



WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

December 19, 2013

**Washington State Bar Association
Seattle, Washington**

Members present were Steve Crossland (Chair), Lupe Artiga, Paul Bastine (BOG Liaison), Bill Covington, Greg Dallaire, Caitlin Davis Carlson, Ellen Dial, Lynn Fleischbein (by telephone), Ellen Reed, 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, and a representative for the Chair of AILA.

The meeting was called to order at 2:05 p.m.

I. Meeting Minutes

The minutes from the Board's November 21, 2013 meeting were approved.

II. Meeting Schedule for Fiscal Year 2014

Due to conflicts for fiscal year 2014, the Board rescheduled monthly meetings to the following dates: March 13, July 10, and September 11.

III. Report of Examination Subcommittee

Subcommittee Chair Lupe Artiga presented the report of the December 19, 2013 Examination subcommittee meeting.

Limited Practice Board Exam Writing Process

Dee McComb of the Limited Practice Board (LPB), which governs LPOs, attended the subcommittee's meeting to talk about the LPB's approach to creating an exam for LPOs and writing exam questions. Ms. McComb focused on the importance of having a list of key study objectives and using that to write the questions. She also talked about

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including what the practitioner is actually doing at the work desk. Ms. McComb talked about how the LPB created the exam with little help from others but did rely on other organizations or licensing agencies that require equivalent knowledge. Ms. McComb talked about the ongoing nature of reviewing the exam questions for content and format.

Paralegal Core Competency Exam (PCCE)

Having further reviewed the materials for the NFPA’s Paralegal Core Competency Exam (PCCE) and considered the amount of material necessary for creating such an exam, the subcommittee agreed that the NFPA PCCE should be the exam to be used for testing the LLLT core education. This will be on the consent agenda for the LLLT Board in January. The subcommittee will discuss at its next meeting whether the qualifying exams for the waiver should satisfy the PCCE requirement for approved waiver applicants.

Family Law and LLLT Professional Responsibility Exam Format

The subcommittee continued its discussions of the exam format and format of the multiple choice questions. The subcommittee believes it is important for there to be a combination of short answer and fact pattern multiple choice questions. Taking into account the issues as they seem now, the subcommittee has a preliminary draft of the practice area exam format as follows:

Question Type	Number of Questions	Time Allotted	Format/Notes
Family Law			
Multiple Choice	30 Analytical x 2 mins/Q 20 Short x 1 min/Q	80 minutes	Subject to change based on needs of study objectives.
Essay	3 x 20 mins/Q	60 minutes	
Problem	1 x 60 mins/Q	60 minutes	
PR & Scope			
Multiple Choice	10 Analytical x 2mins/Q 20 Short x 1min/Q	40 minutes	Subject to change based on needs of study objectives.
Essay	0		Ethics and scope issues will be incorporated into the family essay and problem questions.
Problem	0		Ethics and scope issues will be

			incorporated into the family essay and problem questions.
TOTAL	40 Analytical Mult. Ch. 40 Short Mult. Ch. 3 Essay 1 Problem	4 Hours	

Family Law Exam Advisory Workgroup

The subcommittee heard from staff that no one had applied for the advisory workgroup. The subcommittee would like to make the process for applying less formal in order to encourage more people to assist the Board with exam creation. The Board agreed that any candidates should at least provide a biography and have a Board member nominate him or her. It was further agreed members of the workgroup should sign a nondisclosure agreement.

Exam Objectives List

The subcommittee will continue its work in creating an exam objective list that is weighted so that they will know how many questions are needed in which subject areas. Members Artiga, Reed and Fleischbein will aim to finish the exam objective list by January 10 for distribution to the rest of the subcommittee prior to the next meeting.

IV. RPC Consent Agenda

The Board then discussed the December 19, 2013 consent agenda recommendation of the RPC subcommittee:

- a. Proposed RPC 1.15A and RPC 1.15B of the LLLT Rules of Professional Conduct are adopted in their entirety.

