



WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

June 20, 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, Janet Olejar, Ellen Reed, and Elisabeth Tutsch.

Also in attendance was Thea Jennings (Staff Liaison), Bobby Henry, RSD Associate Director, and Paula Littlewood, WSBA Executive Director. Theda Yandell of the Washington State Paralegal Association presented on the Paralegal Advanced Competency Examination (PACE).

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 May 16, 2013 meeting minutes were approved.

II. Paralegal Advanced Competency Examination and Certification

In anticipation of the Board's discussion regarding Regulation 4: Limited Time Waiver, Theda Yandell presented on the PACE exam run by the National Federation of Paralegal Associations (NFPA). She noted the history of PACE, which began in the late 1990s as a test to give credibility to the paralegal profession and to be used in states considering the regulation of paralegals. PACE was developed in partnership with a professional testing agency. To develop the exam, in consultation with paralegals, educators, and attorneys, NFPA investigated what is taught in paralegal education programs and what paralegals need to know.

To qualify to sit for the examination, applicants must demonstrate they meet education and paralegal experience requirements. The examination is four hours long and is multiple choice with questions drawn at random from a computer databank. The test is

broken into five domains: administration of client legal matters, development of client matters, factual and legal research, factual and legal writing, and office administration. The questions test analytical thinking and include ethics, legal terminology, and technology components. Test takers must carefully read and formulate their answers. The pass rate for the exam is approximately 70%.

Once applicants pass the exam, they maintain their PACE certification by attending 12 hours of continuing legal education courses with ethics included every two years.

The Board then discussed whether the PACE exam might replace the multiple choice section of the LLLT core exam. The Board expressed some reservations but agreed further investigation is warranted.

Finally, Ms. Yadell discussed the Certified Paralegal Exam conducted by the National Association of Legal Assistants (NALA). She stated NALA is recreating their examination, so that it will be accredited. The new exam should be offered for the first time in September 2013. No NALA associations currently exist in this state, so most qualified LLLT waiver applicants would come from other states.

III. Regulation 4: Limited Time Waiver

The Board then discussed the Regulation 4: Limited Time Waiver for recommendation to the Supreme Court. The Admissions & Licensing subcommittee made one slight revision to the regulation recommending that the time period to request review be extended to 14 days. The Board further struck the language “maintained” from Regulation 4B(2). The Board hopes to implement new practice areas before the end of the waiver period in December 2018. The Board then unanimously approved Regulation 4 with the revisions.

The WSBA then proposed that the waiver application fee be set at \$150, given the education savings for applicants and given the need to recoup the costs of the program. The Board approved the fee recommendation for submission to the Supreme Court.

IV. BOG Report

The Board of Governors (BOG) Liaison Paul Bastine presented information on the Governance Task Force, which is reviewing how the WSBA and the BOG function and the structure of the WSBA. The Task Force will make recommendations directly to the Supreme Court regarding whether any restructuring needs to be done.

One area of discussion is LLLTs and LPOs and how their Boards interrelate with the BOG that controls their budgets. The Task Force will be presenting a survey to different WSBA entities, which should be circulated in the next 30-60 days.

V. New Subcommittees

Two new subcommittees will launch in July 2013: the Rules of Professional Conduct (RPC) subcommittee and the Examination subcommittee. Ellen Dial will chair the RPC

Subcommittee, which will be a smaller subcommittee. Staff Liaison Thea Jennings circulated sign-up sheets for the two subcommittees for Board self-selection.

