

Helping Your Clients Be the Best Lawyers They Can Be
Tips to Enhance Your LDA Practice and Successfully Carve Out Your Niche as the Go-To-Resource for Do-It-Yourselfers

LDA Roundtable Discussion
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www.aldap.org
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The ALDAP Advantage™

Win new clients by adding value, not lowering price. Clients who are loyal to the dollar are never loyal to you. As soon as another LDA offers a lower fee, they're gone – and all the loyalty you hoped to build goes with them. But, when you add value to your services, you can charge more – and you'll attract the clients who appreciate the many things you do for them.

What can you do to add value?

As a self-represented litigant, your client is an “attorney” throughout the duration of the case. However, this attorney has not had the benefit of law school, a judicial clerkship, or years of courtroom experience.

All is not lost, however. In much the same way that a paralegal helps a supervising attorney win the case or negotiate a settlement, an experienced LDA can help mold the *pro se* party into the best lawyer he or she can be.

Self-Help Legal Services

Many LDAs fall into the trap of thinking they are solely “document preparers.”

Don't overlook other activities and services that may lawfully be provided by a registered LDA (or anyone else, for that matter).

“Self-Help Services” include:

1. Preparing legal documents at the direction of the client
2. Providing the client with general published factual legal information
3. Providing the client with published legal documents
4. Filing and serving legal documents at the client's specific direction

Bus. & Prof. Code § 6400(d)

“Self Help Services” Under § 6400(d)

Note that this list is “inclusive” rather than “exclusive.” LDAs may, of course, provide additional services for which no license or registration is required under the law.

For the purposes of this discussion we will focus on items 2 and 3, above. To effectively employ these strategies, we first must have a clear understanding of what constitutes the “unauthorized practice of law.”

Unauthorized Practice of Law (UPL)

In addition to the prohibitions contained in Bus. & Prof. Code §§ 6401.5 and 6411, the unauthorized practice of law is addressed in Bus. & Prof. Code § 6125, et seq.

The code does not, however, define what constitutes the “practice of law,” a definition which varies from state to state.

ABA Definition: Practice of Law

In 2003, the American Bar Association (ABA) published the following recommendation regarding the definition of the “practice of law”:

RESOLVED, That the American Bar Association recommends that every state and territory adopt a definition of the practice of law.

ABA Definition: Practice of Law

FURTHER RESOLVED, That each state’s and territory’s definition should include the basic premise that the practice of law is *the application of legal principles and judgment to the circumstances or objectives of another person or entity.*

ABA Definition: Practice of Law

FURTHER RESOLVED, That each state and territory should determine who may provide services that are included within the state's or territory's definition of the practice of law and under what circumstances, *based upon the potential harm and benefit to the public*. The determination should include consideration of minimum qualifications, competence and accountability.

Recommendation, Task Force on the Model Definition of the Practice of Law (ABA 2003) (emphases added), available at <http://www.abanet.org/cpr/model-def/recomm.pdf>

UPL Defined

Constitutional challenges have also been raised in the past, including the landmark *Dacey* case, which upheld the right of a non-attorney to publish a self-help book, "How to Avoid Probate."

UPL Defined

"It could not be claimed that the publication of a legal text which purported to say what the law is amounts to legal practice, and that the mere fact that the principles or rules stated in the text may be accepted by a particular reader as a solution to his problem, does not affect the matter."

New York County Lawyers' Association v. Dacey (New York 1967) 21 N.Y.2d 694

UPL Defined

California courts have also weighed in on this issue.

“In close cases, the courts have determined that the resolution of legal questions for another by advice and action is practicing law “if difficult or doubtful legal questions are involved which, to safeguard the public, reasonably demand the application of a trained legal mind.”

Baron v. City of Los Angeles (1970) 2 Cal.3d 535, 543 (emphasis added)

UPL Defined

“We believe that general California law and the approach taken by other states with respect to divorce services teach that such services do not amount to the practice of law as long as the service offered by LPS was merely clerical, i.e., the service did not engage in the practice of law if it made forms available for the client’s use, filled the forms in at the specific direction of the client and filed and served those forms as directed by the client....

UPL Defined

“...Likewise, merely giving a client a manual, even a detailed one containing specific advice, for the preparation of an unlawful detainer action and the legal incidents of an eviction would not be the practice of law if the service did not personally advise the client with regard to his specific case.”

People v. Landlords Professional Services (4th Dist. 1990) 215 Cal.App.3d 1599, 1608

With this framework in mind, what can YOU do to help your clients be the best lawyers they can be?

Bus. & Prof. Code § 6400(d)(2)
Provide general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing himself or herself in a legal matter, to assist the person in representing himself or herself.

Practice Guides
Your client is the attorney, why shouldn't he benefit from the same resources as members of the State Bar? An experienced LDA can bridge the gap between available resources and the self-represented litigant who needs the information.

- Continuing Education of the Bar (CEB) practice guides and available online via OnLaw
- The Rutter Group practice guides (also available via Westlaw)
- Matthew Bender practice guides (also available via LexisNexis)

Practice Guides

Where to find it:

- Purchase or subscription, which can be costly
- From the law library
 - Most public law libraries offer free WiFi access; print to PDF, or paste into Word, and you have everything you need on your own hard drive
 - If WiFi access is unavailable, bring a flash drive and use one of the on-site computers
- Find it used: Try eBay and Craigslist, used bookstores, etc.
 - Note: Be sure the updates are current before relying on “used” practice guides!

