



WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

September 16, 2013

**Washington State Bar Association
Seattle, Washington**

Members present were Paul Bastine (BOG Liaison), Brenda Cothary, Greg Dallaire, Caitlin Davis Carlson, Jeanne Dawes, Ellen Dial, Janet Olejar, Ellen Reed, and Elisabeth Tutsch.

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

PRELIMINARY MATTERS

The meeting was called to order at 2:02 p.m. Ellen Dial acted as chair in Steve Crossland's absence.

I. Meeting Minutes

The August 15, 2013 meeting minutes were approved.

II. Examination Subcommittee

Subcommittee member Jeanne Dawes presented the report of the September 16, 2013 Examination subcommittee in Lupe Artiga's absence.

NFPA Report

Brenda Cothary has been in contact with NFPA representatives regarding their willingness to revise their PACE Exam to include questions that represent the core curriculum. This will be an agenda topic for NFPA representatives to discuss and decide at their October, 2014 Conference. Ms. Cothary will report back the results at the October Board meeting. The Board may use NFPA practice test questions if they are helpful. Ms. Cothary will email practice exams to review.

The PACE exam is only scored twice a year: on February 15 and August 15. Those who have taken the exam after August 15 will not find out if they passed until February 15.

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This means successful exam takers cannot start the family law courses until Spring Quarter 2014. The NALA test is scored three times a year: the second week of March, July, and November. Ms. Cothary will find out from NFPA whether they can tell us how many Washington test takers are pending, and if a sufficient amount, whether they might agree to run the scoring sooner, so successful candidates can start the family law courses in Winter 2014.

Exam Advisory Workgroups

The Core Exam Advisory Workgroup will initially consist of 20 members, reducing to no less than 8 members once the test is written. The Family Law Advisory Workgroup will initially consist of 6 members and reduce to 4 members once the exam is written. The initial time of service for each workgroup will be one year, beginning January, 2014, and a participant may opt to renew.

The subcommittee circulated a draft volunteer announcement for the workgroups. The subcommittee would like this posted to the website as soon as possible. Volunteers should submit a letter of interest and resume to Thea. The subcommittee hopes to have responses to review by our next meeting.

The subcommittee also wants Board members to reach out to others in the legal community, including educators, to recruit volunteers for these advisory workgroups. Initially the subcommittee will recruit from attorneys and legal educators, but eventually the subcommittee envisions LLLT's being part of these workgroups.

Developing the Question Bank

Submitters should be practitioners in the subject area, including attorneys, paralegals, courthouse facilitators, and legal educators. Thea will prepare an email that describes briefly what an LLLT is and includes a copy of Regulation 2, the One-Page Guide to Writing Multiple Choice Questions, the article "Developing High Quality Multiple Choice Questions," and the core and family law curriculum charts. This would then be sent to the Litigation Section; Solo & Small Practice Section; Family Law Section; Business Law Section; and anyone else qualified to write questions, including attorneys, judges, and educators. Thea will copy the Board, so members have the email to send to those who might be interested in writing questions. She will also send it to those who have already expressed an interest in writing questions.

Promoting Family Law Courses

The subcommittee discussed how to get the word out and market the LLLT program to potential applicants to enroll in the family law courses. WSBA staff is discussing ways to do this with the WSBA Communications Department.

The subcommittee would like someone from the Board to cover all conferences where potential applicants will be, such as the ATJ Conference. Ellen Reed said she could attend the EJC this year, and will try to get on their agenda. Ms. Cothary will be presenting this topic a number of times to different paralegal WSPA chapters in Whatcom, Skagit, Island and Snohomish Counties in September & October, and will present at the WSPA Fall CLE in King County. Ms. Dawes is presenting to the Spokane

NALS group on Wednesday. Ms. Reed also will try to post a blog article on the King County Bar blog, and get the word out through her contacts.

III. RPC Subcommittee Report

Subcommittee Chair Dial presented the report of the September 16, 2013 RPC subcommittee meeting, noting that the report of the Title 5 workgroup will be presented separately by Gonzaga University Professor Brooks Holland.

IOLTA Workgroup

The subcommittee heard from the IOLTA workgroup, which recommends that RPC 1.15A and ELC Title 15 concerning trust funds be adapted directly from the lawyer rules. The IOLTA workgroup will next look at RPC 1.15B.

