WSBA

WASHINGTON STATE BAR ASSOCIATION

Board of Governors Meeting

Public Session Materials

March 9, 2017

Red Lion

Olympia, Washington

WSBA

WSBA MISSION

The Washington State Bar Association's mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

WSBA GUIDING PRINCIPLES

The WSBA will operate a well-managed association that supports its members and advances and promotes:

- **Access to the justice system.**
  Focus: Provide training and leverage community partnerships in order to enhance a culture of service for lawyers to give back to their communities, with a particular focus on services to underserved low and moderate income people.
- **Diversity, equality, and cultural understanding throughout the legal community.**
  Focus: Work to understand the lay of the land of our legal community and provide tools to members and employers in order to enhance the retention of minority lawyers in our community.
- **The public's understanding of the rule of law and its confidence in the legal system.**
  Focus: Educate youth and adult audiences about the importance of the three branches of government and how they work together.
- **A fair and impartial judiciary.**
- **The ethics, civility, professionalism, and competence of the Bar.**

MISSION FOCUS AREAS	PROGRAM CRITERIA
Ensuring Competent and Qualified Legal Professionals • Cradle to Grave • Regulation and Assistance **Promoting the Role of Lawyers in Society** • Service • Professionalism	• Does the Program further either or both of WSBA's mission-focus areas? • Does WSBA have the competency to operate the Program? • As the mandatory bar, how is WSBA uniquely positioned to successfully operate the Program? • Is statewide leadership required in order to achieve the mission of the Program? • Does the Program's design optimize the expenditure of WSBA resources devoted to the Program, including the balance between volunteer and staff involvement, the number of people served, the cost per person, etc?

2016 – 2018 STRATEGIC GOALS

- **Equip members with skills for the changing profession**
- **Promote equitable conditions for members from historically marginalized or underrepresented backgrounds to enter, stay and thrive in the profession**
- **Explore and pursue regulatory innovation and advocate to enhance the public's access to legal services**

GR 12
Washington State Bar Association: Purposes

A. PURPOSES: IN GENERAL.

In general, the Washington State Bar Association strives to:

1. Promote independence of the judiciary and the bar;
2. Promote an effective legal system, accessible to all;
3. Provide services to its members;
4. Foster and maintain high standards of competence, professionalism, and ethics among its members;
5. Foster collegiality among its members and goodwill between the bar and the public;
6. Promote diversity and equality in the courts, the legal profession, and the bar;
7. Administer admissions to the bar and discipline of its members in a manner that protects the public and respects the rights of the applicant or member;
8. Administer programs of legal education;
9. Promote understanding of and respect for our legal system and the law;
10. Operate a well-managed and financially sound association, with a positive work environment for its employees;
11. Serve as a statewide voice to the public and the branches of government on matters relating to these purposes and the activities of the association.

B. SPECIFIC ACTIVITIES AUTHORIZED.

In pursuit of these purposes, the Washington State Bar Association may:

1. Sponsor and maintain committees, sections, and divisions whose activities further these purposes;
2. Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;
3. Provide periodic reviews and recommendations concerning court rules and procedures;
4. Administer examinations and review applicants' character and fitness to practice law;
5. Inform and advise lawyers regarding their ethical obligations;
6. Administer an effective system of discipline of its members, including receiving and investigating complaints of lawyer misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;

7. Maintain a program, pursuant to court rule, requiring members to submit fee disputes to arbitration;
8. Maintain a program for mediation of disputes between members and their clients and others;
9. Maintain a program for lawyer practice assistance;
10. Sponsor, conduct, and assist in producing programs and products of continuing legal education;
11. Maintain a system for accrediting programs of continuing legal education;
12. Conduct audits of lawyers' trust accounts;
13. Maintain a lawyers' fund for client protection in accordance with the Admission to Practice Rules;
14. Maintain a program of the aid and rehabilitation of impaired members;
15. Disseminate information about bar activities, interests, and positions;
16. Monitor, report on, and advise public officials about matters of interest to the Bar;
17. Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about bar positions and concerns;
18. Encourage public service by members and support programs providing legal services to those in need;
19. Maintain and foster programs of public information and education about the law and the legal system;
20. Provide, sponsor, and participate in services to its members;
21. Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the bar's discretion, authorizing collective bargaining;
22. Collect, allocate, invest, and disburse funds so that its mission, purposes, and activities may be effectively and efficiently discharged.

C. ACTIVITIES NOT AUTHORIZED.

The Washington State Bar Association will not:

1. Take positions on issues concerning the politics or social positions of foreign nations;
2. Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or
3. Support or oppose, in an election, candidates for public office.

2016-2017
WSBA BOARD OF GOVERNORS MEETING SCHEDULE

MEETING DATE	LOCATION	POTENTIAL ISSUES / SOCIAL FUNCTION	AGENDA DUE	BOARD BOOK MATERIAL DEADLINE*	EXECUTIVE COMMITTEE 10:00 am–12:00 pm*
November 18, 2016	WSBA Conference Center Seattle, WA	BOG Meeting	**October 13, 2016**	**November 2, 2016**	**October 13, 2016** **(9:30 am – 11:30 am)**
January 26-27, 2017	Gonzaga University Spokane, WA	BOG Meeting	**January 5, 2017**	**January 11, 2017**	**January 5, 2017**
March 9, 2017 March 10, 2017	Red Lion Olympia, WA Temple of Justice	BOG Meeting BOG Meeting with Supreme Court	**February 16, 2017**	**February 22, 2017**	**February 16, 2016** **(9:00 am – 11:00 am)**
May 18-19, 2017	WSBA Conference Center Seattle, WA	BOG Meeting	**April 27, 2017**	**May 3, 2017**	**April 24, 2017** **(2:00 pm – 4:00 pm)**
July 27, 2017 July 28-29, 2017	Alderbrook Union, WA	BOG Retreat BOG Meeting	**June 29, 2017**	**July 12, 2017**	**June 29, 2017**
September 28-29, 2017 September 28, 2017	WSBA Conference Center Seattle, WA TBD	BOG Meeting WSBA APEX Awards Banquet	**September 7, 2017**	**September 13, 2017**	**September 7, 2017**

*The Board Book Material Deadline is the final due date for submission of materials for the respective Board meeting. However, you should notify the Executive Director's office in advance of possible meeting agenda item(s).

This information can be found online at: www.wsba.org/About-WSBA/Governance/Board-Meeting-Schedule-Materials

*Unless otherwise noted.

WSBA Board of Governors
Congressional District Map

2016-2017


Robin Lynn Haynes
President


Bradford E. Furlong
President-Elect

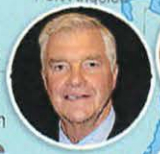

William D. Hyslop
Immediate Past President


Paula Littlewood, Secretary
Executive Director


G. Kim Risenmay
Governor District 1


Rajeev D. Majumdar
Governor District 2


Angela M. Hayes
Governor District 5


Keith M. Black
Governor District 6


Ann Danieli
Governor District 7-North


Andrea S. Jarmon
Governor District 8


James K. Doane
Governor District 7-South


Dan Bridges
Governor District 9


Christina Meserve
Governor District 10


William D. Pickett
Governor District 4


Jill A. Karmy, Treasurer
Governor District 3


Athanasios P. Papailiou
Governor At-Large


Mario M. Cava
Governor At-Large


Sean Davis
Governor At-Large

BASIC CHARACTERISTICS OF MOTIONS

From: *The Complete Idiot's Guide to Robert's Rules*
The Guerilla Guide to Robert's Rules

MOTION	PURPOSE	INTERRUPT SPEAKER?	SECOND NEEDED?	DEBATABLE?	AMENDABLE?	VOTE NEEDED
1. Fix the time to which to adjourn	Sets the time for a continued meeting	No	Yes	No[1]	Yes	Majority
2. Adjourn	Closes the meeting	No	Yes	No	No	Majority
3. Recess	Establishes a brief break	No	Yes	No[2]	Yes	Majority
4. Raise a Question of Privilege	Asks urgent question regarding to rights	Yes	No	No	No	Rules by Chair
5. Call for orders of the day	Requires that the meeting follow the agenda	Yes	No	No	No	One member
6. Lay on the table	Puts the motion aside for later consideration	No	Yes	No	No	Majority
7. Previous question	Ends debate and moves directly to the vote	No	Yes	No	No	Two-thirds
8. Limit or extend limits of debate	Changes the debate limits	No	Yes	No	Yes	Two-thirds
9. Postpone to a certain time	Puts off the motion to a specific time	No	Yes	Yes	Yes	Majority[3]
10. Commit or refer	Refers the motion to a committee	No	Yes	Yes	Yes	Majority
11. Amend an amendment (secondary amendment)	Proposes a change to an amendments	No	Yes	Yes[4]	No	Majority
12. Amend a motion or resolution (primary amendment)	Proposes a change to a main motion	No	Yes	Yes[4]	Yes	Majority
13. Postpone indefinitely	Kills the motion	No	Yes	Yes	No	Majority
14. Main motion	Brings business before the assembly	No	Yes	Yes	Yes	Majority

1 Is debatable when another meeting is scheduled for the same or next day, or if the motion is made while no question Is pending

2 Unless no question is pending

3 Majority, unless it makes question a special order

4 If the motion it is being applied to is debatable

WSBA

WASHINGTON STATE BAR ASSOCIATION

Discussion Protocols
Board of Governors Meetings

Philosophical Statement:

> "We take serious our representational responsibilities and will try to inform ourselves on the subject matter before us by contact with constituents, stakeholders, WSBA staff and committees when possible and appropriate. In all deliberations and actions we will be courageous and keep in mind the need to represent and lead our membership and safeguard the public. In our actions, we will be mindful of both the call to action and the constraints placed upon the WSBA by GR 12 and other standards."

Governor's Commitments:

1. Tackle the problems presented; don't make up new ones.
2. Keep perspective on long-term goals.
3. Actively listen to understand the issues and perspective of others before making the final decision or lobbying for an absolute.
4. Respect the speaker, the input and the Board's decision.
5. Collect your thoughts and speak to the point – sparingly!
6. Foster interpersonal relationships between Board members outside Board events.
7. Listen and be courteous to speakers.
8. Speak only if you can shed light on the subject, don't be repetitive.
9. Consider, respect and trust committee work but exercise the Board's obligation to establish policy and insure that the committee work is consistent with that policy and the Board's responsibility to the WSBA's mission.
10. Seek the best decision through quality discussion and ample time (listen, don't make assumptions, avoid sidebars, speak frankly, allow time before and during meetings to discuss important matters).
11. Don't repeat points already made.
12. Everyone should have a chance to weigh in on discussion topics before persons are given a second opportunity.
13. No governor should commit the board to actions, opinions, or projects without consultation with the whole Board.
14. Use caution with e-mail: it can be a useful tool for debating, but e-mail is not confidential and does not easily involve all interests.
15. Maintain the strict confidentiality of executive session discussions and matters.

WSBA

BOARD OF GOVERNORS

WSBA VALUES

Through a collaborative process, the WSBA Board of Governors and Staff have identified these core values that shall be considered by the Board, Staff, and WSBA volunteers (collectively, the "WSBA Community") in all that we do.

To serve the public and our members and to promote justice, the WSBA Community values the following:

- Trust and respect between and among Board, Staff, Volunteers, Members, and the public
- Open and effective communication
- Individual responsibility, initiative, and creativity
- Teamwork and cooperation
- Ethical and moral principles
- Quality customer-service, with member and public focus
- Confidentiality, where required
- Diversity and inclusion
- Organizational history, knowledge, and context
- Open exchanges of information

WSBA

BOARD OF GOVERNORS

GUIDING COMMUNICATION PRINCIPLES

In each communication, I will assume the good intent of my fellow colleagues; earnestly and actively listen; encourage the expression of and seek to affirm the value of their differing perspectives, even where I may disagree; share my ideas and thoughts with compassion, clarity, and where appropriate confidentiality; and commit myself to the unwavering recognition, appreciation, and celebration of the humanity, skills, and talents that each of my fellow colleagues bring in the spirt and effort to work for the mission of the WSBA. Therefore, I commit myself to operating with the following norms:

- I will treat each person with courtesy and respect, valuing each individual.
- I will strive to be nonjudgmental, open-minded, and receptive to the ideas of others.
- I will assume the good intent of others.
- I will speak in ways that encourage others to speak.
- I will respect others' time, workload, and priorities.
- I will aspire to be honest and open in all communications.
- I will aim for clarity; be complete, yet concise.
- I will practice "active" listening and ask questions if I don't understand.
- I will use the appropriate communication method (face-to-face, email, phone, voicemail) for the message and situation.
- When dealing with material of a sensitive or confidential nature, I will seek and confirm that there is mutual agreement to the ground rules of confidentiality at the outset of the communication.
- I will avoid triangulation and go directly to the person with whom I need to communicate. (If there is a problem, I will go to the source for resolution rather than discussing it with or complaining to others.)
- I will focus on reaching understanding and finding solutions to problems.
- I will be mindful of information that affects, or might be of interest or value to, others, and pass it along; err on the side of over-communication.
- I will maintain a sense of perspective and respectful humor.

WSBA
BOARD OF GOVERNORS

Anthony David Gipe
President

phone: 206.386.4721
e-mail: adgipeWSBA@gmail.com

November 2014

BEST PRACTICES AND EXPECTATIONS

- **Attributes of the Board**
  - Competence
  - Respect
  - Trust
  - Commitment
  - Humor

- **Accountability by Individual Governors**
  - Assume Good Intent
  - Participation/Preparation
  - Communication
  - Relevancy and Reporting

- **Team of Professionals**
  - Foster an atmosphere of teamwork
    - Between Board Members
    - The Board with the Officers
    - The Board and Officers with the Staff
    - The Board, Officers, and Staff with the Volunteers
  - We all have common loyalty to the success of WSBA

- **Work Hard and Have Fun Doing It**

Board of Governors Meeting
Red Lion
Olympia, WA
March 9, 2017

WSBA Mission: Serve the public and the members of the Bar, ensure the integrity of the legal profession, and to champion justice.

PLEASE NOTE: ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

Thursday, March 9, 2017

GENERAL INFORMATION 2

1. AGENDA 12

8:00 A.M. – Executive Session

2. EXECUTIVE SESSION

a. Approval of January 26-27, 2017, Executive Session Minutes **(action)** E-2
b. President's and Executive Director's Reports
c. Executive Director Evaluation Goals **(action)** E-8
d. Litigation Report – Jean McElroy E-13
e. Meeting Evaluation Summary E-41

12:00 P.M. – LUNCH WITH LOCAL ATTORNEYS AND JUDGES; LOCAL HERO AWARDS

1:30 P.M. – PUBLIC SESSION

- **Introductions and Welcome**
- **Report on Executive Session**
- **Consideration of Consent Calendar***

OPERATIONAL

3. STRATEGIC ISSUES

a. Legislative Report – Governor Mario Cava, BOG Legislative Committee Chair, and Alison Phelan, Legislative Affairs Manager 16

*See Consent Calendar. Any items pulled from the Consent Calendar will be scheduled at the President's discretion.

The WSBA is committed to full access and participation by persons with disabilities to Board of Governors meetings. If you require accommodation for these meetings, please contact Kara Ralph at karar@wsba.org or 206.239.2125.

GENERATIVE DISCUSSION

4. GENERATIVE DISCUSSION TOPICS

a. Goals of a Generative Discussion
b. Future Topics for Generative Discussions
c. Future Topics for WSBA Forum Series on Public Policy Issues of Interest

5. CONSENT CALENDAR 18

a. January 26-27, 2017, Public Session Minutes 19
b. Suggested Amendments to Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 3.3 25
c. Suggested Amendments to Rules of Professional Conduct (RPC) 1.6 and 7.3 29
d. Suggested Amendments to Rules of Professional Conduct (RPC) 8.4 35
e. Request for Committee on Professional Ethics (CPE) to Draft Title 7 Rules of Professional Conduct (RPC) Amendments 38
f. Comment on Access to Justice (ATJ) Board's Draft State Plan for the Coordinated Delivery of Legal Services to Low Income People 121

6. INFORMATION

a. Activity Reports 148
b. Executive Director's Report 155
c. ABA Midyear Meeting Report 414
d. Revised Advisory Opinion 427
e. Additional Appointments to Civil Litigation Rules Drafting Task Force Roster 432
f. Diversity and Inclusion Events 437
g. Financials
    1. December 31, 2016, Financial Statements 439
    2. First Quarter FY 2017 Budget to Actual Narrative 480
    3. January 31, 2017, Investment Update 483

7. PREVIEW OF MAY 18-19, 2017, MEETING 484

2016-2017 Board of Governors Meeting Issues

NOVEMBER (Seattle)
Standing Agenda Items:

- Financials
- FY2016 Fourth Quarter Management Report
- BOG 2016-2017 Legislative Committee Agenda
- WSBA Legislative Committee Recommendations
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- Outside Appointments (if any)
- Washington Leadership Institute (WLI) Fellows Report
- WSBA Sections Annual Reports (information)
- WSBF Annual Report

JANUARY (Spokane)
Standing Agenda Items:

- ABA Midyear Meeting Sneak Preview
- Financials
- FY2016 Audited Financial Statements
- FY2017 First Quarter Management Report
- Legislative Report
- LFCP Board Annual Report
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- Outside Appointments (if any)
- Third-Year Governors Candidate Recruitment Report

MARCH (Olympia)
Standing Agenda Items:

- ABA Mid-Year Meeting Report
- Financials
- Legislative Report
- Outside Appointments (if any)
- Supreme Court Meeting

May (Seattle)
Standing Agenda Items:

- BOG Election Interview Time Limits (Executive Session)
- Financials
- FY2017 Second Quarter Management Report
- Interview/Selection of WSBA At-Large Governor
- Interview/Selection of the WSBA President-elect
- Legislative Report/Wrap-up
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- Outside Appointments (if any)
- WSBA Awards Committee Recommendations (Executive Session)

JULY (Alderbrook)
Standing Agenda Items:

- ATJ Board Report
- BOG Retreat
- Court Rules and Procedures Committee Report and Recommendations
- Discipline Selection Panel Recommendations
- Financials
- Draft WSBA FY2017 Budget
- FY2016 Third Quarter Management Report
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- WSBA Committee and Board Chair Appointments
- WSBA Mission Performance and Review (MPR) Committee Update
- WSBA Treasurer Election

SEPTEMBER (Seattle)
Standing Agenda Items:

- 2018 Keller Deduction Schedule
- ABA Annual Meeting Report
- Chief Hearing Officer Annual Report
- Professionalism Annual Report
- Executive Director's Evaluation Report
- Financials
- Final FY2018 Budget
- Legal Foundation of Washington and LAW Fund Report
- Washington Law School Deans
- WSBA Annual Awards Dinner
- WSBF Annual Meeting and Trustee Election

Board of Governors – Action Timeline

Description of Matter/Issue	First Reading	Scheduled for Board Action
Law Clerk Waiver Policies	November 13, 2015	TBD
WSBA Religious and Spiritual Practices Policy	July 22-23, 2016	TBD

WSBA

OFFICE OF LEGISLATIVE AFFAIRS

MEMORANDUM

TO: WSBA Board of Governors

FROM: Gov. Mario Cava, BOG Legislative Committee Chair, and Alison Phelan, WSBA Legislative Affairs Manager

DATE: March 9, 2017

RE: 2017 Legislative Session Report

OVERVIEW:

The regular state legislative session began on January 9 and is scheduled to adjourn Sine Die on April 23, 2017. With a multi-billion dollar budget deficit, mainly due to basic education funding, legislators in both chambers have begun drafting biennial operating and capital budgets scheduled for release in March.

To date, legislators have introduced approximately **2,306 bills** (as of 2/21/17). The WSBA Legislative Affairs Office has referred **665 bills** to relevant WSBA entities for review and potential action. WSBA entities continue to engage in this year's legislative session on issues related to guardianships, pro bono services for military service members, the Uniform Voidable Transactions Act, and many others. Legislative engagement has ranged from testifying before a legislative committee, sending written correspondence to a bill sponsor, and working collaboratively with the Legislative Affairs Manager to convey information regarding proposed legislation.

2017 Legislation

- **WSBA-Request, Senate Bill 5011 (origin: Business Law Section)**. The bill amends the state's Business Corporation Act (RCW 23B) to make Washington more business-friendly through process efficiencies and the modernization of outdated statutory provisions. There is no fiscal impact.
  Position: Support
  Status: SB 5011 was voted unanimously out of the Senate (49-0) and has been referred to the House Judiciary Committee.

- **WSBA-Request, Substitute Senate Bill 5012 (origin: Real Property, Probate & Trust Section)**. The bill creates a non-judicial process for amending or replacing irrevocable trust documents. There is no fiscal impact.

Position: Support
Status: After a friendly amendment was adopted to preserve Attorney General authority, SSB 5012 was voted unanimously out of the Senate Law and Justice Committee and has been referred to the Senate Rules Committee.

- **Senate Bill 5721** (Sponsor: Sen. Mike Padden, R-4). The bill requires any license fee increase approved by the WSBA Board of Governors be voted on by active WSBA members.
  Position: No position
  Status: SSB 5721 was voted out of the Senate Law and Justice Committee (4-3) and has been referred to the Senate Rules Committee.

Session Deadlines
Each legislative session is marked by key cutoff dates or session milestones. Bills must pass each of the 2017 cutoff dates below to be eligible for further consideration (and potentially final passage) this session.

- **Feb. 17: Policy Committee Cutoff** – all policy bills must be voted out of their respective policy committees.
- **Feb. 24: Fiscal Committee Cutoff** – all bills with a fiscal impact must be voted out of their respective fiscal committees.
- **March 8: House of Origin Cutoff** – all bills must be voted out of their respective chambers.
- **March 29: Opposite House Policy Committee Cutoff** – all opposite house policy bills must be voted out of their respective policy committees.
- **April 4: Opposite House Fiscal Committee Cutoff** – all opposite house bills with a fiscal impact must be voted out of their respective fiscal committees.
- **April 12: Opposite House Floor Cutoff** – all opposite house bills must be voted out of their respective chambers.
- **April 23: Sine Die** – final day of the 2017 regular legislative session.

Board of Governors Meeting
Red Lion
Olympia, WA
March 9, 2017

WSBA Mission: Serve the public and the members of the Bar, ensure the integrity of the legal profession, and to champion justice.

How the Consent Calendar Operates: The items listed below are proposed for approval on the Consent Calendar. Following introductions in the Public Session, the President will ask the Board if they wish to discuss any matter on the Consent Calendar. If they do, the item will come off the Consent Calendar and be included for discussion under First Reading/Action Items on the regular agenda. If no discussion is requested, a Consent Calendar approval form will be circulated for each Governor's signature.

Consent Calendar Approval

a. January 26-27, 2017, Public Session Minutes 19
b. Suggested Amendments to Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 3.3 25
c. Suggested Amendments to Rules of Professional Conduct (RPC) 1.6 and 7.3 29
d. Suggested Amendments to Rules of Professional Conduct (RPC) 8.4 35
e. Request for Committee on Professional Ethics (CPE) to Draft Title 7 Rules of Professional Conduct (RPC) Amendments 38
f. Comment on Access to Justice (ATJ) Board's Draft State Plan for the Coordinated Delivery of Legal Services to Low Income People 121

DRAFT – SUBJECT TO APPROVAL

MINUTES

Public Session
Washington State Bar Association
BOARD OF GOVERNORS

Spokane, WA
January 26-27, 2017

The Public Session of the Board of Governors of the Washington State Bar Association (WSBA) was called to order by President Robin Haynes on Thursday, January 26, 2017, at 1:15 p.m., recessed at 4:20 p.m., and reconvened on Friday, January 27, 2017, at 9:50 a.m., at the Gonzaga University Hemmingson Center, Spokane, Washington. Governors in attendance were:

Keith M. Black
Dan W. Bridges
Mario M. Cava
Ann Danieli
Sean M. Davis
James K. Doane
Angela M. Hayes
Andrea S. Jarmon
Jill A. Karmy
Rajeev D. Majumdar
Christina A. Meserve
Athan P. Papailiou
William D. Pickett
G. Kim Risenmay

Also in attendance were President-elect Brad Furlong (Thursday only), Immediate Past-President Bill Hyslop, Executive Director Paula Littlewood, General Counsel/Chief Regulatory Counsel Jean McElroy, Chief Disciplinary Counsel Doug Ende, Director of Human Resources Frances Dujon-Reynolds, Chief Operations Officer Ann Holmes, Director of Advancement/Chief Development Officer Terra Nevitt, and Executive Assistant Margaret Shane.

Dean Jane Korn welcomed the Board and everyone in attendance to the Gonzaga University Hemmingson Center and shared some of the outstanding accomplishments of the University.

The following items were discussed on Thursday, January 26, 2017.

REPORT ON EXECUTIVE SESSION

President Haynes reported that the Board received the President's and the Executive Director's updates, the Discipline Report, and the Litigation Report, and acted on gift recommendations from the Lawyers' Fund for Client Protection.

CONSENT CALENDAR

a. November 18, 2016, Public Session Minutes
b. Civil Litigation Rules Task Force Roster
c. Suggested Amendments to Lesbian Gay Bisexual Transgender (LGBT) Law Section Bylaws

SUGGESTED AMENDMENTS TO BYLAWS ARTICLE XI – Governor James Doane; Terra Nevitt, Director of Advancement/Chief Development Officer; and Paris Eriksen, Sections Program Manager

Governor Doane referred the Board to the information contained in the meeting materials and reminded the Board that it had previously received a great deal of member input on this item, as well as recommendations from the workgroup, and that this item is on the agenda for fourth reading. He stated that the suggested amendments to Article XI provide minimum governance standards for all Sections. Governor Risenmay moved to approve the suggested amendments to WSBA Bylaws Article XI as amended on November 18, 2016, and contained in the meeting materials. Discussion ensued regarding difficulties for some of the Sections to comply with the election timeline in the amended Bylaws and difficulties for some Section members to use the proposed electronic voting system.

Governor Majumdar moved to amend the motion by including "unless otherwise permitted by Section Bylaws" after the title of Article XI(G)(1), Article XI(G)(2), and Article XI(G)(3). Governor Majumdar's motion to amend failed 3-11. Governor Meserve moved to amend Article XI(G)(3) from "...held between March and May each year" to "...held between March and July each year." Discussion ensued regarding the significant workgroup discussion on this point, the

effect of changing the timeline on the Budget and Audit Committee process, and best practices around onboarding incoming leadership. Governor Meserve's motion to amend failed 6-8. Governor Papailiou called the question, which failed 9-5 for lack of a two-thirds majority vote. Governor Pickett moved to amend Article XI(G)(3) from "...held between March and May each year" to "...held between March and July 1 each year." Governor Pickett's motion failed 5-9. Governor Risenmay's original motion to approve the suggested amendments to WSBA Bylaws Article XI as contained in the meeting materials passed on majority voice vote.

PROPOSED SECOND PRACTICE AREA FOR LIMITED LICENSE LEGAL TECHNICIAN (LLLT) LICENSURE – Steve Crossland, LLLT Board Chair, and Ellen Reed, LLLT Program Lead

LLLT Board Chair Crossland gave a broad overview of the current statistics related to the LLLT program, explained the LLLT educational process, and described the makeup of the required license exams. He reported that the LLLT Board has communicated with the Washington Supreme Court and understands that the Court wants the LLLT Board to be looking at new practice areas in order to have a series of practice areas under development and in the pipeline. He noted that currently some of the most significant practice areas which have been discussed as possibilities for LLLT practice are elder law, immigration, and landlord/tenant.

He advised that the next practice area under development will be named Estate and Healthcare Law. He referred the BOG to the information contained in the meeting materials and advised that the LLLT Board will be presenting this new LLLT practice area to the Washington Supreme Court at its en banc session on March 8, 2017, and asking for the Court's approval to move forward with development of this practice area. Discussion ensued regarding outreach to Sections for their input, LLLT appearances in court, handing off to lawyers once the LLLT reaches the limit of what they are licensed to perform, conflicts of interest handled the same as for lawyers, and the LLLT requirement for mandatory malpractice insurance. LLLT Board Chair Crossland emphasized that the LLLT Board seeks and wants input from a wide variety of sources because it wants the program to be the best possible so that the practitioners can serve and protect the public to the best of their ability.

President Haynes explained that this item was on the agenda for discussion only. The Washington Supreme Court will make the decision on the practice areas, but looks to the BOG for feedback and endorsement, if the BOG so desires.

UPDATE FROM THE PRACTICE OF LAW BOARD (POLB) AND SUGGESTED REVISIONS TO GR 25 – Paul Bastine, POLB Chair

POLB Chair Bastine gave an overview of the history and focus of the POLB and advised that the draft report of the work done by the reconstituted POLB over the last year, which was contained in the meeting materials, will be submitted to the Washington Supreme Court. He reviewed the charge of the Court to the reconstituted POLB and referred to the suggested amendments to GR 25 contained in the report.

DISCUSSION RE VOTE ON LICENSE FEE PETITION

Executive Director Littlewood explained the process for setting license fees, background of the current license fee petition, signature verification process, and Washington Supreme Court's Order determining the reasonableness of the 2018-2020 active license fees. She advised that President Haynes and she were invited by the Supreme Court to attend its administrative en banc, where it sits in its administrative capacity of overseeing its various entities, including the WSBA. She explained that this item is currently before the Board because the Washington Supreme Court's Order does not speak to the WSBA's Bylaws or whether a vote on the petition is required, therefore, the Board needs to decide whether it wants to move forward with the vote on the petition.

General Counsel McElroy referred the Board to the relevant WSBA Bylaw provision contained in the meeting materials and advised that questions for the Board to consider include whether the petition now qualifies in light of GR 12.1 and, if it does, would it be a futile act to hold a vote on the petition in light of the Washington Supreme Court's determination regarding reasonableness. She reminded the Board that GR 12.1 and the WSBA Bylaws state that the Washington Supreme Court makes a determination regarding reasonableness of license fees.

