



WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

August 15, 2013

Washington State Bar Association
Seattle, Washington

Members present were Steve Crossland (Chair), Lupe Artiga, Paul Bastine (BOG Liaison), Greg Dallaire, Caitlin Davis Carlson, Jeanne Dawes, Ellen Dial, Janet Olejar, Ellen Reed, and Elisabeth Tutsch (by phone).

Also in attendance was Thea Jennings (Staff Liaison) and Bobby Henry, RSD Associate Director.

Also present was Christy Carpenter, a member of the public.

PRELIMINARY MATTERS

The meeting was called to order at 2:02 p.m.

I. Meeting Minutes

The July 18, 2013 meeting minutes were approved.

II. Chair Updates

Chair Steve Crossland gave a recap of past and upcoming presentations and conferences. He participated on two panels at the ABA Annual Meeting and attended the ABA Task Force on the Future of Legal Education where he was asked to testify. Given the early stages of the LLLT Program, the Task Force decided to wait to see how the Program develops before it determines whether the ABA should take a position on the education and licensure of LLLTs. He and WSBA staff also met with representatives with Kibble Prentice who are evaluating coverage options for LLLTs.

III. Governance Task Force

Board of Governors (BOG) Liaison Paul Bastine presented information on the Governance Task Force. The Board discussed the nature of its relationship with the BOG

and whether LLLTs should have representation on the BOG given that the LLLT Program is administered by the WSBA.

The Board made the following two recommendations to the Task Force: (1) it would welcome the support of its work by the BOG and (2) no matter the number of members on the BOG, nonlawyer professionals regulated by the Bar should have representation on the BOG.

IV. Service Member's Civil Relief Act

The Board readdressed the issue of whether the LLLTs should be able to provide legal services if a party to the action is covered by the Service Member's Civil Relief Act or the Servicemembers Civil Relief Act. The Board unanimously approved allowing LLLTs to provide legal services to parties covered by the Service Member's Civil Relief and the Servicemembers Civil Relief Acts.

V. Family Law Curriculum Workgroup Recommendations

The Board adopted the Family Law Curriculum Workgroup's consent agenda item, which is as follows: (a) The family law course requirements chart developed by the Family Law Curriculum Workgroup is adopted in its entirety.

Family Law Course Attendance

After some discussion about attendance requirements for the family law courses, the Board recommended a minimum 75% participation either remotely or in person with an opportunity for an excused absence at the professor's discretion.

VI. Report of Examination Subcommittee

Chair Lupe Artiga presented the report of the August 15, 2013 Examination subcommittee meeting.

Examination Format

The subcommittee created a possible framework for the examination, which included exam topics, the number of questions within each, and the amount of time allotted for each topic area. The subcommittee preliminarily recommends that the examination take approximately seven hours: 4 hours for the core exam and 3 hours for the practice area exam. Applicants will have approximately two minutes to answer each multiple choice question. The exam framework and timing may require revision as the subcommittee gets further into its work. The subcommittee would like to have an expert in exam writing review its preliminary recommendations to validate its approach.

PACE and NALA Exams

The subcommittee discussed various alternatives to creating and writing the exams themselves. There was not strong support for using an "off-the-shelf" exam from another organization like the NFPA's PACE or CORE exams. The subcommittee will still review the PACE exam but will likely choose to write the core exam itself.

Approach to Developing the Examination

The subcommittee continued its discussions regarding how the subcommittee should develop the core and practice area examinations. It discussed the formation of advisory committees to assist in writing the exam questions. The subcommittee will seek out volunteer lawyers and instructors with knowledge in the subject areas covered on the exams to form both a core advisory committee and a family law advisory committee. For the family law advisory committee, the subcommittee will reach out to family law practitioners in the private bar, at the King County Bar Association, and at the Northwest Justice Project and to desk book contributors. WSBA staff will email the program directors at the ABA approved paralegal programs to request instructors propose exam questions and/or submit copies of their final exams to the Board. From the responses, the subcommittee will begin to develop a bank of questions. Communications will include the one-page guide to writing multiple choice questions found on page 25 of the subcommittee's materials.

VII. RPC Subcommittee Consent Agenda

The Board then discussed the August 15, 2013 consent agenda recommendations of the RPC subcommittee, which were as follows:

- a. The existing lawyer RPC will serve as the basis for the LLLT RPC.
- b. The subcommittee will use the following approach to drafting the RPC:
Determine which RPC (1) do not apply, (2) do apply, (3) apply but need modification, and (4) are missing and need to be added.

The Board approved the recommendations on consent.

VIII. RPC Subcommittee Report

Chair Ellen Dial presented the report of the August 15, 2013 RPC subcommittee meeting. The subcommittee reiterated its process for reviewing the RPC as stated in consent agenda item B. The subcommittee then continued its review of the RPC to make initial determinations regarding which do not apply, do apply, apply but need modification or are missing. The subcommittee made preliminary recommendations regarding all RPC.

Forming Workgroups re Specific RPC

The subcommittee discussed the formation of workgroups to delve into the priority RPC that need to be resolved. The subcommittee pinpointed six topics for in depth examination: IOLTA provisions, Title 5, Preamble and Scope, fees, conflicts and communication. The subcommittee then created its first three workgroups with the following members:

1. IOLTA. Caitlin Davis Carlson, Chair. Additional candidates for the workgroup are Nick Gellert, WSBA Senior Disciplinary Counsel Randy Beitel, and WSBA Audit Manager Rita Swanson. Ms. Davis Carlson anticipates having recommendations prepared for the next subcommittee meeting.

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2. Title 5. Brooks Holland, Chair. Nonlawyer Christy Carpenter and subcommittee members Doug Ende and Janet Olejar will participate. This Workgroup will discuss possible business arrangements for LLLTs, e.g. a partnership with a law firm, a partnership with an LLLT, a partnership with a nonlawyer business (e.g. Wal-Mart kiosk).
3. Preamble. Chair to be announced. Subcommittee members Greg Dallaire, Debi Perluss, and Elisabeth Tutsch will participate. This Workgroup will discuss the varying roles and responsibilities of an LLLT as a member of the profession, advocate, and member of society. Specifically, the subcommittee noted that the negotiator role will not apply and the advocate role will need to be contextualized in terms of what an LLLT can and cannot do.

Chair Dial then invited Board members to participate in these workgroups.

Communicating with a Lawyer or LLLT Representing an Opposing Party

APR 28 is silent regarding whether an LLLT may contact an unrepresented opposing party. The subcommittee contemplated whether it is the duty of the client to contact the opposing party, given that in the eyes of the court, the client is a pro se litigant. Some stated that any LLLT contact with the opposing party could be considered negotiation, whereas others questioned why simple inquiries, e.g. to request documentation, would be impermissible. The subcommittee will bring this issue to the full Board for discussion at its next meeting. If the Board determines this kind of communication is impermissible, an amendment to APR 28 may be necessary.

ADJOURNMENT

The meeting adjourned at 4:15 p.m.

NEXT MEETING

The next meeting will be 2:00 p.m. Monday, September 16, 2013, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.