VI. Scope of Practice Recommendations Consent Agenda

The Board then discussed the June 20, 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 initiate actions and 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 of support.
- b) Unless an issue prohibited by regulation arises, LLLTs may select and prepare all forms authorized by APR 28(F)(6) 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 that require a supplemental order to divide or award, which includes division of all defined benefit plans and defined contribution plans.
- d) LLLTs will be prohibited from advising and assisting clients regarding bankruptcy, including obtaining a stay from bankruptcy. If one party is in bankruptcy or files a bankruptcy during the pendency of the proceeding, the LLLT may not advise and assist regarding disposition of debts and assets unless: the LLLT's client has retained an lawyer to represent him/her in the bankruptcy; or has consulted with an lawyer and the lawyer has provided written instructions for the LLLT as to whether and how to proceed regarding the division of debts and assets in the domestic relations proceeding; or the bankruptcy has been discharged.
- e) If in the course of the representation, an issue arises with respect to which the LLLT is prohibited from giving advice or assistance under these rules, then the LLLT shall inform the client in writing that the issue may exist, the LLLT is not authorized to assist on this issue, the failure to obtain a lawyer's advice could be adverse to the client's interests, and the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's rights.
- f) An LLLT may prepare an order or decree after an issue beyond the scope of practice has been identified only if a lawyer acting on behalf of the client has provided written instructions for the LLLT as to whether and how to proceed with respect to the issue, and only if other defined prohibitions do not apply.
- g) In intimate domestic relationship actions, LLLTs will be limited to advising and assisting clients regarding parenting and support issues.
- h) In intimate domestic relationship actions, LLLTs will be prohibited from advising and assisting clients regarding community property issues.
- i) In parenting plan modification actions, LLLTs may advise and assist in 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.
- j) In parenting plan modification actions, LLLTs will 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.

Chair Greg Dallaire noted that the subcommittee approved these recommendations and incorporated them into draft Regulation 2: Scope of Practice. The Board had no objections to the content and substance of the consent agenda.

VII. Report of the Scope of Practice Subcommittee

Chair Dallaire presented the report of the June 20 2013 Scope of Practice Subcommittee meeting. The subcommittee discussed the remaining scope issues for domestic relations matters and made recommendations as follows:

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Due to the complexity of the issues involved UCCJEA cases, the subcommittee recommends that LLLTs not advise or assist clients regarding the determination of UCCJEA issues unless and until jurisdiction has been resolved.

Service Members' Civil Relief Act

Given the notice issues involved when parties are military personnel, the subcommittee recommends that LLLTs not provide legal services to clients if a party to the action is covered by the Washington Service Members' Civil Relief Act or the Servicemembers Civil Relief Act.

Motion Practice

Motion practice shall be permitted in so far as the Board adopts appropriate forms where there are none or where the forms are drafted by an attorney. As such, LLLTs may select, prepare, file and serve motions consistent with the rule except where other defined prohibitions apply.

Discovery Practice

The subcommittee recommends that LLLTs assist and advise clients regarding discovery in domestic relations actions with one exception: LLLTs may counsel clients about what to expect at a deposition, explain the process, assist in drafting questions, explain cross examination, how to answer questions, etc. but shall be prohibited from appearing or participating in the taking of depositions.

Appeals

The subcommittee recommends that LLLTs be prohibited from initiating or responding to appeals in appellate courts.

Finalizing Regulation 2: Scope of Practice

The subcommittee reviewed draft Regulation 2: Scope of Practice and made some revisions to the language. It further incorporated its new approved scope issues into

Regulation 2, which was circulated to the Board for review. Ms. Jennings will review the revisions to draft Regulation 2 with WSBA staff for finalization. She will submit to the subcommittee a revised version of the Regulation to approve by email, so that it can be included in the Board's meeting materials for approval in July. Following approval by the Board, the Regulation will be forwarded to the Supreme Court for approval.

VIII. Admissions & Licensing Subcommittee Consent Agenda

The Board then discussed the June 20, 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) During the limited time waiver, the Board will grant a waiver of all the core education and the minimum associate level degree to applicants who:
 - i. have passed the PACE or NALA certification exam;
 - ii. have maintained the PACE or NALA continuing certification requirements; and
 - iii. have 10 years of substantive law-related experience supervised by a licensed lawyer within the past 15 years.
- c) The core curriculum requirements chart developed by the Admissions and Licensing Subcommittee is adopted in its entirety, including the minimum credit requirements for each course.
- d) The required core education courses taught at the ABA approved paralegal programs or law schools do not need to have the exact name as listed in the regulations so long as the core curriculum is taught in the courses;
- e) If the required core courses do not total 45 credits, applicants may take any other courses in paralegal studies from an ABA approved paralegal program or law courses at an ABA approved law school to satisfy the 45 credit requirement.
- f) Applications should instruct the applicant to provide a social security number if the applicant has one; otherwise, it shall not be required.
- g) 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.
 - i. For purposes of the experience requirements, the three year clock starts after passing both exams.
- h) There shall be no limit on the number of times an applicant can sit for the exams.
- i) Each component of the examinations (multi-choice, essay, performance) will be graded independently from the other. An applicant must score 75% on each component to pass the exam. The Board shall not grade other components after failing one component.
- j) There shall be no appeal of examination scores and applicants shall not be entitled to receive a copy of their failed exams.