Governor Karmy moved as follows: that the petition for referendum on the 2018-2020 license fees does not meet the requirements of GR 12 because the Court issued an Order finding the fees set by the Board to be reasonable and the petition fee unreasonable. Further, any vote would be fiscally unsound and futile given the Court's Order and that the outcome potentially could be in violation of a Supreme Court Order. As such, no referendum vote will be held. Discussion ensued regarding the $10,000 financial impact of holding a vote (which would not include staff time), the petition's demographic data, and additional outreach and information to the membership to explain why the license fees are fiscally responsible and what the members receive as a result. Governor Papailiou moved to call the question, which passed 11-3. Governor Karmy's motion to not hold the referendum vote passed 13-1.

The following items were discussed on Friday, January 27, 2017.

GENERATIVE DISCUSSION: CHANGING DEMOGRAPHICS OF THE BAR – Governor Jill Karmy; Paula Littlewood, Executive Director; Frances Dujon-Reynolds, Director of Human Resources; and Terra Nevitt, Director of Advancement/Chief Development Officer

Executive Director Littlewood gave an overview regarding the changing of the profession. Discussion ensued regarding what the changing demographics of the bar means to the future of the profession, what impact it has on lawyer members and the public they serve, and whether the Bar is adequately prepared for this issue. Suggestions were made regarding encouraging more lawyers to focus in specific areas, older lawyers to mentor newer lawyers, services for lawyers who are suffering from mental impairments related to aging and services for third parties who are recognizing these impairments in lawyers they work with or know and who need help determining how to intervene, pro bono as well as low bono services, and taking advantage of the Bar's Law Office Management Assistant Program (LOMAP). Executive Director Littlewood noted that there is a huge knowledge and leadership drain coming to the profession, so it will be important to find out how members currently want to give back so the Bar can be instrumental in maintaining the knowledge base and helping to provide flexibility to members in retirement who would like to serve.

Suggestions from guests included lowering the fee and dropping the CLE requirement for 50-year lawyers, emphasizing pro bono work, updating the membership study, instituting a year-long payment plan for older lawyers' license fees, and clearer and simpler instructions for moving from one license level to another in the Bar.

RESOLUTION: A DAY OF REMEMBRANCE – Governor James Doane

Governor Doane read the proposed Resolution contained in the meeting materials, then moved to adopt the same. Motion passed unanimously.

ADJOURNMENT

There being no further business, the Public Session portion of the meeting was adjourned at 11:25 a.m. on Friday, January 27, 2017.

Respectfully submitted,

Paula C. Littlewood
WSBA Executive Director & Secretary

WSBA

MEMORANDUM

To: WSBA President, President-elect, and Board of Governors

From: Shannon Kilpatrick, Chair, WSBA Court Rules and Procedures Committee
Kevin Bank, Assistant General Counsel

Date: February 22, 2017

Re: Suggested Amendment to Infraction Rule 3.3 for Courts of Limited Jurisdiction

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CONSENT – Approve suggested amendment to Infraction Rule 3.3 for Courts of Limited Jurisdiction (IRLJ) for submission to the Washington Supreme Court.

Discussion and Background:

Attached to this memorandum is a suggested amendment to the Infraction Rules for Courts of Limited Jurisdiction. The suggested amendment is the culmination of a multi-year process that began in 2015, when the WSBA Court Rules and Procedures Committee ("Committee") reviewed the IRLJ in accordance with the review cycle established by the Supreme Court. During this process, a proposal was made to amend IRLJ 3.3 to conform that rule to the currently accepted practice that a defendant need not personally appear at a contested infraction hearing when the defendant is represented by an attorney. The initial amendment language that was presented to the IRLJ Subcommittee for review was sent to stakeholders for input on the proposed change. In light of the feedback received, the IRLJ Subcommittee redrafted the language to what is included here. The redraft was done with the input of six infraction practitioners. The updated language then was re-circulated to stakeholders, including the Washington Association of Prosecuting Attorneys, Washington Defenders' Association, a representative of the District Court Judge's Association, and many individual infraction defense attorneys and prosecutors.

The attached materials include a redline and a clean version of the suggested amendment. See Appendices A and B, respectively.

We anticipate submitting this amendment to the Washington Supreme Court after the BOG has completed its consideration.

Suggested Amendment:

As noted above, the current practice in Washington courts is that a defendant accused of a traffic infraction need not personally appear at a contested infraction hearing when the defendant is represented by an attorney. The suggested amendment to IRLJ 3.3 seeks to codify the current practice and in so doing, to clarify that absent special circumstances, when an attorney appears for a defendant without the defendant present, the defendant is not failing to appear.

The only objection received from stakeholders were concerns that prosecutors would be forced to resort to serving a subpoena on the defendant if the prosecutor wanted to call the defendant as a witness, which could lead to delays. The suggested amendment addresses this concern by requiring a lawyer to expressly include a waiver of defendant's presence in his/her notice of appearance. The prosecutor will then be on notice of the defendant's absence and can opt to subpoena the defendant if the prosecutor needs the defendant's presence.

The suggested amendment also expressly acknowledges that there are some scenarios where the defendant's presence may still be required, notwithstanding the waiver of presence. The last clause of the last sentence in the suggested amendment provides that the defendant must still personally appear if "the defendant's presence is otherwise required by statute or these court rules." It was felt that this more general reference to other court rules and statutes was better than attempting to list all of the specific court rules and statutes that could require a defendant's presence. This way, the rule would not need to be amended any time the statutes or court rules are changed, deleted, or renumbered or other court rules and statutes are added that affected this proposed language.

APPENDICES:

A. Suggested Amendment to IRLJ 3.3 - redline version

B. Suggested Amendments to IRLJ 3.3 - clean version

SUGGESTED AMENDMENT

INFRACTION RULES FOR COURTS OF LIMITED JURISDICTION (IRLJ)

RULE 3.3 – PROCEDURE AT CONTESTED HEARING

RULE IRLJ 3.3 PROCEDURE AT CONTESTED HEARING

(a) Generally. The court shall conduct the hearing for contesting the notice of infraction on the record in accordance with applicable law.

(b) Representation by Lawyer. At a contested hearing, the plaintiff shall be represented by a lawyer representative of the prosecuting authority when prescribed by local court rule. The defendant may be represented by a lawyer. If the defendant is represented by a lawyer, and the lawyer has filed a notice of appearance, including a waiver of the defendant's presence, the defendant need not personally appear at the contested hearing unless the defendant's presence is otherwise required by statute or these court rules.

SUGGESTED AMENDMENT

INFRACTION RULES FOR COURTS OF LIMITED JURISDICTION (IRLJ)

RULE 3.3 – PROCEDURE AT CONTESTED HEARING

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WSBA

COMMITTEE ON PROFESSIONAL ETHICS

TO: The President, President-elect, Immediate-Past President, and Governors

FROM: Jeanne Marie Clavere, Professional Responsibility Counsel and CPE Staff Liaison

RE: Technical corrections to RPC 1.6 and 7.3

DATE: February 15, 2017

CONSENT: To approve technical corrections to RPC 1.6 and 7.3.

Attached is a GR9 Cover Sheet regarding two technical corrections to RPC 1.6(b)(6) and (7) and RPC 7.3(b) that were reviewed by the Committee on Professional Ethics (CPE). The proposed amendments are for minor grammatical and drafting corrections only.

Attachments:

- GR 9 Cover Sheet
- RPC 1.6(b)(6) and (7) Redline and Clean copiers
- RPC 7.3(b) Redline and Clean copies

GR 9 COVER SHEET

Suggested Amendments to RULES 1.6 and 7.3 of the Rules of Professional Conduct (RPC)

A. Proponent

Robin Haynes, President
Washington State Bar Association
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539

B. Spokesperson

Jeanne Marie Clavere
Professional Responsibility Counsel
Washington State Bar Association
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539

C. Purpose

The proposed amendments are technical corrections to the Rules of Professional Conduct following the Court's adoption of changes to the RPC on June 2, 2016, in response to the ABA Ethics 20/20 amendments to the ABA Model Rules.

1. Proposed change to RPC 1.6(b)(6) and (7). It is proposed that the word "or" at the end of RPC 1.6(b)(6) be deleted and added to the end of RPC 1.6(b)(7). Because the number of subparts in RPC 1.6(b) increased from seven to eight, the proposed change would reflect the correct placement of the connecting word "or" in the series.

2. Proposed change to RPC 7.3(b). It is proposed that the words "from a client" be deleted from RPC 7.3(b). The proposed change is to remedy an inadvertent drafting error in what was submitted to the Court by the WSBA. As currently written, RPC 7.3(b) only applies to solicitations addressed to current clients, whereas the intention of the rule is to current clients or anyone else. Removing the words "from a client" should eliminate this possible confusion and misinterpretation. It will also make RPC 7.3(b) identical to Model Rule 7.3(b).

D. Hearing

The proponent does not request a public hearing.

E. Expedited Consideration

The proponent requests expedited consideration.

SUGGESTED AMENDMENT

RULES OF PROFESSIONAL CONDUCT (Redline)

RPC 1.6

CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer to the extent the lawyer reasonably believes necessary:

(1) – (5) Unchanged.

(6) may reveal information relating to the representation of a client to comply with a court order; ~~or~~

(7) may reveal information relating to the representation to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or

(8) may reveal information relating to the representation of a client to inform a tribunal about any client's breach of fiduciary responsibility when the client is serving as a court appointed fiduciary such as a guardian, personal representative, or receiver.

(c) Unchanged.

WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Avenue – Sixth Floor
Seattle, WA 98101-2539

SUGGESTED AMENDMENT

RULES OF PROFESSIONAL CONDUCT (Clean)

RPC 1.6

CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer to the extent the lawyer reasonably believes necessary:

(1) – (5) Unchanged.

(6) may reveal information relating to the representation of a client to comply with a court order;

(7) may reveal information relating to the representation to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or

(8) may reveal information relating to the representation of a client to inform a tribunal about any client's breach of fiduciary responsibility when the client is serving as a court appointed fiduciary such as a guardian, personal representative, or receiver.

(c) Unchanged.

WASHINGTON STATE BAR ASSOCIATION
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SUGGESTED AMENDMENT

RULES OF PROFESSIONAL CONDUCT (Redline)

RPC 7.3

SOLICITATION OF CLIENTS

(a) A lawyer shall not, directly or through a third person, by in-person, live telephone, or real-time electronic contact solicit professional employment from a possible client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) – (3) Unchanged.

(b) A lawyer shall not solicit professional employment ~~from a client~~ by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if;

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) – (d) Unchanged.

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SUGGESTED AMENDMENT

RULES OF PROFESSIONAL CONDUCT (Clean)

RPC 7.3

SOLICITATION OF CLIENTS

(a) A lawyer shall not, directly or through a third person, by in-person, live telephone, or real-time electronic contact solicit professional employment from a possible client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) – (3) Unchanged.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if;

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) – (d) Unchanged.

WASHINGTON STATE BAR ASSOCIATION
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Seattle, WA 98101-2539

WSBA

COMMITTEE ON PROFESSIONAL ETHICS

To: President, President-elect, Immediate-Past President and Board of Governors

From: WSBA Committee on Professional Ethics (CPE)

Date: November 17, 2016

Subject: Proposed RPC Amendment To Include Veterans in Rules 8.4(g) and (h)

CONSENT: To approve proposed amendments to the RPC 8.4(g) and (h) to include veterans or members of military status.

The Washington State Veterans Bar Association sent the Committee on Professional Ethics a proposal to add "honorably discharged veteran or military status" to RPC 8.4(g) and (h). The Washington Law Against Discrimination, RCW 49.60, was amended in 2007 to add "honorably discharged veteran or military status" as a protected category. The CPE discussed this suggestion at its October 28, 2016, meeting and concluded that RPC 8.4 should mirror the state law. The CPE voted unanimously to recommend that RPC 8.4(g) and (h) be amended to add "honorably discharged veteran or military status." The proposed changes are attached.

Attachments:

- RPC 8.4(g) and (h) Redline and Clean Copies

SUGGESTED AMENDMENT
RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 8.4 – MISCONDUCT

It is professional misconduct for a lawyer to:

(a) - (f) [Unchanged.]

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, honorably discharged veteran or military status, or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, lawyers, or LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

(i) - (n) [Unchanged.]

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SUGGESTED AMENDMENT
RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 8.4 – MISCONDUCT

It is professional misconduct for a lawyer to:

(a) - (f) [Unchanged.]

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, honorably discharged veteran or military status, or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, lawyers, or LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

(i) - (n) [Unchanged.]

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WSBA

MEMORANDUM

To: WSBA President, President-elect, and Board of Governors

From: Douglas Ende on behalf of Advertising Workgroup

Date: February 28, 2017

Re: Work of the Advertising Workgroup – Proposal that BOG Request a Report and Recommendation from WSBA Committee on Professional Ethics

Consent: Request Committee on Professional Ethics Draft Title 7 RPC Amendments

Overview

In early 2016, the Board of Governors (BOG) convened an informal workgroup to explore and report back to the BOG regarding possible amendments to the rules governing lawyer advertising and communications in Title 7 of the Rules of Professional Conduct. The impetus for formation of the workgroup was publication of the Association of Professional Responsibility Lawyers (APRL) 2015 Report of the Regulation of Lawyer Advertising Committee (2015 Report) [attached as Appendix A].

APRL is a national professional organization composed primarily of private practitioners who defend lawyers in discipline matters, lawyers who provide ethics and risk management services, and law faculty in the area of legal ethics. In 2013, APRL formed a committee to study the regulation of lawyer advertising in the United States. The Committee, which included a liaison from the National Organization of Bar Counsel (NOBC), issued its report on June 22, 2015.[1] Taking into account constitutional and antitrust concerns, technology change, globalization, and the impact of over-regulation, the report concluded that the rules of professional conduct governing lawyer advertising are outdated and unworkable in the current legal environment and are failing to achieve their stated objectives. The report recommended substantial reform of the ABA's Model Rules of Professional Conduct relating to lawyer communications and advertising, together with new regulatory procedures for addressing complaints about lawyer advertising.

[1] The 2015 Report was initially brought to the attention of the Board of Governors in the July 2015 Quarterly Discipline Report. Throughout 2016, in the Executive Director's Report the Board received periodic information about the APRL Reports and status updates on the progress of the Workgroup.

In its 2015 Report, the Committee reserved consideration of the Model Rules related to direct solicitation of clients and referrals. The Committee reconvened to consider those issues and issued a Supplemental Report on April 26, 2016 (2016 Supplemental Report) [attached as Appendix B].

The report was presented at a joint APRL-NOBC program in Chicago in August 2015 and at the ABA National Conference on Professional Responsibility in June 2016. APRL subsequently presented its proposal to the ABA Standing Committee on Ethics and Professional Responsibility with the request that the Committee take up consideration of amending the Title 7 Model Rules. The report was also presented and discussed at the General Session of the October 2016 ABA Center for Professional Responsibility Fall Leadership Conference.

In late 2016, the ABA Standing Committee on Ethics and Professional Responsibility elected to take up consideration of potential amendments to the Title 7 Model Rules in light of the APRL Reports, with the goal of presenting amendments to the ABA House of Delegates in 2017 or 2018. The Committee convened a working group composed of representatives of ABA Center for Professional Responsibility entities and liaison organizations to analyze Title 7 and prepare a recommendation. The Committee is taking written commentary on the APRL proposal through March 1, 2017, and the Committee convened a public forum on the APRL proposal at the ABA Mid-Year Meeting in Miami on February 3, 2017.[2]

Essence of the APRL Proposal

APRL's proposal recommends both substantive and procedural amendments to the ABA Model Rules of Professional Conduct, seeking greater simplicity and uniformity nationally. In short, the APRL Reports propose that the ABA Model Rules focus specifically on false and deceptive advertisements rather than impose complex technical requirements seeking to prohibit potentially misleading, distasteful, or unprofessional communications, and that discipline in this area be reserved for conduct that would otherwise violate Model Rule 8.4(c) (conduct involving fraud, deception, deceit, or misrepresentation). This is achieved in the draft APRL amendments by retaining the core language of Model Rule 7.1 (prohibiting false or misleading communications about a lawyer or the lawyer's services), while deleting Rules 7.4 and 7.5 and most of Rule 7.2. Much of the commentary to the deleted rules is migrated to the comments to Rule 7.1 to provide guidance and direction to lawyers in interpreting how to avoid "false and misleading communications."

[2] A summary of the public forum is available at http://www.americanbar.org/publications/youraba/2017/march-2017/aba-standing-committee-on-ethics-and-professional-responsibility.html

With respect to solicitation and referrals, the 2016 Supplemental Report proposes a modified Rule 7.2 that combines elements of current Model Rules 7.2 and 7.3. The modified Rule 7.2 would include a definition of solicitation in the black letter of the rule, and the general ban on solicitation would be limited to in-person and telephone contacts (not including real time electronic contact), with listed exceptions. The proposal also migrates the provision on prepaid and group legal services plans to Rule 7.2 and retains, in modified form, the prohibition in current Rule 7.2 on giving anything of value to a person for recommending the lawyer's services, with listed exceptions.

Proceedings of the WSBA Workgroup

After Board and staff consultation about the APRL Reports, the Board formed an Advertising Workgroup to evaluate the suitability of the APRL proposal for Washington State. The membership of the Advertising Workgroup included three WSBA members who had been members of the APRL Committee (Art Lachman, Bruce Johnson, and Peter Jarvis), three representatives of the WSBA Committee on Professional Ethics (Chair Mark Fucile, Peter Jarvis, and Natalie Cain),[3] and two WSBA staff liaisons (Chief Disciplinary Counsel Doug Ende and General Counsel/Chief Regulatory Counsel Jean McElroy). Following APRL's publication of the 2016 Supplemental Report, the Workgroup held three meetings on July 7, October 14, and December 16, 2016. At the third meeting, the Chief Legal Officer of Avvo, Josh King, met with the Workgroup to share his perspectives on the regulation of communications about legal services.

The focus of the Workgroup's efforts was to analyze whether the APRL proposal would be viable and appropriate in Washington, the ways in which the proposal might need to be modified in light of Washington's existing Title 7 RPC, and the extent to which the APRL proposal might be improved upon to address issues of over-regulation of advertising.

The consensus of the Workgroup was that the APRL proposal represents a viable model for regulatory reform of ethics rules governing lawyer advertising and communications, that work could begin on how to adapt the proposal for Washington State, and that there is no reason to delay consideration of potential amendments.

Additional Information

Towards the end of the Workgroup's efforts, a development of interest came to light. In December 2016, the Virginia State Bar's Standing Committee on Legal Ethics approved

[3] Peter Jarvis was a member of the APRL Committee and is also a member of the WSBA Committee on Professional Ethics.

proposed amendments to its Title 7 Rules of Professional Conduct. Using the APRL proposal as a touchstone, the Standing Committee recommended significant revisions to Virginia's rules, including the deletion of Rules 7.4 and 7.5 and the streamlining of Rule 7.1 to a single prohibition on false or misleading communications, with specific examples of false and misleading communications addressed in the comments. On February 25, 2017, the Virginia State Bar Council considered and approved the recommendation, and the proposed amendments will be presented to the Supreme Court of Virginia for its review and approval.

Proposed Next Steps

In light of the widespread favorable reception of the APRL Report, the consistency of the APRL proposal with established enforcement practices in Washington State, the availability of knowledgeable volunteers willing to contribute time and effort to the project, and the desirability of prompt action in the area of regulatory reform, it is proposed that, under the Rules of Procedure of the WSBA Committee on Professional Ethics (CPE),[4] the Board of Governors ask the CPE to (1) evaluate, and as appropriate draft, potential amendments to Washington's Title 7 RPC in light of the APRL proposal, (2) include the non-CPE Advertising Workgroup members in the evaluation and drafting process, and (3) report its recommendation to the Board of Governors.

Accompanying Documents

- APRL 2015 Report of the Regulation of Lawyer Advertising Committee
- 2016 Regulation of Lawyer Advertising Committee Supplemental Report

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[4] The CPE Rules of Procedure pertaining to consideration of amendments to the Rules of Professional Conduct provide as follows:

> **Amendments to Rules of Professional Conduct**. The Committee reports to the Board of Governors its opinion on any amendment to the ABA Model Rules of Professional Conduct. The Committee may, on its own initiative or on request of the Board of Governors or the Supreme Court, report to the Board of Governors its opinion regarding suggested or proposed amendments to the Washington Rules of Professional Conduct. When considering suggested or proposed amendments, the Committee may solicit input from individuals or groups who have relevant experience with the amendments under consideration or who are likely to be significantly affected by them. Any Committee members making such contact will disclose that contact to the other members of the Committee before or in conjunction with the Committee's consideration of the issue.

CPE Rules of Procedures § 9 (July 26, 2013).

APPENDIX A

ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS 2015 REPORT OF THE REGULATION OF LAWYER ADVERTISING COMMITTEE

June 22, 2015

ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

REGULATION OF LAWYER ADVERTISING COMMITTEE

2014-2015 MEMBERS AND LIAISONS

Mark L. Tuft, Chair

George R. Clark

Jan L. Jacobowitz

Peter R. Jarvis

Bruce E. H. Johnson

Arthur J. Lachman

James M. McCauley

Ronald D. Rotunda

Lynda C. Shely

James Coyle, Liaison, National Organization of Bar Counsel

Dennis A. Rendleman, Liaison, American Bar Assn. Center for Professional Responsibility

Report of the APRL Regulation of Lawyer Advertising Committee

I. Executive Summary

The rules of professional conduct governing lawyer advertising in effect in most jurisdictions are outdated and unworkable in the current legal environment and fail to achieve their stated objectives. The trend toward greater regulation in response to diverse forms of electronic media advertising too often results in overly restrictive and inconsistent rules that are under-enforced and, in some cases, are constitutionally unsustainable under the Supreme Court's *Central Hudson* test. Moreover, anticompetitive concerns, as well as First Amendment issues, globalization of the practice of law, and rapid technology changes compel a realignment of the balance between the professional responsibility rules and the constitutional right of lawyers to communicate with the public.

In 2013, the Association of Professional Responsibility Lawyers ("APRL")[1] created the Regulation of Lawyer Advertising Committee to analyze and study the ABA Model Rules of Professional Conduct and various state approaches to regulating lawyer advertising and to make recommendations; the goal being to bring rationality and uniformity in the regulation of lawyer advertising and disciplinary enforcement. The Committee consists of both former and current bar regulators, law school professors, authors of treatises on the law of lawyering, and lawyers who are experts in the field of professional responsibility and legal ethics. The Committee also received valuable input from Committee liaisons from the ABA Center for Professional Responsibility and the National Organization of Bar Counsel ("NOBC").[2]

The Committee's fundamental premise is that the proper and constitutional purpose of regulating advertising is to assure that consumers of legal services receive factually accurate, non-misleading information about available services. The Committee obtained, with NOBC's assistance, empirical data derived from a survey sent to bar regulators regarding the enforcement of current advertising rules by state disciplinary authorities. The Committee received survey responses from 34 of 51 jurisdictions. The Committee also considered consumer surveys, state bar reports, and other materials regarding the attitudes of consumers toward lawyer advertising, and the effects of advertising regulations on the public's understanding about legal services. It gave particular attention to the impact of evolving technology and innovations in the marketing of legal services. The Committee considered the constitutional standards for regulating commercial speech, the proliferation of legal ethics opinions, and the paucity of disciplinary decisions on lawyer advertising. The Committee analyzed the legitimate public policies underlying lawyer advertising regulations and the effectiveness of current enforcement efforts in achieving these policy objectives.

Based on the survey results, anecdotal information from regulators, ethics opinions, and case law, the Committee concludes that the practical and constitutional problems with current state regulation of lawyer advertising far exceed any perceived benefits associated with protecting the public or maintaining the integrity of the legal profession, and that a practical solution to these problems is best achieved by having a single rule that prohibits false and misleading communications about a lawyer or the lawyer's services. The Committee

[1] APRL is a national association of lawyers who provide advice and representation in all aspects of legal ethics and professional responsibility. APRL's members include practicing lawyers, academics, judges, corporate counsel, risk management attorneys, and government lawyers. For the past two decades, APRL has taken public positions on the rules governing lawyers, as well as professional discipline regulations, legal malpractice statutes, and other developments in professional responsibility matters, including holding twice yearly conferences on ethics topics, submitting public statements, reports and amicus curiae briefs in pending state and federal litigation and rule amendment proceedings.

[2] Attachment 1 is a brief biographical statement of the members of the Committee and the Committee liaisons.

believes that state regulators should establish procedures for responding to complaints regarding lawyer advertising through non-disciplinary means. Professional discipline should be reserved for violations that constitute misconduct under ABA Model Rule 8.4(c).[3] The Committee recommends that violations of an advertising rule that do not involve dishonesty, fraud, deceit, or misrepresentation under Rule 8.4(c) should be handled in the first instance through non-disciplinary means, including the use of advisories or warnings and the use of civil remedies where there is demonstrable and present harm to consumers.

The Committee decided to focus initially on advertising activities regulated under ABA Model Rules 7.1 ("Communications Concerning a Lawyer's Services"), 7.2 ("Advertising"), 7.4 ("Communications of Fields of Practice and Specialization") and 7.5 ("Firm Names and Letterheads"). The proposed revisions to these rules are set forth in Attachment 2. The proposed revisions to ABA Model Rules 7.1., 7.2, 7.4, and 7.5 retain the standard of prohibiting "false and misleading" communications in Rule 7.1 as the all-encompassing criterion for the regulation of lawyer advertising. Commentary from Rules 7.2, 7.4, and 7.5 has been merged into the Comments in Rule 7.1 to provide additional guidance to practitioners about what types of communications involving advertising, marketing, use of the terms "certified specialist," and firm names do and do not comport with the Rule 7.1 standard. The remainder of Rules 7.2, 7.4, and 7.5 were deleted, given the consensus that Rule 7.1 establishes a sufficient basis for the regulation of legal services advertising. The Committee reserved consideration, for a later time, of issues related to the regulation of direct solicitation of clients (Model Rule 7.3) and communications transmitted in a manner that involves intrusion, coercion, duress, or harassment.[4] The Committee also deferred consideration regarding the effect of certain forms of lawyer advertising and marketing on the regulation of lawyer referral services.[5]

In submitting these recommendations, the Committee is not advocating that states abdicate their regulators' authority over lawyer advertising. Instead, the proposed amendments to the ABA Model Rules on advertising and the proposed enforcement procedures are a common sense response to the major practical and constitutional problems that the Committee has identified with the current approach to regulating lawyer advertising.

II. Identifying the Problem and the Need for Change

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[3] ABA Model Rule 8.4(c) provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

[4] The U.S. Supreme Court has identified other considerations related to direct solicitation that are outside the scope of this report. *E.g.* The Fla. Bar v. Went For It, Inc., 515 U.S. 618 (1995) (holding that Florida's 30-day ban on direct mail solicitation in accident or disaster cases materially advances, in a manner narrowly tailored to achieve the objectives, the state's substantial interest in protecting the privacy of potential recipients and in preventing the erosion of public confidence in the legal system); Shapero v. Ky. Bar Ass'n, 486 U.S. 466 (1988) (holding that a state may not totally prohibit targeted direct mail to prospective clients known to face specific legal problems where the state's interest in preventing overreaching or coercion by an attorney using direct mail can be served by restrictions short of a total ban); Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978) (upholding a total ban of in-person solicitation when the primary motivation behind the contact is the attorney's pecuniary gain); *In re* Primus, 436 U.S. 412 (1978) (holding that direct in-person solicitation is entitled to greater constitutional protection against state regulation when the attorney is motivated by the desire to promote political goals rather than pecuniary gain). *See also* The Fla. Bar v. Herrick, 571 So.2d 1303 (1990) (holding that a state can constitutionally regulate and restrict direct-mail solicitations by requiring personalized mail solicitation to be plainly marked as an "Advertisement."); *"Commercial Speech Doctrine,"* THE FLORIDA BAR, https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/3BC6699A524B477B85257283005D415D/$FILE/Information%20on%20the%20Commercial%20Speech%20Doctrine.pdf?OpenElement.

[5] See, e.g., Geeta Kharkar, *Googling for Help: Lawyer Referral Services and the Internet,* 20 GEO. J. LEGAL ETHICS 769 (2007).

Simply stated, current regulations of lawyer advertising are unworkable and fail to achieve their stated objectives. Survey results show that there are too many state deviations from the ABA Model Rules, actual formal lawyer discipline imposed for advertising violations is rare, lawyers are disheartened by the burden of attempting to determine which regulations apply to the ever-changing technological options for advertising, and consumers of legal services want *more*, not less, information about legal services. The basic problem with the current state patchwork of lawyer advertising regulations lies with the increasingly complex array of inconsistent and divergent state rules that fail to deal with evolving technology and innovations in the delivery and marketing of legal services. The state hodge-podge of detailed regulations also present First Amendment and antitrust concerns in restricting the communication of accurate and useful information to consumers of legal services.

Lawyer advertising rules in most jurisdictions are overly restrictive and, in some instances, are incapable of compliance given today's technology and sophisticated methods of marketing and advertising. The jurisdictions do not uniformly enforce many regulations and sometimes do not enforce them at all. This inconsistent or non-existent enforcement gives a competitive disadvantage to law firms that do not violate the rules. Moreover, the rules vary significantly from state to state on both substantive and technical (if not hyper-technical) issues. The ABA Model Rules have not been uniformly adopted and ABA Ethics 20/20's recent effort to modernize the advertising rules has been enacted by only a few states.[6] Conflicting state advertising regulations create a significant barrier to practice and unreasonably impede innovation in marketing and delivering legal services.

