full Disclosure

Closely tied to the issue of dispensing legal advice is the issue of what Spahn calls "holding out" - in his opinion, a critical issue for paralegals. "Because legal assistants work so closely with lawyers, they must be careful to avoid holding themselves out' as lawyers, either intentionally or unintentionally. When speaking or meeting with clients or the public, legal assistants must correctly describe their role," he explained. That extends to making sure they properly represent themselves in correspondence and on business cards.

"I worry about people being misled into thinking a paralegal is an attorney. If malpractice is committed, there could be an additional legal complaint that the client thought the paralegal was a lawyer," Spahn said.

He said he believes such violations are unlikely to occur in large firms such as McGuire Woods, because the paralegals in that type of environment work very closely with lawyers. However, similar violations may be more common in small firms or in solo practices where legal assistants are depended upon to move a matter forward from start to finish, Spahn explained.

Packard, however, said she believes traditional paralegals are unlikely to commit UPL. "I can't image that any paralegals working in law firms would be likely to commit UPL because of the fact that they're required to work under the supervision of attorneys," she said. "[When looking for UPL violations], the bar is looking for people out on the street who aren't supervised."

In her role as NFPA Ethics Board chair, Packard fields many requests for guidelines on what paralegals can and can't do. "There are people out there who don't think they are practicing law because they're just filing out forms for people for wills or divorces or simple entity organizations. But they have to decide which forms to use and that requires a legal judgment."

Spahn said that, although defining permitted activities is as difficult as defining those that are not permitted, several national ethics guidelines list activities in which a legal assistant may freely participate. For example, the NALA Model Standards, Guideline 5, states that, as long as legal assistants act with full disclosure (defined in NALA's Code of Ethics and Professional Responsibility as disclosing his or her status as a legal assistant at the outset of any professional relationship with a client, attorney, court or administrative agency, or member of the general public), they may:

Maintain client contacts after creation of the attorney-client relationship.

Send and receive correspondence from clients and third parties.

Conduct factual investigations.

Conduct legal research under the supervision of an attorney.

Draft, for a lawyer's review, legal documents, pleadings, correspondence and other materials

Summarize pleadings and depositions

Accompany lawyers to and assist them with meetings and court proceedings.

Stephanie Mark, CLAS, NALA ethics chair and a 24-year paralegal veteran who has been with the firm of Hall, Still, Hardwick, Gable, Golden & Nelson in Tulsa, Okla. since 1984, said NALA doesn't deal with UPL per se. Instead, its approach is to educate its members on all aspects of ethics, including UPL, through its publications, meetings, seminars and Web site. "We don't see gray areas when it comes to UPL," she said. "We emphasize disclosure and also focus on what legal assistants cannot do, like give legal advice, establish the attorney-client relationship, set fees or appear in court or in an administrative proceeding unless expressly authorized by rule or statute. But it all goes back to educating on ethics." She cites the Condon case as an example of the types of decisions NALA monitors and updates its members about.

However, like Packard, she differentiates between how UPL relates to traditional paralegals and how it relates to people who "fill out forms and call themselves legal assistants," such as legal document assistants in California. The latter, she said, "we could talk about forever."

NFPA's Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement expressly prohibits UPL stating, "[A] paralegal shall comply with the applicable legal authority governing the unauthorized practice of law in the jurisdiction in which the paralegal practices" (EC-1.8(a)). It also specifies these guidelines for full disclosure:

A paralegal shall clearly indicate his or her status and disclose it in all business and professional communications to avoid misunderstandings and misconceptions about the paralegal's role and responsibilities.

A paralegal's title shall be included if the paralegal's name appears on business cards, letterhead, brochures, directories and advertisements.

A paralegal shall not use letterhead, business cards or

other promotional materials to create a fraudulent impression of his or her status or ability to practice in the jurisdiction in which the paralegal practices.

A paralegal shall not practice under color of any record, diploma or certificate that has been illegally or fraudulently obtained or issued or which is misrepresentative in any way.

A paralegal shall not participate in the creation, issuance or dissemination of fraudulent records, diplomas or certificates (EC-1.7(a)-(e)).

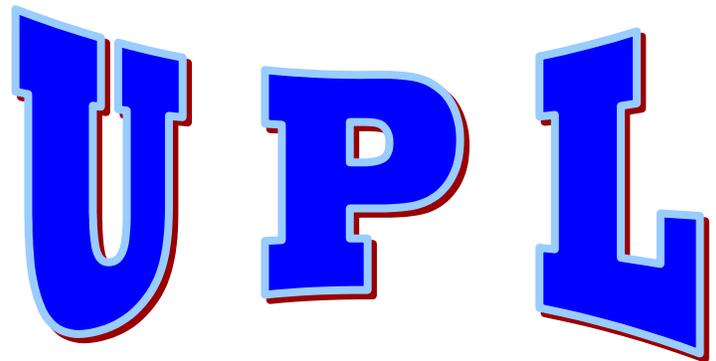
Packard said she believes all of the rules, codes and laws lead practitioners to one final truth: What is in the best interest of the client?

