



WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

October 17, 2013

Washington State Bar Association
Seattle, Washington

Members present were Steve Crossland (Chair), Lupe Artiga, Paul Bastine (BOG Liaison), Bill Covington, Caitlin Davis Carlson, Jeanne Dawes, Ellen Dial, Lynn Fleischbein, Ellen Reed, Elisabeth Tutsch, and Ruth Walsh McIntyre.

Also in attendance was Thea Jennings (Staff Liaison) and Jean McElroy, Chief Regulatory Counsel.

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

PRELIMINARY MATTERS

The meeting was called to order at 2:00 p.m.

I. LLLT Business Relationships with Lawyers & Draft RPC Title 5

Title 5 Workgroup Chair Brooks Holland reported on the draft of the RPC Title 5 workgroup, referencing his October 10, 2013 explanatory email and draft Title 5 circulated to the full Board.

Based on the Board's guidance, the workgroup drafted Title 5 to prohibit nonlawyer ownership of LLLT firms. The workgroup drafted the rules to permit partnership with lawyers and other LLLTs based on the Board's interest in considering such flexible business models. Using the existing structure of RPC 5.1-5.4 to allow LLLTs to partner with both LLLTs and lawyers resulted in complicated and confusing language. As such, the RPC subcommittee proposes an Option B. Using the existing structure of RPC 5.1-5.4, Option B permits LLLTs to partner, share fees with, and manage only other LLLTs, but adds a new RPC 5.x which separately authorizes LLLTs and lawyers to partner under specific conditions. Option B will likely avoid the potential confusion found in addressing LLLT business relationships with other LLLTs and lawyers all within the same RPC. Further, should the Supreme Court decide against lawyer and LLLT joint ownership of law firms, RPC 5.x would be easily severable from the RPC.

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RPC 5.x provides that LLLTs cannot acquire a majority ownership in a firm and that lawyers with managerial authority would have the same supervisory role over the ethics of LLLTs as other lawyers in a firm. The subcommittee recognized that for RPC 5.x to be effective, there would need to be an equivalent lawyer RPC with a comment that includes an admonition against allowing LLLTs to control their independent professional judgment by compensation or otherwise.

The Board discussed and unanimously adopted the RPC 5.x model. The workgroup will prepare a final draft of Title 5 for the Board's next consent agenda.

II. Meeting Minutes

The September 16, 2013 meeting minutes were approved.

III. New Board Policies

In order to promote the timely administration of the program and consistent with the authority of the Board to enact certain policies at will, the Board discussed adopting certain policies to increase enrollment numbers for the Winter Quarter 2014 LLLT family law courses. They approved policy decisions as described below. These policies are effective immediately

NALS Professional Paralegal Exam & Waiver

The NALS Professional Paralegal (PP) exam is substantially equivalent to the PACE and Certified Paralegal exams, which currently qualify for the limited time waiver. The Board agreed the exams were comparable and by unanimous vote adopted a policy adding the PP exam and certification to the list of qualifying options for the limited time waiver.

Enrollment Options for Family Law Courses

Staff Liaison Thea Jennings indicated that her contacts with potential applicants revealed that many interested students had already completed their ABA approved paralegal degrees but were missing a prerequisite course or two. The Board considered different policy options that would permit those students who have completed their degree to enroll. The Board unanimously adopted the policy that applicants may enroll who have completed (1) their paralegal degree or certificate from an ABA approved program and (2) at least half of the required 45 core curriculum credit hours.

IV. RPC Consent Agenda

The Board then discussed the October 17, 2013 consent agenda recommendation of the RPC subcommittee:

- a) The Fundamental Principles, Preamble, and Scope sections of the LLLT Rules of Professional Conduct are adopted in their entirety.

The highlighted text in the Fundamental Principles, Preamble, and Scope sections will need to be revisited once the subcommittee is further into its work. The Board approved the recommendation on consent with one typographical error correction.

V. RPC Subcommittee Report

Chair Ellen Dial presented the report of the October 17, 2013 RPC subcommittee meeting. She noted that the subcommittee will invite a member of the Supreme Court to participate in the meetings of the subcommittee to keep the Court abreast of its work.

