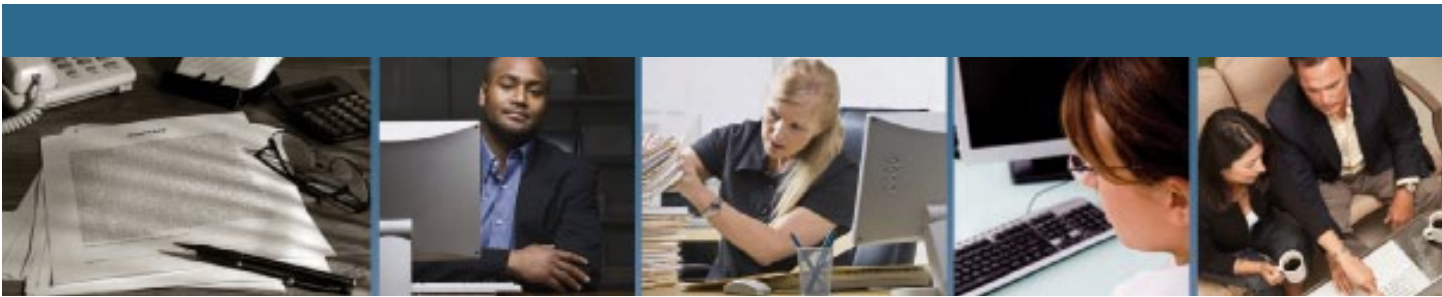


# Consumer Perspectives on Alternative Legal Services

A Roundtable Discussion Hosted by  
The CENTER FOR LEGAL EMPOWERMENT, ACCOUNTABILITY & REFORM

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**CLEAR**  
CENTER FOR LEGAL EMPOWERMENT  
ACCOUNTABILITY & REFORM  
A Project of HALT



## About HALT

Founded more than 30 years ago, HALT (Help Abolish Legal Tyranny) is the nation's largest legal reform organization dedicated to improving America's civil justice system. Our mission is to empower individuals to handle their own legal affairs, to make legal representation more affordable, and to make courts and legal professionals more accountable to those they serve.

- Nationwide, less than 20 percent of those who need civil legal assistance receive it.
- In divorces, one of the most frequent situations where Americans find themselves in a courtroom, more than half of all parties are unrepresented by a lawyer.
- Even when access to a lawyer is provided by the government, there are inadequate resources for those with legal problems. In state after state, Legal Aid programs are unable to assist the poor with up to two-thirds of their legal needs.

Americans who are able to obtain legal help often feel dissatisfied with the outcome. Whether this stems from unrealistic expectations, the stress inherent in the situations that lead to many legal matters, or out-and-out malfeasance or negligence, the self-regulatory nature of the profession offers little comfort. Only one-third of 1 percent (0.34 percent) of the nearly 120,000 complaints filed against the nation's 1.4 million lawyers in 2007 led to formal charges being brought after a probable cause determination by the bar.

A more accountable and accessible legal system is needed. While efforts to improve legal access through *pro bono* programs, legal aid and help for *pro se* litigants are useful, these programs have been insufficient. A more realistic solution to America's legal access problem is to expand the availability of less expensive legal services through innovative alternative providers.



# Consumer Perspectives on Alternative Legal Services

## Conference Overview

“Consumer Perspectives on Alternative Legal Services” was a two-day summit that brought 20 legal innovators together to discuss ways to improve consumer access to legal services and representation. Sponsored by CLEAR, a project of HALT, the conference was held on October 15 and 16 (2009) just outside Washington, D.C.

Our purpose in convening the conference was to explore how CLEAR could assist alternative providers overcome the challenges they face and also deliver better service, value and accountability to consumers.

Alternative providers include lawyers who practice online (e-lawyers), nonlawyer legal service providers such as legal document assistants (LDAs) and independent paralegals, and those who host Web sites offering legal advice, information and self-help tools.

Conference participants included representatives from the California Association of Legal Document Assistants (CALDA), LegalAdviceLine.com, LegalZoom, KnowYourCourts.com, the Federal Trade Commission and Justia.com. Participants examined the most pressing issues facing alternative providers, including how best to measure client satisfaction, how to challenge unfair unauthorized practice of law accusations, how to increase the alternative providers’ accountability through technology and how best to offer *pro bono* services.

## What is the Value of Alternative Legal Services?

America’s legal system is broken. There are quicker, less expensive, and often more effective methods for resolving legal problems and addressing legal needs than the primary option facing most consumers which is to hire a lawyer. Lawyers often complicate matters unnecessarily and make the cost of obtaining justice prohibitive, while the “adversarial” ethic of lawyers frequently does more to obscure than to clarify the truth. These obstacles to justice have provoked Americans’ increasing bitterness toward the legal system and lawyers.

On the other hand, navigating the legal system on one’s own is daunting to even the most educated consumers, requiring significant expenditure of time to complete even a single transaction—if the consumer is even capable of doing so without assistance.

Consumers need access to a middle option: a service provider who offers them assistance with navigating the everyday complexity of simple



Chas Rampenthal (of LegalZoom)

legal matters without the unnecessary cost of a lawyer’s expertise in navigating even greater complexity.

While conference participants stated that alternative legal providers fill this need, they also believed that consumers are not generally aware of these options. Legal document assistants and other alternative providers are particularly helpful with small claims, bankruptcy and



Conference attendees

family law matters, which are among the most common types of legal matters. Alternative legal service providers can be of particular benefit for the poor. For example, consumers who are denied Legal Aid (because they don't meet income requirements or because of the agency's capacity constraints) could likely benefit from using alternative providers and self-help tools.