A paralegal for 30 years, the last 24 of which have been at Stoel Rives, in Boise, Idaho, Packard has come to trust her professional instincts about what she can and can't do.

"If it feels like giving legal advice and it sounds like giving legal advice, I don't do it," she explained.

Instead, she consults the attorney about the client's questions and gets back to him or her. After speaking with the attorney, she conveys his informational response.

Mark's advice is this: Err on the side of caution. "As educated individuals, we know what's ethical and what's not. In those situations when we are unsure, we should always, always go to an attorney."

The image shows the letters 'UPL' in a large, bold, blue font with a red outline. The letters are spaced out and have a slight 3D effect.

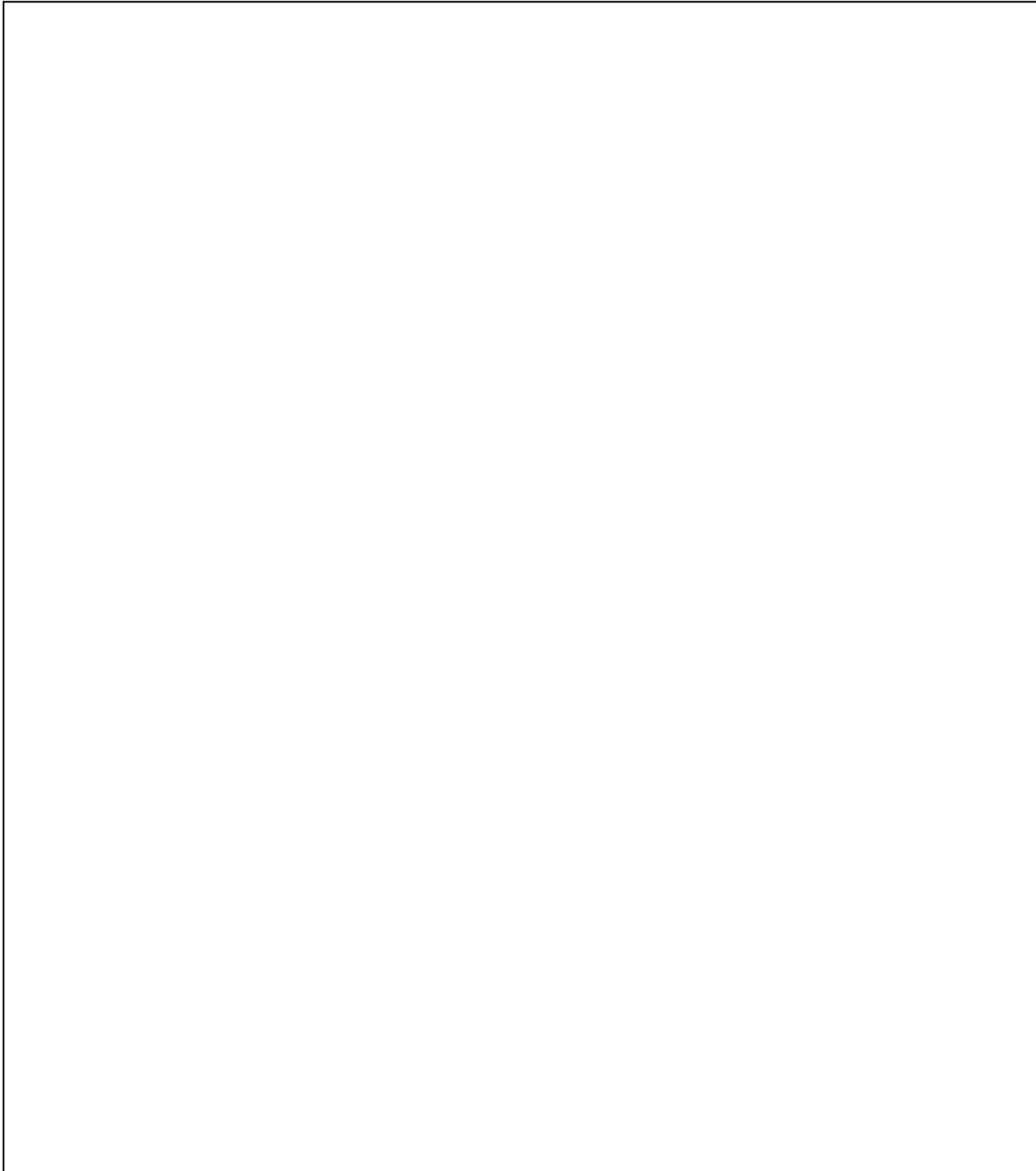


**California Association
of Legal Document Assistants
16th Annual Conference**



October 17 – 19, 2003

Asilomar Conference Center
800 Asilomar Blvd, Pacific Grove, CA
(831) 372-8016



PAYMENT

OPTION #1 -- based on double occupancy with another CALDA member (Please circle your choice)

<u>Registration Fees:</u>	<u>Prior to September 1, 2003</u>	<u>After September 1, 2003</u>
CALDA Members	\$480.00	\$525.00

Under Option #1 -- The above includes all conference materials, **double occupancy room Friday and Saturday night**, breakfast, lunch and dinner, both Friday and Saturday, breakfast on Sunday for UPL session.