Prohibition Against Communicating with Opposing Party

At its last meeting, the Board determined that an LLLT may not communicate with an unrepresented opposing party or a lawyer/LLLT representing the opposing party. After discussion, the subcommittee determined an amendment to APR 28 clarifying this prohibition is not necessary; however, the prohibition should be incorporated into RPC 4.2-4.4.

IOLTA Rules

The IOLTA workgroup will present its final draft of the IOLTA provisions to the Board at its November meeting. This includes RPC 1.15A and RPC 1.15B and ELC Title 15. After which, the draft with any necessary changes will appear on the Board's consent agenda for December.

Title 1

At its last meeting, the subcommittee divided into workgroups to complete Title 1. The workgroups completed drafts for the subcommittee meeting. The subcommittee discussed a draft of RPC 1.1-1.6. It debated whether fee sharing arrangements as found in RPC 1.5(e) should be permitted. If permitted, the issue of joint responsibility would arise, meaning to what extent would a lawyer and/or LLLT share responsibility both ethically and financially in the outcome of a case. The subcommittee does not want to limit any possible business arrangements that would create a viable business option for LLLTs. The subcommittee was unable to resolve the issue of joint responsibility and did not complete its review of Title 1. The subcommittee will continue its discussions on Title 1 at its next meeting.

Drafting the RPC

The subcommittee then created workgroups for Titles 2-3.

VI. Report of Examination Subcommittee

Chair Lupe Artiga presented the report of the October 17, 2013 Examination subcommittee meeting.

Paralegal Core Competency Exam (PCCE)

The subcommittee discussed concerns about the board creating a core education exam. This issue was previously discussed as a concern by the admissions subcommittee and other board members in general. Creating an exam on general legal education is a huge

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undertaking and requires a substantial amount of resources that the LLLT board and WSBA do not have. It was put to the subcommittee that the core exam should be a broad based foundation of legal education and there should not be a higher standard for LLLTs than there is for lawyers.

The subcommittee reviewed the study guide and sample questions for the Pace Core Competency Exam (PCCE) administered by the National Federation of Paralegal Associations (NFPA). The PCCE covers more topics than are required; however, there is room in the core education requirements for elective courses. Furthermore, like a bar exam and law students, a LLLT student need not take all courses that are covered on the exam. There are study guides and prep courses available for preparing for the exam. The subcommittee did not make any decisions, but agreed that it may be best to proceed with an exam that has been professionally developed.

The PCCE does not cover LLLT RPC issues. The subcommittee considered creating a third ethics exam.

Family Law Exam and Advisory Workgroup

Moving forward on the premise that a core exam will no longer need to be created, the subcommittee discussed the make-up of the family law practice area exam. The subcommittee discussed the importance of ethics, scope and writing and believes those items should be included in the practice area exams. A first concept of the practice area exam is as follows:

Subjects	Multiple Choice	Written Components	Advisory Group
Family Law	80 min/40 Questions	60 min for 3 essays/ 60 min performance	6 members reduced to 4 members after creation of exam
Professional Responsibility/Scope	40 min/20 Questions	PR/Scope issues incorporated in family law written components.	
Total Practice Area Exam	2 hours/60 Questions	2 hours writing	4 hours total

The subcommittee discussed the practice area advisory groups whose purpose would be to assist with exam creation and to advise the LLLT board on changes in law that may require changes to scope or exam questions. The advisory group would not be reimbursed and would be made up of volunteer lawyers and eventually LLLTs. The Board unanimously approved the creation of the Family Law Advisory Workgroup.

Staff was directed to send out notices seeking volunteers to the law schools, paralegal schools, family law section, solo and small business section, the Access to Justice Board and judges if possible. The subcommittee previously suggested six members on the advisory workgroup to start with and that would then be reduced to four after the creation of the exam. The size still needs to be discussed and finalized by the subcommittee.

VII. Other

BOG Liaison Paul Bastine noted that the term “nonlawyer” is regularly used to describe LLLTs. However, when talking about nonlawyers, we are talking of those who are not in the legal profession. The Governance Task Force has been using the term to describe anyone who is not a member of the Bar Association. As such, the use of that term has become confusing. This will need to be clarified at some point.

ADJOURNMENT

The meeting adjourned at 4:30 p.m.

NEXT MEETING

The next meeting will be 2:00 p.m. Thursday, November 21, 2013, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.