Preamble Workgroup

The Preamble workgroup, which reviewed the Fundamental Principles, Preamble, and Scope introductory sections of the RPC, circulated a redlined version to the subcommittee for its review. The goals of the workgroup were to emphasize and clarify the limited scope and authorization of LLLTs to practice law, while placing emphasis on the same kinds of aspirational duties and ideals that are placed on lawyers. The Preamble workgroup will prepare a final draft of the introductory sections and place it on the full Board's consent agenda with the understanding that some changes may be necessary at the end of the drafting process to maintain consistency and clarity.

Drafting the RPC

The subcommittee then divvied up Title 1 among the members for drafting.

IV. RPC Title 5

Workgroup Chair Brooks Holland presented the report of the Title 5 workgroup and the RPC subcommittee's discussions re Title 5, referencing the workgroup's Memo and other supplemental materials circulated to the full Board for consideration.

With respect to RPC 5.1-5.4, the workgroup concluded that a proposal regarding these RPC necessitates policy decisions that should be considered by the full Board. In particular, the workgroup seeks policy guidance on whether RPC 5.4 should permit non-LLLT and nonlawyer ownership of LLLT practices. The workgroup considered three possible business arrangements for LLLTs, which are as follows:

1. Permit LLLTs to form professional relationships with lawyers, other LLLTs and nonlawyers, all of whom could own LLLT practices or share LLLT fees, e.g. a Walmart kiosk. This business model is forbidden for lawyers in the U.S. except under certain limitations in D.C.
2. Permit LLLTs to form professional relationships with lawyers and other LLLTs but prohibit non-lawyer ownership and fee-sharing with non-lawyers.
3. Limit LLLT practices to LLLT ownership and control.

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As to option 1, the subcommittee noted that this option would create a robust market for legal services and may eliminate some of the startup costs for LLLTs. However, it also noted that such changes to the LLLT RPC 5.4 would likely open the door to changes to the lawyer RPC relating to nonlawyer ownership. The subcommittee also discussed concerns regarding LLLTs maintaining independent judgment under this model.

As to option 2, the subcommittee discussed two possible scenarios: one where a law firm or lawyer(s) owns a LLLT business but is not associated with the practice and a second where a law firm or lawyer(s) owns a LLLT business but maintains ethical and fiscal responsibility for the practice. To determine whether lawyers may have a passive shareholder ownership of LLLT practice, the subcommittee asked the workgroup to report back with some business models. It was noted that permitting LLLT ownership of a law firm would require a change to lawyer RPC 5.4.

After discussion, the subcommittee recommended the following to the full Board:

1. Nonlawyer ownership of LLLT practices and/or fee sharing with nonlawyers should be prohibited.
2. Lawyers may own a LLLT practice provided they maintain ethical and fiscal responsibility for the practice. Potential business models will need to be analyzed to determine what limits, if any, should be placed on such ownership.
3. LLLTs should not be permitted to have any ownership interest in law firms.

After discussion, the Board agreed that nonlawyer ownership of LLLT practices and/or fee sharing with nonlawyers should be prohibited. However, the Board asked the Title 5 workgroup to look more closely at opportunities for LLLTs to partner creatively with lawyers. The Board will then consider whether lawyer and LLLT joint ownership of law firms is appropriate.

V. LLLT Communication with Opposing Parties or Lawyers and LLLTs Representing Opposing Parties

The Board contemplated whether an LLLT may communicate with an opposing party or lawyers/LLLTs representing opposing parties. APR 28 is silent regarding whether an LLLT may contact an unrepresented opposing party. The Board 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. After discussion, the Board decided that an LLLT may not communicate with an unrepresented opposing party or a lawyer/LLLT representing the opposing party, as that would be advocating. The Board further noted that LLLTs will have other avenues for completing administrative work, e.g. motions to continue, drafting letters under the client's signature, etc. It was noted that RPC 4.2 and RPC 4.3 may need comments explaining the rationale behind the Board's decision.

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VI. Governance Task Force

Ms. Dawes prepared a letter to the Governance Task Force memorializing the Board's recommendations to the Task Force. The Board approved the letter for submission.

ADJOURNMENT

The meeting adjourned at 4:00 p.m.

NEXT MEETING

The next meeting will be 2:00 p.m. Thursday, October 17, 2013, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.