OPTION #2 – based on single occupancy (Please circle your choice)

<u>Registration Fees:</u>	<u>Prior to September 1, 2003</u>	<u>After September 1, 2003</u>
CALDA Members	\$610.00	\$650.00
Non-Members	\$680.00	\$725.00
Children 7-17 add \$56.42/per night		

Under Option #2 -- The above includes all conference materials, **single occupancy room Friday and Saturday night**, breakfast, lunch and dinner, both Friday and Saturday, breakfast on Sunday for UPL session.

OPTION #3 – based on occupancy with spouse or partner not attending conference (Please circle your choice)

<u>Registration Fees:</u>	<u>Prior to September 1, 2003</u>	<u>After September 1, 2003</u>
CALDA Members	\$680.00	\$725.00
Non-Members	\$750.00	\$775.00
Children 7-17 add \$56.42/per night		

Under Option #3 -- The above includes all conference materials, breakfast, lunch and dinner, both Friday and Saturday, breakfast on Sunday for UPL session.

OPTION #4 – based on attending conference but not staying at Asilomar (Please circle your choice)

<u>Registration Fees:</u>	<u>Prior to September 1, 2003</u>	<u>After September 1, 2003</u>
CALDA Members	\$325.00	\$350.00
Non-Members	\$500.00	\$525.00

Under Option #4 -- The above includes all conference materials. Meals are extra (breakfast \$8.00, lunch \$10.00 and dinner is \$15.50). Indicate meals here \$_____.

OPTION #5 (Please circle your choice)

<u>Members per day Registration</u>	<u>Friday Only</u>	<u>Saturday Only</u>	<u>Sunday Only</u>
	\$210.00	\$210.00	\$25.00
<u>Non Members per day Registration</u>	<u>Friday Only</u>	<u>Saturday Only</u>	<u>Sunday Only</u>
	\$210.00	\$210.00	\$25.00
Children 7-17 add \$56.42/per day			

Under Option #5 -- The above includes all conference materials, breakfast, lunch and dinner Friday and/or Saturday, Sunday UPL materials only and breakfast.

IF YOU ARE PLANNING ON ARRIVING THURSDAY, 10/16/03 AND STAYING AT ASILOMAR ADD AN ADDITIONAL \$131.00/double occupancy.

PAYMENT OPTION #1

I would like to pre-pay for the conference as I have indicated above for a total of \$_____.
Refunds may be made prior to 9/1/03 less \$100.00 booking fee. No refunds after 9/15/03. NO EXCEPTIONS!

PAYMENT OPTION #2

I would like to send a \$100.00 deposit now and be billed on a monthly basis until paid in full for the conference as I have indicated above for a total of \$_____.
Refunds may be made prior to 9/1/03 less \$100.00 booking fee. No refunds after 9/15/03. NO EXCEPTIONS!

Name: _____	Phone: _____
Address _____	Home Phone: _____
City: _____ Zip: _____	FAX: _____
E-Mail Address: _____	

Please make Checks payable to CALDA & mail to:
Cindy Elwell, Divorce With Dignity, 1138-A Ballena Blvd., Ste 3, Alameda, CA 94501,
or phone 510-523-7290

Or Credit Card information: # _____ Exp. _____
Visa ___ Mastercard ___

Signature _____

****THIS IS NOT A SURVEY, THIS IS PART OF YOUR REGISTRATION****

ASILOMAR and CALDA want to serve you. But we need information from you. Asilomar needs an accurate head count (CALDA members, non-members, families, etc.).

In order to make this a great conference for you, please complete the following and submit with your registration so Asilomar and CALDA can meet your needs.

ROOM RESERVATIONS FOR CONFERENCE

Please mark only what applies.

I plan to have my own room.

I plan to share a room with _____.
(Member Name)

I plan to bring my family/non-members. _____.
(# of adults / # of children)

I want to share a room, but have no one in mind. Please connect me with a roommate.

I will be attending, but will not be staying at Asilomar.

If you have any special requests, please let us know. We are coordinating with Asilomar staff for the room accommodations.

Within two weeks of registering, you will receive a confirmation from Cara Gould, Secretary. If you do not receive a confirmation, please contact her directly at (559) 298-5582 or e-mail her at Secretary@Calda.org.

Please do not assume that your payment has been received or your registration is complete. You **MUST** receive a confirmation for your room reservation and/or conference registration.

**The California Association of Legal Document Assistants
(CALDA)
Is a State Bar of California approved MCLE provider
(8.5 hours)**