

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

May 16, 2013

Washington State Bar Association Seattle, Washington

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

Also in attendance was Thea Jennings (Staff Liaison), Bobby Henry, RSD Associate Director, and Paula Littlewood, WSBA Executive Director. Janet Skreen and Laurie Garber presented on the Pro Se Forms Project.

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

PRELIMINARY MATTERS

The meeting was called to order at 2:02 p.m.

I. Meeting Minutes

The April 18, 2013 meeting minutes were approved.

II. Approval of Amendments to APR 28

Executive Director Paula Littlewood reported that she spoke with the Supreme Court and the Chief Justice regarding amendments to APR 28 with respect to the education requirements and scope issues. She noted the urgency to have the education components approved given our communications with the educational institutions. Given the short timeline, the Court indicated that the Board may send the portions of the rule that are ready now up to the court for approval. The proposed amendments will not be published for comment, so any additional changes can be forwarded in the future.

The Board then discussed the proposed amendments as found on page 298-301 of the Board's meeting materials. The Board approved the amendments without debate for submission to the Supreme Court.

III. Accessibility of the LLLT Education

The Board then discussed the accessibility of the practice area education component. What has been envisioned is a partnership between the law schools for creation of the family law practice area education component. For the curriculum, emphasis was placed on accessibility, affordability, and academic rigor.

The Family Law Curriculum Workgroup's original purpose as conceived by the Board was to create a "curriculum in a box" that could be distributed to ABA approved paralegal programs at community colleges with the law schools instructing the community colleges regarding how to teach the curriculum. The Workgroup convened its first meeting and the discussion led to offering the courses through a streaming platform. UW has offered to matriculate all students and offer a web-based format for the courses with different course components being taught by different instructors depending on their expertise and offered via podcast to students unable to physically attend. The streaming platform would keep the students actively engaged.

The Admissions & Licensing subcommittee raised specific concerns regarding affordability. It was noted, however, that the need for accessibility and academic rigor would be satisfied. From a public perception perspective, spending time in a law school setting would lend credibility to the profession. The Board asked the Workgroup to consider the following questions as it continues its work:

- 1. Can community colleges qualify to deliver the education down the road?
- 2. How can the cost of the proposed delivery system be determined at this point so we can ensure affordability?
- 3. What technology hurdles could there be (in particular for the students)?
- 4. What requirements should there be for matriculation in order to take the practice courses?

IV. Pro Se Forms Project

Janet Skreen of the Administrative Office of the Courts and Laurie Garber of the NW Justice Project presented on the Pro Se Forms Project. The Pro Se Project was established to address the complexity and difficulty that pattern forms present to pro se litigants. The Project has undertaken the task of translating the family law pattern forms into plain language. The goal is to make the forms more understandable. Each form goes through a rigorous review process with a thorough legal review conducted. The forms have been tested by various stakeholders, and reviewed by three forms review groups.

The Supreme Court has authorized the Plain Language Forms Review Workgroup to be the final approval body for all plain language forms. A total of 129 forms have been approved. Currently, 60 approved forms have been published for comment on the Court's website. They hope to publish the initial versions of all forms by September 1, 2013 with a comment period through December 1, 2013. Ideally, the final versions will be posted by January 1, 2014 with a three-month window before use of the forms shall be mandatory for all. Other types of pattern forms will be translated to plain language following the launch of the family law pattern forms.

V. Admissions & Licensing Subcommittee Consent Agenda

The Board then discussed the May 16, 2013 consent agenda recommendations of the Admissions & Licensing Subcommittee, which were as follows:

- a) Under a limited time waiver, eligible applicants may waive certain admission requirements provided the applicants meet other specified education and/or experience requirements.
- b) The limited time waiver period shall occur from January 1, 2014 to December 31, 2016.
- c) During the limited time waiver, applicants may waive the minimum associate degree requirement with either PACE or NALA certification combined with * of experience (to be determined).
- d) During the limited time waiver, 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.
- e) The core curriculum requirements chart developed by the Admissions and Licensing Subcommittee is adopted in its entirety.
- f) Fingerprint cards for criminal history checks and proof of financial responsibility shall be required of all applicants prior to licensing similar to the LPO model with administrative details to be determined by WSBA staff.
- g) Good moral character requirements for applicants shall parallel the procedures used for lawyer applicants 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.

Except for A, C, and E, all consent agenda items including necessary revisions, were adopted upon consent. A, C, and E were removed for further discussion. Item B was revised as follows: The limited time waiver will end on December 31, 2016, and the limited time waiver will begin when the Board begins accepting applications.

VI. Admissions & Licensing Subcommittee Meeting Report

Chair Bill Covington presented the report of the May 16, 2013 Admissions & Licensing Subcommittee meeting.

Limited Time Waiver

The Subcommittee discussed the limited time waiver. The subcommittee's consensus was that those who have a substantial amount of experience and prior education should have the opportunity to enter the legal technician profession without the burden of returning to school, except for the practice area education requirements. Therefore, the subcommittee decided to expand and further clarify the limited time waiver granted to those who have passed either the PACE or NALA exam as follows:

The LLLT Board will grant a waiver of all the core education and the minimum associate level degree to applicants who:

1. have passed the NALA or PACE certification exam;

- 2. have maintained the NALA or PACE continuing certification requirements; and
- 3. have 10 years of substantive law-related experience.