The Board approved the recommendation on consent with one amendment to the explanatory note. The explanatory note should include reference to the applicability of the comments regarding comparability and no earnings credit, which are critical to the proper application of the rules. Subcommittee Chair Ellen Dial clarified that since the subcommittee has not adopted a formal approach regarding how to address the comments, the subcommittee is drafting explanatory notes for the rules to explain whether the rules are the same as the lawyer rules and if not, why they are different.

V. RPC Subcommittee Report

Subcommittee Chair Dial presented the report of the December 19, 2013 RPC subcommittee meeting. At its next meeting, the subcommittee expects to complete Title 1 without the terminology provisions in RPC 1.0. It further completed most of its review of Title 3.

Conflicts of Interest Rules

The subcommittee discussed the draft conflicts of interest rules. Two issues of specific concern arose regarding whether LLLTs may (1) obtain conflict waivers from clients under RPC 1.7(b) or (2) enter into business transactions with clients under RPC 1.8(a).

RPC 1.7 and Conflicts Waivers

The subcommittee addressed concerns regarding the ability of an LLLT, within his or her limited scope of knowledge, to explain fully the implications of a conflict such that the client could provide informed consent to a waiver of a conflict. The subcommittee further expressed doubts regarding whether a lawyer with whom a LLLT's client consults regarding a conflict would be able to determine whether an LLLT's representation would be diligent and competent, as required by RPC 1.7(b)(1). In an effort to simplify the rules, the subcommittee recommended against allowing LLLTs to accept conflict waivers by a majority vote. The subcommittee recommends that RPC 1.7(b) be reserved.

The subcommittee clarified, however, that an LLLT will be authorized to make appropriate inquiries and consult with others to determine whether a directly adverse conflict exists. Additionally, in the context of a firm jointly owned with an attorney, an LLLT may operate with a waiver provided the attorney makes a determination that the conflict is waivable, explains the implications to the client, and obtains informed consent. The issue of imputation of conflicts will be raised at the next meeting.

RPC 1.8 and Business Transactions

The subcommittee then addressed the appropriateness of business transactions between LLLTs and clients. Given its previous discussion regarding conflict waivers, the subcommittee determined such transactions should be prohibited.

Remaining Conflicts Rules

The remaining conflicts rules required no substantive revisions from the lawyers' rules. At its next meeting, the subcommittee expects to finalize the conflicts rules for the Board's February consent agenda.

Draft RPC 1.13, RPC 1.14, RPC 1.16, and RPC 1.17

The subcommittee approved its draft rules 1.13, 1.14, 1.16, and 1.17 for the Board's consent agenda in January.

VI. Process for Approving New Practice Areas

The Board will begin exploring new practice areas in 2014. Adding a new practice area will make LLLTs more marketable and the profession financially viable. The Board discussed the process the Practice of Law Board (POLB) created to consider practice areas. The POLB created subcommittees of experts to analyze possible practice areas and to report back to the POLB with recommendations. The Board considered whether this would be an appropriate process for approving new practice areas. A Board member could chair each of the practice area subcommittees. The subcommittees would likely only need to meet once or twice. The Board again noted that developing the first examination will require much work over the next year. As such, overloading the Board

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at this time may be unwise. With that in mind, the Board agreed creating subcommittees later in 2014 would be a good way to make determinations regarding new practice areas.

Member Dial noted that she had a conversation with the Chair of the Elder Law Section who expressed interest in working with the Board to explore elder law as a practice area. The Chair suggested that one or more representatives of the Board meet with the Section during its Spring retreat. Member Dallaire spoke with various landlord/tenant practitioners who expressed concerns regarding the feasibility of landlord/tenant law due in part to the negotiation practitioners must engage in to assist clients effectively in this practice area.

ADJOURNMENT

The meeting adjourned at 3:40 p.m.

NEXT MEETING

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