The realities of on-line and other forms of electronic media advertising reflect the advent of e-commerce, competition, and changes in market forces. Innovations in technology that enhance the speed of communication, as well as increasing globalization, have resulted in ineffective regulation of lawyer advertising by state regulatory agencies. The legal profession today is an integral part of the Internet-based economy, and advertising regulations should enable lawyers to effectively use new on-line marketing tools and other innovations to inform the public.[7] The sharp increase in mobile technology and Internet marketing options have resulted in borderless forms of marketing and advertising. Virtual law practice and web-based delivery of legal services, as well as the public's increased reliance on and use of the Internet and mobile technology, mandate a reexamination of how the legal profession views lawyer advertising and what can or should be effectively regulated.

A realignment of the balance between the core values of professional responsibility and effective lawyer advertising designed to communicate accurate information about the availability of legal services for consumers in the twenty-first century is essential. In the Committee's view, the overarching goals are two-fold: (1) establishing a uniform and simplified rule that prohibits false and misleading advertisements; and (2) ensuring that consumers have access to accurate information about legal services while not being deceived by members of the Bar.

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[6] Arkansas, Delaware, Idaho, Iowa, Kansas, North Carolina, Pennsylvania, West Virginia and Wyoming have adopted the Ethics 20/20 advertising rule amendments. ABA CPR Policy Implementation Comm.,*Variations of the ABA Model Rules of Prof'l Conduct: Rule 7.1*, http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_7_1.authcheckdam.pdf (last updated May 4, 2015).

[7] Statistics and available data indicate that there is a serious disconnect between the way lawyers are expected to communicate with their clients in accordance with existing rules and the way that clients are communicating with everyone else and seeking information about legal services.

III. A Brief History of the Regulation of Lawyer Advertising

A. How We Got to Where We Are

Over the years, the regulation of lawyer advertising has swung from one extreme to another and come to a sudden halt at its current position where it ambivalently hovers between the two. At the one extreme, the regulation once consisted of a longstanding blanket prohibition on *all* lawyer advertising. At the other extreme, and with the blink of an eye, the nationwide ban was lifted and the U.S. Supreme Court expressed its decisive recognition of lawyer advertising as commercial free speech protected under the First Amendment. Nevertheless, the Supreme Court left the authority in the states' hands to continue regulating lawyer advertising, and the state regulators have pursued that mandate without much consistency. With ever-changing technologies, which allow for instantaneous and global communication, regulation has become challenging for regulators and practicing attorneys alike who strive to assure that attorney advertising is compliant under both evolving rules and new technology. Lawyers wanting to embrace these new technologies have been reluctant to do so out of concern that they will not comply with lawyer advertising regulation.

B. Regulation Prior to *Bates v. Arizona*

The regulation of lawyer advertising goes as far back as the nineteenth century in Great Britain, where it was a rule of etiquette, not of ethics, based on the view that law was a form of public service and not a means of earning a living.[8] As such, lawyers looked down on advertising as unseemly.[9] This "rule" was neither enforced nor considered "law" in the general sense of the word; instead, it was merely understood.

In 1908, the American Bar Association (the "ABA") adopted the *Canons of Professional Ethics* (the "Canons") and established a general prohibition of all advertising.[10] The logic behind this categorical ban was that advertising was unprofessional; and therefore, lawyer advertising would threaten the requisite of professionalism in lawyering.[11] As Robert Boden, Dean and Professor of Law at Marquette University states, "[h]igh standards and advertising did not mix."[12] Thus began a half-century-long tradition as three generations of lawyers in the United States deemed advertising to be unprofessional and therefore strictly prohibited.

In 1969, the ABA enacted its 1969 *Code of Professional Responsibility* (the "Code"), which maintained the general prohibition of attorney advertising.[13] However, shortly thereafter the adherence to a blanket ban on advertising began to unravel. In 1975, the U.S. Supreme Court decided *Goldfarb v. Virginia State Bar*, and posited that lawyers provide services in exchange for money and thus engage in "commerce."[14] Though this case did not deal directly with the question of lawyer advertising, it nonetheless suggested that the practice of law is not just a profession—it is also a business. As the Court explained, "[i]t is no disparagement of the

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[8] Bates v. State Bar of Ariz., 433 U.S. 350, 371 (1977).

[9] *Id.*

[10] The general prohibition contained a few limited exceptions called a "laundry list" of permitted advertising activity. Robert F. Boden, *Five Years After* Bates*: Lawyer Advertising in Legal and Ethical Perspective*, 65 MARQ. L. REV. 547, 549 (1982).

[11] *Id.* at 554.

[12] *Id.* at 550.

[13] *Id.*

[14] Goldfarb v. Va. State Bar, 421 U.S. 773, 787-88 (1975).

practice of law as a profession to acknowledge that it has this business aspect, . . . [i]n the modern world it cannot be denied that the activities of lawyers play an important part in commercial intercourse."[15]

One year later in *Virginia State Pharmacy Board. v. Virginia Citizens Consumer Council*, the U.S. Supreme Court recognized that the First Amendment protects advertising, referred to as "commercial speech," based on the public's right to receive the free flow of commercial information.[16] The Court held that "speech does not lose its First Amendment protection because money is spent to project it, as in a paid advertisement of one form or another" and, "speech likewise is protected even though it is carried in a form that is 'sold' for profit . . . and even though it may involve a solicitation to purchase or otherwise pay or contribute money."[17]

Finally, in 1977, the U.S. Supreme Court directly upheld the legitimacy of lawyer advertising in *Bates v. State Bar of Arizona*.[18] In this case, two Arizona lawyers, John R. Bates and Van O'Steen, opened a law office with the aim of providing "legal services at modest fees to persons of moderate income who did not qualify for governmental legal aid."[19] After two years of conducting their practice with this goal in mind, the lawyers came to the stark realization that their concept was unattainable unless they did something to attract clients.[20] Accordingly, they placed an advertisement in their local daily newspaper, announcing that they were offering "legal services at very reasonable fees" and listing their fees for certain routine legal services.[21] The State Bar of Arizona found that the advertisement violated the rule in Arizona's Code of Professional Responsibility banning lawyer advertising and, consequently, the Arizona Supreme Court censured the lawyers for their conduct.[22]

On appeal to the U.S. Supreme Court, Justice Blackmun held that lawyer advertising, as a form of commercial speech, could not be subjected to blanket suppression and that the specific advertisement at issue was protected under the First Amendment.[23] The Court carefully considered and dismissed each of the State Bar of Arizona's claims—namely, that (i) advertising will have an adverse effect on the legal profession; (ii) advertising of legal services will be misleading; (iii) advertising will have the undesirable effect of stirring up litigation; (iv) advertising will increase the overhead costs of the profession which will in turn be passed along

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[15] *Id.* at 788.

[16] In this case, there was a challenge against a state statute that prohibited pharmacists from advertising prescription drug prices. Though *Virginia State Pharmacy Board v. Virginia Citizens Consumer Council* did not deal directly with advertising in the professional practice of law, it looked at the state of advertising in the professional practice of pharmacy, where the concern was similarly focused on the preservation of high professional standards in a professional services industry. Va Pharmacy Bd. v. Va Consumer Council, 425 U.S. 748, 765 (1976).

[17] *Id.* at 761 (internal citations omitted). Accordingly, in holding that commercial speech is protected and could not be absolutely prohibited, the Court overturned *Valentine v. Christensen*, 316 U.S. 52, 55 (1942), which was the then-existing precedent holding that commercial speech was *not* constitutionally protected.

[18] *Bates*, 433 U.S. at 384.

[19] *Id.* at 353-54.

[20] *Id.* at 354.

[21] *Id.*

[22] *Id.* at 356-58.

[23] *Id.* at 383. It is interesting to note that Justice Blackmun, the author of *Bates*, later said, "I seriously doubt whether suppression of information concerning the availability and price of a legally offered product is ever a permissible way for the State to 'dampen' demand for or use of the product." *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 574 (1980) (Blackmun, J., concurring, joined by Brennan, J.) (citing Ronald D. Rotunda, *The Commercial Speech Doctrine in the Supreme Court*, 1976 U. ILL. LAW FORUM 1080, 1080–83 (1976)).

to consumers in the form of increased fees; (v) advertising will lead to poor quality of service; and (vi) the problems of enforcement justify wholesale restrictions.[24] The Court rejected the "highly paternalistic" approach that the state must protect citizens from advertising because it potentially could manipulate them, and concluded that barring lawyer advertising only "serves to inhibit the free flow of commercial information and to keep the public in ignorance."[25] The Court explained that even when advertising communicates only an incomplete version of the relevant facts, the First Amendment presumes that *some* accurate information is better than *no* information at all.[26] Put differently, the Court stated that "the preferred remedy is more disclosure, rather than less."[27] Thus, out of this decision came the birth of a revolutionary concept that lawyers may have a general constitutional right to advertise.

C. Regulation Since *Bates v. Arizona*

Although the *Bates* court invalidated an absolute prohibition on lawyer advertising, it nonetheless left the door open for states to regulate advertising. For example, states retained the authority to prohibit false, deceptive, or misleading advertising, and to place reasonable restrictions on time, place, and manner of advertising.[28] In declining to consider the full range of potential problems for lawyers when advertising, the Court defaulted to the state bars to apply *Bates* and revise existing regulations accordingly.[29] This undefined scope of regulation bolstered the longstanding reluctance to permit lawyer advertising. Most state bars narrowly construed *Bates* and thereby preserved as much of the traditional view of advertising as unprofessional as could withstand constitutional challenge.[30]

Two years after the decision, the state bars' reaction to *Bates* was "hesitant and inconsistent," as fifteen states had not drafted any new lawyer advertising standards.[31] By 1983, however, the ABA adopted its Model Rules of Professional Conduct ("Model Rules" or "RPCs").[32] In the Model Rules, the ABA expressly permitted advertising, as Rule 7.2(a) stated, "subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication."[33] Many states then followed suit, enacting various advertising regulations and attempting to straddle the fine line between advertising as a constitutionally protected speech and misleading advertising.[34]

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[24] *Id.* at 368-79.

[25] *Id.* at 365.

[26] *Id.* at 374-75.

[27] *Id.* at 375.

[28] *Id.* at 383-84.

[29] "Underlying all of the post-*Bates* amendments is the theory that *Bates* declared a general right to advertise, leaving to the states a regulatory power to prescribe the form, content, and forum of lawyer advertising." Boden, *supra* note 10, at 555.

[30] *Id.*; *see also In re* R.M.J., 455 U.S. 191, 200 (1982) ("the decision in *Bates* nevertheless was a narrow one. The Court emphasized that advertising by lawyers still could be regulated.").

[31] Geoffrey C. Hazard, Jr., Russell G. Pearce & Jeffrey W. Stempel, *Why Lawyers Should Be Allowed to Advertise: A Market Analysis of Legal Services*, 58 N.Y.U. L. REV. 1084, 1086.

[32] *Id.* at 1087.

[33] MODEL RULES OF PROF'L CONDUCT R. 7.2 (AM. BAR ASS'N 1983).

[34] Jan L. Jacobowitz & Gayland O. Hethcoat II, *Endless Pursuit: Capturing Technology at the Intersection of the First Amendment and Attorney Advertising*, 17 J. TECH. L. & POL'Y 63, 64 (2012); R. Michael Hoefges, *Regulating Professional Services Advertising: Current Constitutional Parameters and Issues Under the First Amendment Commercial Speech Doctrine*, 24 CARDOZO J.

(footnote continued)

D. The *Central Hudson* Standard and Application to Lawyer Advertising Rules

Though the *Bates* court embraced the importance of the "commercial speech" doctrine— "[commercial] speech should not be withdrawn from protection merely because it proposed a mundane commercial transaction. . . . [S]uch speech serves individual and societal interests in assuring informed and reliable decisionmaking"[35]—it nonetheless failed to establish a clear standard for assessing the constitutionality of a regulation on commercial speech. In 1980, however, the U.S. Supreme Court articulated a clearer standard in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York.*[36] The question was whether a regulation of the Public Service Commission of the State of New York violated the First and Fourteenth Amendments because the regulation completely banned promotional advertising by an electrical utility.[37] The Court's test included a four-part analysis: if the first two inquiries yield positive answers, the Court then turns to the third and fourth inquiries:

1. whether the expression is protected by the First Amendment because it concerns lawful activity and is not misleading;

2. whether the asserted governmental interest is substantial;

3. whether the regulation directly advances the governmental interests; and

4. whether it is not more extensive than is necessary to serve that interest.[38]

Following the *Central Hudson* decision, several First Amendment cases dealing with individual lawyer advertising and state regulation were decided based upon the *Central Hudson* test. In each of these cases, the regulations in question failed to satisfy *Central Hudson*'s four-part analysis and thus violated the First Amendment. These cases are considered next.

1. Examples of State Regulations That Do Not Satisfy *Central Hudson*

a. *In re R.M.J.*

In 1982, the U.S. Supreme Court decided *In re R.M.J.*, which involved a lawyer's appeal of a disciplinary reprimand based upon "four separate kinds of violation of Rule 4 [of the Missouri Supreme Court]:

ARTS & ENT. L. J. 953 (2007); Rodney A. Smolla, *Lawyer Advertising and the Dignity of the Profession*, 59 ARK L. REV. 437 (2006). *See also In re* R.M.J., 455 U.S. at 193 ("the Committee . . . revised that court's Rule 4 regulating lawyer advertising. . . . [and] sought to 'strike a midpoint between prohibition and unlimited advertising,' and the revised regulation of advertising, adopted with slight modification by the State Supreme Court, represents a compromise. Lawyer advertising is permitted, but it is restricted to certain categories of information, and in some instances, to certain specified language.").

[35] *Bates*, 433 U.S. at 363-64.

[36] Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557 (1980).

[37] *Id.* at 558.

[38] *Id.* at 566. Through application of this four-step analysis for commercial speech to the Commission's arguments supporting its ban on promotional advertising, the Court found that the first three inquiries yielded affirmative answers; turning to the fourth inquiry, however, the Court concluded that the Commission's *complete* suppression of speech was far more extensive than necessary to further the State's interest in energy conservation. As such, the test in its totality could not be satisfied, and the Court held that the Commission's order violated the First and Fourteenth Amendments.

listing the areas of his practice in language or in terms other than that provided by the Rule, failing to include a disclaimer, listing the courts and States in which he had been admitted to practice, and mailing announcement cards to persons other than 'lawyers, clients, former clients, personal friends, and relatives.'"[39] Specifically, the lawyer had listed in his advertisements areas of law not explicitly approved by the Missouri Bar's Advisory Committee, including the words "personal injury" and "real estate" instead of the Bar-approved words, "tort law" and "property law," respectively.[40] He also listed in his advertisements other areas of law, such as "contract" and "zoning & land use" that were not found on the Advisory Committee's list at all.[41] His advertisements in local newspapers and the Yellow Pages also stated that he was licensed in Missouri and Illinois, and contained in large capital letters a statement that he was "Admitted to Practice Before THE UNITED STATES SUPREME COURT."[42]

On the issues of listing the areas of law and licensed jurisdictions, the U.S. Supreme Court found that the lawyer's advertisements were not misleading.[43] The Court also found that the answer to the second inquiry of the *Central Hudson* test—whether the asserted governmental interest was substantial in this case—was no.[44]

The Court determined that the state interest was unclear as to enforcing an absolute prohibition.[45] This led the Court to posit that the fourth factor of the *Central Hudson* test could not be met, as there was room for a "less restrictive path" instead of absolute prohibition.[46] Thus, applying *Central Hudson*, the Court found unconstitutional the Missouri rules that provided an absolute prohibition on the advertising of descriptive practice areas, licensed jurisdictions, and the mailing of announcements to persons other than lawyers, clients, former clients, friends, and relatives.

Notably, in his appeal, the lawyer did not challenge the constitutionality of the rule requiring disclaimers.[47] As such, the Court permitted that requirement to stand and explained that "warning[s] or disclaimer[s] might be appropriately required . . . in order to dissipate the possibility of consumer confusion or deception."[48] The Court would consider the issue of when disclaimers are too burdensome in later cases.

b. *Zauderer v. Office of Disciplinary Council*

Zauderer v. Office of Disciplinary Council involved two different local newspaper advertisements: the first advertisement stated that the attorney would represent defendants in drunk driving cases and that his clients' "full legal fee would be refunded if they were convicted of DRUNK DRIVING"; and the second

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[39] *In re* R.M.J., 455 U.S. at 204.

[40] *Id.* at 197.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 205.

[44] *Id.*

[45] "Mailings and handbills may be more difficult to supervise than newspapers. But again we deal with a silent record. There is no indication that an inability to supervise is the reason the State restricts the potential audience of announcement cards." *Id.* at 206.

[46] *Id.*

[47] *Id.* at 204.

[48] *Id.* at 201.

advertisement offered representation to women injured by the Dalkon Shield Intrauterine Device.[49] The Dalkon Shield was depicted in the form of a line drawing and the advertisement included legal advice, general information, and the statement that "[i]f there is no recovery, no legal fees are owed by our clients."[50] The Supreme Court of Ohio found First Amendment protection to be inapplicable and reprimanded the attorney for violating Ohio's Disciplinary Rules.[51]

On appeal, the U.S. Supreme Court, citing *Central Hudson*, found that because the statements regarding the Dalkon Shield were not false or deceptive, it was the State's burden to establish that "prohibiting the use of such statements to solicit or obtain legal business directly advances a substantial governmental interest."[52] The Court also determined that the State's interests—of protecting the public from advertisements that both invade the privacy of the reader and may be subject to claims of overreaching and undue influence, as well as preventing lawyers from stirring up litigation—were not sufficient justifications for the discipline imposed on the lawyer.[53] The Court explained that the State's interest in propounding a prophylactic rule "to ensure that attorneys . . . do not use false or misleading advertising to stir up meritless litigation against innocent defendants"[54] was "in tension with our insistence that restrictions involving commercial speech that is not itself deceptive be narrowly crafted to serve the State's purposes."[55] Thus, the Court concluded that an attorney may not be disciplined for soliciting legal business through printed advertising containing truthful and non-deceptive information and advice regarding the legal rights of potential clients.[56]

Regarding the illustration of the Dalkon Shield, the Court noted that the use of illustrations or pictures in advertisements serves an important communicative function, and "[a]ccordingly, commercial illustrations are entitled to the First Amendment protections afforded verbal commercial speech: restrictions on the use of visual media of expression in advertising must survive scrutiny under the *Central Hudson* test."[57] The Court found that the illustration at issue was an accurate representation of the Dalkon Shield, bearing no features that were likely to deceive, mislead, or confuse the reader.[58] The burden once again shifted to the State to both present a substantial governmental interest justifying the restriction as applied and to demonstrate that the restriction vindicated the state interest through the least restrictive available means.[59] The State was unsuccessful in carrying its burden, as the State's interest—to ensure that attorneys advertise "in a dignified manner," maintain

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[49] Zauderer v. Office of Disciplinary Council, 471 U.S. 626, 629-30 (1985).

[50] *Id.* at 630-31. In full, this advertisement related the following information: "The Dalkon Shield Interuterine [*sic*] Device is alleged to have caused serious pelvic infections resulting in hospitalizations, tubal damage, infertility, and hysterectomies. It is also alleged to have caused unplanned pregnancies ending in abortions, miscarriages, septic abortions, tubal or ectopic pregnancies, and full-term deliveries. If you or a friend have had a similar experience, do not assume it is too late to take legal action against the Shield's manufacturer. Our law firm is presently representing women on such cases. The cases are handled on a contingent fee basis of the amount recovered. If there is no recovery, no legal fees are owed by our clients."

[51] *Id.* at 636.

[52] *Id.* at 641.

[53] *Id.* at 642-43.

[54] *Id.* at 643.

[55] *Id.* at 644.

[56] *Id.* at 647.

[57] *Id.*

[58] *Id.*

[59] *Id.*

their dignity in their communications with the public, and behave with decorum in the courtroom—was not convincingly "substantial enough to justify the abridgment of [the attorneys'] First Amendment rights."[60] Moreover, the Court opined that the State's restrictions amounted to an impermissibly broad prophylactic rule in the form of a blanket ban on the use of illustrations, especially given that the State could police the use of illustrations in advertisements on a narrower, more tailored, case-by-case basis.[61]

Nonetheless, the Court did uphold Ohio's disclosure requirements relating to the terms of contingent fees. The Court found that the State's interest in preventing deception of consumers was substantial because the attorney's advertisement, which stated, "[i]f there is no recovery, no legal fees are owed by our clients," would mislead and deceive the public and potential clients who do not necessarily understand the distinction between the technical meanings of "legal fees" and "costs."[62] The Court concluded that the disclosure requirements were not more extensive than necessary to serve the state interest where Ohio has "not attempted to prevent attorneys from conveying information to the public; it has only required them to provide somewhat more information than they might otherwise be inclined to present."[63] Accordingly, the attorney's "constitutionally protected interest in *not* providing any particular factual information in his advertising is minimal . . . [as] disclosure requirements trench much more narrowly on an advertiser's interests than do flat prohibitions on speech."[64]

c. *Peel v. Attorney Registration & Disciplinary Commission*

Five years later, in *Peel v. Attorney Registration & Disciplinary Commission*, the U.S. Supreme Court considered whether an Illinois attorney's letterhead, stating that he is a National Board of Trial Advocacy ("NBTA") certified civil trial specialist, was First Amendment protected speech.[65] The Illinois regulations stated that "no lawyer may hold himself out as 'certified' or a 'specialist'" and that "communication shall contain information necessary to make the communication not misleading and shall not contain any false or misleading statement or otherwise operate to deceive."[66] Accordingly, the Attorney Registration and Disciplinary Commission of Illinois ("Commission") and the Illinois Supreme Court deemed the attorney's letterhead— referring to his NBTA certification and his licensure in three jurisdictions— inherently misleading and thus unprotected by the First Amendment.[67]

However, the U.S. Supreme Court held that the contents of the attorney's letterhead were neither misleading nor deceptive because the certification and licensure were both true and verifiable facts.[68] Rejecting the argument that the attorney's listing of certification constituted an implicit assertion as to the quality of his legal services, the Court reasoned that there is no evidence that a claim of NBTA certification suggests any

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[60] *Id.* at 647-48.

[61] *Id.* at 649.

[62] *Id.* at 652.

[63] *Id.* at 650.

[64] *Id.* at 651 (Emphasis Added).

[65] Peel v. Attorney Registration & Disciplinary Comm'n, 496 U.S. 91, 93-94 (1990).

[66] *Id.* at 97.

[67] *Id.* at 98-99.

[68] *Id.* at 101.

greater degree of professional qualification than reasonably may be inferred from an evaluation of its rigorous requirements.[69]

Moreover, the Court recognized that information about certification and specialties "facilitates the consumer's access to legal services and thus better serves the administration of justice."[70] Thus, the attorney's statements on his letterhead were protected under the First Amendment.[71] The Court also concluded that the State's concern about the *possibility* of deception was "not sufficient to rebut the constitutional presumption favoring disclosure over concealment . . . [which, in this case] both serves the public interest and encourages the development and utilization of meritorious certification programs for attorneys."[72]

d. Recent Federal Court Cases

Since *Peel*, federal courts have continued to apply the *Central Hudson* test to balance a lawyer's First Amendment rights with the state's interest in regulating lawyer advertising and preventing deception of the public. Five notable cases have been brought in the last decade: *Alexander v. Cahill*,[73] *Public Citizen v. Louisiana Attorney Disciplinary Board*,[74] *Harrell v. The Florida Bar*,[75] *Searcy et al. v. The Florida Bar*,[76] and *Rubenstein v. The Florida Bar*.[77]

In *Alexander v. Cahill*, the advertisements at issue were those of a personal injury firm that contained dramatizations, comical scenes, jingles, special effects like wisps of smoke and blue electrical currents

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[69] *Id.* at 102.

[70] *Id.* at 110.

[71] The Court limited this holding by stating: "A lawyer's truthful statement that 'XYZ Board' has 'certified' him as a 'specialist in admiralty law' would not necessarily be entitled to First Amendment protection if the certification was a sham." *Id.* at 109. In 1990, the Florida Supreme Court addressed unsolicited letters in *The Florida Bar v. Herrick*, where an attorney mailed an unsolicited letter to a couple upon learning that the couple had an interest in a vessel that had been seized by customs and, in the letter, stated: "Our law firm *specializes in* Customs laws relating to vessel seizures. If you have any questions, please call." 571 So.2d 1303, 1304 (1990) (emphasis added). In *Herrick*, the attorney was not certified or designated in any area of law, let alone Customs Law as the advertisement stated because it was not even an area recognized under the Florida Certification Plan or the Florida Designation Plan. The Supreme Court of Florida ruled that permitting Herrick to state that he is a specialist in Customs law "runs the risk of misleading the public into believing that he has been qualified under the Bar's designation or certification program. The state's interest here in preventing the public from being misled is strong and the regulation is narrowly drawn. This is not a case where the attorney truthfully advertises that he has been certified as having met the standards of a recognized organization which tests the proficiency of lawyers in certain areas of the law." *Id.* at 1307 (citing *Peel*).

[72] *Peel*, 496 U.S. at 111. The Court also stated that even if it assumed for the sake of argument that the attorney's letterhead was *potentially* misleading to some consumers, "that potential does not satisfy the State's heavy burden of justifying a categorical prohibition against the dissemination of accurate factual information to the public." *Id.* at 109. The Court pointed out that the State's complete ban on statements that are not actually or inherently misleading, such as certification as a specialist by bona fide organizations such as NBTA, were far too extensive, and therefore, did not meet the *Central Hudson* test, where the State could have imposed lesser restrictions such as "screening certifying organizations or requiring a disclaimer about the certifying organization or the standards of a specialty." *Id.* at 110.

[73] 598 F.3d 79 (2d Cir. 2010) (New York Bar Rules).

[74] 632 F.3d 212 (5th Cir. 2011) (Louisiana Bar Rules).

[75] 915 F. Supp. 2d 1285, 1311 (M.D. Fla. 2011) (Florida Bar Rules).

[76] Complaint, No. 4:13CV00664, 2013 WL 6493683 (N.D. Fla. Dec. 11, 2013). (Florida Bar Rules). *See also Florida Law Firm Challenges Bar's New Advertising Restrictions*, 23 NO. 8 WL J. PROF'L LIAB. 4 (Jan. 23, 2014).

[77] No. 14-CIV-20786, 2014 WL 6979574 (S.D. Fla. Dec. 9, 2014) (Florida Bar Rules).

surrounding the firm's name, and slogans such as "heavy hitters" and "think big," among other gimmicks.[78] After New York's Appellate Division adopted "content-based" lawyer advertising rules to regulate *potentially* misleading advertisements consisting of "irrelevant, unverifiable, and non-informational" statements and portrayals, the attorney filed a complaint, contending that the new rules infringed upon his First Amendment rights because the rules prohibited "truthful, nonmisleading communications that the state ha[d] no legitimate interest in regulating."[79]

The Second Circuit agreed after scrutinizing the regulation's categorical bans on (i) the endorsement of or testimonial about a lawyer or law firm from a client regarding a matter that is still pending, (ii) the portrayal of a judge, (iii) the irrelevant "attention-getting techniques unrelated to attorney competence,"[80] such as style and advertising gimmicks, puffery, wisps of smoke, blue electrical currents, and special effects, and (iv) the use of nicknames, monikers, mottos, or trade names implying an ability to obtain results in a matter. The court found that this type of information is not inherently misleading or even likely to be misleading.[81] Therefore, this kind of advertising did not warrant the State's general sweeping prohibition contained in the new rules and so the regulations failed the *Central Hudson* test and were adjudged unconstitutional.[82]

Public Citizen v. Louisiana Attorney Disciplinary Board presented the Fifth Circuit with issues similar to those decided upon in *Alexander v. Cahill*. Here, six subparts of the Louisiana Supreme Court's new attorney advertising Rule 7.2(c) faced constitutional attack: (i) the prohibition of communications that contain references or testimonials to past successes or results obtained; (ii) the prohibition of communications that promise results; (iii) the prohibition of communications that include a portrayal of a client by a non-client, or the depiction of any events or scenes or pictures that are not actual or authentic, without disclaimers; (iv) the prohibition of communications that include the portrayal of a judge or a jury; (v) the prohibition of communications that employ a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter; and (vi) the requirement of disclosures and disclaimers that are clear and conspicuous and of a certain format, size, and visual/auditory display.[83] The Fifth Circuit found that these subparts of the rule, with the exception of

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[78] *Alexander*, 598 F.3d at 84.

[79] *Id.* at 84-86.

[80] *Id.* at 93. This categorical ban was similar in substance to several of the Florida Bar's advertising rules at issue in *Harrell v. The Florida Bar*: Rule 4-7.1, which was a "general prefatory rule, the comment to which limits permissible advertising content to 'only useful, factual information presented in a nonsensational manner,'" Rule 4-7.2(c)(3), which prohibited the use of "'visual and verbal descriptions, depictions, illustrations, or portrayals of persons, things, or events' that are 'manipulative, or likely to confuse the viewer,'" and Rule 4-7.5(b)(1)(A), which similarly prohibited "any television or radio advertisement that was '"deceptive, misleading, manipulative, or that is likely to confuse the viewer."' *Harrell v. Fla. Bar*, 608 F.3d 1241, 1250 (11th Cir. 2010). There, on remand, the district court struck down these rules on the ground that they were impermissibly vague, indeterminate, and exerted a chilling effect on a lawyer's proposed commercial speech that had a right to constitutional protection. *Harrell*, 915 F. Supp. 2d 1285, 1311 (M.D. Fla. 2011). *See also* Jacobowitz & Hethcoat, *supra*, note 34, at 72-73.

[81] *Alexander*, 598 F.3d at 96.

