

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

July 18, 2013

Washington State Bar Association Seattle, Washington

Members present were Steve Crossland (Chair), Guadalupe Artiga, Paul Bastine (BOG Liaison), Brenda Cothary, Greg Dallaire, Jeanne Dawes, Ellen Dial, Janet Olejar, and Elisabeth Tutsch.

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 2:01 p.m.

I. Meeting Minutes

The June 20, 2013 meeting minutes were approved.

II. Chair Updates

Chair Steve Crossland gave a recap of past and upcoming presentations. Specifically, he noted that he met with a mid-sized Seattle firm and their paralegals. The firm expressed great interest in how the program might fit into their business model and whether immigration might be a future practice area.

Chair Crossland also noted that he, Bill Covington, and WSBA staff Bobby Henry, Thea Jennings, and Paula Littlewood met with representatives from 13 community colleges facilitated by Jan Yoshiwara, the Deputy Executive Director for Education Services of the Washington State Board for Community and Technical Colleges. With Ms. Yoshiwara's assistance, an advisory committee under the auspices of the State Board for Community and Technical Colleges will be convened with representation from many of the state community colleges and the LLLT Board. The committee's purpose will be to explore using a unified course numbering system and the Board's required curricular topics for the core education. The goal would be to assure access and affordability of the LLLT education component.

III. Governance Task Force Survey

Board of Governors (BOG) Liaison Paul Bastine presented information on the Governance Task Force, which is reviewing how the WSBA and the BOG function and their structure. The Task Force will make recommendations directly to the Supreme Court regarding whether any restructuring needs to done.

BOG Liaison Bastine briefly explained the structure of the BOG, including how members are voted in and appointed to the BOG, term lengths, and the general makeup of the BOG. He further clarified questions regarding the current governance structure and principle issues surrounding the BOG's infrastructure.

The Task Force is particularly interested in hearing from all Supreme Court boards that are administered by the WSBA, including the LLLT Board, regarding how the BOG and the WSBA might best serve the needs of the public. One area of discussion is how these boards interrelate with the BOG that controls their budgets. Another area of discussion is whether LLLTs should have representation on the BOG given that LLLTs will be licensed by and the LLLT Program administered through the WSBA.

The Task Force created a survey for the LLLT Board, which was circulated at the meeting. The Board agreed it should respond as a group to the survey. The Board will review the survey and be prepared to discuss possible responses at the next meeting.

IV. Admissions & Licensing Consent Agenda

The Board then discussed the July 18, 2013 consent agenda recommendations of the Admissions & Licensing subcommittee, which were as follows:

- Applicants must complete five credit hours in basic domestic relations subjects and ten credit hours in advanced and Washington specific domestic relations subjects.
- b) Tuition for the domestic relations courses will be \$250 per credit.
- c) Prior to enrolling in the domestic relations practice area courses, applicants not seeking a waiver must complete the following core courses: Civil Procedure; Interviewing and Investigation Techniques; Introduction to Law and Legal Process; Legal Research, Writing, and Analysis; and Professional Responsibility.
- d) Appendix APR 28 Regulations 1, 3, and 5-12 are recommended for adoption and submission to the Supreme Court.

The Board approved items A-C with slight revisions to item B, as follows: "For informational purposes, tuition for domestic relations courses is estimated to be \$250."

The Board then discussed item D: Appendix APR 28 Regulations 1, 3 and 5-12. Board members asked the Admissions & Licensing subcommittee for clarification on some of the regulations. The Board then made a slight revision to Regulation 11B to correctly cross-reference Regulation 11A within the text and approved the Regulations as proposed.

V. Admissions & Licensing Subcommittee Meeting Report

Board Chair Steve Crossland presented the report of the July 18, 2013 Admissions & Licensing Subcommittee meeting.

Family Law Curriculum Workgroup Proposed Consent Agenda Items

The Subcommittee discussed the Family Law Curriculum Workgroup's proposed consent agenda items for the August Board meeting, which include:

- a) The family law course requirements chart developed by the Family Law Curriculum Workgroup is adopted in its entirety.
- b) The Workgroup recommends 80% minimum participation in the courses, which shall be tracked using Adobe Connect and classroom attendance.

The Board had concerns regarding requiring 80% participation of students. The Board was more comfortable with two-thirds participation, though they were unsure mandatory participation should be required. They request that the Workgroup reconsider.

Core Education Gap Analysis

The subcommittee then discussed the "gap" in the curriculum of core education courses that have been taught, or are currently being taught at the community colleges. The gap analysis was not completed in time for the July meeting. Preliminary indications are that there is not much of a gap to fill. Scott Haddock will report back to the subcommittee and/or the Board when the gap analysis is complete.

