

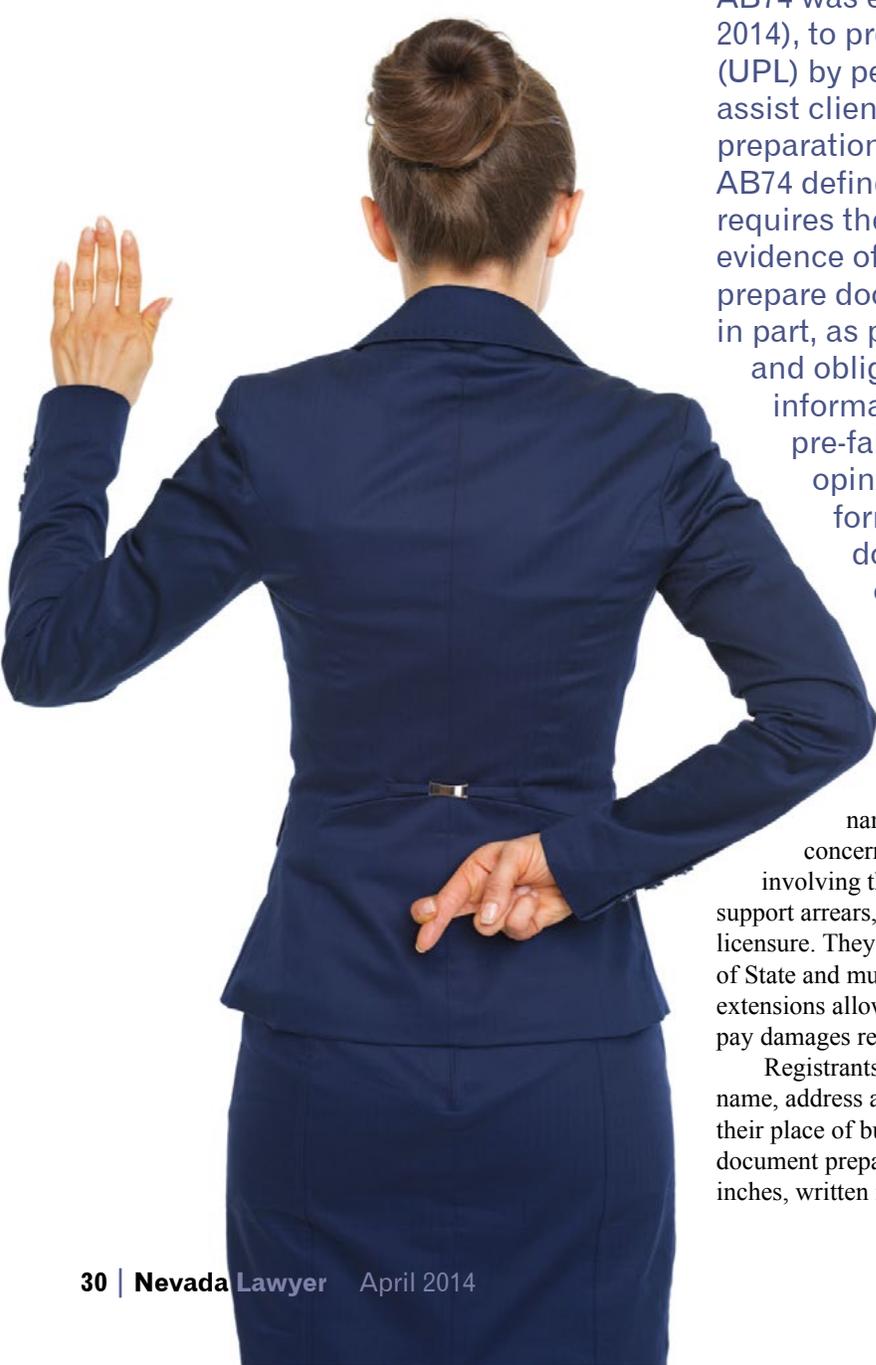
DRAWING A LINE IN THE SAND AGAINST UNAUTHORIZED PRACTICE OF LAW

BY JON ERIC GARDE, ESQ.

AB74 was enacted June 12, 2013 (effective March 1, 2014), to prevent the unauthorized practice of law (UPL) by permitting unsupervised non-attorneys to assist clients only through entities called document preparation services (DPS).¹ Codified as NRS § 240A, AB74 defines what a DPS can and cannot do and requires the creation of a document trail as supportive evidence of UPL, when committed. A DPS, for a fee, can prepare documents concerning “legal matters,” defined, in part, as pertaining to a client’s legal rights, benefits and obligations.² Document preparers must use information provided solely by the client to complete pre-fabricated legal forms and cannot give legal opinions or advice, including indicating which forms to use.³ NRS § 240A thus distinguishes documentation preparation from the practice of law. DPS clients remain self-represented absent legal counsel.⁴