[82] *Id.*

[83] This subpart of the rule provided:

> "Any words or statements required by these Rules to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud. All disclosures and disclaimers required by these Rules shall be clear and conspicuous. Written disclosures and disclaimers shall use a print size at least as large as the largest print size used in the advertisement or unsolicited written communication, and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and read the disclosure or disclaimer. Spoken disclosures and disclaimers shall be plainly audible and spoken at the same or slower rate of speed as the other spoken

(footnote continued)

the prohibition of communications that promise results,[84] were capable of being communicated in a non-deceptive and non-misleading way and were therefore not *inherently* likely to deceive.[85]

Applying the *Central Hudson* analysis, the court found that the Louisiana Attorney Disciplinary Board had at least two substantial government interests: protecting the public from unethical and potentially misleading lawyer advertising and preserving the ethical integrity of the legal profession.[86] The Fifth Circuit then aligned with the Second Circuit and found that the categorical prohibitions of communications that contain references or testimonials to past successes or results obtained, or that include the portrayal of a judge or a jury, were not directly advancing or reasonably related to the State's interests, and were more extensive than was reasonably necessary.[87]

On the other hand, the Fifth Circuit departed from the Second Circuit precedent by finding that the prohibition of communications that employ a nickname, moniker, motto or trade name that states or implies an ability to obtain results in a matter, was materially advancing the State's interests and narrowly tailored to meet those ends.[88] It distinguished *Alexander v. Cahill* because, in that case, this same rule was struck down due to "'a dearth of evidence in the present record' to support a 'prohibition on names that imply an ability to get results.'"[89] Here, the court held, the State "provided the necessary evidence . . . that the Second Circuit found to be absent from *Alexander*."[90]

The court applied the lower standard of rational basis review upon the requirement for disclaimers when communications include a portrayal of a client by a non-client, or depict any events, scenes, or pictures that are not actual or authentic.[91] It concluded that the requirement was reasonably related to the substantial governmental interests and thus, constitutional.[92] Upon considering the requirement for disclosures of a certain format and style, however, the court again applied the lower standard of rational basis review, but held that this requirement was overly burdensome and therefore violated the First Amendment.[93]

> content of the advertisement. All disclosures and disclaimers used in advertisements that are televised or displayed electronically shall be both spoken aloud and written legibly."

Pub. Citizen, Inc. v. La. Attorney Disciplinary Bd., 632 F.3d 212, 228 (5th Cir. 2011).

[84] The court explained that "[a] promise that a party will prevail in a future case is necessarily false and deceptive. No attorney can guarantee future results. Because these communications are necessarily misleading, LADB may freely regulate them and [this] Rule . . . is not an unconstitutional restriction on commercial speech." *Id.* at 218-19. *See also Harrell*, 915 F. Supp. 2d at 1299 (prohibiting statements that "promise results" is facially valid because it is not impermissibly vague).

[85] *Pub. Citizen, Inc.*, 632 F.3d at 19.

[86] *Id.* at 220.

[87] *Id.* at 224.

[88] *Id.* 225-26.

[89] *Id.* at 226.

[90] *Id.*

[91] *Id.* at 227.

[92] *Id.* at 228.

[93] *Id.* at 229.

In *Harrell v. The Florida Bar*, the United States District Court for the Middle District of Florida examined "as-applied" First Amendment challenges to an attorney's marketing campaign featuring the slogan, "Don't settle for less than you deserve." [94] The Bar initially advised him to change the slogan to, "don't settle for anything less," explaining that his slogan would create unjustified expectations.[95] The Bar, however, later revoked acceptance of any version of the new slogan, finding that it improperly characterized his services in violation Rule 4-7.2(c)(2), which bans all "statements describing or characterizing the quality of the lawyer's services."[96] The attorney then filed suit challenging this rule, as well as other Florida advertising rules that allegedly prohibited various marketing strategies and chilled commercial speech in violation of his First and Fourteenth Amendment rights.[97] Specifically under review, in addition to Rule 4-7.2(c)(2), was Rule 4-7.5(b)(1)(C), which contained the Florida Bar's categorical ban on all background sounds.[98] The prohibition included all background sounds in television and radio advertisements except instrumental music: such as the background noises caused by the attorney-plaintiff's dogs, gym equipment, and other activities in his law firm that were part of his proposed advertisements.[99]

Applying the *Central Hudson* test, the district court concluded that the two advertising rules impermissibly restricted the attorney's First Amendment rights.[100] First, the court found that both the slogan and intended use of background sounds were neither actually nor inherently misleading.[101] Next, the court concluded that the State had two substantial interests: first, an interest in "ensuring that the public has access to information that is not misleading to assist the public in the comparison and selection of attorneys," and second, an interest in "preventing the erosion of the public's confidence and trust in the judicial system and curbing activities that negatively affect the administration of justice."[102]

Finally, upon applying the third prong of *Central Hudson*, the court found that neither rule directly or materially advanced the Bar's asserted interests.[103] In particular, the court found that there was insufficient concrete evidence to justify the Bar's categorical ban on background sounds, stating that "[i]n the absence of any evidence that prohibiting the type of innocuous non-instrumental background sounds as those proposed by Harrell here will protect the public from being misled or prevent the denigration of the legal profession, the Bar has failed to satisfy the third prong of the *Central Hudson* test."[104] Thus, the regulations as applied to Harrell were deemed unconstitutional.

Florida's amended regulations are currently facing another First Amendment challenge under the *Central Hudson* test. In *Searcy et al. v. The Florida Bar*, a personal injury law firm filed a lawsuit against the Florida Bar, attacking regulations that prohibit statements of quality and past results unless such statements are

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[94] Harrell v. Fla. Bar, 915 F. Supp. 2d 1285, 1289 (M.D. Fla. 2011).

[95] Harrell v. Fla. Bar, 608 F.3d 1241, 1249 (11th Cir. 2010)..

[96] *Id.*

[97] *Id.* at 1250.

[98] *Id.*

[99] *Id.* at 1251.

[100] *Harrell*, 915 F. Supp. 2d at 1309-10.

[101] *Id.*

[102] *Id.* at 1302.

[103] *Id.* 1308-10.

[104] *Id.* at 1310.

"objectively verifiable."[105] Searcy Denney Scarola Barnhart & Shipley PA ("Searcy Denney") had advertisements on its website, blog, and social media accounts containing statements of opinion, such as "the days when we could trust big corporations . . . are over," and truthful but subjective descriptions of the firm's services and record, such as, "we have 32 years of experience resulting in justice for clients . . ."[106] The Bar held that these statements and descriptions violated the "objectively verifiable" requirement in Florida's lawyer advertising rules.[107] Searcy Denney then challenged the rules in federal court, claiming that the "objectively verifiable" requirement violates the First Amendment because the requirement prohibits commercial speech for which there is no evidence that it is misleading or harmful to consumers, and Florida has no legitimate interest in prohibiting the speech.[108] The firm further asserted that the rules do not directly advance, and are far more extensive than necessary to serve, any interest Florida might claim.[109]

Finally, *Rubenstein v. The Florida Bar* involved yet another personal injury law firm that similarly confronted the "objectively verifiable" requirement in Florida's lawyer advertising rules;[110] but Rubenstein distinguished itself by focusing on the requirement as applied to past results, and the Florida Bar's Guidelines interpreting the requirement. At the time, the lawyer advertising rules permitted attorney advertisement of past results where "objectively verifiable," but the Bar had interpreted and enforced the rules, as stated in its Guidelines, to prohibit all reference to past results on indoor and outdoor display, television and radio media, because these "specific media . . . present too high a risk of being misleading."[111] On the plaintiff's motion for summary judgment, the court found that the plaintiff was challenging "only that narrow and specific blanket prohibition" as violating its First Amendment rights.[112] Applying *Central Hudson*, the court first found that the State had three substantial governmental interests in promulgating the Rules and Guidelines: (i) to protect the public from misleading or deceptive attorney advertising, (ii) to promote attorney advertising that is positively informative to potential clients, and (iii) to prevent attorney advertising that contributes to disrespect for the legal system and thereby degrades the administration of justice.[113] The court then stated, however, that the Bar had presented "no evidence to demonstrate that the restrictions it has imposed on the use of past results in attorney advertisement support the interests its Rules were designed to promote."[114] The court concluded its *Central Hudson* analysis by expressing that the Bar additionally failed to demonstrate how the restrictions on attorney speech, which amounted to a blanket restriction on the use of past results in attorney advertising in certain mediums, were no broader than necessary to serve the interests they purported to advance.[115] The court emphasized that the Bar never demonstrated that "lesser restrictions—e.g., including a disclaimer, or required

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[105] Complaint, *Searcy v. Fla. Bar*, No. 4:13CV00664, 2013 WL 6493683, at *12 (N.D. Fla. Dec. 11, 2013), *available at* http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/D0EE8F4E3167003D85257C58005BDD01/$FILE/131211%20Complaint%20-%20Orig.pdf?OpenElement.

[106] *Id.* at *17.

[107] *Id.*

[108] *Id.*at *20.

[109] *Id.*

[110] No. 14-CIV-20786, 2014 WL 6979574, at *2 (S.D. Fla. Dec. 14, 2014).

[111] *Id.* at *20.

[112] *Id.* at *23.

[113] *Id.* at *23-24.

[114] *Id.* at *25.

[115] *Id.* at *29.

language—would not have been sufficient."[116] Thus, Rubenstein succeeded on the merits of its First Amendment challenge.

The clear direction in which the United States Supreme Court has taken the regulation of commercial speech emphasizes that government must prove that the regulation it is defending does in fact advance an important regulatory interest, refusing to accept mere "common sense" or speculation as a sufficient basis for restrictions on advertising.[117] In other words, the government must present objective evidence to support a ban or restriction on truthful commercial speech and cannot simply ban or restrict speech by fiat grounded in subjective intuition that the advertising is "potentially misleading." For example, in *Florida Bar v. Went For It, Inc.*,[118] the Court went out of its way to compare the empirical evidence presented to support a thirty-day ban on targeted direct mail solicitation of accident victims to the lack of similar data in *Edenfield v. Fane*,[119] in which the Court invalidated a Florida ban on in person solicitation by certified public accountants.

In sum, there is no shortage of cases in which lawyer advertising regulations has failed the *Central Hudson* test, leading the Committee to conclude that attorney advertising regulations are, in many cases, unconstitutional and unsustainable.

IV. The Diverse Forms of Electronic Communication &The Explosion of Social Media

According to a Pew Research Center 2014 Social Media Update, for the 81% of American Adults who use the Internet:

- 52% of online adults now use two or more social media sites;
- 71% are on Facebook;
- 70% engage in daily use;
- 56% of all online adults 65 and older use Facebook;
- 23% use Twitter;
- 26% use Instagram;
- 49% engage in daily use;

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[116] *Id.* at *30.

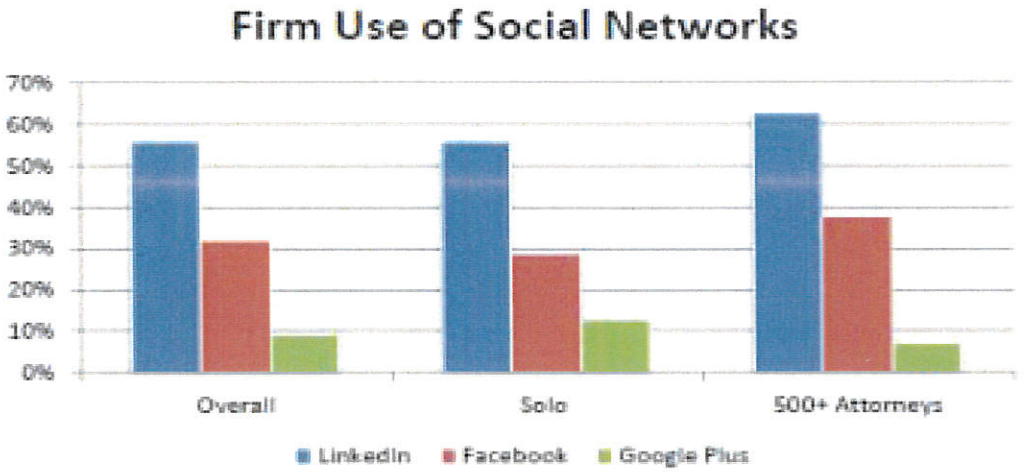
[117] *See, e.g.*, *44 Liquormart, Inc. v. R.I.*, 517 U.S. 484, 503 (1996) ("Precisely because bans against truthful, nonmisleading commercial speech rarely seek to protect consumers from either deception or overreaching, they usually rest solely on the offensive assumption that the public will respond 'irrationally' to the truth."); *Ibanez v. Fla. Dep't of Bus. and Prof'l Regulation*, 512 U.S. 136, 147 (1994) (striking down requirement of a disclaimer because the state failed "to back up its alleged concern that the [speech] would mislead rather than inform."); *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993) (rejecting state's asserted harm because the state had presented no studies nor even anecdotal evidence to support its position); *Peel v Attorney Registration & Disciplinary Comm'n*, 496 U.S. 91, 108 (1990) (rejecting a claim that lawyer's truthful claim of specialization certification was potentially misleading for lack of empirical evidence); and *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 648-49 (1985) (striking down restrictions on attorney advertising where "[t]he State's arguments amount to little more than unsupported assertions.").

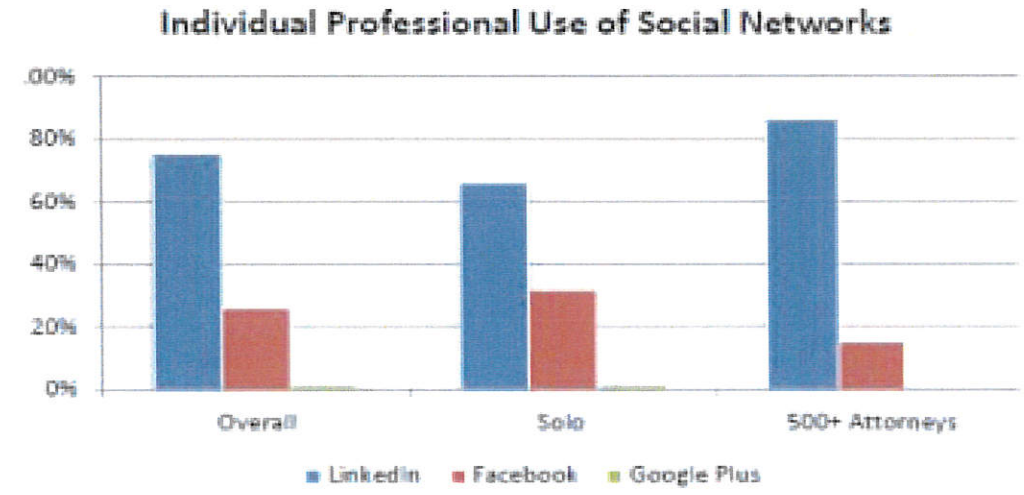
[118] 515 U.S. 618 (1994).

[119] 507 U.S. 761 (1993).

- 53% of online young adults (18-29) use Instagram; and
- 28% use LinkedIn.

Given these statistics that reflect the general population's use of social media, it is not surprising that in recent years there has been a vast increase in diverse forms of communication regarding lawyers and lawyer services. These include websites, attorney blogs, microblogs (such as Twitter), YouTube® infomercials, webinars, postings on social media such as Facebook and LinkedIn, online review sites, text messaging, the use of smart phones, "apps", links, video technology and tag lines. The graphs below illustrate the increasing use of LinkedIn and Facebook by lawyers and law firms.[120]





[120] Images supplied by Allison Shields, *Blogging and Social Media*, ABA TECHREPORT 2014, *available at* http://www.americanbar.org/publications/techreport/2014/blogging-and-social-media.html.

Additionally, in response to innovation and increased competition, lawyers and law firms are engaging in much more sophisticated forms of marketing and advertising, including "advertorials," cooperative lawyer ads, retargeting, search engine optimization, online referral and lead-sharing sites, and "pay-per-click" or "pay-per-deal" arrangements.[121] For example, Google's AdWords (one of Google's advertising services) gives lawyers an opportunity to capitalize on Google's vast market. The Google AdWords process is a highly efficient marketing device where lawyers may choose keywords in creating text advertisements. When an Internet user types these keywords into Google's search engine, the lawyer's advertisement appears in a list of "sponsored links" on the results page.[122]

Lawyers are also increasingly involved, either voluntarily or involuntarily, in online lawyer rating services, such as Avvo.com, Yelp, "Super Lawyers," and "Best Lawyers." These online companies post ratings and reviews of lawyers and offer consumers help in finding lawyers. Avvo.com, for example, posts ratings and reviews for lawyers in every state and offers a free legal Q&A service for finding the right lawyer. Justia.com offers free case law, legal resources, and a "Find a Lawyer" feature. Premium services provide websites, blogging, and on-line marketing to law firms. LegalMatch.com helps users find prescreened lawyers, and offers attorneys leads that match their legal specialty. Pro-se-litigation.com connects self-represented litigants with lawyers who offer unbundled legal services. Upcounsel.com helps businesses connect with lawyers to an on-line bidding service where users post requests for specific work and attorneys respond with quotes for fixed fees or hourly rates.

There is also a growing number of social networking websites for lawyers, including Avvo, JD Oasis, Legal OnRamp, WireLawyer, and Foxwordy. Social networking sites for lawyers typically include discussion boards, private messaging, profiles, connections, document libraries, and ratings. Even further, large law firms frequently use marketers, public relations personnel, and sales forces to develop leads and pursue business opportunities.

V. Other Deficiencies in Current Regulations Warranting Change

In addition to the foregoing, there are other difficulties with the current approach to regulating lawyer advertising that further demonstrate the need for change.

A. Many Current Rules are Outdated

State rules on lawyer advertising are largely based on print and other forms of traditional advertising such as announcements, business cards, mailers, newsletters, yellow pages, billboards, television and radio ads, newspaper advertisements, and listings in Martindale Hubbell or other print directories. Lawyer advertising

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[121] The ABA Commission on Ethics 20/20 studied the issue of the use of the Internet in client development in a paper entitled "Issues Paper Concerning Lawyer's Use of Internet Based Client Development Tools" in September 2010. For more information see http://www.americanbar.org/content/dam/aba/migrated/2011_buildethics_2020/clientdevelopment_issuespaper.authcheckdam. LinkedIn is a social media network that is fast becoming an indispensible tool used by legal professionals and those with whom they communicate. As a social networking website, LinkedIn allows people in professional occupations of all kinds to list their work experience and educational background and share that information, or in other words, "connect" with other professionals, in an effort to obtain employment. LinkedIn currently has approximately 300 million users, with a geographical reach of 200 countries and territories, and it continues to grow. A blog is an Internet-based forum that offers opinions or information, sometimes on a particular issue, and is usually freely accessible by anyone with an operating Internet connection. Many lawyers and law firms have taken to blogging to showcase their knowledge, explore legal issues, and voice their perspectives on specific areas of law.

[122] Connor Mullin, *Regulating Legal Advertising on the Internet: Blogs, Google & Super Lawyers*, 20 GEO. J. LEGAL ETHICS 835, 838 (2007).

regulations have even been applied to law firm give-away items such as coffee mugs and baseball hats. A number of states are attempting to apply existing rules to new methods of electronic advertising.[123] For example, Maryland Rule 7.2(b) requires that "[a] copy or recording of an advertisement or such other communication shall be kept for at least three years after its last dissemination along with a record of when and where it was used." For lawyers that use websites, blogs, and other social media, compliance with the rule is problematic because the content of such media is not static, but constantly changing. Lawyers and law firms, as well as bar regulators, frequently raise questions about whether or how to apply pre-electronic era standards to continuously evolving technologies.[124]

Twitter is a prime example of the struggle to apply old rules to new technology. For example, in Florida, Rule 4-7.12 governs required content of advertisements and stipulates that, among other things, all advertisements for legal employment must include the lawyer's or law firm's full name and office location.[125] Perhaps at first blush this rule does not appear burdensome; however, the rule "makes [a lawyer's or law firm's] use of Twitter an impossibility because there is a limit of 140 characters."[126] Peter Joy, an ethics professor at the Washington University School of Law in St. Louis, caustically remarked, "Pity the lawyer trying to use Twitter in . . . Little Harbor on the Hillsboro, Fla."[127] Similarly, lawyers could not use Twitter to announce a specific case outcome in states that require a disclaimer to accompany the statement.[128]

B. The Spread of Over-Regulation

The trend in recent years has been toward greater regulation in an effort to respond to (or perhaps dampen) lawyer advertising in the electronic age. California, for example, now regulates lawyer advertising more than at any time in the past. In addition to an elaborate rule on advertising and solicitation that includes fifteen "advertising standards" that are presumptive violations of the rule,[129] California's State Bar Act restricts the use of certain forms of lawyer advertising, including "computer networks" and provides for injunctive and

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[123] Some states single out electronic media for special treatment or significantly restrict advertising in electronic media. *See e.g.*, NYSBA, *Social Media Ethics Guidelines* (Mar. 18, 2014), *available at* https://www.nysba.org/Sections/Commercial_Federal_Litigation/Com_Fed_PDFs/Social_Media_Ethics_Guidelines.html [hereinafter *Social Media Ethics Guidelines*].

[124] A number of states have found that advertising rules apply to an attorney's activity on the Internet, including law firm websites. *See, e.g.*, Cal. State Bar Formal Op. 2001-155, N.Y. State Bar Formal Op. 709, Ala. State Bar Formal Op. 1996-07, N.C. Ethics Comm. RPC 239, N.D. Bar Ass'n Formal Op. 1999-02, R. REGULATING FLA. BAR 4-7.11.

[125] R. REGULATING FLA. BAR 4-7.12(a).

[126] David L. Hudson Jr., *Firm Challenges Florida Bar Over Website Ad Limits*, ABA JOURNAL (Mar. 1, 2014, 9:49 AM), http://www.abajournal.com/magazine/article/firm_challenges_florida_bar_over_website_ad_limits/; *You Cannot Be Serious, Law Firm Tells Florida Bar*, COURTHOUSE NEWS SERVICE (December 13, 2013, 7:25 AM), http://www.courthousenews.com/2013/12/13/63717.htm.

[127] Hudson, *supra* note 126.

[128] VA. R. OF PROF'L CONDUCT 7.1(b): "A communication violates this rule if it advertises specific or cumulative case results, without a disclaimer that (i) puts the case results in a context that is not misleading; (ii) states that case results depend upon a variety of factors unique to each case; and (iii) further states that case results do not guarantee or predict a similar result in any future case undertaken by the lawyer. The disclaimer shall precede the communication of the case results. When the communication is in writing, the disclaimer shall be in bold type face and uppercase letters in a font size that is at least as large as the largest text used to advertise the specific or cumulative case results and in the same color and against the same colored background as the text used to advertise the specific or cumulative case results."

[129] CAL. R. OF PROF'L CONDUCT 1-400.

declaratory relief, civil penalties, attorney's fees and discipline for violations.[130] Other California statutes and rules provide additional regulation of lawyer advertising.[131]

As in California,[132] the trend in many states has been toward greater micromanagement of on-line advertising to ensure technical compliance with traditional rules. For instance, Model Rule 7.2(c)'s requirement that all advertising contain an "office address" causes more confusion than clarity when lawyers practice through "virtual" offices that do not have a "bricks and mortar" location. By requiring a physical office address, regulations may inadvertently cause more confusion to consumers who then travel to that physical address only to find a post office box or executive suite where the advertising lawyer receives his/her mail.

Another example of over-regulation is the Florida Bar's adoption of new attorney advertising rules in May 2013 that specifically apply to *all* forms of communication in any print or electronic forum.[133] Whereas lawyer websites, blogs, and social media sites such as LinkedIn, Facebook, and Twitter were previously exempt from the rules as "information provided upon request,"[134] social media advertising is now subject to the advertising regulations.[135] The Florida Supreme Court issued an opinion approving the revised rules, but the dissenting opinions questioned whether applying the rules to websites was an "improvement" to the regulatory scheme. Justice Pariente rejected what she categorized as a "one-size-fits-all approach," and explained, "I would exempt websites and information upon request from advertising restrictions, and I question whether the entire revamped approach to regulating traditional forms of advertising is a beneficial change."[136] Similarly, Justice Canady expressed that he found the new rules "unduly restrictive" and explained, "I am particularly concerned about the impact of the application of the advertising rules to lawyer websites."[137] Nonetheless, the Florida Bar embraced and continues to embrace the application of the rules to a panoply of communication mediums and specifically requires disclaimers and disclosures in all advertisements where testimonials and past results are used.

In addition to increased regulation, some states issued ethics opinions that apply existing rules to social media, attorney blogs, and other Internet communications.[138] While these opinions may be technically correct, they often pose impractical obligations on lawyers and can deter lawyers from making communications that are not fraudulent or deceptive.

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[130] CAL. BUS. & PROFESSIONS CODE §§6157-6159.2.

[131] *See, e.g.*, CAL. INS. CODE §1871.7 (unlawful solicitation of business), CAL. LABOR CODE §§139.45, 5430-5434 (advertisements with respect to workers' compensation, CAL. PENAL CODE §549 (penalties for certain solicitations and referrals).

[132] *See* Cal. State Bar Formal Interim Op. 12-0006 (discussing the circumstances under which "blogging" is regulated under the attorney advertising rules).

[133] R. REGULATING FLA. BAR 4-7.11(a). This includes but is not limited to "newspapers, magazines, brochures, flyers, television, radio, direct mail, *electronic mail and Internet, including banners, pop-ups, websites, social networking, and video sharing media*. *Id.* (emphasis added).

[134] *In re Amendments to the Rules Regulating the Fla. Bar – Subchapter 4-7, Lawyer Adver. Rules*, 108 So. 3d 609, 612-13 (2013) (Pariente, J., dissenting). *See also* Hudson, *supra* note 126; *You Cannot Be Serious*, *supra* note 126.

[135] *See, e.g.*, *In re Amendments*, 108 So. 3d at 611, 616 (Appendix).

[136] *Id.* at 612 (Pariente, J., dissenting).

[137] *Id.* at 616 (Canady, J., dissenting).

[138] *See, e.g.*, Cal. State Bar Formal Op. 2012-186 (2012) (characterizing various innocuous Facebook communications as commercial speech subject to California's advertising rules); N.Y. Cnty. Bar Ass'n Formal Op. 748 (2015) (warning lawyers that certain features of LinkedIn present risks of ethics violations); N.C. Formal Op. 2013-10 (2013) (contrasting group lawyer ads and lawyer referral services).

LinkedIn is one example where regulations have caused difficulty and dissension. A central feature of LinkedIn has long been that (i) users can list their abilities and areas of practice in a preset and pre-defined section entitled, "Specialties," or "Skills and Expertise," and, (ii) users probably *should* do so if they want to stay current with the social networking platform, enhance their professional profiles, and get discovered for more opportunities. According to some ethics opinions, however, these headings constitute potentially misleading advertising in violation of the rules. In Florida, for example, Rule 4-7.14 provides "[a] lawyer may not engage in potentially misleading advertising."[139] This means that a lawyer may not state that he or she is "board certified, a specialist, an expert, or other variations of those terms" because it could be potentially misleading to prospective clients.[140] Rule 4-7.14 has thus made attorney participation on LinkedIn seem unduly difficult.

On September 11, 2013, however, the Florida Bar issued an advisory opinion stating that a lawyer may not list his or her practice area under the "Skills & Expertise" heading on LinkedIn unless he or she is board certified in that practice area.[141] The New York State Bar Association ("NYSBA") used similar reasoning in advising that a lawyer or law firm may not use the LinkedIn heading, "Specialties," to describe its areas of practice because such activity would inappropriately allow that lawyer or law firm to claim recognition as a "specialist" without certification.[142] Moreover, the NYSBA recently released Social Media Ethics Guidelines, and Guideline No. 1.B discusses the "prohibited use of 'Specialists' on social media."[143] The Comment focused on LinkedIn in particular, stating, "if the social media network, such as LinkedIn, does not permit otherwise ethically prohibited 'pre-defined' headings, such as 'specialist,' to be modified, the lawyer shall *not* identify herself under such heading unless appropriately certified."[144]

Because LinkedIn's headings raised serious concerns for various state bars and caused uncertainty for lawyers, LinkedIn, agreed to modify its website and headings.[145] LinkedIn first removed the "Specialties" heading; then, in early 2014, LinkedIn changed the "Skills and Expertise" heading to, "Skills and Endorsements," removing the problematic, potentially misleading word, "Expertise"; and today, the heading, "Skills and Endorsements," has been amended so that it now simply reads, "Skills."

The new heading, "Skills," contains none of the problematic words like "Expertise," or "Specialties," or other variations thereof. However, LinkedIn may have simply taken the problem and put it in another place and format: upon editing an account, LinkedIn still asks the user the problematic question, "[d]o you have any of

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[139] R. REGULATING FLA. BAR 4-7.14.

[140] R. REGULATING FLA. BAR 4-7.14(a)(4). The Comments add that "a lawyer can only state or imply that the lawyer is "certified," a "specialist," or an "expert" in the actual area(s) of practice in which the lawyer is certified."

[141] Fla. Bar Advisory Op. (Sept. 11, 2013), *available at* http://it-lex.org/wp-content/uploads/2013/09/Florida-Bar-Opinion-re-LinkedIn-Redacted.pdf (citing NYSBA Formal Ethics Op. 2013-972 (2013).

[142] NYSBA, Formal Ethics Op. 2013-972 (2013).

[143] *Social Media Ethics Guidelines*, *supra* note 123, at 3. *See also* Pa. Bar Ass'n, Formal Op. 2014-300 (2014) [hereinafter *Ethical Obligations for Attorneys Using Social Media*].

[144] *Social Media Guidelines, supra* note 123, at 4 (emphasis added).