Conference participants agreed that to serve more consumers, alternative providers need to gain legitimacy. Establishing practice guidelines and education requirements, as well as quality control mechanisms, would go for a long way to achieving this. However, the absence of an industry regulatory body makes it difficult to implement such measures.

## Next Steps

- Develop public education campaigns emphasizing the value of alternative providers
- Encourage referral arrangements between alternative providers and Legal Aid providers
- Develop a client satisfaction survey for alternative providers to use at the outset and conclusion of each engagement
- Undertake market research on consumer attitudes about traditional and alternative providers, paying special attention to special groups, such as elders

## Unauthorized Practice of Law

Many states have overly broad definitions of what constitutes the Unauthorized Practice of Law (UPL), leaving alternative providers

vulnerable to specious allegations from traditional legal professionals who feel threatened by them. This has a chilling effect on competition and innovation and gives consumers fewer choices when seeking legal assistance. Experienced UPL defense attorneys who attended the conference were of the unanimous opinion that complaints are most often made by lawyers, not consumers. Furthermore, LDAs confirmed that concerns about UPL prosecutions cause them to refrain from giving basic advice, such as informing clients about local rules, even when they are knowledgeable and experienced.

Alternative providers who face UPL investigations or prosecution clearly need more support and access to resources to protect themselves. These might include access to a repository of state case law in the area.

## Next Steps

- Analyze and evaluate each state's UPL statute and investigation process
- Promote partnerships between LDAs and traditional attorneys to foster trust and mutual assistance
- Draft and promote narrower UPL definitions and push for more transparency in the UPL complaint system
- Educate prosecutors and bar officials about UPL abuse

*Conference participants agreed that to serve more consumers, alternative providers need to gain legitimacy.*

## Certifying Alternative Legal Practitioners

The legal profession has been slow to accept what the medical profession learned a long time ago, when it licensed physician's assistants and nurse practitioners: specialists can deliver high-quality services even in very technical fields.

The legitimate concern underlying UPL statutes is the need to protect the public from entrusting their legal affairs to unqualified persons. Enforcement of UPL statutes is one approach.

Another would be to ensure that the public has access to as many legal representation resources as possible. A certification program for alternative providers—in areas in which they can provide quality representation—would help to accomplish this.

Many LDAs develop significant expertise in certain areas, such as family and bankruptcy law. A specialty certification system would ensure that LDAs have the training and expertise necessary to provide limited representation (much like a nurse or nurse practitioner can provide limited treatment to a patient).

## Next Steps

- Identify areas of law and types of matters that could be handled by specialty practitioners
- Develop training and certification programs for those practice areas

## Accountability and Technology

Technology holds the promise of greater transparency, better communication and more efficient dispute resolution for consumers and alternative providers. However, improvements in service delivery should be matched by greater accountability.

Alternative providers noted that the first requirement for consumer satisfaction is that a client understands the nature of the service he or she is requesting. Accordingly, providers claim, consumers' most common complaint is that they did not receive the services they paid for. The most common resolution was to provide the consumer with a full refund.

Members of CALDA (California Association of Legal Document Assistants) promise to adhere to a set of "best practices" that includes reviewing their contractual obligations with their clients prior to commencing the engagements.

## Next Steps

- Create a uniform Bill of Rights for legal consumers
- Encourage all providers to enter into written contracts so there is a clear and mutual understanding of the relationship, services to be provided and obligations of each party
- Conduct a consumer satisfaction survey
- Develop a dispute resolution system
- Provide a central location for consumers to file complaints against online providers
- Establish a regulatory body to set industry standards

## Pro Bono Services

The emergence of alternative legal service providers gives rise to many opportunities to offer free or reduced-cost legal services to more people than ever before. Conferees discussed whether they should emulate the traditional bar's *pro bono* policies or develop new ones. For example, should it means-test its services or offer them to certain classes, such as the poor, veterans or elders? Also, should it collaborate with partners in other industries? It was pointed out that many LDAs currently handle certain family matters, such as restraining orders in domestic violence cases, on a *pro bono* basis.

## Next Steps

- Research nonprofit and corporate organizations with whom to partner in offering *pro bono* services
- Explore creating "Pro Bono Days" in different geographic markets
- Develop a free "legal kit" to be offered to various communities

## Conclusion

The results of this initial discussion highlighted various challenges to the industry and consumer access and understanding, and yielded several ways to address and resolve these issues.

Now that areas of concern facing consumers have been identified, HALT is better prepared to take the lead on ensuring that consumers have access to better services and information and that alternative legal providers have access to more professional development resources.



Conference participants and guests attending a reception at the Stewart Mott House in Washington, DC, October 15, 2009

## Participants

### **Attorney Client Privilege, LLC**

Sean Harrington

### **Avvo**

Josh King

### **California Association of Legal Document Preparers (CALDA)**

Carl Knoll

Carol Ludlow

Angie Walters

### **Federal Trade Commission**

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### **Government Accountability Project**

Louis Clark

### **Justia**

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### **LegalZoom**

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### **National Consumers League**

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### **nCourt**

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David Morris

### **The Company Corporation**

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### **U.S. Department of Justice**

*Antitrust Division*

Aaron Comenetz

### **Law Office of Richard Lubetzky**

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