



WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

April 18, 2013

**Washington State Bar Association
Seattle, Washington**

Members present were Steve Crossland (Chair), Lupe Artiga, Brenda Cothary, William Covington, Caitlin Davis Carlson, Jeanne Dawes, Ellen Dial, Lynn Fleischbein, Janet Olejar, Elisabeth Tutsch, and Vickie Williams.

Also in attendance were Thea Jennings (Staff Liaison) and Jean McElroy (WSBA General Counsel & 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. Updates regarding Meetings and Outreach

Staff Liaison Thea Jennings reported on a meeting with the Jan Yoshiwara, the Deputy Executive Director of Education for the State Board for Community and Technical Colleges, to discuss the educational program for LLLTs. In the past, with the assistance of the workforce education deans at the different colleges, they have created standardized educational programs offered statewide. Such an initiative usually begins with a local advisory committee of employers (or the WSBA as a licensing and regulatory association) reaching out to the institutions. Ms. Yoshiwara will discuss the LLLT program at her next meeting with all the colleges and see which schools have interest in an educational program developed around the LLLT program. Ms. Yoshiwara suspects that many of the schools will be interested. After which, they can help facilitate discussions with these schools to get the programs operational.

Chair Steve Crossland reported on his meeting with the Supreme Court in early April. The Supreme Court is enthusiastic about the Board's progress. The Court urged the Board to continue to act as quickly as possible. Chair Crossland noted that he has received multiple requests to present information regarding the Board's work, including at the ABA Annual Meeting in San Francisco this August.

II. Board Meeting Minutes

The Board adopted the March 14, 2013 Board meeting minutes.

Scope of Practice Subcommittee Consent Agenda

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

- a) In domestic violence actions, LLLTs may advise and assist clients regarding protection and restraining orders, responses to petitions for protection orders, and modifications and renewals of protection orders.
- b) In domestic violence actions, LLLTs will be prohibited from advising and assisting clients with anti-harassment orders, criminal no contact orders, and sexual assault protection orders.
- c) In relocation actions, LLLTs may advise and assist clients regarding relocation petitions, ex parte final orders, motions/declarations to waive notice requirements, and child support paperwork.
- d) In relocation actions, LLLTs will be prohibited from advising and assisting clients regarding objections to relocation petitions, responses to objections, and temporary orders.
- e) In relocation actions, LLLTs must terminate the legal services and advise the client to seek the advice of a lawyer if an objection is filed or there is a need for temporary orders.

The Board adopted all of the recommendations on consent.

III. Admissions & Licensing Subcommittee Recommendations Consent Agenda

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

- a) Applicants must have a minimum of an associate-level degree.
- b) The pro bono requirement should be stricken from APR 28(D)(3).
- c) The qualifying examination will include a core exam and a major area of study exam which will be comprised of three parts: a multiple choice section, an essay section, and a practicum section.

Before presenting the consent agenda for adoption, Subcommittee Chair Bill Covington clarified a couple of items on the consent agenda as described below:

- Item A is subject to any waiver provided for in the regulations.
- The ethics section of the examination should be built into the core and major exams.

The Board adopted all of the recommendations and clarifications on consent.

IV. Scope of Practice Subcommittee Report

Chair Crossland presented the report of the April 18, 2013 Scope of Practice Subcommittee meeting. The subcommittee made specific recommendations related to prohibited acts by family law LLLTs.

Prohibitions re Advising Clients on Division of Property and Bankruptcy

The subcommittee recommends that family law LLLTs be prohibited from advising and assisting clients regarding the following in all domestic relations actions:

- Division of owned real estate;
- Bankruptcy or the intention to file bankruptcy by either party;
- Division of formal business entities; and
- Division of retirement assets, which includes division of all defined benefit plans and defined contribution plans that require a supplemental order, e.g. qualified domestic relations order, to divide or award.

Collaboration between LLLTs and Lawyers

The subcommittee then discussed collaboration between LLLTs and lawyers when both are working on or one or the other has worked on a case. Pursuant to APR 28(F), when an issue beyond the scope arises, the LLLT must advise the client, preferably in writing, that the issue is beyond the scope of the family law LLLT's practice and the client should seek the advice and assistance of an attorney. Once the legal service beyond the LLLTs scope has been provided by a lawyer, the lawyer should notify the client, preferably in writing, that s/he has provided unbundled legal services to the client, with instructions regarding what to do next and that s/he is responsible only for the discreet issue(s) in the case. The subcommittee recommends the following regulation:

- An LLLT may continue to provide services to a client after an issue beyond the scope of practice has been identified only if the client provides the LLLT with an attorney's written certification that the issue has been settled, and only if other defined prohibitions do not apply.

The subcommittee envisions that LLLTs and lawyers will eventually develop relationships where they refer clients to one another.