The subcommittee discussed different ideas for how to fill in this "gap" in education. Because it does not look like it will be a big gap, the subcommittee has proposed a daylong gap seminar. This seminar could possibly be held at and webcast from the WSBA CLE conference room. A fee could be charged to cover the costs and expenses. The seminar would need to be scheduled for Spring or Summer 2014 so that people could enroll in the family law curriculum in Fall 2014. Staff will work with the WSBA communications department on planning and developing this event. The subcommittee would like to see the seminar offered once or twice per year as an in-person and live webcast event. The subcommittee believes that the last offering should be in 2016; after which, individuals would need to retake courses to make up the gap in the education.

VI. Scope of Practice Report

Before offering its consent agenda items, the Scope of Practice subcommittee chose to offer its July 18, 2013 meeting report, which it found necessary in order to explain its revisions to proposed Regulation 2. Chair Dallaire presented the report.

Family Law Curriculum Workgroup Report

The Family Law Curriculum Workgroup had questions regarding draft Regulation 2:

• Whether or not any prohibitions apply as to the Uniform Interstate Family Support Act (UIFSA).

- Whether or not anti-stalking orders are within the acceptable scope of practice.
- The reasons for the prohibition against representing parties covered under the Service Member's Civil Relief Act.

The UIFSA has complicated jurisdictional issues similar to UCCJEA issues. Given the subcommittee's determination that UCCJEA issues are beyond the scope, the subcommittee agreed there should be a prohibition for UIFSA issues. The subcommittee concluded anti-stalking orders should be prohibited in domestic violence actions. The Board agreed to the subcommittee's two new prohibitions found in Regulation 2B(3).

Regarding the Service Member's Civil Relief Act, the Workgroup felt there is a great need for legal services for these parties and that if the idea is to promote access to justice, the program is losing a large population of people who have less than optimal access and are younger without the money to hire lawyers. No family law practitioners were at the subcommittee meeting to provide input. Nevertheless, the subcommittee agreed to strike the prohibition against providing legal services if a party to the action is covered under the Service Members' Civil Relief Act or the Servicemembers Civil Relief Act. It did so for the following reasons: (1) High quality education, as will be provided by the family law courses, would likely prevent problems in this area and (2) prohibitions against dividing real estate and defined benefit plans are in place, which would protect service members stationed outside Washington. It removed the issue from the consent agenda and struck the language from Regulation 2B(3)(b).

Board members expressed strong concerns that the family law practitioners were not able to contribute to the discussion and agreed temporarily to strike the prohibition with the understanding that the Board will readdress the issue with necessary input at the next meeting. Regulation 2 will be submitted to the Court with the language omitted.

Final Regulation 2 Revisions

The subcommittee then discussed other final revisions to Regulation 2. Among other minor editorial changes, the subcommittee agreed to the following substantive changes:

- To Regulation 2B(2): Unless <u>an issue beyond the scope arises or</u> a prohibited <u>issues arises</u> <u>act would be required</u>, LLLTs may <u>advise and assist clients (1) to</u> initiate and respond to actions and <u>(2)</u> <u>advise and assist clients</u> regarding motions, discovery, trial preparation, <u>temporary</u> and final orders, <u>i.e. findings of fact and conclusions of law, final decrees, parenting plans, and orders of child support;</u> and modifications of <u>final</u> orders of support.
- To Regulation 2B(3): LLLTs licensed to practice in domestic relations ... (b) shall not provide legal services: ... (ii) if 25 U.S.C. Chapter 21, the Indian Child Welfare Act, or RCW 13.38, the Washington State Indian Child Welfare Act, applies to the matter.

The Board agreed to these proposed changes.

Concluding the Work of the Subcommittee

Ellen Reed has been working on an informational document explaining the rationale behind decisions on scope. The purpose for the document would be to answer any future questions that may arise regarding scope.

The subcommittee then discussed what should be its approach to publishing and/or informing the public and LLLTs of approved and prohibited forms. It suggests a subcommittee be formed in the future to explore questions relating to forms. At a minimum, a webpage should be devoted to resources LLLTs may use for locating forms.

