

**Limited License Legal Technicians Subcommittee
Colorado Supreme Court Advisory Committee
Fourth Meeting
January 22, 2016, 2:00 p.m. – 3:40 p.m.
Colorado Bar Association Offices, 9th Floor
Meeting Minutes**

Members Present: Alec Rothrock (Chair), Jonathan Asher, Loren Brown, Cynthia Covell, Jim Coyle, Patrick Flaherty, Susan Gleeson, Judy Graff, Hon. Suzanne Grant, Kevin Hanks, Steve Lass, Melissa Oakes, Janet Price, Christopher Ryan, Helen Shreves, David Stark, Steven Vasconcellos.

Approximately ten members of the public were also present.

1. Introduction

The Chair welcomed everyone to the fourth meeting of the LLLT subcommittee. There was a report circulated for this meeting: Colorado Legal Navigators & Colorado Legal Technicians: A Proposed Two-Tiered Approach regarding Non-Lawyer Legal Professionals Drafted for the Colorado Supreme Court Advisory Committee on Licensing Paralegals prepared by Joseph Slonka, Esq., Arapahoe Community College; Jodi Terwilliger-Stacey, Esq., Arapahoe Community College, Jose Trujillo, CRP and Marie Marinelli, Legal Assistant.¹ Not all of the authors of the report could attend the meeting, but Mr. Trujillo attended the meeting and spoke on Mr. Slonka's behalf.

2. Discussion of the Colorado Legal Navigators & Colorado Legal Technicians Report

The Chair thanked Mr. Slonka and his group for the comprehensive report. In Mr. Slonka's absence, the Chair asked Mr. Trujillo to discuss the report. The report provides research of the issues and provides recommendations. There is a two tier program discussed in the report: Colorado Legal Navigators and Colorado Legal Technicians. Mr. Slonka and his group hope that this report will assist the subcommittee in determining which tier of non-lawyer representation may be the most useful in Colorado, based upon other states programs that have been implemented.

Mr. Trujillo explained that Tier One consists of legal navigators helping both parties. Tier One navigators could represent parties in administrative hearings. Tier One navigators help parties navigate through the system, without any attorney supervision. The navigators would be self-employed and charge a fee. However, Tier Two consists of legal technicians who are hired or work in a legal setting either at a law firm or court setting. Tier Two technicians could not represent a party unless approved by the court. Legal technicians would be directly supervised by an attorney; therefore, this might create an attorney-client relationship by the supervising attorney. There was debate about whether or not Tier Two technicians could go to court/argue in front of judges.

¹ Attachment 1.

A member expressed concern that there is no difference between a Tier Two legal technician under attorney supervision and a paralegal now. Mr. Trujillo confirmed that the legal technician would be able to do the following services: intake, direct/fill out forms, directly address opposing counsel/court, ability to file documents, and draft letters and legal documents.

Members expressed concern that Tier One would cause a massive group of people practicing law without any supervision. Seventy-five percent of family law lawyers would be out of business. Mr. Trujillo indicated that Tier One would require more education.

There was discussion about how judges have identified problems with needing people to be able to step up and advocate in hearings in pro se matters, etc. This proposal would address that issue.

There was substantial discussion on New York's navigator program. Based on New York's navigator program, navigators have the ability to represent an individual and attend court hearings. The Colorado Bar is concerned with unemployed and underemployed lawyers. In New York, none of the navigators are lawyers. They are retired volunteers. They can respond to court questions and help litigants with paperwork. Calling a lawyer a navigator doesn't help; it limits them. The New York navigator system is designed for pro bono only. They have two to three days of training, then they can only answer simple questions. They cannot address the court unless asked.

There was discussion about a Mesa County pilot program, which hasn't happened yet. Sherlocks would be navigators. It was mentioned that it might be a good idea to have a pilot program in one of the metro counties and see how to train/access utility of navigators here as a trial process.