Document preparers must be US citizens or permanent residents, must annually register with the Nevada Secretary of State and are assigned a registration number. Registration entails submission of the applicant’s name, address, telephone number, fingerprints, and information concerning convictions for gross misdemeanors, felonies or crimes involving theft or fraud, evasive or immoral behavior such as child support arrears, or disbarment from law practice or other professional licensure. They must report material changes within 30 days to the Secretary of State and must renew their certificate within 30 days of expiration with no extensions allowed.⁵ A \$50,000 bond must be posted during registration to pay damages resulting from fraud or incompetence.⁶

Registrants are issued a Certificate of Registration, featuring the business name, address and registration number, that must be conspicuously posted in their place of business. Additional notice must be conspicuously posted in the document preparer’s place of business, on a sign measuring at least 12 x 20 inches, written in English or the customer’s language and stating that:



1. The document preparer is not an attorney and cannot provide legal advice or legal representation to any person;
2. The full name of all registered document preparers working in that office;
3. A list of services provided and the price for each service; and
4. Information about the bond, the bond amount and the bond number filed by the registrant.⁷

A DPS must provide clients with a contract written in English and the client's primary language, signed by the business and the client, which provides:

1. An explanation of the services performed for the client by the document preparer;
2. The anticipated time in which the documents will be completed, at what court or agency the documents will be filed or submitted, and any hearing dates or deadlines for filing or submittal by that court or agency;
3. That the document preparer is not an attorney licensed in Nevada and cannot provide legal advice or legal representation to any person;
4. That any complaint against the document preparer can be filed at the Secretary of State or with the Bar Counsel of the State Bar of Nevada, depending on the type of alleged violation, including contact information for both of agencies; and
5. The date that the client signed the contract. At any time, a client can void a contract that does not comply with these requirements.⁸

An additional signed notice must be provided to each client, written in English and the client's primary language, read to and comprehended by the client, stating:

1. The full business name and contact information for the company including the name of the person(s) who must be notified of any lawsuit filed against them;
2. That the document preparer is not an attorney licensed in Nevada and cannot provide legal advice or legal representation to any person;
3. That unless the document preparer is a licensed attorney in another state, any conversation between the client and the document preparer is not protected by the attorney client privilege and can be disclosed to other persons;
4. Information about the bond filed by the registrant, including the amount and bond number; and
5. The expiration date of any state, city and/or county business licenses of the document preparer.⁹

Document preparers must provide receipts and monthly billing statements to clients for all payments for services. Receipts must be printed or typewritten and must include the letterhead and name of the

document preparer, the DPS's business address and telephone number, and the preparer's registration number and taxpayer identification number.¹⁰

AB74 is also understood by identifying parties exempted from registration, including:

1. Secretarial/receptionist services;
2. Licensed attorneys or their employees acting within the scope of their employment;
3. Law students certified by the State Bar of Nevada for training;
4. Government entities or employees acting within the scope of their employment,
5. A nonprofit organization qualifying for tax exempt status per 26 USC § 501(c), that provides free legal services;
6. A legal aid service accredited by the state bar, an accredited law school, a government entity or an employee acting within the scope of their employment;

Document preparers must be U.S. citizens or permanent residents, must annually register with the Nevada Secretary of State and are assigned a registration number.

continued on page 32

DRAWING A LINE IN THE SAND AGAINST UNAUTHORIZED PRACTICE OF LAW

continued from page 31

7. A military legal aid office, employee or assigned person acting within the scope of that employment or assignment;
8. Any person providing services regulated under federal law;
9. A BIA or DHS accredited representative handling immigration matters; and
10. A corporation, limited liability company or other business entity providing itself such services through its own officers, executives, managers or employees acting within the scope of their employment.

All in all, NRS §240A sets up a detailed paper trail, the absence of which creates liability.

Regulations have closed two statutory loopholes preventing non-attorneys from evading registration. Firstly, a more precise definition of employee has been promulgated to exclude “independent contractors or persons rendering professional services to an employer on a fee, retainer or contract basis.” Thus, independent paralegal services cannot use their

professional relationship with law offices as camouflage to evade registration. Secondly, qualification for non-profit status under 26 USC 501(c) requires the DPS to have either last filed federal taxes under 501(c) designation or to have received a written appointment letter from the IRS providing 501(c) designation.

This provision is crucially important, because applications for non-profit status can extend for years, creating opportunity to evade registration.

All in all, NRS §240A sets up a detailed paper trail, the absence of which creates liability. Yet, compliance empowers complainants with a strong chance to prevail against systematic offenders. NRS

