



WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

November 21, 2013

Washington State Bar Association
Seattle, Washington

Members present were Steve Crossland (Chair), Lupe Artiga, Paul Bastine (BOG Liaison), Brenda Cothary, Greg Dallaire, Caitlin Davis Carlson, Jeanne Dawes, Ellen Dial, Lynn Fleischbein, Janet Olejar, Elisabeth Tutsch, and Ruth Walsh McIntyre.

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

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

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

I. Meeting Minutes

The minutes from the Board's October 17, 2013 meeting were approved.

II. Meeting Schedule for Fiscal Year 2014

The Board d agreed to maintain its schedule of meeting on the third Thursday of the month for fiscal year 2014.

III. UW Family Law Courses

To ensure the courses begin Winter Quarter 2104, the UW will now offer the family law courses entirely by webcast. This will reduce the expense of offering the course and concern for the number of students enrolled.

IV. Meeting with Community Colleges

On Friday, November 15, 2013, Staff Liaison Thea Jennings and Board member Janet Olejar attended meetings with the workgroups of the community colleges. At the first meeting, a workgroup discussed finalizing the crosswalk of the curriculum. As expected,

Spokane's curriculum does not align. All three other ABA approved schools appear to align with the Board's core curriculum. Clark College, which is working towards ABA approval, also likely meets the Board's requirements.

During the second meeting, another workgroup discussed two things: (1) the bylaws of the LLLT Education Endorsement Committee, the endorsing/approving body that would approve LLLT programs at Washington community colleges, and (2) the development of the Washington Standards, which will be based in part on the ABA standards and will be the guidelines this body will follow for endorsing programs.

V. Additional Practice Areas

The Board next discussed how to consider a new practice area and related timelines. Adding a new practice area will make LLLTs more marketable and the profession financially viable. The Board noted that developing the first examination will require much work over the next year. As such, overloading the Board at this time may be unwise. The Board will begin exploring new practice area options in early 2014 without making any decisions until later in the year. The Board will invite practitioners to come in and provide some insight into their practice areas.

VI. RPC Consent Agenda

The Board then discussed the November 21, 2013 consent agenda recommendation of the RPC subcommittee:

1. Proposed Title 5 of the LLLT Rules of Professional Conduct is adopted in its entirety.

The Board approved the recommendation on consent, noting that RPC 5.x(a)(1) may require modification depending on the decisions of the Board related to fee sharing.

VII. RPC Subcommittee Report

Chair Ellen Dial presented the report of the November 21, 2013 RPC subcommittee meeting.

IOLTA Rules

The IOLTA workgroup's final draft of the IOLTA RPC provisions will appear on the Board's consent agenda for December. The subcommittee deferred action on draft ELC Title 15 and lawyer ELC Title 15.7 until a later date.

Recommendations re Lawyer Rules and ELC for LLLTs

Adoption of certain provisions of the RPC for LLLTs will not be effective until companion changes are made to the lawyer rules, e.g. RPC 5.x. The subcommittee discussed presenting its recommended changes to the lawyer rules to the Court at the same time as the RPC for LLLTs. A liaison from the Supreme Court is likely to be appointed to the RPC subcommittee and this person's input will be essential for determining the most effective way to present amendments to the lawyer rules.

The subcommittee also discussed how best to approach drafting the ELC for LLLTs. It was noted that WSBA staff will likely take the lead on drafting these procedural rules for the Board's consideration and approval.

Title 1.1-1.6 Workgroup

The subcommittee continued its discussions regarding RPC 1.1-1.6. The subcommittee pinpointed two issues for the Board's consideration and guidance: (1) fee sharing and (2) accepting and sharing in retainers. The Board discussed these issues as detailed below.

Fee Sharing

The subcommittee questioned whether fee sharing under 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 did not want to limit any possible business arrangements that would create a viable business option for LLLTs. However, an LLLT can never assume responsibility for services that are outside of his or her scope of practice.

The Board expressed concerns regarding consumers not having a choice in the lawyers with whom LLLTs work in flat fee arrangements with fee sharing provisions. After discussion, the Board determined that to protect consumers and the freedom of choice, fee sharing with lawyers not in the same firm should be prohibited.

Retainers

The subcommittee further questioned whether LLLTs should be permitted to accept and share in retainers under RPC 1.5(f)(1). The subcommittee noted that confusion around the meaning of retainer versus advanced fees is ripe for abuse. The Board agreed with the subcommittee that the risk of harm to the public is too great with regard to LLLTs accepting retainers. Further, in the context of a jointly held firm with a lawyer, an LLLT may not share in retainer funds collected by an attorney. The Board noted that it will need to recommend a comment or provision in the lawyer RPC regarding how to handle retainer funds when in a partnership with an LLLT.

VIII. Report of Examination Subcommittee

Chair Lupe Artiga presented the report of the November 21, 2013 Examination subcommittee meeting.

Family Law Exam and Advisory Workgroup

The subcommittee discussed options for finding volunteers for the advisory groups and for writing questions for the practice area exam. The sections have been slow to assist with sending out communications to their members. Individual contacts also are not responding to the call for help. The subcommittee decided that they will need to move forward with writing and creating the exam. In the meantime, staff will continue efforts to get the sections members involved, at least for writing questions. In addition, staff will compile past questions from bar exams to use as a basis for starting some questions. Subcommittee members are going to reach out to their contacts for assistance with exam

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questions. Finally, the subcommittee will ask for the assistance of the entire LLLT Board with question writing and review.

Regarding the format for the practice area exam and exam questions, the subcommittee is keeping with the same format as previously discussed. However, the subcommittee is leaning towards having a mix of simple and complex multiple choice questions given limited and hands on practice of legal technicians and the ability of the subcommittee to write a large number of good complex questions. Subcommittee members will work on devising a method or matrix for weighting issues to be covered on the exam.

Timelines and Board Retreat

The subcommittee set target dates for the practice area exam creation process. The subcommittee hopes to have most questions drafted by Spring 2014 with a retreat focused on questions review and finalization in May 2014. The subcommittee is aiming to complete the first exam, and perhaps additional questions for the bank, by August 2014.

Paralegal Core Competency Exam (PCCE)

The subcommittee continued its discussions about using a standard national paralegal exam for the LLLT core education exam. The subcommittee heard from Sue Ellen from the National Federation of Paralegal Association (NFPA) about the NFPA's Paralegal Core Competency Exam (PCCE). The subcommittee was impressed with the amount of research and effort that was involved in creating the PCCE. The subcommittee will review the PCCE some more and still prefers to use the PCCE rather than create another broad based exam on multiple subjects.

ADJOURNMENT

The meeting adjourned at 4:10 p.m.

NEXT MEETING

The next meeting will be 2:00 p.m. Thursday, December 19, 2013, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.