The Chair noted that there seems to be a lot of support for the legal navigator proposal. He suggested the subcommittee discuss what elements of a navigator that they like and don't like. There was discussion about whether or not a navigator is neutral. Jim Coyle noted they have to be neutral. Navigators help people find where they are supposed to be and go through procedures of court. They are in a supportive position while in court if the parties don't understand what judge is asking them. They are not giving legal advice. Most often lawyers for collection agencies and debtors are negotiating – that's not neutral. Furthermore, in the case of landlord lawyers and tenants, they're not neutral. Navigators would make it more neutral. Could you limit assistance to where one side has attorney and one side doesn't?

Should navigators be able to help parties fill out forms? It was noted that victims' advocates already assist parties filling out forms. Are navigators to be paid by the state or volunteers for the state? This would not be a private industry business. This would be people in a courthouse regulated by chief judge and they wouldn't have a relationship with the parties they are assisting.

There was discussion about how a Colorado Springs court trains people for this type of program, but they don't address the court. How is this different from Sherlocks? Navigators seem to be the same. Depends on each navigator, some of them will cross line/some won't.

There was discussion about a possible example: A county court judge doesn't like unrepresented parties. This would provide justice/fairness in court because each party would understand procedures, etc. So, they could navigate the system. Low income, domestic violence persons are usually denied justice because a party doesn't have proper evidence. They need a navigator to assist them; however, navigators can't be neutral or they won't be able to help pro se parties at all. A critical issue is who can be a lawyer and what advice they can give.

A member pointed out that there is a new family law committee that follows a small claims program (one year pilot project). In family law and small claims court, forms can be drafted and you can have a hearing officer who is knowledgeable in the topic. Many people come in post-decree totally confused about forms. In family law, this will slide into everyone representing people and lawyers no longer being needed. Both parties together would elect to go there and there would be an appeal process. The typical type of cases for these programs would be landlord/tenant, collections, and family law. The member pointed out that the navigator model is not appropriate for family law. Legal Aid doesn't help divorce cases anymore, only domestic violence. This will create a big problem for family law – they need a different model.

There was a discussion about what a navigator can do and what they're doing in New York, Washington, and Utah. Mr. Trujillo noted that this tier program is different than how Washington does their program; however, he felt this tier program would still serve the community at a lower cost even though the tier program is more restrictive. The concept was approved by the Utah Supreme Court program, but not yet implemented. There was general agreement that the subcommittee wanted to invite Judge Fern Fisher from New York to the next meeting to talk about that state's navigator model, including the educational component, change in culture, and how far navigators can go. It was also noted that if anyone wants more information on the New York navigator program, he or she can go to the nycourts.gov website. Navigators don't give legal advice or do settlement negotiations.

There was concern about making sure the person the navigator is helping doesn't rely on the navigator as he or she would an attorney. There was discussion about a limited scope of the kind of cases navigators can handle. Navigators may become way for judges to process cases more quickly. However, then you aren't getting more justice; judge and system should work harder instead. Judge needs judicial education to help pro se parties. There was concern expressed about using navigators as settlement negotiators.

The subcommittee needs to look at net benefit and if that justifies what they're trying to do. There will be issues, but cases will move through court faster. If we want justice, navigators cannot be neutral. There would need to be a navigator for each side. Who is clientele? Only indigent? Sherlocks help landlords and tenants, not just indigent.

The Chair noted there is a lot of support for this idea. We need more information, which types of cases, how this would work for Colorado. There was discussion about educational requirements of legal navigators. Current Sherlocks – some have high school education, but lots of courtroom experience. Some Sherlocks have JD, but it's more about courtroom knowledge/personal skills. Mediators have high school degree or GED only. Maryland has a highly developed mediator program. It's more about your experience – not education. CFIs have no education requirement.

It's a slippery slope for navigators. We should wait and see what happens in other states where navigator system is in place.

There was a reminder by Jim Coyle that the jurisdiction of the advisory committee is to assist court in regulating practice of law. Where does jurisdiction begin and end in this topic? Some courts may not be under jurisdiction of this committee.

The Chair reminded everyone that this meeting focused on navigators, not legal technicians. He thanked everyone for the lively discussion. The Chair concluded that the committee will invite Judge Fern Fisher from the New York navigator program to the next meeting to talk about their model.