The Board approved the recommendations without debate.

IX. Admissions & Licensing Subcommittee Meeting Report

Chair Bill Covington presented the report of the June 20 2013 Admissions & Licensing Subcommittee meeting.

Core Education Requirement

The subcommittee discussed the curriculum of core education courses that have been taught, or are currently being taught at the community colleges. Those courses do not necessarily cover all the content that the subcommittee proposes be covered in the core education courses. The subcommittee does not want students, and future applicants, to retake several course simply because a few concepts or topics were not covered in a course. Therefore, subcommittee members Janet Olejar, Scott Haddock and Brenda Cothary are going to do a “gap” analysis to determine what core curriculum topics are missing, if any, from the curriculum taught at ABA approved paralegal programs. They will report back at the July meeting.

The subcommittee discussed different ideas for how to fill in this “gap” in education. Depending on the amount of “fill-in-the-gap” education needed, the subcommittee proposes that either a course or seminar be developed by the community colleges, or that volunteers from the community colleges create a one to three day seminar covering the material missing from the curriculum until the LLLT requirements can be incorporated into the paralegal curriculum. Ideally, the subcommittee would like to see a seminar format that could be recorded and then viewed online by all LLLT applicants until the paralegal curricula are established.

Exam

The subcommittee discussed an alternative to creating the core exam would be to use one of the certifying exams from NFPA or NALA. The subcommittee discussed the alternative and the initial consensus was that they would prefer to write an exam specifically tailored to the core education requirements. Though based on the Board’s discussion, he noted the Examination subcommittee will further investigate this option.

The subcommittee also brainstormed ideas for outside assistance in creating the exams. The subcommittee discussed using law school and paralegal instructors, experts in certain areas, and gathering testing materials and questions from the community colleges.

Family Law Curriculum Recommendations

The subcommittee approved the recommendations of the Family Law Curriculum Workgroup as follows:

- a) Applicants must complete five credit hours in basic domestic relations subjects and ten credit hours in advanced and Washington specific domestic relations subjects.
- b) Tuition for the domestic relations courses will be \$250 per credit.

- c) Prior to enrolling in the domestic relations practice area courses, applicants not seeking a waiver must complete the following core courses: Civil Procedure; Interviewing and Investigation Techniques; Introduction to Law and Legal Process; Legal Research, Writing, and Analysis; and Professional Responsibility.

Regulations

The subcommittee reviewed, discussed, modified and approved draft Regulations 1 and 3 through 13. This included requiring professional liability insurance for financial responsibility and setting the minimum coverage. In addition, they approved the LLLT oath and license fee structure. The Board was instructed to review carefully the Regulations to finalize them for submission to the Supreme Court in July.

X. Other

Chair Crossland reviewed the status of the Board noting that by June 2014 we will be ready to begin accepting applications for licensure. By Fall of next year, the Board will have licensed the first LLLTs. He noted that the Board may want to consider new practice areas soon without necessarily implementing them.

Executive Director Paula Littlewood then addressed the Board briefly regarding the ABA Task Force on the Future of Legal Education. A draft report had arrived that day from the Task Force, which included recommendations regarding the implementation of legal education programs and regulation for limited practitioners. Director Littlewood noted she is a member of the Task Force and would be traveling to the Task Force meeting later that week. She sought guidance from the Board on whether to express concerns as a Task Force member on behalf of the Board regarding these draft recommendations. The Board confirmed its position that the legal education of LLLTs should not necessarily be housed at the law schools or dictated by the ABA and that the Board and the WSBA will be taking an active role in overseeing the implementation of the legal education and regulation of LLLTs.

Finally, the Board approved its May 16, 2013 meeting minutes. .

ADJOURNMENT

The meeting adjourned at 3:55 p.m.

NEXT MEETING

The next meeting will be 2:00 p.m. Thursday, July 18, 2013, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.