[145] The Florida Bar, *Update: Complying with Bar Rules on LinkedIn May be Easier Than Thought*, FLA. BAR NEWS (Jan. 1, 2014), http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/8c9f13012b96736985256aa900624829/0e9ba4af36b1dbb785257c4a004c633e!OpenDocument.

these skills or areas of expertise?" Additionally, LinkedIn permits endorsements and recommendations, but does not allow for the addition of disclaimers to statements that many state bars would no doubt consider to be testimonials—another issue that is far from resolved.[146]

There is a lack of empirical research showing a correlation between the proliferation of regulation and consumer harm. For example, the Florida Bar's survey of Floridians' attitude toward the increased regulation of attorney advertising found that while 22% of the respondents felt that advertisements for professional services were misleading, 22% also believed such advertisements were accurate.[147] Moreover, whereas about 25% of the respondents indicated that after seeing attorney advertising on television and the Internet, their view of the Florida court system had changed, more than 50% of the respondents indicated that their view had not changed, and 10% of the respondents even reported that their view had *improved*.[148] Thus, the survey results fail to show a real harm to the public, as is required to restrict commercial speech.[149]

Additionally, the data collected in 1997 by a Task Force convened by the Florida State Bar revealed that consumers wanted *more* "useful" and "factual" information to help them choose an attorney and the supporting survey results explained that large majorities of consumers were interested in attorney "qualifications," "experience," "competence," and "professional record (i.e. wins/losses)." The supporting survey results also showed that negative attitudes about legal system and lawyers consistently declined over the relevant period, despite the increase in quantity and breadth of attorney advertising. For example, "the number of people who strongly agreed that lawyer advertisements 'play more on people's emotions and feelings than on logic and thoughtfulness' was down from 56% to 43%; the number of people who felt that attorney advertisements 'encouraged people with little or no injury to take legal action' was down from 55% to 35%, and those who thought advertisements increased the propensity to engage in frivolous lawsuits was down from 55% to 35%; those who believed that attorney advertisements were at least somewhat truthful and honest increased from 51% to 69%; and those who strongly agreed that attorney advertisements lessened the respect for the fairness and integrity of the legal process was cut nearly in half, from 32% to 17%."[150]

The jurisdictional differences are more likely to inhibit the spread of important legal information and create barriers to competition than to inform or protect consumers. Rampant dissimilarity exists among state rules that seek to regulate potentially misleading communications or specific content such as past results, listing lawyer specialties, including endorsements and testimonials and use of symbols, dramatizations, rankings, slogans, and even background music (sometimes referred to as "attention getting techniques"). For example, Arkansas, Nevada, Pennsylvania, South Carolina and Wyoming have prohibitions against the use of testimonials and endorsements.[151] Other states allow the use of testimonials and endorsements with appropriate

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[146] *See, e.g.*, *Ethical Obligations for Attorneys Using Social Media*, *supra* note 143.

[147] Jacobowitz & Hethcoat, *supra* note 34, at 77.

[148] *Id.* (emphasis added).

[149] *Id.*

[150] Rubenstein v. Fla. Bar, No. 14-CIV-20786, 2014 WL 6979574, at *26, n. 6 (S.D. Fla. Dec. 14, 2014) (discussing The Florida Bar Joint Presidential Advertising Task Force, *Final Report & Recommendations* (May 1997)).

[151] Am. Bar Ass'n, *Differences Between State Advertising and Solicitation Rules and the ABA Model Rules of Professional Conduct*, at 9 (May 2014), *available at* http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/state_advertising_and_solicitation_rules_differences_update.authcheckdam.pdf.

disclaimers.[152] Still other states have rules containing no provision governing endorsements and testimonials at all.[153]

In addition to the over-regulation of lawyer advertising that does not serve the legitimate public policy of assuring accurate information about legal services, state regulators (most often Bar associations) spend hundreds of thousands of dollars attempting to defend the regulations in various lawsuits brought by members. The waste of bar dues and licensing fees to defend the regulations without any quantifiable evidence of the need for the regulations to support a legitimate state purpose is yet another reason the current framework of lawyer advertising regulation is failing.

C. The Questionable Objectives of Certain State Regulations

Upholding "professionalism" and "the dignity of the profession" sneak into various state versions of Model Rules 7.1 and 7.2. Justification for these variants include concern on how lawyers hold themselves out to the public, the lack of decorum and respect for the judicial system, the negative image of lawyers and the legal profession, and the loss of respect and lack of trust in lawyers.[154] For example, in the 2011 Report on The Lawyer Advertising Rules, the Florida Bar stated that the primary goals of lawyer advertising regulation include "protection of the public from advertising that contributes to disrespect for the judicial system, including disrespect for the judiciary" and "protection of the public from advertising that causes the public to have an inaccurate view of the legal system, of lawyers in general, or of the legal profession in general."[155]

This purported public policy basis for regulating lawyer advertising needs to be reexamined. The traditional reason for prohibiting lawyer advertising was that it was "unprofessional."[156] Yet, today under the *Central Hudson* test,[157] regulation of taste, dignity, and professionalism is outside the permissive scope of regulation. Nevertheless, many state regulations continue to prohibit tasteless and unseemly content in the name of misleading or potentially misleading advertisements.

Leaving aside the fact that these tests for "tastelessness," "unseemliness," and the like are vague, the reason for forbidding them appears to be the theory that if lawyers advertise the way they want to, the public would think less of us, so we must forbid lawyers from doing that and metaphorically dress them up in a three-piece suit. If that is true, the problem should be self-correcting — it will be the rare client who hires a lawyer that he or she thinks is "tasteless."

D. Anti-Competitive Concerns With Lawyer Advertising Regulation

During the past twenty years, the Office of Public Policy, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics of the Federal Trade Commission also have weighed in on the regulation of lawyer advertising. The FTC submitted advisory letters to several state supreme courts and lawyer regulation

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[152] These states include California, Florida, Georgia, Louisiana, Missouri, Montana, New York, Rhode Island, South Dakota, and Wisconsin. *Id.*

[153] *E.g.*, VA. R. OF PROF'L RESPONSIBILITY 7.1.

[154] *See* Jacobowitz & Hethcoat, *supra* note34; Smolla, *supra* note 34.

[155] *Rubenstein*, 2014 WL 6979574, at *4 (discussing the Report on the Lawyer Advertising Rules by the Board Review Committee on Professional Ethics (May 27, 2011)).

[156] ABA CANON ON PROF'L ETHICS, CANON 27 (1908).

[157] For discussion of the *Central Hudson* test, see *supra* Part III.D.

offices when various states considered amending their advertising regulations that the FTC perceived could restrict consumer access to factually accurate information that might be useful in making an informed decision about hiring a lawyer. For example, the FTC has reminded regulators in Alabama, Arizona, Florida, Indiana, Louisiana, New Jersey, New Mexico, New York, Ohio, Tennessee, and Texas that overly broad advertising restrictions may not only reduce competition and violate federal antitrust laws, but also restrict truthful information about legal services.[158]

Restrictions on accurate information about legal service, imposed by competing law firms that function as part of the regulatory governing body, restrain trade and hinders the public's access to useful information.[159]

Not all "state actions" are immune from antitrust laws such as the Sherman Act and FTC Act. If the state action has a significant impact on interstate commerce, it will be subject to Sherman Act scrutiny and will be immune from antitrust compliance only if the action protects a sovereign right. Moreover, when a non-sovereign actor comprised of market participants, such as a unified Bar with quasi-governmental functions, engages in anticompetitive conduct, its actions will be immune from antitrust laws *only if* (1) there is a clearly articulated and affirmative state policy (i.e., the state has to anticipate anticompetitive result as necessary consequence of policy goal); and (2) there is active state supervision of the actor.[160] "Active" state supervision of a non-sovereign actor requires that (a) the state supervisor must actually review the anticompetitive decision (not just the policies and procedures used to come to the decision); (b) the state supervisor must have the ability to veto the decision as inconsistent with state policy goals; and (c) the state supervisor cannot be an active market participant.[161]

Thus, state lawyer regulation offices that impose restraints on truthful lawyer advertising restrain competition, hinder the public's access to useful accurate information about legal services, and may run afoul of antitrust laws.The recent U.S. Supreme Court decision in *North Carolina State Board of Dental Examiners v. F.T.C.* is illustrative.[162] The Supreme Court found that the Board of Dental Examiners exclusion of non-dentists from providing teeth whitening services was anticompetitive and an unfair method of competition in violation of the Federal Trade Commission Act. The Court determined that the Board was not actively supervised by a state entity because a controlling number of the Board members who were decision makers were "active market participants" (i.e., dentists) and there was no state entity supervision of the decisions of the non-sovereign board.[163] Many lawyer regulatory entities are carefully monitoring the application of this precedent as the same analysis could be applied to lawyer disciplinary authorities – especially if it appears that the lawyers making decisions on "permissible" lawyer advertising are competitors and there are no clearly articulated objective criteria to determine if the advertising of their competitors violates the Rules of Professional Conduct.

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[158] ABA Center for Professional Responsibility, *FTC Letters Regarding Lawyer Advertising* (2015), http://www.americanbar.org/groups/professional_responsibility/resources/professionalism/professionalism_ethics_in_lawyer_advertising/FTC_lawyerAd.html.

[159] *Id.*

[160] F.T.C. v. Phoebe Putney Health System, Inc., 133 S. Ct. 1003, 1010 (2013) (quoting California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97, 105 (1980)).

[161] North Carolina State Board of Dental Examiners v. F.T.C., 135 S. Ct. 1101, 1116 (2015).

[162] 135 S. Ct. 1101 (2015).

[163] *Id.* at 1117.

E The Consequences of Inconsistent Enforcement of Excessive Regulations

The results of APRL's survey and other data demonstrate the lack of consistent enforcement of existing rules and regulations. In particular, state bars have insufficient resources to monitor *all* lawyer advertising and maintain consistent enforcement. Lawyer advertising is viewed by many bar regulators as a low-level problem.[164] There is a general lack of consumer complaints and virtually no empirical data demonstrating actual consumer harm caused by lawyer advertising. Instead, the greater perceived harm is to the profession. Most complaints about lawyer advertising are made by other lawyers.[165] In addition, many regulators acknowledge that compliance with the lawyer advertising rules is better achieved by more effective non-disciplinary measures. Finally, state regulators by and large have had a poor "win" record in the few cases in which enforcement of the advertising rules have been challenged in federal court or sought through discipline.

Inconsistent enforcement of existing rules has significant consequences. A 2002 law review article by Professor Fred C. Zacharias, a former member of APRL, provides a case study of the ramifications of under-enforcement of advertising rules, including engendering confusion and lack of respect and confidence by lawyers and the public.[166] Other articles also discuss the negative consequences of inconsistent enforcement.[167] And the advertising regulations as currently enforced have done little, if anything, to improve the image of the legal profession.

Inconsistent enforcement of inharmonious regulations has also had a negative effect on the dissemination of useful information. Lawyers are unclear as to how to interpret incompatible state regulations and how regulators may apply the rules in the event of a complaint. The effect is to discourage lawyers from communicating with the public in the way that the public (and lawyers themselves) generally communicate with one another.

The time-worn advice that lawyers should comply with the most restrictive rule when faced with competing state regulations is not always practical and does not advance the legitimate goals of regulating lawyer advertising.[168] The requirements of each state may greatly vary such that compliance with each jurisdiction may not be possible.[169]

The deterrent effect of inconsistent advertising rules and enforcement on cross-border practice is well-known. The complex choice of law problems that confront lawyers and state regulators adds to the confusion

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[164] See discussion of APRL's Survey results, *infra*, Part VI.

[165] In the APRL Survey, discussed *infra,* Part VI, one State Bar regulator reported that between 2002 and 2008, only eight complaints about lawyer advertising were opened and all involved lawyers complaining about other lawyers. During the same period, the office received about 4,000 complaints per year and opened roughly over 1,000 investigations.

[166] Fred C. Zacharias, *What Lawyers Do When Nobody's Watching: Legal Advertising as a Case Study of the Impact of Underenforced Professional Rules*, 87 IOWA L. REV. 971, 1005 (2002).

[167] *See generally* Nia Marie Monroe, *The Need for Uniformity: Fifty Separate Voices Lead to Disunion in Attorney Internet Advertising*, 18 GEO. J. LEGAL ETHICS 1005, 1015-16 (2005); Fred C. Zacharias, *What Direction Should Legal Advertising Regulation Take?*, 2005 PROF. LAW. SYMP. 45 (2005).

[168] *See* Pa. Bar Ass'n Comm., Legal Ethics and Prof'l Responsibility, Informal Op. 98-85 (1998) (defining the test as the "least common denominator approach."). *See also* Anthony E. Davis, *Ethics and Etiquette of Lawyering on the Internet,* 224 N.Y. L.J. 1, 6 (2000).

[169] Daniel Backer, *Choice of Law in On-Line Legal Ethics: Changing a Vague Standard for Attorney Advertising on the Internet,* 70 FORDHAM L. REV. 2409, 2418 (2002); Monroe, *supra* note 167.

and uncertainty.[170] For example, each state has different labeling, disclosure, record-keeping and filing requirements, and the rules "vary greatly as to what materials and information need to be retained, and in what form."[171] The lack of predictability on how a particular bar regulator will view a given advertisement is an increasingly difficult problem for lawyers and law firms. This lack of predictability is further compounded by inconsistent and selective enforcement and constantly evolving state bar policy and ethics advisory opinions as a result of new technologies.

VI. The Committee's Survey

In 2014, the Committee sent questionnaires to fifty-one U.S. lawyer regulation offices requesting information regarding the enforcement of advertising rules in their jurisdiction.[172] With the assistance of James Coyle, the Committee's liaison from NOBC, thirty-six of fifty-one jurisdictions responded to the survey. The responses confirm that:

- Complaints about lawyer advertising are rare;
- People who complain about lawyer advertising are predominantly other lawyers and not consumers;
- Most complaints are handled informally, even where there is a provable advertising rule violation;
- Few states engage in active monitoring of lawyer advertisements; and
- Many cases in which discipline has been imposed involve conduct that would constitute a violation of ABA Model Rule 8.4(c).

In response to the question, "Who are the predominant complainants in lawyer advertising charges," 78% responded that it was other lawyers and only 3% responded that is was consumers.

In regard to how often complaints about lawyer advertising are received: 56% responded, "rarely," 17% responded, "almost never," and 8% responded, "frequently."

The majority of the responding jurisdictions reported that complaints about lawyer advertising that involve a potential advertising rule violation are handled informally, such as through a call or letter requesting changes. Where complaints about lawyer advertising involve a provable advertising rule violation, the majority are still handled informally, in some cases with warning letters, diversion, dismissal of formal charges, changes in advertising language, and other dispositions. Only 17% of the jurisdictions responding reported that they actively monitor lawyer advertisements.

In response to the question – "How often do formal advertising complaints alleging false or misleading communications result in disciplinary sanctions, including diversion and probation?" – 50% responded, "rarely," 36% responded, "almost never," and 6% responded, "frequently."

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[170] Backer, *supra* note 10.

[171] J.T. Westermeier, *Ethics and the Internet,* 17 GEO. J. LEGAL ETHICS 267, 282 (2004).

[172] Attachment 3 is the Committee's questionnaire to state regulators.

The survey showed that formal advertising complaints involving violations of the advertising rules other than false or misleading communications which result in disciplinary sanctions (including diversion and probation) are infrequent: with 50% responding this occurs, "rarely" and 43% responding this occurs, "almost never."

Finally, in response to the question of whether any formal disciplinary cases found consumer or client harm or confusion that did not violate Rule 8.4(c), 67% said "no" and 11% replied "yes."

VII. Other Survey Results

Donald R. Lundberg, a member of APRL and NOBC and a former executive secretary of the Indiana Supreme Court Disciplinary Commission, wrote a paper for the 24th ABA National Conference on Professional Responsibility in 2008 in which he reported the results of an informal survey he conducted among bar counsel on regulating lawyer advertising. The survey confirmed the low-level enforcement of lawyer advertising rules. Of the responses he received from twenty-two jurisdictions, Mr. Lundberg reported that three jurisdictions are at "the non-interventionist extreme," that is, they throw up their hands in resignation, save, perhaps, for rare third-party initiated forays into enforcement in strong meritorious cases. Eight jurisdictions were described as largely "non-interventionists" and yet responsive to highly meritorious consumer-generated complaints; four jurisdictions were neutral, meaning that there was some responsiveness to meritorious, consumer-generated complaints and occasional self-initiated enforcement actions on a selected case basis. Mr. Lundberg reported that two jurisdictions were "moderately interventionist" in being proactive in selectively reviewing advertising in a non-comprehensive way, and five jurisdictions responded that they examined lawyer advertising in some comprehensive fashion. Mr. Lundberg concluded based on his informal survey results that there is clearly no consensus among states about how advertising enforcement should be pursued, although most states align with the "non-interventionist" end of the spectrum. He also concluded that contrary to many other disciplinary actions, it is difficult to draw a straight line between regulation of lawyer advertising and protection of clients from tangible harm. Mr. Lundberg's informal survey also confirmed that one of the defining features of the advertising regulatory situation is a paucity of complaints originating from consumers.[173]

VIII. A Commonsense Approach to Regulating Lawyer Advertising

A. Condensing Model Rules on Advertising Into One Practical Rule

A new approach to regulating lawyer advertising is long overdue. First, the disciplinary rules on lawyer advertising should be standardized. Second, regulators should focus more narrowly on prohibiting false and deceptive advertisements. Lawyers should not be subject to discipline for "potentially misleading" advertisements or advertisements that a regulator thinks are distasteful or unprofessional. Nor should they be subject to discipline for violations of technical requirements in the rules regarding font size, placement of disclaimer, or advertising record retention. Regulators should use non-disciplinary measures to address lawyer advertising and marketing that does not violate Model Rule 8.4(c).

APRL is not advocating a loosening or abandonment of regulating and enforcing strongly meritorious cases. Rather, APRL's solution addresses the inutility of the overregulation and under-enforcement of lawyer

[173] Donald R. Lundberg, *Some Thoughts About Regulating Lawyer Advertising*, 34 ABA Nat'l Conference on Prof'l Responsibility (May 28-31, 2008). Mr. Lundberg's paper includes an appendix of the specific results of the Bar Counsel survey.

advertising rules, the inconsistencies of the current regulatory scheme, and the practical challenges posed by evolving technologies.

Although *Central Hudson* and its progeny affirm the validity of the state's interest in protecting the public and the trustworthiness of the legal system by regulating deceptive and misleading advertising, the opinions also highlight the constitutional concerns when regulations contain restrictions without adequate evidence of a nexus to harm. Restrictions that are subject to inconsistent and subjective interpretation also raise constitutional concerns.

The Committee's proposed revisions to and deletions from ABA Model Rules of Professional Conduct 7.1, 7.2, 7.4, and 7.5, and their comments, set forth in Attachment 2, reflect a policy determination that the ABA should recommend that states adopt uniform regulatory rules for lawyer communications regarding legal services (outside the context of in-person solicitation) founded upon the constitutional limitation set forth in *Bates v. State Bar of Arizona,* 433 U.S. 350 (1977), and its progeny prohibiting "false and misleading" communications.

Supreme Court authority has left open the possibility that additional limited restrictions on lawyer communications regarding legal services, including advertising and marketing, may pass muster under the First Amendment. However, empirical data about enforcement of and compliance with the existing patchwork of state lawyer advertising regulations shows that the organized bar can better uphold the integrity of the profession with less restrictive rules. These rules will still promote access to justice: which in the modern age includes the dissemination of accurate information about the availability of professional legal services.

The ABA Model Rules in this area also need to reflect the fact that in an age of web-based and electronic communication, jurisdictional differences in regulatory standards simply are impractical and unworkable. Adopting a regulatory line of refraining from "false and misleading" lawyer communications is consistent with the prohibition in Rule 8.4(c), which prohibits lawyers from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation," as well as with consumer protection statutory principles prohibiting unfair and deceptive acts and practices enacted in the vast majority of U.S. jurisdictions, as well as under federal law.

A simple "false or misleading" standard for lawyer communications about legal services best balances the important interests of access to justice, protection of the public and clients, integrity of the legal profession, and the uniform regulation of lawyer conduct.

The legitimate public policy considerations discussed above support removing the general prohibition against "giving anything of value to a person for recommending the lawyer's services" contained in Rule 7.2(b). Legitimate professional responsibility concerns regarding referral fees and the division of fees are adequately dealt with in other rules, including Rule 1.5(e) and Rule 5.4.

Specifically, the Committee proposes that the language in Rule 7.1 be retained, and that Rules 7.2, 7.4, and 7.5, and their comments, be deleted in their entirety.[174] The Committee proposes revising the comments to Rule 7.1 to reflect the language and principles contained in Rules 7.2. 7.4, and 7.5, which provide guidance on the general "false and misleading" standard in Rule 7.1. The incorporation into the comments to Rule 7.1 of

[174] As discussed above, APRL's committee deferred consideration of the rules on solicitation thus APRL has not addressed nor is it recommending any changes to Rules 7.3 and 7.6.

many of the concepts explained in the comments to Rules 7.2, 7.4, and 7.5 offers additional direction to lawyers in interpreting how to avoid "false and misleading" communications when describing specific skills (including specialization or expertise), receiving prospective client referrals from third parties, and in naming law firms.

The proposed streamlining of the Model Rules is the most practical approach to bring the Rules in line with technological changes and current enforcement practices, while still protecting consumers from false, misleading, or deceptive practices.

The comments to Rule 7.1 provide lawyers with practical guidance on what conduct or statements may fall within the prohibited category of "false and misleading" and what statements are *not* considered misleading. The proposed amendments set forth objective criteria to determine what constitutes "false and misleading" communications about a lawyer's services, while preserving a lawyer's constitutional right to disseminate accurate commercial speech. These revisions further support the fifty-one U.S. lawyer regulatory entities in enforcing the least restrictive means to achieve the public policies of maintaining confidence in the legal system and assuring consumers have access to accurate information about legal services.

B. Uniform Enforcement Protocols

The primary goal of regulating lawyer advertising is to protect the public and consumers of legal services from deceptive or fraudulent advertising and marketing by lawyers. This is consistent with the primary goal of lawyer discipline as a whole: protection of the public.

To accomplish this goal, the Committee explored whether complaints made about lawyer advertising may be better addressed in a non-disciplinary framework rather than as a disciplinary investigation and prosecution of an alleged advertising rule violation. The Committee considered that members of the general public rarely file a complaint about a lawyer's advertising or marketing. It is believed that the overwhelming majority of complaints about a lawyer advertising are filed by other lawyers, not by clients or members of the general public. Frequently, the motivation for a lawyer to complain about another lawyer's advertising is that the complaining lawyer sincerely believes that all lawyers should be on a "level playing field" as to advertising and solicitation. The complaint often arises from the complaining lawyer's belief that he or she is suffering a competitive disadvantage.

Experience has shown that most of the reported breaches of the advertising rules are technical or minor in nature and do not involve actual deception of a consumer or client. Regulators can best remedy these kinds of breaches quickly and efficiently by diverting lawyer advertising complaints to regulatory staff that will communicate with the noncompliant lawyer on a more informal basis to obtain voluntary compliance. In other words, the regulatory staff should communicate with the lawyer who is the subject of a complaint to provide notice that the lawyer's advertising does not appear to comply with an applicable advertising rules and should be afforded an informal opportunity to address the issue—either by fixing and avoiding the problem or by explaining why no problem is present. Experience has also shown that, with few exceptions, lawyers will take the necessary action to bring their advertising into compliance once when the matter is brought to their attention. If the lawyer makes a satisfactory correction or provides a satisfactory explanation, the public will be protected.

In contrast, processing all lawyer advertising complaints through the full lawyer disciplinary system takes far more time and expense. It also siphons bar resources and attention away from the investigation of more serious lawyer misconduct where the interests of the public and clients are at greater risk of injury; the public is less protected.

There will be circumstances in which diversion of a complaint is inappropriate and the machinery of formal discipline should be invoked. This will be true, for example, in situations involving apparent coercion, duress, harassment, or criminal or fraudulent conduct involving a risk of demonstrable harm. This also will include lawyers who have been notified of actual or apparent non-compliance, and who either fail to respond or continue to violate the cited rules. That there will be infrequent cases deserving of more serious consideration and a further expenditure of disciplinary resources does not justify treating all cases that way. This is especially true where, as here, experience shows that the vast majority of cases neither need nor require such efforts.

State regulators should consider a non-disciplinary framework for regulating lawyer advertising in which a lawyer is given notice that a complaint has been made about his or her advertising, including identification of the problem or non-compliance, and an opportunity to remedy the matter or offer an explanation. If the lawyer remedies the problem or provides a sufficient explanation supporting his or her advertising, the matter can be closed. These complaints can be handled on an informal basis without referral of the complaint into the disciplinary system. With rare exceptions, lawyers that are given fair notice of non-compliance will remedy the matter and the file can be closed. If a satisfactory correction and/or explanation of the materials is not received, the complaint should be processed as a standard disciplinary complaint. For five years, the Virginia State Bar has used a non-disciplinary process of this nature for handling lawyer advertising complaints. Formal lawyer advertising complaints received by bar counsel or the intake department of the disciplinary system are referred to Ethics Counsel's office for informal non-disciplinary disposition. Absent extraordinary factors, formal discipline based on RPC violations relating to advertising and marketing materials is limited to situations involving lawyers who continue to violate the RPCs even after being placed on notice of their violations and the need to stop them; situations involving criminal conduct, fraudulent conduct or material and demonstrable harm to identified persons; or situations involving coercion, duress or harassment. Complaints of that nature are processed as standard disciplinary complaints, as the alleged conduct will likely involve the application of Rule 8.4(c). Virginia's model is an example of one that may be refined and adopted by the ABA and state bar associations across the country.

IX. Conclusion

It is long past time for rationality and uniformity to be brought to the regulation of lawyer advertising. The Committee recommends that the ABA Model Rules governing communications about legal services be consolidated into a single disciplinary rule that simply prohibits false or misleading statements. Adopting this approach to advertising regulation, combined with reasonable uniform enforcement policies and protocols by state disciplinary authorities, is in the Committee's view the best way to ensure honest communication by lawyers while at the same time promoting the widest possible access by the public to legal services.

ATTACHMENT 1

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Mr. Tuft is a member of the California State Bar Commission on the Revision of the Rules of Professional Conduct and a former chair of the California State Bar Committee on Professional Responsibility and Conduct. Mr. Tuft is a member of the ABA Center on Professional Responsibility and is a member of the Center's Policy Implementation Committee and Editorial Board. Mr. Tuft is a past president of the Association of Professional Responsibility Lawyers. He has taught courses on legal ethics as an adjunct professor at the University of San Francisco School of Law and is a frequent lecturer and writer on professional responsibility. Mr. Tuft has received several teaching and bar association awards for his work in legal education.

GEORGE R. CLARK

George R. Clark is a solo practitioner in Washington, D.C. who represents lawyers, law firms, and their clients. With more than thirty years of experience in professional responsibility matters (over twenty of them as inside ethics partner at a 1000 lawyer firm), he advises law firms and lawyers on the full range of ethics and practice issues, including conflicts and disqualification. A trial lawyer for over thirty years, he frequently consults on litigation-related ethics matters. Mr. Clark also serves as an expert witness, and lectures regularly on ethics issues. Additionally, he often advises clients on their dealings with their lawyers, and acts for lawyers in discipline and admission matters.

Mr. Clark is past chair (2009-2012) of the District of Columbia Bar Rules of Professional Conduct Review Committee. He has been selected for inclusion in 2012 through 2015 Washington DC Super Lawyers. He is a 1969 graduate of the University of Notre Dame (B.S. Physics), earned his J.D. from the University of Illinois College of Law (1972), and began his legal career as law clerk to the late Judge William B. Jones of the U.S. District Court in Washington. He is a member of the Center for Professional Responsibility and the Business Law Section (Firm Counsel Connection and Professional Responsibility Committee) of the American Bar Association and Treasurer of the Association of Professional Responsibility Lawyers. He and his wife Mary live in Washington, D.C., where he was chair of the Committee of 100 on the Federal City (2009-2012) and three time past president of the Federation of Citizens Associations of DC.

JAN L. JACOBOWITZ

Jan L. Jacobowitz is a Lecturer in Law, Associate Director of the Center for Ethics & Public Service and the Director of the Professional Responsibility & Ethics Program (PREP) at the University of Miami's School of Law. Under Ms. Jacobowitz's direction, PREP was a 2012 recipient of the ABA's E. Smythe Gambrell Award—the leading national award for a professionalism program. Ms. Jacobowitz has presented over one hundred PREP Ethics CLE Seminars and has written and been a featured speaker or panelist on topics such as Legal Ethics in Social Media and Advertising, Lawyer's First Amendment Rights, Cultural Awareness in the Practice of Law, and Mindful Ethics.

Prior to devoting herself to legal education, Ms. Jacobowitz practiced law for over twenty years. She began her career as a Legal Aid attorney in the District of Columbia; prosecuted Nazi war criminals at the Office of Special Investigations of the U.S. Department of Justice; was in private practice with general practice and commercial litigation firms in Washington, D.C. and Miami; and served as in-house counsel for a large Miami based corporation. Ms. Jacobowitz has a J.D. from George Washington University and a B.S. in Speech from Northwestern University. She is admitted to practice in the District of Columbia, Florida, and California, and is a certified civil court mediator.

PETER R. JARVIS

Peter Jarvis is a partner in Holland & Knight's Portland office, where he practices primarily in the area of attorney professional responsibility and risk management. Mr. Jarvis advises lawyers, law firms, corporate legal departments and government legal departments about the law governing lawyers. This includes, but is not limited to, matters relating to conflicts of interest, duties of confidentiality, other legal or professional ethics issues, advice on the avoidance of civil or criminal liability, law firm breakups, and questions relating to law firm or legal department structure and operation. Mr. Jarvis also serves as an expert witness and is an avid lecturer for public and private/in-house continuing legal education seminars.