VII. Scope of Practice Consent Agenda Items

The Board then discussed the July 18, 2013 consent agenda recommendations of the Scope of Practice & Forms Subcommittee, which were as follows:

- a) LLLTs shall not advise and assist clients regarding the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues unless and until jurisdiction has been resolved.
- b) LLLTs shall not provide legal services to clients if a party to the action is covered by the Washington Service Members' Civil Relief Act or the Servicemembers Civil Relief Act.
- c) LLLTs may select, prepare, file, and serve motions consistent with the rule except where other defined prohibitions apply.
- d) LLLTs may assist and advise clients regarding discovery in domestic relations actions except where other defined prohibitions apply.
- e) In domestic relations matters, LLLTs shall not appear or participate in the taking of a deposition.
- f) In domestic relations matters, LLLTs shall not initiate or respond to an appeal to an appellate court.
- g) LLLTs shall not advise and assist clients with anti-stalking orders in domestic violence actions.
- h) After an issue beyond the LLLT's scope of practice has been identified, an LLLT may prepare a document related to the issue only if a lawyer acting on behalf of the client has provided appropriate documents and written instructions for the LLLT as to whether and how to proceed with respect to the issue. The LLLT shall then be required to follow the instructions and incorporate the terms of the necessary documents into the final court orders. The LLLT may proceed in this manner only if no other defined prohibitions apply.
- i) Appendix APR 28 Regulation 2 is recommended for adoption and submission to the Supreme Court.

As discussed previously, item B relating to the Servicemembers Civil Relief Act was removed from the consent agenda for further discussion at the August meeting.

The Board approved all other consent agenda items, though it made one slight revision to Regulation 2. Under Regulation 2B(3)(c)(v), the Board replaced "community property"

with "pseudo-community property," which is the appropriate term of art in the context of intimate domestic relationship actions.

VIII. Approval of Appendix APR 28 Regulations 1-12

The Board then approved Appendix APR 28 Regulations 1-12 for submission to the Supreme Court.

IX. RPC Subcommittee Report

Chair Ellen Dial presented the report of the July 18, 2013 RPC subcommittee meeting. Subcommittee members first made introductions around and expressed great interest in developing comprehensive RPC that will provide future guidance to practicing LLLTs and protect the interests of the public.

Approach to Drafting the RPC

The subcommittee decided on 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.

General Commentary on the RPC and Specific Concerns

The subcommittee next discussed problematic RPC or RPC that may be of specific interest to subcommittee members for further analysis. The subcommittee then pointed out the following issues that may require close attention:

- IOLTA rules
- "Title 5—Law Firms & Associations," including what will be acceptable business arrangements for LLLTs, what will be their obligations for supervision, will they be able to partner with lawyers, with nonlawyers?
- Fee sharing
- Confidentiality in nontraditional business/employment environments, e.g. a domestic violence shelter
- What will be an LLLT's ethical responsibilities when not acting as an LLLT, e.g. if the LLLT also acts as a guardian ad litem

Reviewing the RPC

At which point, the subcommittee began reviewing the RPC to make initial determinations regarding which RPC do not apply, do apply, apply but need modification, or are missing. The subcommittee deferred decisions regarding whether the rules should include the comments and whether additional comments will be necessary. The subcommittee further reserved discussion on the fundamental principles, scope, and terminology sections of the RPC until it is further into its work. With that, the

subcommittee started reviewing Title 1—Client-Lawyer Relationship. The subcommittee will continue with conflicts of interest at its next meeting.

X. Visit by Chief Justice Madsen

Supreme Court Chief Justice Barbara Madsen stopped by the meeting briefly to thank the Board for its hard work and diligence getting the program implemented.

XI. Report of Examination Subcommittee

Chair Lupe Artiga presented the report of the July 18, 2013 Examination subcommittee meeting. 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. However, the subcommittee is interested in looking at the exam materials and sample exams, as well as learning more about those exams before making a final determination. Brenda Cothary will gather additional information and perhaps someone to speak with the subcommittee for the next meeting.

The subcommittee also discussed the concept of using advisory committees to assist in writing the exam questions. There appeared to be wide support on the subcommittee for this approach. Under this approach, the subcommittee would 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. The subcommittee would seek help in drafting exam questions from a large group of lawyers, e.g. the family law section. With a large group, just one or two questions per person would yield a large question bank. The subcommittee would then cull through those questions and forward the remaining questions to the advisory committee to be sure the questions are consistent with current law. The subcommittee did not make any final recommendations on the exam writing process.

The subcommittee also briefly discussed the need to determine the number of questions for each part of the exam and how long the exam should be. The subcommittee quickly realized that they needed more information. Staff will seek out a psychometrician for advice and consultation, possibly from the University of Washington. In addition, staff will provide the subcommittee with materials on question writing.

ADJOURNMENT

The meeting adjourned at 4:25 p.m.

NEXT MEETING

The next meeting will be 2:00 p.m. Thursday, August 15, 2013, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.