Dissolution and Legal Separation Action Recommendations

In dissolution and legal separation actions, the subcommittee recommends that family law LLLTs advise and assist clients in the following areas:

- Trial preparation;
- Findings of Fact and Conclusions of Law (Provided issues beyond the scope of LLLT family law practice do not arise. See prohibited actions);
- Decrees of Dissolution of Marriage or Legal Separation (Provided issues beyond the scope of LLLT family law practice do not arise. See prohibited actions);
- Parenting Plan Final Orders;
- Restraining Orders; and
- Orders of Child Support and Child Support Worksheets.

Having approved the above, the subcommittee recommended that LLLTs may select and prepare all pattern forms for dissolution and legal separation actions, unless an issue prohibited by regulation arises.

Paternity & Support Action Recommendations

The subcommittee recommends that LLLTs advise and assist in the preparation of all pattern forms for paternity and parenting and support actions, unless an issue prohibited by regulation arises.

Intimate Domestic Relationship Action Recommendations

The subcommittee recommends that LLLTs be able to advise clients in a very limited capacity regarding intimate domestic relationship actions. The subcommittee recommends that in intimate domestic relationship actions:

- In addition to initiating the actions, LLLTs should be permitted to advise and assist clients regarding parenting and child support issues; and
- LLLTs should be prohibited from advising and assisting clients regarding community property issues.

No pattern forms exist for this type of action. As such, the Board will need to create and/or approve forms for the use of LLLTs.

Child Support Modification Action Recommendations

The subcommittee recommends that LLLTs advise and assist in the preparation of all pattern forms for child support modification actions, unless an issue prohibited by regulation arises.

Recommended Amendments to APR 28

The subcommittee then recommended further amendments to the rule related to scope as follows:

- Remove the parenthetical from APR 28(F)(8); and
- Under APR 28(F)(6), amend the language to “Select, and complete, file, and effect service of forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts . . .”

V. Admissions & Licensing Subcommittee Report

Subcommittee Chair Covington presented the report of the April 18, 2013 Admissions & Licensing Subcommittee meeting.

Core and Major Curriculum Requirements

The subcommittee finalized the curriculum for the core and major area of practice courses and what the elements of each course should include. The Subcommittee asks that the Scope of Practice Subcommittee review the major course requirements for any additional items that should be included. The subcommittee recommends the Board approve the core curriculum requirements in its entirety.

Limited Time Waiver Provisions

The Subcommittee discussed the terms “waiver” and “grandfathering” to determine what they mean and how they are intended to be applied in these situations. The Subcommittee determined by consensus decision that the term “grandfather” actually means “limited time waiver” and that the limited time period for such waivers should be between January 1, 2014 and December 31, 2016.

The subcommittee does not recommend an ongoing waiver. However, the subcommittee recommends that there be a limited time waiver for applicants who do not meet all of the education requirements. The subcommittee prepared a waiver chart outlining the specific conditions under which an applicant could waive some or all of the education requirements. Specifically, the subcommittee recommends the following limited time waiver:

- The minimum associate-level degree requirement may be waived through a combination of passing the PACE or NALA certification examination and experience. The required experience for this waiver has not yet been decided; and
- Educational institutions may waive or give credit for core course requirements if the institution determines the previous courses taken by students are substantially equivalent to the Board-mandated core curriculum requirements.

The subcommittee agreed that there should be no limited time waiver for the major curriculum requirement.

Regulations Recommendations

The subcommittee discussed the draft regulations and decided that the admissions regulations should parallel what is done for limited practice officers and attorneys. The Subcommittee then made further recommendations as follows:

- Recommend requiring fingerprint checks and proof of financial responsibility (through insurance or otherwise, similar to LPOs) for licensing.
- Recommend requirement of good moral character, along the lines of the requirements for lawyers, with a process that provides for a character and fitness board/panel of three people, with a right of appeal to the full Board if an application is rejected on character and fitness grounds.

VI. Procedures for Adding Members to Subcommittees

The Board then discussed procedures for adding members to subcommittees. After consultation between the subcommittee chair and Chair of the Board, the Chair may add persons to the subcommittee provided the following criteria have been considered:

- The size of the subcommittee should not exceed 10;
- A majority of the subcommittee members should be Board members;
- The addition to the subcommittee should bring expertise relevant to the subcommittee;
- The balance of the subcommittee should be maintained or not tilted in a particular direction; and
- The person should be willing and able to contribute the time required to participate in the subcommittee’s work.

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VII. Amendments to APR 28

The Board discussed proposed amendments to APR 28 relating to education and experience that reflect decisions previously made by the Board. The Board expressed strong concerns about sending amendments to APR 28 up to the Court by the end of this month. Further, the Scope group made some recommendations for changes in the rule and foresees perhaps making more as they continue to discuss scope issues. For our next meeting, each member of the Board shall review the Rule closely to pinpoint any concerns or issues the Board should address during revisions. WSBA staff will revise the Rule based on the April 18, 2013 meeting and will circulate it for the next meeting. The Board shall be prepared to discuss and approve revisions to the Rule at the May meeting.

ADJOURNMENT

The meeting adjourned at 3:35 p.m.

NEXT MEETING

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