Mr. Jarvis has decades of experience as a trusted adviser to lawyers and also draws on his substantial background as a civil litigation attorney in matters involving antitrust, appellate, business tort, general contract, insurance, product liability, tax and Uniform Commercial Code concerns. Prior to joining Holland & Knight, Mr. Jarvis was the partner-in-charge of the Portland office of a multistate law firm and was co-leader of that firm's national professional responsibility/risk management practice group. He also served for many years as the in-house ethics counsel for a multistate law firm.

BRUCE E. H. JOHNSON

Bruce E. H. Johnson is a partner in the Seattle office of Davis Wright Tremaine LLP. A member of the Washington State and California Bars, Mr. Johnson's litigation practice focuses on internet, media, and professional liability defense. He also regularly advises lawyers, law firms, and legal departments on legal ethics, professional responsibility, and malpractice matters. He has defended many lawsuits involving social media websites, including *Browne v. Avvo, Inc.*, which held that lawyer evaluations and ratings are statements of opinion absolutely protected by the First Amendment. One of the leading national authorities on First Amendment commercial speech protections, Mr. Johnson is the co-author (with Steven G. Brody) of the Practising Law Institute treatise Advertising and Commercial Speech: A First Amendment Guide.

ARTHUR J. LACHMAN

Arthur J. Lachman practices in Seattle, Washington, focusing on legal ethics, professional liability, and law firm risk management issues. A 1989 graduate of the University of Washington School of Law, he clerked on the Ninth Circuit Court of Appeals, has practiced as a commercial litigation attorney, and has taught civil litigation and ethics subjects at both Puget Sound area law schools. Mr. Lachman has served as president of the Association of Professional Responsibility Lawyers and chair of the ABA Center for Professional Responsibility's National Conference Planning Committee. He is co-author of *The Law of Lawyering in Washington*, published by the Washington State Bar Association, and served as chair of the WSBA Rules of Professional Conduct Committee from 2008 to 2010. Mr. Lachman has also served as chair of the Ethics/Loss Prevention Committee and Director of Professional Development at Graham & Dunn in Seattle. He holds bachelors and graduate degrees in accounting from the University of Illinois at Urbana-Champaign.

JAMES M. McCAULEY

James M. McCauley is the Ethics Counsel for the Virginia State Bar. Mr. McCauley and his staff write the draft advisory opinions for the Standing Committees on Legal Ethics and Unauthorized Practice of law and provide informal advice over the telephone to members of the bar, bench, and general public on lawyer regulatory matters. Mr. McCauley teaches Professional Responsibility at the T.C. Williams School of Law in Richmond, Virginia and served on the American Bar Association's Standing Committee on Legal Ethics and Professionalism from 2008-2011. Mr. McCauley served on the faculty of the Virginia State Bar's Mandatory Professionalism Course from 2004-2010. He is a Fellow of the Virginia Law and the American Bar Foundations. Mr. McCauley also served on the Board of Governors of the Real Property Section of the Virginia State Bar from 2004-2010. Mr. McCauley is a member of the John Marshall Inn of Court in Richmond, Virginia. In 2013, he was appointed by the Chief Justice of the Supreme Court of Virginia to serve on its Special Committee on Criminal Discovery Rules. Mr. McCauley serves on the Board of Directors for Lawyers Helping Lawyers.

RONALD D. ROTUNDA

Ronald D. Rotunda is the Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence at Chapman University. He joined the faculty in 2008. Before that, he was University Professor and Professor of Law at George Mason University, and the Albert E. Jenner, Jr. Professor of Law, at the University of Illinois. He is a magna cum laude graduate of Harvard College and a magna cum laude graduate of Harvard Law School, where he was a member of Harvard Law Review. He practiced law in Washington, D.C., and was assistant majority counsel for the Watergate Committee.

He has co-authored the most widely used course book on legal ethics, Problems and Materials on Professional Responsibility (Foundation Press, 12th ed. 2014) and is the author of a leading course book on constitutional law, Modern Constitutional Law (West Academic Co., 11th ed. 2015). He is the co-author of Legal Ethics: The Lawyer's Deskbook on Professional Responsibility (ABA-West/Thompson Reuters Publishing, St. Paul, Minnesota, 2014-15 ed.) (jointly published by the ABA and West/Thompson Reuters Publishing). Mr. Rotunda is also the co-author of the six-volume Treatise on Constitutional Law (West/Thompson Reuters Publishing, 5th ed. 2012), and a one volume Treatise on Constitutional Law (West Academic., 8th ed. 2010). He is also the author of several other books and more than 400 articles in various law reviews, journals, newspapers, and books in this country and in Europe. His works have been translated into French, German, Romanian, Czech, Russian, Japanese, and Korean and have been cited more than 2,000 times by law reviews and state and federal courts at every level, from trial courts to the U.S. Supreme Court. Professor Rotunda was rated in 2014 as one of "The 30 Most Influential Constitutional Law Professors" in the United States.

LYNDA C. SHELY

Lynda C. Shely, of The Shely Firm, PC, Scottsdale, Arizona, provides ethics advice to lawyers and law firms. She also assists lawyers in responding to initial Bar charges, performs law office risk management reviews, trains law firm staff in ethics requirements, and advises on a variety of ethics topics including ancillary business ventures, conflicts of interest, fees and billing requirements, trust account procedures, multi-jurisdictional practice requirements, and ethics requirements for law firm advertising/marketing. Prior to opening her own firm, she was the Director of Lawyer Ethics for the State Bar of Arizona for ten years. Before she moved to Arizona, Ms. Shely was an intellectual property associate with Morgan, Lewis & Bockius in Washington, DC.

Ms. Shely received her B.A. from Franklin & Marshall College in Lancaster, Pennsylvania and her J.D. from Catholic University in Washington, DC. She was selected as the State Bar of Arizona Member of the Year in 2007 and has received other awards from the State Bar for her contributions to Law Related Education and Outstanding Leadership in Continuing Legal Education. She also received the Scottsdale Bar Association's 2010 Award of Excellence. Ms. Shely is a former chair of the ABA Standing Committee on Client Protection and a past member of the ABA's Professionalism Committee and Center for Professional Responsibility Conference Planning Committee. She is the President-Elect of the Association of Professional Responsibility Lawyers and also serves on several State Bar of Arizona Committees. Ms. Shely was the 2008-2009 president of the Scottsdale Bar Association. She has also been an adjunct professor at all three Arizona law schools, teaching professional responsibility.

JAMES COYLE

Jim Coyle is Attorney Regulation Counsel for the Colorado Supreme Court. In that capacity, Mr. Coyle assists the Supreme Court with regulating the practice of law in Colorado, including attorney admissions, registration, discipline, disability, diversion, mandatory continuing legal and judicial education, unauthorized practice and inventory counsel functions. Mr. Coyle's office also acts as counsel for the Attorneys Fund for Client Protection and the Commission on Judicial Discipline. Mr. Coyle is an active member of the American and Colorado Bar Associations, National Conference of Bar Examiners, National Organization of Bar Counsel, ABA Center for Professional Responsibility, National Client Protection Organization, National Continuing Legal Education Regulators Association, Association of Judicial Discipline Counsel and ABA Commission on Lawyer Assistance Programs.

DENNIS A. RENDLEMAN

Dennis A. Rendleman is Ethics Counsel in the Center for Professional Responsibility at the American Bar Association where he provides expertise and research on legal and judicial ethics and professional responsibility law and professionalism. He is counsel to the ABA Standing Committee on Ethics and Professional Responsibility. Prior to joining the ABA, Mr. Rendleman was Assistant Professor of Legal Studies at the University of Illinois at Springfield and spent twenty-three years at the Illinois State Bar Association, leaving in 2003 as General Counsel. Mr. Rendleman has engaged in the private practice as a consultant and expert witness in professional responsibility and discipline matters. He is a former member of and current liaison to the Illinois Supreme Court's Committee on Professional Responsibility and has been a member of the Illinois Judicial Ethics Committee since its founding in 1998. He is a graduate of the University of Illinois and its College of Law.

ATTACHMENT 2

APRL Proposed Changes to the
ABA Model Rules of Professional Conduct - 2015

[CLEAN VERSION]

Rule 7.1 Communications Concerning A Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Comments

[1] This Rule governs all communications about a lawyer's services. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] It is professional conduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching. [*from MR 7.2 Comments]*

[6] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[7] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. [*from MR 7.2 Comments]*

Areas of Expertise/Specialization

[8] A lawyer may indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services. A lawyer may state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification. [*from MR 7.4 Comments]*

Firm Names

[9] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer. [*from MR 7.5 Comments]*

[10] Lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm. [*from MR 7.5 Comments]*

Rule 7.2 Advertising

Comments (*Comments 1, 2, and 3 moved to MR 7.1 Comments)*

Rule 7.3 Solicitation of Clients

No changes

Rule 7.4 Communication of Fields of Practice and Specialization

Comments (*Comments 1 and 3 were moved to MR 7.1 Comments)*

Rule 7.5 Firm Names And Letterheads

Comments (*Comments moved to MR 7.1 Comments)*

Rule 7.6 Political Contributions To Obtain Legal Engagements Or Appointments By Judges

No changes

APRL Proposed Changes to the
ABA Model Rules of Professional Conduct - 2015

[REDLINE VERSION]

Rule 7.1 Communications Concerning A Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Comments

[1] This Rule governs all communications about a lawyer's services~~, including advertising permitted by Rule 7.2~~. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] It is professional conduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(c). See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching. [*from MR 7.2 Comments]*

[6] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[7] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. [*from MR 7.2 Comments*]

Areas of Expertise/Specialization

[8] A lawyer may indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services. A lawyer may state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification. [*from MR 7.4 Comments*]

Firm Names

[9] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer. [*from MR 7.5 Comments*]

[10] Lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm. [*from MR 7.5 Comments*]

Rule 7.2 Advertising

~~(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.~~

~~(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may~~

~~(1) pay the reasonable costs of advertisements or communications permitted by this Rule;~~

~~(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;~~

~~(3) pay for a law practice in accordance with Rule 1.17; and~~

~~(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if~~

~~(i) the reciprocal referral agreement is not exclusive, and~~

~~(ii) the client is informed of the existence and nature of the agreement.~~

~~(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.~~

Comments *(Comments 1, 2, and 3 moved to MR 7.1 Comments)*

~~[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.~~

~~[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.~~

~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to~~

many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Except as permitted under paragraphs (b)(1) (b)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false

~~or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.~~

~~[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.~~

Rule 7.3 Solicitation of Clients

No changes

Rule 7.4 Communication of Fields of Practice and Specialization

~~(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.~~

~~(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.~~

~~(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.~~

~~(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:~~

~~(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and~~

~~(2) the name of the certifying organization is clearly identified in the communication.~~

Comments *(Comments 1 and 3 were moved to MR 7.1 Comments)*

~~[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty," or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.~~

~~[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.~~

~~[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.~~

Rule 7.5 Firm Names And Letterheads

~~(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.~~

~~(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~

~~(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.~~

~~(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.~~

Comments *(Comments moved to MR 7.1 Comments)*

~~[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.~~

~~[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.~~

Rule 7.6 Political Contributions To Obtain Legal Engagements Or Appointments By Judges

No changes

ATTACHMENT 3

APRL ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

Two First National Plaza
20 South Clark Street
Suite 1050
Chicago, IL 60603
www.aprl.net

Phone: 312.782.4396
Fax: 312.782.4725
admin@aprl.net

October 17, 2014

Re: **Regulation of Lawyer Advertising**

Dear Bar Counsel:

I am writing to you on behalf of the Committee on the Regulation of Lawyer Advertising created by the Association of Professional Responsibility Lawyers ("APRL"). As you may know, APRL is a national organization of lawyers and law professors specializing in the field of legal ethics and professional responsibility. APRL's committee is currently studying the enforcement of lawyer advertising regulations by bar regulators particularly in reference to the use of technology and electronic media. As you will note from the list below, our committee includes both APRL and non-APRL members.

Courts imposing lawyer discipline typically assert that the purpose of lawyer discipline is not to punish the lawyer but to protect the public. On the assumption that this is also the purpose behind discipline for violation of rules regulating advertising and marketing of lawyer services, the Committee would appreciate it if you could respond to the attached brief survey.

Please also indicate whether there have been any consumer surveys in your jurisdiction regarding lawyer advertising and, if so, whether you can provide us with the results of those surveys.

Thank you for responding to our request. We would appreciate receiving your response by email or letter in the next thirty days. If you have any questions or would prefer instead to discuss these matters over the phone, please let me know so that I can arrange a time and date for a call.

I look forward to hearing from you.

Very truly yours,

Mark L. Tuft
Chair, APRL Committee on the
Regulation of Lawyer Advertising

APRL Committee on the Regulation of Lawyer Advertising

George R. Clark Esq., Washington, D.C.
James M. McCauley, Virginia State Bar, Richmond, VA
Nicole Hyland, Frankfurt Kurnit Klein & Selz, NY., NY
Jan L. Jacobowitz, Professor, University of Miami School of Law, Coral Gables, FL
Peter R. Jarvis, Holland & Knight LLP., Portland, OR
Bruce E. H. Johnson, Davis Wright Tremaine, LLP, Seattle, WA
Ronald D. Rotunda, Professor, Chapman University Law School, Orange, CA
Lynda C. Shely Esq., The Shely Law Firm, Scottsdale, AZ
Mark L. Tuft, Cooper, White & Cooper LLP., San Francisco

Liaisons:
Dennis A. Rendleman, Ethics Counsel, ABA Center on Professional Responsibility
James C. Coyle, Attorney Regulation Counsel, Colorado Supreme Court, Denver, CO., NOBC.

ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

2014 ADVERTISING REGULATION SURVEY

1. Who are the predominant complainants in lawyer advertising charges?

   - Other lawyers _____
   - Consumers _____
   - Judges _____
   - Public officials _____
   - Anonymous _____

2. How often do you receive complaints about lawyer advertising?

   - Frequently _____
   - Rarely _____
   - Almost never _____

3. How do you typically handle complaints about lawyer advertising where there is a potential advertising rule violation?

   - Informally (e.g., call or letter requesting changes) _____
   - Formal investigation _____
   - Diversion _____
   - Peer Review _____
   - Dismissal with advertising language _____
   - Warning letter _____
   - Not at all addressed _____

4. How do you typically handle complaints about lawyer advertising where there is a provable advertising rule violation?

- Informally (e.g., call or letter requesting changes) _____
- Formal charges _____
- Diversion _____
- Dismissal with advertising language _____
- Warning letter _____
- Other disposition (please explain) _____
- Not at all addressed _____

5. Does the disposition of complaints where there is a provable advertising rule violation depend on the particular rule (e.g., ABA Model Rules 7.1 – 7.5)?

- Yes _____
  (please identify the advertising rules that receive the greatest attention)
- No _____

6. Is your jurisdiction engaged in actively monitoring lawyer advertisements?

- Yes (please describe these activities) _____
- No _____

7. How often do formal advertising complaints alleging false or misleading communications result in disciplinary sanctions (including diversion and probation)?

- Frequently _____
- Rarely _____
- Almost never _____

8. How often do formal advertising complaints alleging violations of the advertising rules other than false or misleading communications result in disciplinary sanctions (including diversion and probation)?

- Frequently _____
- Rarely _____
- Almost never _____

9. Are there any reported decisions involving or including violations of advertising regulations in which there is a finding of actual consumer or client harm or actual confusion?

- Yes _____
  (please list names, years, and type of harm/confusion)
- No _____

10. In those circumstances where discipline has been imposed, did the violation involve conduct that was partly or entirely based upon dishonesty, fraud, deceit or misrepresentation, whether by affirmative statement or concealment?
(see ABA Model Rule 8.4(c))

- Yes _____
  (please explain, including what state of mind requirement was applied)
- No _____

11. Have there been any formal discipline cases finding consumer or client harm or confusion that *did not* violate Rule 8.4(c)?

- Yes _____
  (please explain what rule was violated and what harm was identified)
- No _____

Thank you for responding by November 25, 2014

Please address your responses to:

Mark L. Tuft, Chair
APRL Regulation of Lawyer Advertising Committee
201 California Street, 17th Floor
San Francisco, CA 94111
mtuft@cwclaw.com

APPENDIX B

APRL ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

Association of Professional Responsibility Lawyers

Regulation of Lawyer Advertising Committee
Supplemental Report April 26, 2016

Introduction and Summary

The Committee's initial report, dated June 22, 2015, addressed concerns about overly restrictive and inconsistent state regulation of lawyer advertising, particularly in relation to today's diverse and innovative forms of electronic media advertising. The Committee recommended changes in the advertising rules to achieve greater rationality and uniformity in regulatory enforcement of lawyer advertising and marketing by proposing a new Rule 7.1 in place of ABA Model Rules 7.1, 7.2, 7.4 and 7.5 and by the use of non-disciplinary means to address most complaints about lawyer advertising. The Committee reserved for later consideration issues related to the regulation of direct solicitation of clients and communications transmitted in a manner that involves intrusion, coercion, duress and harassment (Model Rule 7.3). The Committee also deferred consideration of reciprocal referrals (Rule 7.2(b)(4)) and the effect of certain forms of lawyer advertising on the regulation of lawyer referral services.

The Committee has now considered the solicitation rules and has concluded that the legitimate regulatory objectives of preventing overreaching and coercion by lawyers who use in-person solicitation and targeted communications with the primary motivation of pecuniary gain can best be achieved by combining provisions of Model Rules 7.2 and 7.3 in a single rule. The Committee's proposed revisions of Model Rules 7.2 and 7.3 in the form of new Rule 7.2 is set forth in Attachment A.

The Committee's revised rule both defines solicitation and distinguishes solicitations that are prohibited from those that are permitted with appropriate protections.

Overview of the Legal and Constitutional Principles that Support Revising the Current Regulation of In-Person Solicitation, Targeted Communications, and Paying for Referrals

In developing proposed Rule 7.2 and this supplemental report, the Committee analyzed Supreme Court precedent, which identifies specific factors to consider when regulators seek to prohibit or restrict a lawyer's direct solicitation of a potential client.[1] The Committee concluded

[1] *The Fla. Bar v. Went For It, Inc.*, 515 U.S. 618 (1995) (holding that Florida's 30-day ban on direct mail solicitation in accident or disaster cases materially advances, in a manner narrowly tailored to achieve the objectives, the state's substantial interest in protecting the privacy of potential recipients and in preventing the erosion of public confidence in the legal system); *Shapero v. Ky. Bar Ass'n*, 486 U.S. 466 (1988) (holding that a state may not totally prohibit targeted direct mail to prospective clients known to face specific legal problems where the state's interest in preventing overreaching or coercion by an attorney using direct mail can be served by restrictions short of a total ban); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978) (upholding a total ban of in-person solicitation when the primary motivation behind the contact is the attorney's pecuniary gain); *In re Primus*, 436 U.S. 412 (1978) (holding that direct in-person solicitation is entitled to greater constitutional protection against state regulation when the attorney is motivated by the desire to promote political goals rather than pecuniary gain). *See also The Fla. Bar v. Herrick*, 571 So.2d 1303 (1990) (holding that a state can constitutionally regulate and restrict direct-mail solicitations by requiring personalized mail solicitation to be plainly marked as an "Advertisement."); *"Commercial Speech Doctrine,"* THE FLORIDA BAR,

that most of the current restrictions on solicitation in the attorney advertising rules as well as the underlying public policy at play are based primarily upon lawyers approaching prospective clients in a face-to-face encounter without regard to today's digital world of electronic communications.

In fact, the ABA historically expressed concern about in-person solicitation assuming a lawyer may overwhelm a potential client and that, given the verbal nature of the exchange, it may be unclear what the lawyer said or what the prospective client reasonably inferred. However, that rationale does not apply to electronic communications, such as text messaging and posting on social media and in chat rooms, where there are verbatim logs or records of the communications that preserve the lawyer-prospective client exchange, and where the consumer can simply delete/ignore the exchange.

The Supreme Court has upheld restrictions on lawyer solicitation based upon the rationale that lawyers are better trained and skilled than other professionals in persuasion and oral advocacy.[2] For example, in *Ohralik v. Ohio State Bar Ass'n*,[3] the Court upheld a blanket prohibition against in-person solicitation of legal business for pecuniary gain. The state's interest in preventing "those aspects of solicitation that induce fraud, undue influence, intimidation, overreaching and other forms of vexatious conduct" overrides the lawyer's interest in communication. Moreover, the Supreme Court noted that since in-person solicitation for pecuniary gain is basically impossible to regulate, a prophylactic ban is constitutional.

Once again, that rationale may be justified when applied to traditional face-to-face solicitation and live telephone conversations, but loses ground when applied to today's prerecorded telephonic messages and other electronic communications. Individuals may easily ignore a message that a lawyer sends via a chat room, text message or instant message without feeling awkward or impolite in doing so, as they might in a face-to-face encounter or a live telephone conversation. Modern telephone communication also allows a person who sees an unfamiliar number on his caller ID to easily ignore, block or not answer the incoming call. In fact, the tremendous growth of unsolicited business calls have created an environment in which people routinely ignore unfamiliar numbers and, at their convenience, screen their voicemail messages deciding whether to respond to the caller or delete the message. As a result, the risk of duress, coercion, over-persuasion or undue influence is far less with many forms of electronic communications than with live (face-to-face) communications and therefore the case for restricting solicitation by electronic communication is much weaker. Recall that the facts in *Ohralik* involved face-to-face contact between the lawyer and the prospective client.

As the Supreme Court noted in *Edenfield v. Fane*,[4] striking down a ban on in-person solicitation by CPAs:

> "[T]he constitutionality of a ban on personal solicitation will depend upon the identity of the parties and the precise circumstances of the solicitation. Later cases

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https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/3BC6699A524B477B85257283005D415D/$FILE/Information%20on%20the%20Commercial%20Speech%20Doctrine.pdf?OpenElement.

[2] *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 464-465 (1978)(finding a greater potential for overreaching when a lawyer, professionally trained in the art of persuasion, personally solicits an unsophisticated, injured or distressed person).

[3] 436 U.S. 447, 454 (1978).

[4] 507 U.S. 761 (1993).

have made this clear, explaining that *Ohralik's* holding was narrow and depended upon certain "unique features of in-person solicitation by lawyers" that were present in the circumstances of that case.

> *Ohralik* was a challenge to the application of Ohio's ban on attorney solicitation and held only that a State Bar 'constitutionally may discipline a lawyer for soliciting clients in person, for pecuniary gain, under circumstances likely to pose dangers that the State has a right to prevent.' While *Ohralik* discusses the generic hazards of personal solicitation, the opinion made clear that a preventative rule was justified only in situations 'inherently conducive to overreaching and other forms of misconduct.'"[5]

Therefore, when considering other means of solicitation, for example, through chat rooms, social media, text messaging, instant messaging, etc., regulation of those contacts is justified only if the solicitation occurs under circumstances that are "inherently conducive to overreaching or other forms of misconduct."

The ABA Model Rules currently include a prohibition against what is referred to as "real-time electronic contact" as a form of "in-person" solicitation. See ABA MR 7.3(a).This Committee believes that the term "real-time electronic contact" as a moniker to describe "in person" solicitation ignores the required examination of the precise circumstances under which a solicitation occurs. Many forms of social media and electronic communication (i.e., texting, instant messaging, posting on social media) are more akin to a targeted written communication rather than a face-to-face communication because the person contacted has an opportunity to reflect or research before responding or not respond at all. In other words, "real-time electronic contacts" with a potential client are not face-to-face encounters but are more like targeted mailings, which are constitutionally protected. There is no need for discipline unless they are inherently conducive to overreaching or other forms of misconduct. The requirements under paragraphs (c) and (d) of the proposed rule in addition to the requirements of Rule 7.1 serve as adequate protection and an absolute ban is no longer warranted.

For instance, a chat room is a cyber construct. It is not a room and no one chats. It is a "place" on the Internet where people can visit and write whatever they want, just like a listserv or Facebook Messenger. Anyone can leave the chat room; or, they can "lurk" without posting. No one is "trapped" in an Internet "chat room" with an aggressive lawyer like the hospitalized accident victim in *Ohralik*. Everything posted in a chat room is in writing and there is a record of what is said. The point is not whether chat rooms may be described as "real time" communication, but rather that the contacts that occur in an Internet chat room simply are not "in person" communications. Thus, there is no justification for a prophylactic ban on lawyer solicitation in an Internet chat room or other "real-time" electronic forums.[6] Those communications are subject to the general prohibition of false or misleading speech.

"Face time," "Skype" and other forms of VOIP[7] video conferencing, are just telephone conversations. The Committee's proposed rule bans live telephone calls (with individuals other than those excepted in Rule 7.2(a)), and so it would also ban solicitation via "Face time" or

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[5] 507 U.S. at 774. (Citations omitted).

[6] See Philadelphia Bar Ass'n Ethics Op. 2010-6; Florida Advisory Opn. 1-00-1 (Revised).

[7] VOIP is "Voice over the Internet Protocol."

"Skype" because the communication is just a live telephone call with the ability to show yourself to the other person (if he consents).

Though described by the ABA rules as "real-time electronic contacts," if the means of solicitation is more akin to targeted letters or written communications, state regulators cannot impose a prophylactic ban. *Shapero v. Kentucky Bar Ass'n*[8], held that the state may not prohibit a lawyer from sending truthful solicitation letters to persons identified as having legal problems. In *Shapero*, the Court focused on the method of communication and found targeted letters to be comparable to the print advertising used in *Zauderer,*[9] which can easily be ignored or discarded. The same reasoning applies to social media, texting and other forms of electronic solicitation.

The Supreme Court upheld (in a 5 to 4 decision) a Florida Bar rule banning targeted direct mail solicitation to personal injury accident victims or their families for 30 days after an accident or disaster. *Florida Bar v. Went For It, Inc.*[10] However, in reaching its holding the Court focused on the timing of the letters. The Court found that the timing and intrusive nature of the targeted letters was an invasion of privacy; and, when coupled with the negative public perception of the legal profession, the Florida rule imposing a 30 day "cooling off" period materially advanced a significant government interest. This decision, however, does not support a prophylactic ban on targeted letters, only a restriction as to their timing. Moreover, other states have not followed Florida's rule.

Thus, having considered the indirect nature of electronic communication, the Committee recommends a rule that imposes a ban only on face-to-face and live telephone solicitations, but not "real time" electronic or video contacts with a potential client. Several state bar opinions have reached similar conclusions.[11]

In addition to limiting prohibited solicitation to face-to-face and live telephone, the Committee proposes an expansion of the exceptions to the ban on direct in-person solicitation to include persons who are sophisticated users of legal services and persons who are contacted pursuant to a court-ordered class action notification. As in the case of persons who are lawyers or with whom the lawyer has a close personal or family relationship, there is far less likelihood of undue influence, intimidation and overreaching when the person contacted is a sophisticated user of legal services.[12] Proposed Comment [4] describes a sophisticated user of legal services as a person who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. The exception under paragraph (b)(3) reflects existing case law. In each instance, the safeguards under paragraphs (c) and (d) as well as the requirements of Rule 7.1 serve as adequate protection and an absolute ban is no longer warranted in these situations.

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[8] 486 U.S. 466 (1988).

[9] *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985).

[10] 515 U.S. 618 (1995).

[11] Philadelphia Bar Ass'n Ethics Op. 2010-6 concludes that Rule 7.3 does not apply to solicitation by e-mail, social media, chat room or other electronic means where it would not be socially awkward for potential client to ignore a lawyer's overture as they can with targeted mailing; such contacts are not "real time" communications for purposes of the rule. North Carolina State Bar Op. 2011-08 advises that a lawyer's use of chat room support service does not violate Rule 7.3 as it does not subject the website visitor to undue influence or intimidation; the visitor has the ability to ignore the live chat button or to indicate with a click that he or she does not wish to participate in a live chat session. Florida also concurs as evidenced by its complete reversal of its original opinion that banned chat room solicitation and its acknowledgement of the evolution of digital communications. Florida Advisory Opinion A-00-1 (Revised) (Approved by the Board Review Committee on Professional Ethics on October 15, 2015) notes,"... written communications via a chat room, albeit in real time, does not involve the same pressure or opportunity for overreaching" as face to face solicitation).

[12] Other state bar rules have recognized this long-established exception. See Va. Rule 7.3, cmt.[2] at http://www.vsb.org/pro-guidelines/index.php/rules/information-about-legal-services/rule7-3/

Proposed Rule 7.2

Proposed Rule 7.2 combines elements of current Model Rules 7.2 and 7.3 regarding solicitation of clients. Paragraph (a) provides a definition of "solicitation" that is derived from the first sentence in Comment [1] to Model Rule 7.3. The Committee believes it is important to define what constitutes a solicitation in the black letter of the rule rather than in a comment and that the definition apply to both direct in-person and targeted written contacts. The definition in paragraph (a) tracks Model Rule 7.3, Comment [1] except that it clarifies that a solicitation includes targeted communications initiated by "or on behalf of" a lawyer and limits solicitations to communications that offer to provide legal services "in a particular matter." The phrase "in a particular matter" is consistent with Model Rule 7.3(c) and paragraph (c) of this rule. The comments to the proposed rule make it clear that all in-person and targeted communications offering to provide legal services in regard to a particular matter must comply with Rule 7.1.