3. Conclusion

To accommodate the guest speaker, the next subcommittee meeting will be on April 8, 2016 at 2:00 p.m. at the CBA Offices, 9th floor. However, this date may change based upon the guest speaker's availability.

The meeting was adjourned at 3:40 p.m.

ATTACHMENT 1

COLORADO LEGAL NAVIGATORS & COLORADO LEGAL TECHNICIANS: A Proposed Two-Tiered Approach regarding Non-Lawyer Legal Professionals Drafted for the Colorado Supreme Court Advisory Committee on Licensing Paralegals

I. INTRODUCTION

The Colorado Supreme Court Advisory Committee on Licensing Paralegals requested a further study of the proposals from the last committee meeting regarding the committee's exploration of possible non-lawyer positions. The positions studied in the last report were the New York Navigator program, Arizona's Legal Document Preparers, Washington's Limited License Legal Technician and Colorado's AARs and SRLCs. This document and the proposals within are based upon these models, necessarily mixing and matching the various services performed and authority granted to these positions in order to derive a snapshot of what such an intermediary position in Colorado may or could look like.

Presented here are two drafts for a non-lawyer professional position for consideration by the State of Colorado, utilizing currently existing models/programs and updating the scope of services, authority, and proficiencies as indicated. The **Colorado Legal Navigators** are generally based upon the New York Navigators together with Colorado's Self Represented Litigant Coordinator (SRLCs) and Administrative Accredited Representative (AARs) programs. The **Colorado Legal Technicians** are generally based upon the Washington LLLT model.

Each position detailed below is intended to show a two-tiered approach, Tier One aimed at self-practice and Tier Two aimed at employment within a law firm or legal office. Each position is intended to allow all qualifying individuals to fill the position, e.g., law school graduates, social workers, paralegals, administrative agents, etc. Tier One for each position includes the ability to address the Court when the Court seeks his/her input or responses to questions from the bench.

Tier One for each position is intended for an individual to hold themselves out to the public as a self-employed professional who is determined by the Court, or its appointees, to be a qualified legal professional and possibly charge a fee. Tier Two for each position is intended to be one with less requirements to meet, but the individual must be an employee within a legal setting (law firm, government office, or other) with attorney oversight. It is suggested that a path be created for Tier Two professionals to be able to earn Tier One status.

The qualifications, education, compensation, and continuing qualifications of each position discussed below have yet to be determined, but it is envisioned that Tier One would have qualifications that are akin to the Washington LLLT program, e.g., a college degree, special training in the field of law, on-the-job experience, passage of an entry exam, and continuing legal education requirements; whereas, Tier Two would have qualifications somewhat akin to Colorado's SRLC program.

Each enumerated function shown is merely a suggestion until an appointed board, agency, or Judiciary committee appointed to oversee the proposed positions has been created. This document is intended to simply be "food for thought" and depict possible scenarios for legal

professionals to provide services to Colorado communities. The authors are humbly proud and pleased to have been given the opportunity to assist in this endeavor.

II. COLORADO LEGAL NAVIGATORS (CLNs)

A. Tier One: (CLN1)

We recommend that the current Colorado SRLC and AAR programs be used as a basis for this tier, together with ideas and functions from the New York Navigators program. This Tier One position allows an individual who has met the requirements of this position to, *without direct attorney supervision*, pursue a career in delivering individualized legal assistance to those in need and to pro se parties.