Procedural guidance from non-attorney, legal publications:

- “California Legal Secretary” published by James Publishing
- “Legal Professionals’ Handbook” and “Law Office Procedures Guide” published by The Rutter Group

DIY Legal Books

- Nolo® is the most widely known publisher, with “mass market” appeal
- Depending on your practice area(s), there may be other books that are applicable, such as:
 - “How to Do Your Own Divorce in California: Everything You Need for an Uncontested Divorce of a Marriage or a Domestic Partnership” by Ed Sherman
 - “Own Your Own Corporation” By Garrett Sutton
 - “California Construction Law,” by Sam Abdulaziz

Bus. & Prof. Code § 6400(d)(3)

Make published legal documents available to a person who is representing himself or herself in a legal matter.

Pleadings, Forms & Briefs

- Templates and form samples contained in the practice guides
- Some court websites host imaged case files which are available to the public for download:
 - Sacramento Superior Court (no charge); see attached
 - Los Angeles Superior Court (fee for download); see attached
 - Riverside Superior Court (fee for download); see attached
- ALDAP's Pleading Vault
- Google search for the title of document, cause of action, or other language your client needs
- Copy documents from court files (or hire an attorney service to do this for you)

Other Services

Other value-added services, not specifically included in the legal definition of "self-help services":

- Teaching your client how to use the resources at the law library
- Coaching: explaining how courts work, courtroom etiquette, etc.
- Write your own books, articles, pamphlets and brochures

Authorities & Further Reading

- Bus. & Prof. Code § 6401.5
“This chapter does not sanction, authorize, or encourage the practice of law by nonlawyers. Registration under this chapter, or an exemption from registration, does not immunize any person from prosecution or liability pursuant to Section 6125, 6126, 6126.5, or 6127.”

Authorities & Further Reading

- Bus. & Prof. Code § 6411
“It is unlawful for any person engaged in the business or acting in the capacity of a legal document assistant or unlawful detainer assistant to do any of the following:...
...(d) Provide assistance or advice which constitutes the unlawful practice of law pursuant to Section 6125, 6126, or 6127...”

Authorities & Further Reading

- Bus. & Prof. Code § 6411, continued
“...(e) Engage in the unauthorized practice of law, including, but not limited to, giving any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by subdivision (d) of Section 6400.”

Authorities & Further Reading

- Bus. & Prof. Code § 6125
“6125. No person shall practice law in California unless the person is an active member of the State Bar.”

Authorities & Further Reading

- Bus. & Prof. Code § 6126
“(a) Any 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, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars (\$1,000), or by both that fine and imprisonment...”

Authorities & Further Reading

- Bus. & Prof. Code § 6126, continued
“...Upon a second or subsequent conviction, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a sentence of less than 90 days for a second or subsequent conviction under this subdivision, the court shall state the reasons for its sentencing choice on the record...”

Authorities & Further Reading

- Bus. & Prof. Code § 6126, continued
“... (b) Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail...

Authorities & Further Reading

- Bus. & Prof. Code § 6126, continued
“... However, any person who has been involuntarily enrolled as an inactive member of the State Bar pursuant to paragraph (1) of subdivision (e) of Section 6007 and who knowingly thereafter practices or attempts to practice law, or advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail...

Authorities & Further Reading

- Bus. & Prof. Code § 6126, continued
“... (c) The willful failure of a member of the State Bar, or one who has resigned or been disbarred, to comply with an order of the Supreme Court to comply with Rule 9.20 of the California Rules of Court, constitutes a crime punishable by imprisonment in the state prison or a county jail. (d) The penalties provided in this section are cumulative to each other and to any other remedies or penalties provided by law.”

Authorities & Further Reading

- Bus. & Prof. Code § 6127
 “The following acts or omissions in respect to the practice of law are contempts of the authority of the courts:
 (a) Assuming to be an officer or attorney of a court and acting as such, without authority.
 (b) Advertising or holding oneself out as practicing or as entitled to practice law or otherwise practicing law in any court, without being an active member of the State Bar.
 Proceedings to adjudge a person in contempt of court under this section are to be taken in accordance with the provisions of Title V of Part III of the Code of Civil Procedure.”

Authorities & Further Reading

- *New York County Lawyers’ Association v. Dacey* (New York 1967) 21 N.Y.2d 694
- *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535
- *People v. Landlords Professional Services* (4th Dist. 1990) 215 Cal.App.3d 1599
- *Agran v. Shapiro* (1954) 127 Cal.App.2d Supp. 807

Authorities & Further Reading

- Recommendation, Task Force on the Model Definition of the Practice of Law (ABA 2003), available at <http://www.abanet.org/cpr/model-def/recomm.pdf>
- Complete details of the public comments submitted and presented at the ABA hearing, available at http://www.abanet.org/cpr/model-def/draft_def_comment.html
- James C. Turner, *Lawyer vs. Nonlawyer*, 26 Legal Times (February 3, 2003), available at http://www.halt.org/about_halt_in_the_news/pdf/turner-legal-times-02-03-03.pdf
- Catherine J. Lancot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law*, 30 Hofstra L. Rev. 811 (2002)