Paragraph (b) defines solicitations that are prohibited under the reasoning in *Ohralik v. Ohio State Bar Ass'n.*[13] Prohibited solicitations under paragraph (b) include employees and other agents of the lawyer. For the reasons described above, the Committee believes that a total ban on in-person contacts to solicit professional employment when a significant motive is the lawyer's pecuniary gain is justified only in the case of direct face-to-face and live telephone contacts and not in the case of real time electronic contact. Chat rooms and other forms of real time electronic communication are less fraught with the possibility of intimidation and coercion and are more properly addressed under paragraphs (c) and (d) of the proposed rule.

The exceptions to the ban on direct in-person solicitation have been expanded to include persons who are sophisticated users of legal services and persons who are contacted pursuant to a court-ordered class action notification. Proposed Comment [4] describes a sophisticated user of legal services as a person who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. The exception under paragraph (b)(3) reflects existing case law.

Paragraph (c) carries forward the requirements of Model Rule 7.3(c) with minor revisions. The phrase "on or behalf of" a lawyer had been added for greater clarity and is consistent with the definition of solicitation in paragraph (a)

Paragraph (d) provides a more straightforward and clear statement of the protections in Model Rule 7.3(b). These protections apply to all in-person and targeted communications permitted under the rule. The headings to each paragraph provide additional clarity.

As noted above, the Committee recommends stream-lining the regulations regarding "solicitation" currently in Model Rules 7.2 and 7.3, while maintaining the legitimate policy objectives of both rules, by including solicitation of potential clients both by direct in-person, face-to-face or telephone communication and through paying someone else something of value for referring prospects in a single rule. Proposed Rule 7.2 combines the solicitation provisions of Model Rule 7.3 with the provision in Model Rule 7.2(b) of refraining from giving someone something of value for referring clients because both provisions involve the solicitation of prospective clients. Paragraph (e) carries forward Model Rule 7.3(d) without substantive change.

Paragraph (f) is substantially the same as Model Rule 7.2(b), which prohibits "giving anything of value" to anyone for referring clients to a lawyer, other than to employees and lawyers

[13] 436 U.S. 447 (1978).

who work in the same firm as the lawyer receiving the referral. Rule 7.2(f)(1) is changed to clarify that payments for online group directories/advertising platforms are just payments for advertising. Paying for referrals historically was a prohibited form of solicitation, allegedly because of the risk that a lawyer who pays someone for referrals would engage in unseemly "ambulance chasing" by engaging runners to lure potential clients. Thus, as Hazard, Hodes, & Jarvis, *Law of Lawyering* §60.05 (4th ed. 2015) notes: "Ordinarily, paying for a recommendation of a lawyer's services is a form of solicitation, and thus prohibited by Model Rule 7.3. Rule 7.2(b), however, provides several commonsense exceptions for a recommendation of services, but where the evils of direct contact solicitation are not present." The Committee has added the language about employees and lawyers in the same firm to address the reality that lawyers in the same firm routinely pay a portion of earned fees on a matter to the "originating" lawyer in the firm. The policy prohibiting giving anything of value for client referrals reflects the same public policy concerns as the Federal Trade Commission's restrictions on the use of endorsements and testimonials in advertising, which are premised on the recognition that marketing products and services based on compensated endorsers, without conspicuous disclosure of the details of their connections, is unfair and deceptive to consumers. *See* 16 C.F.R. Part 255.

The provision in Model Rule 7.2(b) pertaining to lawyer referral services has been carried forward without change to paragraph (f)(2) to permit, among other things, lawyers to pay charges for prepaid plans and not-for-profit or "qualified lawyer referral service." The language was modified in 2000 because, as the Reporter's Notes to the *ABA Ethics 2000 Commission Proposed Amendments to the Model Rules of Professional Conduct* explain:

> This change is intended to more closely conform the Model Rules to ABA policy with respect to lawyer referral services. It recognizes the need to protect prospective clients who have come to think of lawyer referral services as consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.

Comments to Proposed Rule 7.2

Comment [1] to proposed Rule 7.2 is derived from the second sentence in Comment [1] to Model Rule 7.3.

Comments [2] and [3] are Comments [2] and [4] of Model Rule 7.3. No substantive change is intended.

Comment [4] derives from Comment [5] to Model Rule 7.3 and adds a sentence describing who is a sophisticated user of legal services. Comment [5] carries over Comment [8] to Model Rule 7.3. Comments [6] and [7] are based on Comments [6] and [7] of Model Rule 7.3. Comment [8] derives from Comment [9] of Model Rule 7.3

Comments [9] – [11] are Comments [5], [6] and [8] from Model Rule 7.2.

2014-2016 Committee Members and Liaisons

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Jan L. Jacobowitz
Peter R. Jarvis
Bruce E. H. Johnson
Arthur J. Lachman
James M. McCauley
Ronald D. Rotunda
Lynda C. Shely
James Coyle, Liaison, National Organization of Bar Counsel
Dennis A. Rendleman, Liaison, American Bar Assn. Center for Professional Responsibility

ATTACHMENT A

APRL Proposed Amendments to
ABA Model Rule of Professional Conduct 7.2
[CLEAN VERSION]

Rule 7.2 Solicitation of Clients

Solicitation

(a) A solicitation is a targeted communication initiated by or on behalf of a lawyer, that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services for a particular matter.

(b) Except as provided in paragraphs (c) and (e), a lawyer shall not solicit in person by face-to-face contact or live telephone, or permit employees or agents of the lawyer to solicit in person or by live telephone on the lawyer's behalf, professional employment from a prospective client when a significant motive for doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer;
(2) is a sophisticated user of legal services;
(3) is pursuant to a court-ordered class action notification; or
(4) has a family, close personal, or prior professional relationship with the lawyer.

Written Solicitation

(c) Every written, recorded or electronic solicitation by or on behalf of a lawyer seeking professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (b)(1)-(4).

Limitation on Solicitation

(d) A lawyer shall not solicit professional employment from any person if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
(2) the solicitation involves coercion, duress or harassment.

Prepaid and Group Legal Services Plans

(e) Notwithstanding the prohibitions in paragraph (b), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Paying Others to Recommend a Lawyer

(f) A lawyer shall not compensate, give or promise anything of value to a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm, except that a lawyer may:

(1) pay the reasonable costs of advertisements and other communications permitted by Rule 7.1, including online group advertising;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
(i) the reciprocal referral agreement is not exclusive; and
(ii) the client is informed of the existence and nature of the agreement.

Comment

Solicitation

[1] A lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves in-person, face-to-face or live telephone contact by a lawyer with someone known to need legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyers to the public, rather than direct in-person, face-to-face or live telephone communication, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.1 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in violation of Rule 7.1. The contents of in-person, face-to-face or live telephone communication can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading. All solicitations permitted under this Rule must comply with the prohibition in Rule 7.1 against false and misleading communications

[4] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or a sophisticated user of legal services. A sophisticated user of legal services is an individual who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. Consequently, the general prohibition in paragraph (b) and the requirements in paragraph (c) are not applicable in those situations. Also, paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5] The requirement in paragraph (c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation that contains information that is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of paragraph (d)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of paragraph (d)(1) is prohibited. Moreover, if after sending a solicitation or other communication as permitted by Rule 7.1 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of paragraph (d).

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.1.

[8] Paragraph (e) of this Rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be

designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rule 7.1 and this Rule. See Rule 8.4(a).

Paying Others to Recommend a Lawyer

[9] Except as permitted under paragraphs (f)(1)-(f)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rules 7.1 and this Rule. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (f)(1), however, allows a lawyer to pay for advertising and solicitations permitted by Rule 7.1 and this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff and website designers, as long as the employees, agents and vendors do not direct or regulate the lawyer's professional judgment (see Rule 5.4(c)). Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[10] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)

[11] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (f) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

APRL Proposed Amendments to
ABA Model Rules of Professional Conduct 7.2 and 7.3
[REDLINE VERSION]

Rule 7.2 ~~Advertising~~Solicitation of Clients

Solicitation

(a) ~~Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.~~A solicitation is a targeted communication initiated by or on behalf of a lawyer, that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services for a particular matter.

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(b) Except as provided in paragraphs (c) and (e), a lawyer shall not solicit in person by face-to-face contact or live telephone, or permit employees or agents of the lawyer to solicit in person or by live telephone on the lawyer's behalf, professional employment from a prospective client when a significant motive for doing so is the lawyer's pecuniary gain, unless the person contacted:

(4) is a lawyer;
(5) is a sophisticated user of legal services;
(6) is pursuant to a court-ordered class action notification; or
(4) has a family, close personal, or prior professional relationship with the lawyer.

Written Solicitation

(c) Every written, recorded or electronic solicitation by or on behalf of a lawyer seeking professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (b)(1)-(4).

Limitation on Solicitation

(d) A lawyer shall not solicit professional employment from any person if:
(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
(2) the solicitation involves coercion, duress or harassment.

Prepaid and Group Legal Services Plans

(e) Notwithstanding the prohibitions in paragraph (b), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Paying Others to Recommend a Lawyer

(f) A lawyer shall not compensate, give or promise anything of value to a person who is not an employee or lawyer in the same law firm for the purpose of recommending or securing the ~~lawyer's~~ services of the lawyer or law firm, except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by ~~this~~ Rule 7.1 including online group advertising;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

~~(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.~~

Comment

~~[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.~~

~~[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.~~

~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would~~

~~regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.~~

~~[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.~~*[portions of these Comments were moved to the Comments to 7.1]*

Solicitation

[1] A lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves in-person, face-to-face or live telephone contact by a lawyer with someone known to need legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyers to the public, rather than direct in-person, face-to-face or live telephone communication, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.1 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in violation of Rule 7.1. The contents of in-person, face-to-face or live telephone communication can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading. All solicitations permitted under this Rule must comply with the prohibition in Rule 7.1 against false and misleading communications

[4] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer or a sophisticated user of legal services. A sophisticated user of legal services is an individual who has had significant dealings with the legal profession or who regularly retains legal services for business purposes. Consequently, the general prohibition in paragraph (b) and the requirements in paragraph (c) are not applicable in those situations. Also, paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade

organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5] The requirement in paragraph (c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation that contains information that is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of paragraph (d)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of paragraph (d)(1) is prohibited. Moreover, if after sending a solicitation or other communication as permitted by Rule 7.1 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of paragraph (d).

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.1.

[8] Paragraph (e) of this Rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rule 7.1 and this Rule. See Rule 8.4(a).

Paying Others to Recommend a Lawyer

[~~9~~5] Except as permitted under paragraphs (~~f~~b)(1)-(~~b~~f)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.~~3~~1 and this Rule. A communication contains a recommendation if it

endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (~~b~~f)(1), however, allows a lawyer to pay for advertising and ~~communications~~solicitations permitted by Rule 7.1 and this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff and website designers, as long as the employees, agents and vendors do not direct or regulate the lawyer's professional judgment (See Rule 5.4(c)). Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[10~~6~~] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals to lawyers who own, operate or are employed by the referral service.)

~~[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would~~

~~mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.~~

[~~8~~11] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (~~b~~f) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

~~**Rule 7.3 Solicitation of Clients**~~

~~(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:~~

~~(1) is a lawyer; or~~

~~(2) has a family, close personal, or prior professional relationship with the lawyer.~~

~~(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:~~

~~(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or~~

~~(2) the solicitation involves coercion, duress or harassment.~~

~~(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).~~

~~(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.~~

~~**Comment**~~

~~[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.~~

~~[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.~~

~~[3] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or real-time electronic persuasion that may overwhelm a person's judgment.~~

~~[4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.~~

~~[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from~~

~~participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.~~

~~[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).~~

~~[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.~~

~~[8] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

~~[9] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).~~

(substance of ER 7.3 moved to new ER 7.2(a), (b), (c), and (d))

WSBA

TO: Board of Governors

FROM: Terra Nevitt, Director of Advancement and Chief Development Officer

DATE: March 2, 2017

RE: Comment on the Access to Justice Board's Draft State Plan for the Coordinated Delivery of Civil Legal Aid

CONSENT: Approve Comment on ATJ Boards Draft State Plan for the Coordinated Delivery of Civil Legal Aid.

Attached is a letter from the Access to Justice Board seeking comment on a draft State Plan for the Coordinated Delivery of Civil Legal Aid for Low Income People. WSBA's proposed response to the Plan and the suggested role for WSBA is attached for your approval on the Consent Agenda. Additional background on the State Plan is contained in the ED Report this month.

WSBA
BOARD OF GOVERNORS

Robin L. Haynes
President

phone: 509.596.1426
e-mail: robin@giantlegal.net

March 9, 2017

Geoff Revelle, Chair
Access to Justice Board
1325 Fourth Avenue, Suite 600
Seattle, WA 98101

Dear Geoff,

Thank you for the opportunity to comment on the Access to Justice Board's Draft State Plan for the Coordinated Delivery of Legal Services to Low Income People. As you know, the work of the Alliance for Equal Justice is well aligned with WSBA's mission to serve the public and the members of the Bar, ensure the integrity of the legal profession, and to champion justice. Much of what is contained in the plan is also aligned with our guiding principles

- to operate a well-managed association that supports its members and advances and promotes access to the justice system;
- diversity, equality, and cultural understanding throughout the legal community;
- the public's understanding of the rule of law and its confidence in the legal system;
- a fair and impartial judiciary; and the ethics civility, professionalism, and
- competence of the Bar.

We look forward to continuing our long standing support of the Access to Justice Board and the Alliance for Equal Justice as they work to further the important goals outlined in the draft State Plan. Below are some specific comments on the draft State Plan for your consideration.

Goal 1
WSBA is happy to partner with the Alliance in recognizing organizations that make significant contributions to the advancement of race equity and have a number of annual awards that may be relevant including the Excellence in Diversity Award, the Award of Merit, and the Norm Maleng Leadership Award, which is given in partnership with the Access to Justice Board. You can find a complete list of WSBA's annual Apex Awards at http://www.wsba.org/News-and-Events/Awards.

WSBA may also be a resource in Strategy 1: *Engaging in activities that create shared awareness and understanding of what is needed to achieve race equity in our legal systems and society*. WSBA periodically conducts research to support the development and expansion of racial equity initiatives in

the profession. This includes identifying and addressing the gaps in research necessary to understand the needs of legal professionals and clients. We would welcome input from the Alliance on useful research projects.

Looking at Strategy 3: *Raising organizational competency and capacity to address race equity in our legal system and society*, it seemed out of place to limit "employing a race equity lens" to "prioritizing services to clients." Given the overall goal and strategy, perhaps this activity could be broadened.

Goal 2
The Alliance may want to explore some level of collaboration with WSBA's Low Bono Section with regard to educating low-income communities about their legal rights and responsibilities.

Goal 3
WSBA has observed the challenge of delivering services to the public in rural communities through its Moderate Means Program. In the coming year we will be focusing on addressing the rural access gap using technology and leveraging what we learned from the Long Distance Lawyering Pilot we previously conducted. We look forward to engaging in further conversation about what role mentorship can play in closing this rural access gap and the appropriate role for WSBA.

For additional information on WSBA's diversity and public service programming, including the Moderate Means Program, please contact Joy Williams, joyw@wsba.org. To learn more about our work in the area of mentorship, please contact Ana Selvidge, anas@wsba.org. To learn more about WSBA's Apex Awards, please contact Pam Inglesby, pami@wsba.org. Thank you, as always, for your important work and for your ongoing partnership.

Sincerely,

Robin L. Haynes
President

Paula C. Littlewood
Executive Director

cc: Terra Nevitt, Director Advancement
Diana Singleton, Access to Justice Manager

February 16, 2017

Robin Haynes, President
Paula Littlewood, Executive Director
Washington State Bar Association
Sent via electronic mail

Dear Robin and Paula,

The Access to Justice Board convened a group of twenty-three civil legal aid providers in 2015 to design a plan to realize the vision that poverty is not an impediment to justice. This group developed a draft State Plan for the Delivery of Civil Legal Aid over the past 15 months. This Plan is intended to guide the collective efforts of the Alliance for Equal Justice for the next three years as we seek to expand access to the justice system and to identify and eliminate barriers that perpetuate poverty and deny justice. The plan was developed with extensive feedback gathered from legal aid providers and community partners across the state. The plan identifies goals and strategies to bring us closer to our shared vision for how the Alliance might work together to achieve greater impact.

We intend the plan to be a universal tool that all Alliance for Equal Justice legal services providers and partners can use to guide their work. Taken as a whole, the draft plan provides a framework for organizations to work together to expand access to justice. Not every organization is positioned to implement each part of the Plan and we expect programs and partners to identify the ways in which they are best positioned to implement specific goals using specific strategies.

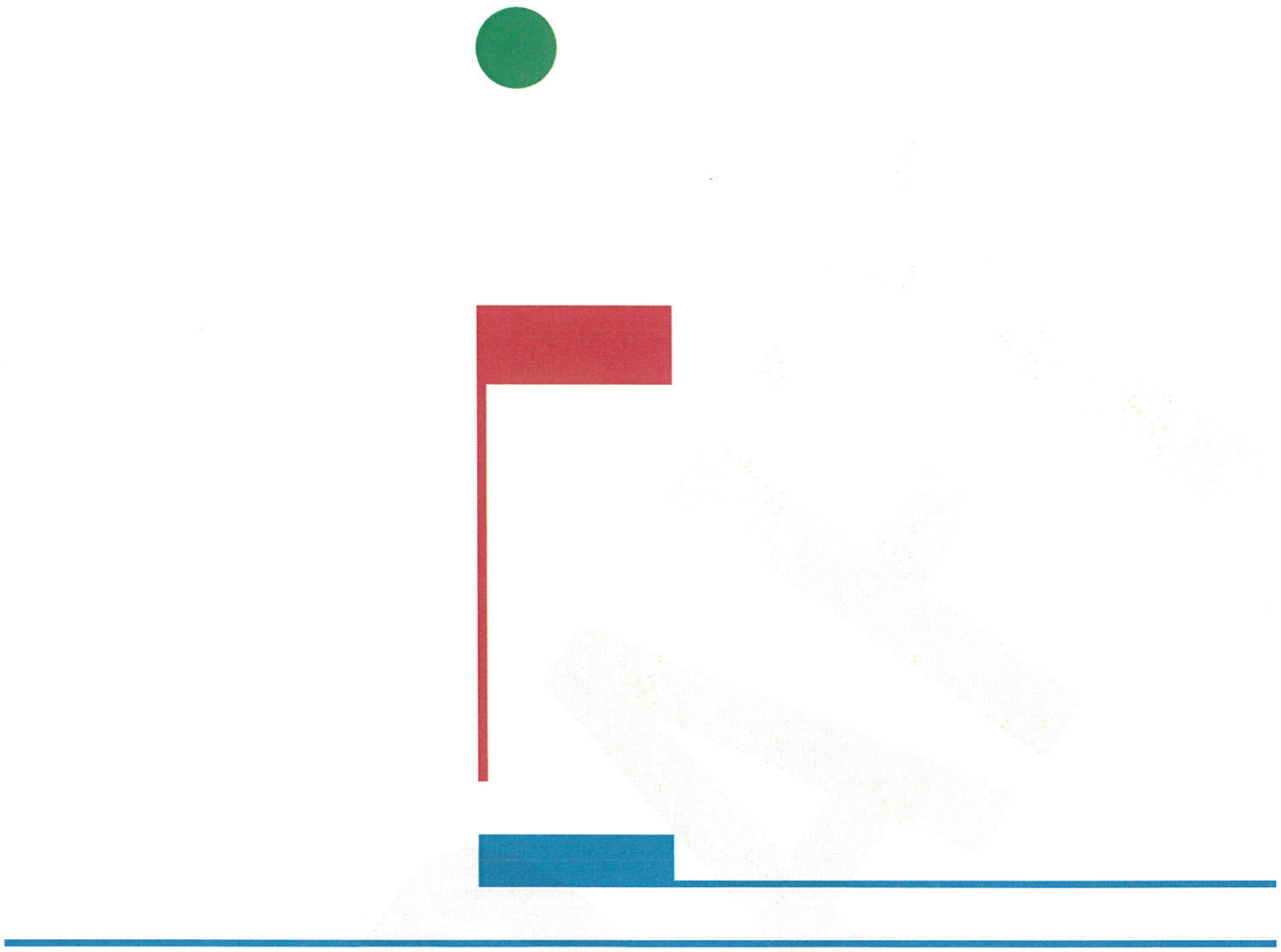
We need your help to finalize a plan that is relevant to your work and the needs you see in your stakeholder communities. Please note that the Washington State Bar Association is referenced as a key resource in Strategy 4 of Goal 1 and Strategy 2 of Goal 3. We ask that you review the draft plan and share with us your feedback. You may submit written comments to the Access to Justice Board via email at atj@wsba.org by April 17, 2017. You may also submit comments through the following survey by April 17, 2017: https://goo.gl/forms/L1pkuqI7ChtiU7Gx2. These comments will be considered prior to the ATJ Board's adoption of a final plan in May.

If you have questions about the State Plan, the Alliance for Equal Justice, or the Access to Justice Board, please contact Terra Nevitt at (206) 727-8282 or TerraN@wsba.org.

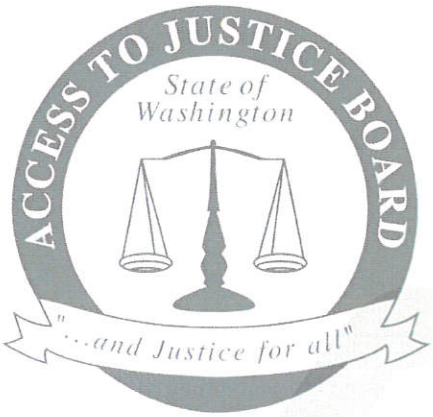
Sincerely,

Geoff Revelle, Access to Justice Board Chair

Enclosures: State Plan Progress Memo
Washington State Alliance for Equal Justice Hallmarks
Draft Plan for the Coordinated Delivery of Civil Legal Aid



Access to Justice Board
2017–2019 State Plan for the Coordinated Delivery of Civil Legal Aid to Low Income People


ACCESS TO JUSTICE BOARD
State of Washington
"...and Justice for all"

Access to Justice Board 2017–2019 State Plan for the Coordinated Delivery of Civil Legal Aid to Low Income People

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INTRODUCTION

This Plan is intended to guide the collective efforts of the Alliance for Equal Justice to expand access to our civil justice system and identify and eliminate barriers that perpetuate poverty and deny justice. We adopt this plan as communities across Washington report increasing fear and anxiety about a changing political climate that once again targets those who have historically been most vulnerable to marginalization. We adopt this plan with the belief that we must coordinate our collective efforts, using all the legal tools we are privileged to wield, and take direction from community leaders in pursuit of a just and equitable system. As set forth in our Hallmarks, The Alliance for Equal Justice ("the Alliance") exists to ensure that poverty is not an impediment to justice; that legal barriers which perpetuate poverty and inequality will be dismantled; and that our laws and our justice systems will be open and equally effective for all who need their protection, especially those who have been placed on the margins of society due to their identities.

The severity of Washington's justice gap and the inadequate funding of civil legal aid cannot be overstated. The 2015 Civil Legal Needs Study tells us that the need is greater than ever. Seven in 10 low-income households face at least one significant legal problem each year and, on average, experience more than nine legal problems for which the vast majority will not get the help they need. The study tells us that low-income Washingtonians do not understand that the challenges they face have legal remedies. It tells us that the nature of their legal problems are changing and that the problems intersect and compound, with one legal problem left unaddressed building into multiple legal problems. The study tells us that twenty years after the adoption of Washington's first state plan, we are far from delivering on our vision of equitable justice and it challenges us to do better. Closing the justice gap will require major investments to double the number of state-funded civil legal aid attorneys, expand the level of volunteer attorney involvement in the delivery of civil legal aid services, and create statewide support infrastructure for the Alliance. Closing the justice gap will also require acknowledging and breaking down the artificial silos that we've created between the civil, criminal, and juvenile justice systems and identifying and challenging structurally racialized systems and practices that disproportionately affect minority clients and client communities.

INTRODUCTION

Our Hallmarks call on us to maximize the impact of our limited resources through coordination and the delivery of effective and economical legal aid. Recognizing that we may never have the resources needed to give every low-income household access to legal representation, this plan seeks to improve the way we work together – within existing resources. The plan sets forth five goals that represent a universal commitment of all Alliance members. Goal number 1 identifies race equity as a lens to apply to all of our work. Goals 2-5 identify the focus of our work at each stage that an individual might encounter a legal need, starting with ensuring that low-income communities and individuals understand their legal rights and responsibilities in goal 2. Once a legal problem has been identified and an individual desires legal help, goal 3 asks the Alliance to ensure that members of underserved and underrepresented communities will be able to obtain legal assistance regardless of their geographic and/or demographic circumstances. Once legal services have been engaged, goal 4 calls for holistic and client-centered approaches to address the complexity and breadth of legal needs and to help clients overcome demographic, systems-based and other institutional barriers. And finally, goal 5 urges that in addition to the important work of seeking legal remedies for individuals, the Alliance continue to pursue systemic advocacy to effect structural reforms that maintain and defend progress and improve the well-being of communities and individuals and dismantle systems of institutional racism and other forms of oppression.

We expect that each Alliance organization will review the State Plan goals, strategies and implementation steps to determine, in collaboration with other Alliance members, the role(s) they should play in achieving these collective goals in the coming years. Specific strategies and implementation steps are intended as helpful guidance, but there is no substitute for the knowledge that individual organizations have about their own current and potential strengths and capabilities, the communities they serve and the changing and evolving circumstances affecting clients, communities, and client service delivery. The plan also identifies measures of success for the purpose of better aligning organizational actions, providing feedback that leads to individual program and system improvements and to support Alliance accountability to the State Plan. They are not intended to dictate behavior to any organization or impact funding decisions. Many performance measures are specifically imbedded in the statements of strategy within the plan. Other measures will require the collection and analysis of data. For those measures, we recommend that organizations/regions spend the first year of the plan gathering baseline data, the second year establishing realistic targets and the third year analyzing performance and implementing changes in support of the strategy. A state plan monitoring committee should coordinate collection and distribution of performance measure data. It is expected that implementation of the plan will be evaluated annually and course corrections made as needed.

As the coordinator of this effort, the Access to Justice Board is tasked with supporting and monitoring the implementation of this plan. In many places throughout the document, the Access to Justice Board and its committees are identified to play the role of clearinghouse. That role may include collecting the relevant information, reviewing and assessing theinformation, and communicating back to the Alliance in the form of an aggregate report, the sharing of best practices, or recommended next steps.

Achieving a just and equitable system will require courage, collective vision and agility to respond to changing needs, challenges, and opportunities. The State Plan offers a framework for the Alliance to work together to rise to the occasion and act with common commitment, focus, and collective determination. Through this State Plan we recommit to our values and our common commitments.

GOAL 1

Alliance organizations will promote racial equity both systemically and within their organizational practices, working toward a vision that race or color does not determine the availability and quality of services, benefits, and opportunity for communities and individuals.

WHAT IS THE PROBLEM?

As stated in our Washington Race Equity & Justice Initiative's Commitments, tensions and fears from tragedies around the country continue to increase due to recent contentious national events and, as a result, many vulnerable communities, especially communities of color, are targeted and treated as less worthy. REJI is a call to action to work together to challenge the racial bias that has been built into our societal fabric. The 2015 Civil Legal Needs Study Update tells us that people of color experience substantially greater number of legal problems, that they regularly experience discrimination and unfair treatment on the basis of legally protected characteristics such as race, and that low-income communities and people of color have little confidence in the justice system. Consistent with the REJI Commitments, this goal and its strategies call on the Alliance to transform structures, policies and practices that perpetuate disparate outcomes for communities of color, including by assessing and strengthening our organizations' own alignment with race equity and justice values and goals.

STRATEGY 1

Engage in activities that create a shared awareness and understanding of what is needed to achieve race equity in our legal systems and society.

Alliance organizations can implement this strategy by:

- Working with the Race Equity and Justice Initiative, to identify currently existing annual events focused on race equity, or with a substantial race equity focus, and engage Alliance organizations, Access to Justice Board members, legal aid funders, community members and officers of the broader justice system to attend those events. If the committee finds that no such events exist, then the committee should leverage existing resources to establish one.
- Identifying, coordinating and collaborating with different groups that are already focused on race equity and utilize social media and emerging technology to collaborate and share resources and tools to achieve racial equity. The Race Equity and Justice Initiative can support this effort by serving as a clearinghouse.

Our vision of success is:

- Alliance organizations are using common language to demonstrate a shared understanding and awareness of the reforms needed to achieve race equity in our systems.

Indicators of success include:

- Alliance organizations are participating in an annual conference or events that focus on race equity.

- Alliance organizations report increased relationships and collaborations around advancing race equity.

STRATEGY 2

Increase the diversity of staff, boards, and volunteers.

Alliance organizations can implement this strategy by:

- Identifying and adopting existing tools (e.g., the Implicit Bias test from Harvard University and the City of Seattle of Race Equity Tool Kit) in order to conduct a race equity self-audit at all levels in their organizations, with support from the Race Equity and Justice Initiative.
- After conducting the self-audit, addressing and developing strategies to eliminate practices that operate as impediments to the recruitment and retention of a diverse staff, board, and volunteers.
- Developing capacity and technical resources to enable organizations to implement their strategies for race equity and diversity.

Our vision of success is:

- Alliance organizations that reflect the diversity of the communities we serve at all levels.

Indicators of success include:

- All Alliance organizations have completed a self-audit.
- All Alliance organizations will incorporate race equity awareness and provide individualized tools and resources as part of the orientation for all board, staff, and volunteers.
- An increase in staff, board, and volunteer diversity for Alliance organizations that is reflective of the clients they serve.

STRATEGY 3

Raise organizational competency and capacity to advance race equity in our legal system and society.

Alliance organizations can implement this strategy by:

- Identifying and adopting existing tools and trainings to identify, evaluate, and build solutions for creating organizational and systemic racial equity, with support from the Race Equity and Justice Initiative.
- Employing a race equity lens when prioritizing services to clients.