The scope of services in defined practice areas (to be determined) performed by a CLN1 who is a non-lawyer legal professional, would include representing individuals at administrative hearings and addressing the Court when the Court requests. Other services could be as follows:

1. Meet with parties, perform intake and draft Fee Agreements;
2. Assist parties in selecting correct forms, and provide individualized instructions on how to complete them based on what the litigant wants to pursue or request of the court;
3. Record information provided by parties on approved forms if they cannot do so themselves and assist parties to understand what information is needed to complete the approved forms;
4. Select, provide, complete, file, and effect service of forms that have been approved by the State of Colorado or the Federal government, or forms prepared by a Colorado lawyer, the Judiciary branch, or forms approved by the Colorado Supreme Court, and inform the client of the local procedures when using the selected forms;
5. Perform legal research and draft legal letters and documents beyond what is permitted in paragraph (4), if the work is reviewed and approved by a Colorado lawyer;
6. Answer general questions about the court system, court process, timelines, docket information, how to get a hearing scheduled, and the availability of an interpreter;
7. Provide general information about court procedures and logistics;
8. Provide general information about court rules, terminology, procedures and practices;
9. Explain general options and procedures within and outside the court systems;
10. Assist the parties with preparation of court orders or discover whether an order has been issued;
11. Provide language and/or citations of statutes/rules for parties' forms;
12. Address the Court on behalf of the parties at the Court's request;
13. Represent parties in administrative hearings where allowed; and
14. Maintain client confidentiality.

B. Tier Two: (CLN2)

We recommend that the current Colorado SRLC and AAR programs be used as a basis for this tier, together with some ideas and functions from the New York Navigators program. This Tier Two position is intended to be an employee within a legal office or governmental office, *with the supervision of a licensed attorney*, to provide individualized legal assistance, without representation, to those who meet approved eligibility guidelines and according to the supervising attorney's directions.

The scope of services in the defined practice areas (to be determined) performed by a CLN2 who is a non-lawyer legal professional, would include all of the services of the CLN1, other than addressing the Court on behalf of the parties at the Court's request and representing individuals at administrative hearings, given that the supervising attorney would perform these services. The remaining services *would be the same* for the CLN2 as the CLN1:

1. Meet with parties, perform intake and draft Fee Agreements;
2. Assist self-represented litigants (hereinafter "SRL") in selecting correct forms, and provide general instructions on how to complete them based on what the litigant requests, or the supervising attorney directs, or at the request of the court;
3. Record information provided by the SRLs on approved forms if the litigants cannot do so themselves and assist SRLs to understand what information is needed to complete the approved forms;
4. Select, provide, complete, file, and effect service of forms that have been approved by the State of Colorado or the Federal government, or forms prepared by a Colorado lawyer, the Judiciary branch, or forms approved by the Colorado Supreme Court, and inform the client of the local procedures when using the selected forms;
5. Perform legal research and draft legal letters and documents beyond what is permitted in paragraph (4), if the work is reviewed and approved by a Colorado lawyer;
6. Answer general questions about the court system, court process, timelines, docket information, how to get a hearing scheduled, and the availability of an interpreter;
7. Provide general information about court procedures and logistics;
8. Provide general information about court rules, terminology, procedures and practices;
9. Explain general options and procedures within and outside the court systems;
10. Assist the SRL with preparation of court orders or discover whether an order has been issued;
11. Provide language and/or citations of statutes/rules for litigants' forms;
12. Maintain separation from creating attorney-client relationships; and
13. Maintain client confidentiality.

III. COLORADO LEGAL TECHNICIANS (CLT)

A. Tier One: (CLT1)

We recommend that the current State of Washington Limited Licensed Legal Technician program be used as a basis for this tier. This Tier One position is intended to allow an individual who has met the requirements of this position to pursue a career as a Colorado Legal Technician (CLT) and operate *without the supervision of a licensed attorney*.

The CLT1 shall ascertain whether the issue is within the defined practice area for which the CLT1 is licensed. If it is not, the CLT1 shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the CLT1 may undertake the following:

1. Obtain relevant facts and documents, and explain the relevancy of such information to the client;
2. Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
3. Inform the client of applicable procedures for proper service of process and filing of legal documents and the availability of an interpreter;
4. Review documents or exhibits that the client has received from the opposing party, and explain them to the client;
5. Select, provide, complete, file, and effect service of forms that have been approved by the State of Colorado or the Federal government, or forms prepared by a Colorado lawyer, the Judiciary branch, or forms approved by the Colorado Supreme Court, and inform the client of the local procedures when using the selected forms;
6. Perform legal research and draft legal letters and documents beyond what is permitted in paragraph (5), if the work is reviewed and approved by a Colorado lawyer;
7. Advise a client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;
8. Assist the client in obtaining necessary documents or records, such as birth, death, or marriage certificates; and
9. Accompany clients in conferences with the judge or the judge's court attorney to provide support;
10. Assist clients by responding to a judge's or court attorney's questions concerning facts related to the case;
11. Represent parties in administrative hearings where allowed; and
12. Maintain client confidentiality.