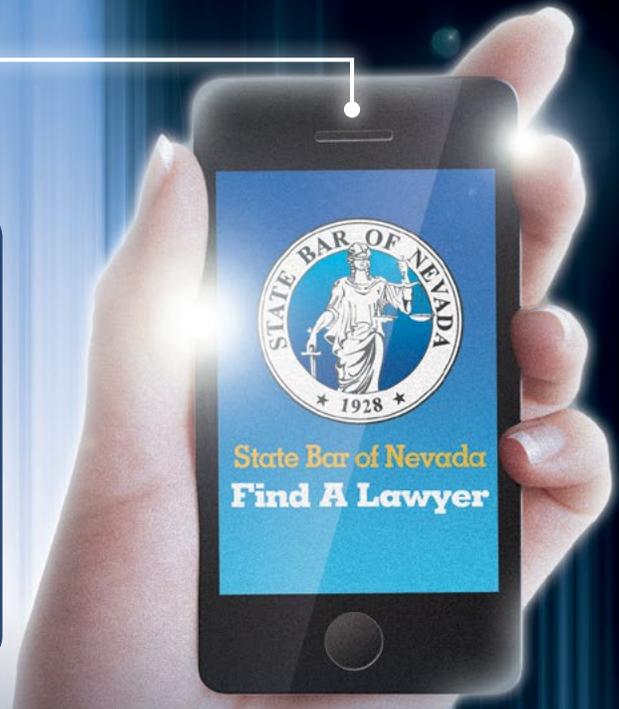
§ 240A requires the Secretary of State to set up a complaint process by phone and online registration. The Secretary of State can conduct an investigation and, upon finding culpable conduct, can issue a cease and desist order, initiate proceedings to suspend or revoke registration and transfer matters to the State Attorney General to issue civil sanctions, or to the State District Attorney for criminal prosecution within the county where the business is located or the document preparer resides.

NETWORKING in the PALM of YOUR HAND

The State Bar of Nevada puts contact information for the Nevada legal community at your fingertips with the all-new **Find A Lawyer** mobile app.

Not in your office? Not in front of your computer? Not a problem. This hands-on directory provides you with quick and easy access to listings for all attorneys licensed in the state of Nevada, wherever you happen to be.

Extend your reach by downloading the **Find A Lawyer** mobile app on your smart phone or tablet today.



DOWNLOAD the Find A Lawyer mobile app on your iOS or Android devices here!



702.382.2200 • 800.254.2797 • nvbar.org

Civil sanctions include:

1. Injunctive relief against a person who violates or threatens to violate a provision of the law or a regulation or order adopted or issued pursuant thereto;
2. Fines ranging from \$100 to \$5,000 for each violation;
3. Orders of restitution for any suffered pecuniary loss; or
4. Any combination of these remedies.

Penalties are paid to the Secretary of State, including the cost of enforcement and attorney's fees.

Criminal penalties, which do not include felony convictions, are slightly enhanced, compared to those set forth under NRS § 7.285, which define UPL. Willful violations of the document preparation statute bring a misdemeanor conviction for the first infraction within the preceding five years. The second infraction within five years brings a gross misdemeanor conviction (not more than a year in county jail) with a maximum fine of \$10,000, or both. The criminal court may also order payment of restitution in cases involving a pecuniary loss. Any infraction committed after receipt of an order by the Secretary of State evidences intentional conduct when involving the same form of activity leading to a conviction.

Enforcement provisions are presently unfunded; however, the Secretary of State reports the ability to absorb registration within its present budget. Yet, NRS § 240A creates a private civil cause of action and, factoring in the \$50,000 bond and the provision of double damages, attorney's fees and costs, ample incentive exists for private attorneys, including legal aid

providers, to enforce NRS § 240A. Accordingly, prospective judgments should provide our state legislature with incentive to fund state enforcement. ■

- 1 Intr. Assemblywoman Flores, Jan. 31, 2013; signed by Gov. Sandoval, June 12, 2013.
- 2 AB 74, § 5.3 (which provides a catch-all phrase subsuming § 5)
- 3 Id., § 4.1.a (holding that a "[d]ocument preparation service" means a person who... [f]or compensation and at the direction of a client, provides advice or assistance to the client in a legal matter...") & § 20.
- 4 Id., §§ 3.1 & 3.2
- 5 Id., § 7
- 6 Id., § 9
- 7 Id., § 13
- 8 Id., § 15
- 9 Id., § 14
- 10 Id., § 19



JON ERIC GARDE graduated from University of Buffalo Law School in 1992. He directed the Lutheran Social Ministry Immigration Project in Las Vegas, before commencing private practice in 1995. Garde serves as vice chair of Nevada's Chapter of the American Immigration Lawyers Association and, as AILA Consumer Protection Liaison, has lectured and published on various topics, and litigates frequently.

State Bar of Nevada Member Benefits



Bar members are entitled to the following benefits:

Fastcase – free online legal research for all active members.

Career Center – help in finding legal jobs and candidates.

ABA Retirement Funds – tax-qualified retirement plan services for the legal community.

Ethics Hotline – for all ethics related questions. Call 800-254-2797 to get the answers you need.

State Bar Publications – monthly subscription to *Nevada Lawyer* magazine and weekly subscription to the E-Newsletter.

Lawyers Concerned for Lawyers – confidential help from a fellow lawyer is a phone call away.

LawPay – credit card processing for attorneys.

ABA Discount – 15% off ABA publications.

FedEx – save up to 26% on select services with FedEx Advantage.

Hertz, Avis and Budget – discount auto rentals.

SOLACE – listserv program offering emergency assistance to legal professionals in crisis.

CLIO – cloud-based practice management system designed for solo practitioners and small firms.