Core Education Requirement

Many of the courses at the community colleges do not have as many credits attributed to them as the subcommittee has proposed. The subcommittee discussed the difficulties that would be placed on students who previously had taken a course for less credit and subsequently wanted to make up the difference. Therefore, the subcommittee agreed that:

- 1. the core education should remain at 45 credits of paralegal studies;
- 2. the required courses should have different numbers of minimum credits assigned to the required courses. The five credit courses will require a minimum of 3 credits and the ten credit course will require a minimum of 8 credits (see core education chart);
- 3. the required core education courses do not need to have the exact name so long as the core curriculum is taught in the paralegal program courses; and
- 4. if the required courses do not total 45 credits, applicants may take any other courses in paralegal studies to satisfy the 45 credit requirement.

Application and Exam Issues

The subcommittee discussed various issues relating to the application and examination. The subcommittee made the following decisions:

- Social Security Number—the subcommittee decided that the application should instruct the applicant to provide the SSN if the applicant has one; otherwise, it is not required. This is the same as for applicants for the bar exam.
- Passing core exam and failing practice area exam or vice-versa—the
 subcommittee decided that if an applicant for initial licensure fails one of the
 required exams, the applicant will have the opportunity to pass the other exam at
 the next two administrations of the exam. The passing score is good for a year. If
 the applicant does not pass after a year, the applicant will be required to retake the
 previously passed exam.
 - o For purposes of the experience requirements, the three year clock starts after passing both exams.
- Retaking the exam—the subcommittee decided that there should be no limit on the number of times an applicant can sit for the exams.
- Exam passing standards—the subcommittee decided that each component (multichoice, essay, performance) will be graded independently from the other and that an applicant must score 75% on each component to pass the exam. There is no need to grade other components after failing one component.
- Exam appeals—the subcommittee decided that there would be no appeal of examination scores and applicants would not be entitled to receive a copy of their failed exams. This is the same as LPO applicants. There is also no appeal of scores for applicants to the bar exam.

VII. Scope of Practice & Forms Subcommittee Recommendations Consent Agenda

The Board then discussed the May 16, 2013 consent agenda recommendations of the Scope of Practice & Forms Subcommittee, which were as follows:

- a) Unless an issue prohibited by regulation arises, for dissolution and legal separation, paternity, parenting and support, and child support modification actions, LLLTs may advise and assist clients regarding trial preparation; final orders, i.e. findings of fact and conclusions of law, final decrees, parenting plans, and orders of child support; and modifications of final orders.
- b) Unless an issue prohibited by regulation arises, LLLTs may select and prepare all pattern forms for dissolution and legal separation, paternity, parenting and support, and child support modification actions.
- c) LLLTs will be prohibited from advising and assisting clients regarding division of owned real estate, formal business entities, and retirement assets, which includes division of all defined benefit plans and defined contribution plans that require a supplemental order to divide or award.
- d) LLLTs will be prohibited from advising and assisting clients regarding bankruptcy or the intention to file bankruptcy by either party.
- e) 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.
- f) The parenthetical should be stricken from APR 28(F)(8).
- g) 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 . . ."
- h) In intimate domestic relationship actions, LLLTs will be limited to advising and assisting clients regarding parenting and support issues.
- i) In intimate domestic relationship actions, LLLTs will be prohibited from advising and assisting clients regarding community property issues.

After reviewing its previous work on the consent agenda items, the Subcommittee had numerous concerns about the language and phrasing of the consent agenda items. Based on these concerns, the Subcommittee decided to remove all items except for Items F and G from the Board's consent agenda. The Board approved Items F & G on consent.

VIII. Scope of Practice Subcommittee Report

Chair Greg Dallaire presented the report of the May 16, 2013 Scope of Practice Subcommittee meeting.

Consent Agenda Revisions

The Subcommittee spent a substantial amount of its time refining the language for Items A-E of its May 16, 2013 consent agenda. Items A-E and H-I shall appear on the June 20, 2013 consent agenda with any necessary revisions.

Reviewing Past Scope Decisions of the Subcommittee

The Subcommittee then reviewed its previous decisions to fine tune language where necessary.

Reviewing the WA Pattern Forms

The subcommittee then reviewed a WA Pattern Forms Chart which listed all domestic relations pattern forms in Washington. The subcommittee agreed that while useful for identifying scope issue that may still need to be discussed by the subcommittee, the chart when published should be limited to those forms that are prohibited for use by LLLTs.

Parenting Plan Modification Actions

The subcommittee made specific recommendations related to parenting plan modification actions. The subcommittee recommends that in parenting plan modification actions:

- LLLTs should be permitted to advise and assist in the preparation of all forms authorized by APR 28(F)(6) for minor and agreed major parenting plan modification actions, unless an issue prohibited by regulation arises.
- LLLTs should be prohibited from advising and assisting clients regarding major parenting plan modification actions, unless there is agreement by the parties at the onset of the representation by the LLLT.

Remaining Scope Issues to Be Resolved

At its next meeting, the Subcommittee will focus on unresolved scope issues, including motions, discovery, UCCJEA issues, military personnel issues, etc. It will further work on the draft regulation for scope.

IX. Other

Chair Crossland then briefly introduced a question regarding how the Board and the WSBA will evaluate the Program after initial launch. The Court will want some sort of unbiased report. The Board will need to establish evaluating criteria and data collecting techniques. Some suggested surveying judges and clients, tracking malpractice complaints, coordinating with legal services to address needs of pro se litigants, and evaluating the educational programs.

ADJOURNMENT

The meeting adjourned at 4:15 p.m.

NEXT MEETING

The next meeting will be 2:00 p.m. Thursday, June 20, 2013, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.