B. Tier Two: (CLT2)

We recommend that the current State of Washington Limited Licensed Legal Technician program be used as a basis for this tier. This Tier Two position is intended to allow an individual who is an employee within a legal office or governmental office, *under the supervision of a licensed attorney*, to provide individualized legal assistance to those in need and to pro se parties, according to the supervising attorney's directions.

The supervising attorney shall ascertain whether the issue is within the defined practice area for which the CLT2 is approved. If it is not, the attorney shall provide the services required on this issue. If the issue is within the defined practice area, the CLT2 may undertake the same scope of services as the CLT1, other than:

- accompanying clients in conferences with the judge or the judge's court attorney to provide support,
- assisting clients by responding to a judge's or court attorney's questions concerning facts related to the case,
- representing parties at administrative hearings, and
- reviewing documents or exhibits from a client or opposing party,

given that the supervising attorney would normally perform these services. The remaining services for the CLT2 are:

1. Obtain relevant facts and documents, and explain the relevancy of such information to the client;
2. Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
3. Inform the client of applicable procedures for proper service of process and filing of legal documents and the availability of an interpreter;
4. Select, provide, complete, file, and effect service of forms that have been approved by the State of Colorado or the Federal government, or forms prepared by a Colorado lawyer, the Judiciary branch, or forms approved by the Colorado Supreme Court, and inform the client of the local procedures when using the selected forms;
5. Review documents or exhibits that the client has received from the opposing party, and explain them to the client;
6. Perform legal research and draft legal letters and documents beyond what is permitted in paragraph (4), if the work is reviewed and approved by a Colorado lawyer;
7. Advise a client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;
8. Assist the client in obtaining necessary documents or records, such as birth, death, or marriage certificates;
9. Maintain separation from creating attorney-client relationships; and
10. Maintain client confidentiality.

IV. CONCLUSION

The current positions that this document is based upon (SRLCs, AARs, and LLLTs) were discussed in the previous report from this group to the Committee and can be reviewed to help understand the requirements to achieve each of these positions in the jurisdictions where they reside. New provisions would still need to be considered, drafted, and approved in Colorado for the scope, qualifications, and implementation of the legal positions. The suggested positions may be based upon, supplement, or even replace, the currently funded and existing Colorado programs.

Each position could have new standards for entry to each tier, or the entry standards from the New York Navigator, Colorado SRLC, or Washington LLLT programs can be adopted/modified for each tier. All Tier Two positions are recommended to have a pathway to achieve the standards for the Tier One position, thus allowing participants to move upwards and forward in their career.

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Appendix: Snapshot Comparison

Below is a snapshot comparison of the non-lawyer legal positions discussed in the prior report in order as they appeared in that report, together with the drafted positions discussed in this report for a simple comparison.

Position	Legal Info/Advice?	Represent?	Address court?	Fees?
<u>AAR</u>	Limited	Yes (Admin)	No	Yes
<u>Navigators</u>				
HCA	No	No	No	No
US	No	No	Yes	No
A2J	Limited	No	Yes	No
CDN	Limited	No	Yes	No
<u>Wash LLLT</u>	Yes	No	No	Yes
<u>CLDP</u>	Limited	No	No	Yes
<u>CLS</u>	No	Yes (Admin)	No	No
<u>SRLC</u>	Limited	No	No	No

COLORADO LEGAL NAVIGATORS

Tier One	Limited	Yes (Admin)	Yes	Yes??
Tier Two	Limited	No	No	No

COLORADO LEGAL TECHNICIANS

Tier One	Yes	Yes (Admin)	Yes	Yes??
Tier Two	Limited	No	No	No