GOAL 1

Our vision of success is:

- Alliance organization staff demonstrate increased awareness of the impacts of race and structurally racialized systems and practices on our society and the client communities we serve.
- Alliance organizations are participating in dialogue about race.

An indicator of success will be:

- All Alliance organization staff have had training on how to talk to each other about race.

STRATEGY 4

Promote and raise the visibility of Alliance organizations' and law firms' activities and successes in advancing race equity.

Alliance organizations can implement this strategy by:

- Collaborating with WSBA and local bar associations to establish awards recognizing legal aid organizations or individuals within organizations that make significant contributions to the advancement of race equity.
- Incorporating race equity topics into all communications channels, including through the Access to Justice Board's Communications Committee and the Equal Justice Coalition.

Our vision of success is:

- Race equity is woven into the fabric of the Alliance.

An indicator of success will be:

- An increased perception among community-based organizations that Alliance organizations are effective partners in advancing race equity.
- At least five earned media pieces related to Alliance organization's work to advance race equity each year.

GOAL 2

The Alliance will work to ensure that low-income communities and individuals understand their legal rights and responsibilities and where to seek legal assistance.

WHAT IS THE PROBLEM?

The 2015 Civil Legal Needs Study tells us that nearly 50% of low-income households are not aware that the problems they are facing have a legal component; and they do not seek legal help. This gap in understanding persists despite decades of effort to provide legal education to low-income people through websites like WashingtonLawHelp.com and through grassroots community outreach and engagement. This goal and suggested strategies call on Alliance organizations to take a critical look at our educational efforts and consider new approaches to empowering clients to understand the legal nature of the problems they experience and to make informed decisions about whether, when and where to go for legal help.

STRATEGY 1

Conduct an assessment of the current educational activities, resources and tools, identify any gaps and needs for improvement, and develop and execute on plans and any necessary tools that will address those gaps and needs.

Alliance organizations can implement this strategy by:

- Conducting an inventory of educational activities and resources within their region(s), identify the gaps and need for improvements and communicating the results to the Access to Justice Board Delivery System Committee, which can serve as a clearinghouse.

- Addressing any identified gaps and needs for improvement, create and execute plans to educate low-income persons about legal problems, rights and responsibilities, and the availability of legal assistance, with a special emphasis on reaching underserved communities. These plans may be on an organizational and/or regional level based on need and resources. They should include developing and distributing educational resources through a variety of media and organizations and should incorporate best practices and common language. The Access to Justice Board's Communications Committee can support these efforts as a clearinghouse.

The Access to Justice Board and its committees can implement this strategy by:

- Addressing any identified gaps and needs for improvement, create tools and strategies to educate low-income persons about their legal rights and the services available to them within and outside the civil legal aid system and sharing them with Alliance organizations.

- Developing an interactive legal wellness tool – in collaboration with Alliance organizations – that will enable low-income people to describe the situations they are facing and gain an understanding of the legal rights implicated and the resources available to address them. Alliance organizations can determine how the tool can be used through their networks and communities and encourage its use.

Our vision of success is:

- An improvement in the ability of low income people to understand the legal dimensions of the problems that they are experiencing and make informed decisions about whether, when, and where to go for legal help.

STRATEGY 2

Communicate with low-income communities in ways that are accessible to low-income persons regardless of limited literacy, limited English proficiency, disability, or access to technology.

The Access to Justice Board and its committees can implement this strategy by:

- Developing model guidelines for effective community-based outreach and education both on- and off-line and sharing them with Alliance organizations.

Our vision of success is:

- A rise in client satisfaction with their ability to obtain information about their legal rights and responsibilities and the availability of legal assistance.

An indicator of success will be:

- Increased contact with low-income persons, including those with limited literacy, limited English proficiency, disability, or access to technology.

GOAL 3

Alliance organizations will work to ensure that low-income members of underserved and under-represented communities will be able to obtain legal assistance regardless of geographic and/or demographic circumstances.

WHAT IS THE PROBLEM?

Who you are matters. The 2015 Civil Legal Needs Study demonstrates that low-income people who identify as African American or Native American experience a greater prevalence of legal problems in nearly every substantive area explored by the study. The same is true for people with disabilities and young people. It shows that low-income people regularly experience discrimination and unfair treatment on the basis of immigration status, prior juvenile or criminal system involvement, and credit history and that victims of domestic violence or sexual assault report nearly double the prevalence of problems across all legal problem areas with an average of 19.7 legal problems per person, per year. The LGBTQ Supplement to the 2015 Civil Legal Needs Study illustrates that the LGBTQ community experiences different legal problems than the general low-income population and substantially higher levels of problems associated with discrimination and unfair treatment. Federal and state legal aid funding restricts programs from serving certain groups of people and access to legal aid in rural areas remains a persistent challenge. Consistent with our Hallmarks, this goal and its suggested strategies call on the Alliance to authentically engage with low-income communities, adapt our delivery systems to meet their needs, and focus our limited resources on meeting the civil justice needs of those who are most vulnerable and in need.

STRATEGY 1

Work with community-based partners to identify underserved and underrepresented communities on an ongoing basis and provide targeted legal assistance.

Alliance organizations can implement this strategy by:

- Seeking assistance from community partners to identify the common needs of the underrepresented and underserved communities they work with in order to provide targeted legal assistance.
- Providing a self-determined amount of services in community places frequented by underserved populations (e.g., libraries, shelters, community centers, hospitals, schools, churches).
- Considering and pursuing opportunities to co-locate legal aid and other community services on a limited or permanent basis.
- Training community partners to identify legal needs and make effective referrals.

Our vision of success is:

- Community-based partners have an increased understanding of how to identify civil legal problems and help low-income and vulnerable people with whom they work to access legal aid.

- Legal aid's strategy in reaching underserved and underrepresented populations is improved through partnership with community-based partners.

Indicators of success include:

- An increase in the provision of legal aid outside of traditional legal aid program offices, including through co-location with community partners, by the end of year two.
- An increase in the number of community organizations collaborating with Alliance organizations as partners, by the end of year three.
- An increase in number of community-based partners trained by Alliance members to identify legal problems of persons they serve and make effective referrals, by the end of year two.
- An increase in the number of targeted referrals that Alliance organizations receive from community-based partners, by the end of year three.

STRATEGY 2

Leverage technology to better serve low-income clients in underserved and underrepresented communities.

This strategy can be implemented by:

- Automating the new plain language family law forms and ensuring that the public has online access to the document assembly system at no cost through the collaboration of the Northwest Justice Project, the Administrative Office of the Courts, the Office of Civil Legal Aid, and the Access to Justice Board.
- Increasing the number of attorneys providing legal assistance to underserved and underrepresented communities using Skype (or other like systems), document viewing and similar technologies through the collaboration of Alliance organizations, the Access to Justice Board's Justice Without Barriers Committee and Technology Committee, the Washington State Bar Association, and local courts.
- Developing a mentorship program for attorneys in attorney-rich areas willing to serve clients from underrepresented and underserved communities using technology and other means through the collaboration of the Access to Justice Board's Leadership Development and Technology Committees, Alliance organizations, and the Washington State Bar Association.

Our vision of success is:

- Increased services to low-income clients regardless of geography or other barriers to accessing legal aid in traditional settings.

- A rise in volunteer retention and satisfaction for attorneys in attorney-rich areas who are providing services to underrepresented and underserved communities using technology and other means.

STRATEGY 3

Improve access to and the efficiency of existing intake mechanisms.

Alliance organizations and the Access to Justice Board can implement this strategy by convening an Alliance stakeholder group to:

- Assess and make recommendations on the strategic role of centralized intake, advice, and referral services as a component of statewide intake services.
- Assess regional or local intake systems and make recommendations on flexible and efficient models that complement centralized intake and support a variety of intake strategies.
- Identify and assess innovative intake and referral methods used outside the state of Washington that could be implemented within the state.
- Identify and implement client-centered approaches to intake for underserved and underrepresented populations, including consultation with the broader community of providers of social and human services to low-income people.

Our vision of success is:

- Reduced time between initial contact and initiation of services to clients from underrepresented and underserved communities.
- Increased services to communities identified as underrepresented and underserved regardless of any barriers to accessing legal aid through traditional intake mechanisms.

GOAL 4

The Alliance will use holistic and client-centered approaches to address the complexity and breadth of legal needs and to help clients overcome demographic, systems-based and other institutional barriers.

WHAT IS THE PROBLEM?

The 2015 Civil Legal Needs Study revealed that, on average, low-income households will experience more than nine civil legal problems annually. Experience shows us that these problems are often intertwined, and that helping an individual to address and overcome the problems they face often requires legal and non-legal solutions. Without addressing the interrelated nature of these problems clients will continue to need civil legal aid for recurring and unaddressed legal problems. We also understand from the Civil Legal Needs Study Update that low-income people of color experience substantially higher rates of legal problems and that issues relating to discrimination and unfair treatment cut across every substantive legal category. Many of the problems experienced by low-income minority clients and communities flow from their involvement with structurally racialized systems and practices that appear to be race-neutral but drive disparate treatment and disproportionate negative outcomes. This goal and its strategies call on Alliance organizations to fully realize the values articulated in our Hallmarks around authentic client and client community engagement, ensuring the availability of a full range of legal aid, and building effective partnerships with legal and community based organizations.

STRATEGY 1

Work with clients to identify and prioritize legal and non-legal needs and to develop strategies to meet those needs.

Alliance organizations can implement this strategy by:

- Continuing to develop flexible models, tools, and resources to help clients identify and prioritize the breadth of their legal and non-legal needs. These tools should be shared with the Access to Justice Board's Delivery System Committee as a clearinghouse.
- Developing and offering training to enable staff and volunteers to better identify clients' legal and non-legal needs.
- Employing a race equity lens – consistent with Goal 5 – in identifying client needs, local and statewide client service priorities, and strategies to address the problems experienced by low-income racial and ethnic minorities and communities of color including, but not limited to, those who are not eligible for state and federally-funded services.
- Establishing client satisfaction surveys or other tools to secure input from clients with respect to the services that they receive and the manner in which they receive them. Such systems should include questions that measure how well the organization is identifying and developing strategies to address the full range of clients' needs.

GOAL 4

Our vision of success is:

- A rise in client satisfaction related to Alliance organizations' ability to help them identify the full range of their legal and non-legal needs and helping them make informed decisions about whether and, if so, how to address them.

An indicator of success will be:

- An increase in the number of and extent to which Alliance organizations are identifying, working with clients to help them make informed decisions about their goals, and to prioritize and address their legal and non-legal needs by the end of year two.

STRATEGY 2

Expand and strengthen partnerships and collaborations to improve each client's ability to address legal and non-legal needs.

Alliance organizations can implement this strategy by:

- Strategically and intentionally collaborating with community based organizations, as appropriate to the circumstances, in helping clients address their needs.
- Regularly seeking and securing input from community based organizations in assessing the needs of clients.
- Sharing information about legal and non-legal resources in the region.

The Access to Justice Board and its committees can implement this strategy by:

- Facilitating the development of an improved protocol to ensure effective cross-referrals and collaboration between Alliance organizations. To the extent possible, clients should need only knock on one Alliance door to get the help they need.

Our vision of success is:

- Clients are better able to address their legal and non-legal needs.
- An increase in the quality and number of cross-referrals and collaborations among Alliance organizations.

An indicator of success will be:

- An increase in the number of referrals clients receive to address the breadth of their legal and non-legal needs.

GOAL 4

STRATEGY 3

Develop and expand holistic service models to improve long-term outcomes for clients.

Alliance organizations can implement this strategy by:

- Identifying communities that would benefit the most from coordinated or holistic legal aid.
- Piloting or expanding holistic models with those populations.
- Assessing existing services to determine the feasibility of implementing a client-centered, holistic approach.
- Establishing client-centered systems to secure input from clients with respect to how well the organization is addressing the full range of clients' needs.

The Access to Justice Board and its committees can implement this strategy by:

- Identifying and providing tools that will allow Alliance organizations to capture the depth of the services they are providing and the outcomes they are achieving for clients. Alliance organizations can utilize the tool(s) to assess and report the depth of services being provided.

Our vision of success is:

- An end to the revolving door of legal aid, with fewer people returning because their issues have been resolved as a result of coordinated or holistic services.

An indicator of success will be:

- An expanded number of coordinated or holistic models being implemented, by the end of year two.

GOAL 5

The Alliance will pursue systemic advocacy to effect structural reforms that maintain and defend progress and improve the well-being of communities and individuals and dismantle systems of institutional racism and other forms of oppression.

WHAT IS THE PROBLEM?

Our Hallmarks call on us to identify and eliminate the systems that operate to deny justice to low-income members of racial, national, ethnic and social minorities and other low-income persons who experience barriers due to explicit or implicit bias and other marginalizing dynamics. Despite many advocacy successes, the 2015 Civil Legal Needs Study reveals that low-income people of color, among other groups, experience substantially greater number of legal problems and regularly experience discrimination and unfair treatment on the basis of legally protected characteristics such as race. The study also tells us that low-income people have precious little confidence that the justice system can help people "like them" to enforce their rights. We know from various symposia sponsored by the Supreme Court's Minority and Justice Commission, national and state-based research and many years of experience that racialized systems and structures have developed that result in disparate treatment of people and communities of color and that drive disproportionate negative outcomes for members of these groups as well as other historically and currently marginalized groups. This goal and its strategies calls on the Alliance to prioritize collaborative systemic advocacy designed to eliminate these systems, structures and practices, and that such advocacy be rooted in authentic engagement with client communities and in partnership with community-based organizations.

STRATEGY 1

Engage with client communities in order to inform and drive systemic advocacy.

Alliance organizations can implement this strategy by:

- Creating annual community engagement plans by organization and region, as is helpful in each case, and distributing them to regional partners, stakeholders, and the Alliance.
- Revisiting, evaluating, and modifying their engagement plan annually based on results and distributing written results and modifications to regional partners, stakeholders, and the Alliance.

Our vision of success is:

- Alliance organizations will be able to demonstrate that community input is playing a role in helping identifying systems, structures, and practices that result in disparate treatment or disproportionate negative outcomes for low-income people and communities, including but not limited to communities of color.

An indicator of success will be:

- Every Alliance organization and region will have a client community engagement plan, by the end of year two.

GOAL 5

STRATEGY 2

Communicate and collaborate within the Alliance and with other allies in order to identify patterns within communities that point to the need for systemic change and identify opportunities for collaboration.

Alliance organizations can implement this strategy by:

- Identifying a liaison for systemic change advocacy to be a point of contact in the region and for the Alliance. This person should participate in regional and statewide advocacy groups.
- Convening regional stakeholder groups at least quarterly to discuss systems, structures, and practices that result in disparate treatment and drive disproportionate negative outcomes for low income and marginalized communities and considering the value of systemic change advocacy to address these.
- Convening a statewide stakeholder group at least biennially to revisit and refine statewide systemic reform work.
- Regularly providing advocacy updates to the Access to Justice Board's Communications Committee and the Equal Justice Coalition for widespread distribution. These updates should expressly highlight systemic advocacy, outlining the systemic practices being challenged and the impact of the program's advocacy.

Our vision of success is:

- Alliance organizations at regional and state levels working together to effectively implement statewide system reform strategies in at least three substantive priority areas.

An indicator of success will be:

- That regional partners will have identified top priorities for systemic change advocacy, by the end of year two.
- Increased participation (in number and quality) from community based organizations in identifying statewide advocacy priorities.
- Increased participation (in number and quality) from community based organization in pursuing systemic change.
- At least five earned media pieces related to the statewide advocacy priorities each year.

GOAL 5

STRATEGY 3

Partner with community based organizations to develop resources and make strategic investments in the ability of Alliance organizations to engage in systemic advocacy.

Alliance organizations can implement this strategy by:

- Considering annually allocating specific resources for systemic change advocacy appropriate to their mission.

Legal aid funders can implement this strategy by:

- Requesting information annually from grantees on systemic change advocacy activities and accomplishments.

Our vision of success is:

- An increased focus on and support for advocacy that is intentionally focused on identifying and eliminating systems, structures, and practices that negatively affect low-income and marginalized communities and that result in disparate treatment and drive disparate outcomes for communities of color and other marginalized populations.

STRATEGY 4

Develop leaders that are skilled in systemic advocacy. Alliance organizations can implement this strategy by:

Alliance organizations can implement this strategy by:

- Having staff, board members, and volunteers apply to the Equal Justice Community Leadership Academy.
- Participating and providing opportunities for community lawyer training on an ongoing basis.
- Participating and providing opportunities for race equity training on an ongoing basis.

GOAL 5

Our vision of success is:

- That community lawyering becomes a core component of each program's strategic client service mix.

Indicators of success include:

- Every Alliance organization has multiple members who have graduated from the Academy.
- By 2019 every Alliance organization will have a majority of staff engaged in community advocacy who has received community lawyering training.

GLOSSARY OF TERMS

Alliance for Equal Justice or Alliance

We are lawyers, judges, legal workers, volunteers and community leaders committed to the fair, effective, and inclusive administration of civil justice in Washington State. In partnership with clients and communities of low-income and vulnerable people, we work to expand meaningful access to the civil justice system and to identify and eliminate barriers that deny justice and perpetuate poverty.

Alliance organizations

Programs or organizations that participate in the Alliance for Equal Justice. Note that the Alliance describes a fluid network, rather than a specific set of organizations. There is no entity responsible for determining which organizations are considered to be a part of the Alliance.
Alliance partners

Equity

Fairness achieved based on an understanding that individuals and communities are subject to different forms of treatment and have access to different amounts of privilege. To be contrasted with fairness based on equal distribution of resources.

Holistic Services

Services that are provided in a manner that takes into account the entirety of a client's barriers and goals, legal and non-legal. This includes two primary components:

1 Helping clients identify legal and non-legal problems and potential solutions for their legal problems; and

2 Working in collaboration with legal and non-legal community partners to ensure that the client's range of needs are addressed. Whether through direct, unbundled, or referral services.

Implicit Bias

Attitudes and beliefs that result from subtle cognitive processes that often operate at a level below conscious awareness and without intentional control.

Race Equity

A vision that race or color does not predict the amount and quality of opportunities, services, and benefits for impacted communities and individuals.

Race Equity Lens

Examining a practice, system, behavior or event with an awareness and focus on the vision that race or color should not predict the amount and quality of opportunities, services and benefits for impacted communities and individuals.

Structural Racism

Racial inequity perpetuated by a system of public policies, institutional practices, cultural representations, and other norms.

Systemic Advocacy

Action that is designed to affect change in all parts of a local, regional or statewide system that negatively affects low-income and marginalized people, and that takes into account the interrelationships and interdependencies among all of that system's parts.

WSBA
BOARD OF GOVERNORS

Bradford E. Furlong
President-elect

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ACTIVITY REPORT
01/06/17 – 01/21/17

WSBA and BOG COMMITTEE MEETINGS:

01/20/17	BOG Legislative Committee
01/26/17 – 01/27/17	BOG Meeting
02/03/17	BOG Legislative Committee
02/24/17	BOG Legislative Committee

SPECIALTY, COUNTY AND MINORITY BARS OUTREACH:

01/13/17	King County Bar Association MLK Luncheon
01/25/17	Lunch with Spokane County Judicial Officers Meeting with Spokane County Bar Assn Meet with Gonzaga undergrads

WSBA
BOARD OF GOVERNORS

Christina A. Meserve
Governor, Tenth District

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ACTIVITY REPORT
January 17, 2017 thru February 17, 2017

LIAISON DUTIES:

Date	Event
1/17/17	Low Bono Section Executive Committee Meeting (via phone)
2/2/17	Environmental & Land Use Executive Committee (via phone)
2/21/17	Low Bono Section Executive Committee Meeting (via phone)

WSBA and BOG COMMITTEE MEETINGS:

Date	Event
1/13/17	BOG Legislative Committee (via phone)
1/20/17	BOG Legislative Committee (via phone)
1/25-27/17	BOG Meeting
2/3/17	BOG Legislative Committee (via phone)
2/10/17	BOG Legislative Committee (via phone)
2/17/17	BOG Legislative Committee (via phone)
2/24/17	BOG Legislative Committee (via phone)

SPECIALTY, COUNTY AND MINORITY BARS OUTREACH:

Date	Event
1/20/17	Thurston County Bar Association Meeting
2/8/17	Washington Women Lawyers Meeting (via phone)
2/14/17	Thurston County Bar Association Family Law Section Meeting
2/15/17	Government Lawyers Bar Association Executive Committee Meeting
2/17/17	Thurston County Bar Association Meeting

WSBA
BOARD OF GOVERNORS

James K. Doane
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ACTIVITY REPORT
James K. Doane, District 7-South
January 12, 2017 to February 22, 2017

Jan 12, 2017	Washington State Bar Foundation Board of Trustees meeting
Jan13, 2017	King County Bar Foundation Martin Luther King lunch
Jan 18, 2017	Intellectual Property Section Executive Committee meeting
Jan 19, 2017	Open Sections Night representing Corporate Counsel Section as immediate past chair and Washington State Bar Foundation as trustee and as liaison to Business, Animal, and Intellectual Property Sections
Jan 20, 2017	Mandatory Continuing Legal Education Board meeting
Jan 20, 2017	Animal Law Section Executive Committee meeting
Jan 25, 2017	Board of Governors and staff dinner in Spokane
Jan 26, 2017	Board of Governors meeting in Spokane
Jan 27, 2017	Board of Governors meeting in Spokane
Jan 30, 2017	John Henry Browne book event at The Rainier Club

Feb 1, 2017	Compliance benchmarking with in-house lawyers at Convercent lunch in Seattle
Feb 3, 2017	Seattle University Law Professor Lorraine Bannai book event at The Rainier Club
Feb 5, 2017	Write "A Day of Remembrance--Remembering Executive Order 9066" for Northwest Asian Weekly http://nwasianweekly.com/2017/02/a-day-of-remembrance-remembering-executive-order-9066/ and Linked Inhttps://www.linkedin.com/pulse/day-remembrance-all-james-doane?articleId=7648333870694698057
Feb 10, 2017	Bronze sponsor at Latina/o Bar Association of Washington Gala and attend with Consuls General of Mexico and Peru
Feb 16, 2017	Board of Governors Nomination Committee meeting
Feb 16, 2017	Budget and Audit Committee meeting
Feb 22, 2017	Intellectual Property Section Executive Committee meeting
Various	Coordination and touching base with Asian Bar Association of Washington and Northwest Indian Bar Association and other MBAs

WSBA
BOARD OF GOVERNORS

Jill A. Karmy
Treasurer & Governor, Third District

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ACTIVITY REPORT

January 29, 2017 to March 10, 2017

WSBA and BOG COMMITTEE MEETINGS:

2-3-17	BOG Legislative Meeting (via phone)
2-10-17	BOG Legislative Meeting (via phone)
2-14-17	Appearance, WA Senate Law & Justice Committee, Olympia
2-16-17	Budget & Audit Meeting, Seattle (via phone)
2-16-17	BOG Executive Committee Meeting (via phone)
2-17-17	BOG Legislative Committee (via phone)
2-24-17	BOG Legislative Committee (via phone), *anticipated*
3-3-17	BOG Legislative Committee (via phone), *anticipated*
3-9-17 to 3-10-17	BOG Meeting, Olympia, *anticipated*

SPECIALTY, COUNTY AND MINORITY BARS OUTREACH:

1-30-17	Coffee with District 3 potential BOG candidate
1-30-17	WSBA Conference call with members BOG candidate
2-3-17	WSBA Conference call with members BOG candidate
2-23-17	WSBA Diversity Event, Vancouver, *anticipated*
2-25-17	Clark County Bar Association Barrister's Ball, Vancouver, *anticipated*

WSBA
BOARD OF GOVERNORS

Keith M. Black
Governor, Sixth District

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ACTIVITY REPORT
January 25, 2017 – March 10, 2017

WSBA AND BOG COMMITTEE MEETINGS:

January 25-27, 2017	Attended all Regular Sessions and Functions of BOG January Meetings in Spokane, WA
January 31, 2017	Participated in Third-Year Governors Outreach Calls to Perspective BOG Candidates
Feb. 10, 17, 24, March 3, 2017	BOG Weekly Legislative Committee Meeting Conference Calls
March 2, 2017	BOG Personnel Committee Meeting in Seattle
March 8-10, 2017	Attended all Regular Sessions and Functions of BOG March Meetings in Olympia

SPECIALTY, COUNTY AND MINORITY BARS OUTREACH:

February 21, 2017	Attended Tacoma-Pierce County Bar Association Board of Trustees Meeting and in Tacoma
January – March 2017	Numerous Individual Recruitment Calls, Formal Letters to Local Bar Presidents and Leaders, and Exchanged Correspondence Regarding Open BOG Seat in District 6 (Six Candidates have filed)
January 12, 2017	Attend Swearing-in of Pierce County Superior Court Justices, Tacoma

WSBA
BOARD OF GOVERNORS

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Governor, Second District

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ACTIVITY REPORT
Jan. 2017 to Feb. 2017

LIAISON DUTIES:

1/9/17	E-mail w/ Health Law Section Executive Committee re: Annual meeting and agenda and issues I can assist with
1/12/17	E-mail w/ SABAW re: appointment of Parsi Judge
2/16/17	E-mail w/ Health Section re: communication to BOG

WSBA and BOG COMMITTEE MEETINGS:

1/18/17	Diversity Committee Meeting
1/26-27/17	BOG Meeting in Spokane
2/2/17	Telecon w/ Jenna Nand about what duties come with a BOG position and running for office
2/15/17	Diversity Committee Meeting

SPECIALTY, COUNTY AND MINORITY BARS OUTREACH:

1/4/17	Whatcom County Bar meeting
1/31/17	LAW Advocates 30th Anniversary
2/16/17	Meeting with San Juan County Bar Association
2/25/17	Skagit County Bar Charity Auction (anticipated)

WSBA

WASHINGTON STATE BAR ASSOCIATION

EXECUTIVE DIRECTOR'S REPORT
March 1, 2016

Access to Justice Board State Plan for the Coordinated Delivery of Civil Legal Aid for Low Income People

In the board materials this month is a letter from the Access to Justice Board seeking comment on a draft State Plan for the Coordinated Delivery of Civil Legal Aid for Low Income People. The plan, which is the fourth developed by the Access to Justice Board since 1995, is intended to guide the collective efforts of the Alliance for Equal Justice over the next three years in its efforts to expand access to the civil justice system. The plan, which was developed by representatives of 22 civil legal aid organizations from across the state and the Access to Justice Board, identifies five goals for the Alliance. The first goal identifies race equity as a lens to apply to all of the Alliance's work. Goals two through five focus on expanding access to the civil justice system at each stage that an individual might encounter a legal need, starting with ensuring that low-income communities and individuals understand their legal rights and responsibilities in goal two. Once a legal problem has been identified and an individual desires legal help, goal three asks the Alliance to ensure that members of underserved and underrepresented communities will be able to obtain legal assistance regardless of their geographic and/or demographic circumstances. Once legal services have been engaged, goal four calls for holistic and client-centered approaches to address the complexity and breadth of legal needs and to help clients overcome demographic, systems-based and other institutional barriers. And finally, goal five urges that in addition to the important work of seeking legal remedies for individuals, the Alliance continue to pursue systemic advocacy to effect structural reforms to improve the well-being of communities and individuals and dismantle systems of institutional racism and other forms of oppression.

As you know, WSBA is a proud supporter of the Alliance for Equal Justice and has been identified as a key partner in three areas of the plan. Under goal one, relating to race equity, the fourth strategy suggests that the Alliance recognize successes in advancing race equity and encourages collaboration with WSBA and local bar associations to establish awards recognizing this work. Under goal three, which addresses access to the system for underserved and underrepresented groups, the plan contemplates partnering with WSBA and others to increase the number of attorneys leveraging technology to serve these communities. Under that same goal, WSBA is a suggested partner for developing mentoring for long distance lawyering-type projects that use attorneys from attorney-dense areas to serve low-income people in underrepresented and underserved communities. These areas of collaboration align WSBA's current programming and strategic focus for mentorship and its public service work, particularly the Moderate Means Program where staff are trying to develop systems to support attorneys from areas like King County to provide assistance to moderate-income people in rural parts of the state. Please note that WSBA's proposed response to the Plan and the suggested role for WSBA is on the Consent Agenda for this meeting.

Working with Sections to Align Section Bylaws with WSBA Bylaws Article XI

Following the Board's approval of amendments to Article XI of the WSBA Bylaws, which relates to Sections, the Sections Team has reached out to Section Leaders to provide an overview of the steps involved in amending their bylaws to harmonize with the minimum standards and processes set forth in

the revised Article XI. While Article XI took effect on January 26, the Sections Policy Workgroup acknowledged that it would take time for Sections to align their bylaws, thus Sections will have the opportunity to submit their revised bylaws for BOG approval at its May or July 2017 meetings. In order to streamline the process, staff will be providing Sections with a redline version of their current bylaws, which will reflect minimum changes needed to align with Article XI and other WSBA bylaws and highlight areas for further consideration.

Follow-up on "The Changing Demographics of the Bar" Discussion

The January generative discussion addressing the changing demographics of the bar provided a great opportunity to check alignment of WSBA's existing initiatives with the interests of its members and the Board. It also provided some concrete ideas that staff can move forward with, such as the *Transitioning out of Practice Letter*, described below. We look forward to continuing the conversation with the Senior Lawyers Section and other stakeholders as further programming is developed to address the changing demographics of the profession, including:

- 2017 Senior Lawyers Conference focusing on baby boomers and the changing demographics of the profession.
- May 25, 2017, MentorLink Mixer for attorneys transitioning out of active practice and attorneys who have already closed their practice, retired and stayed connected to the legal community.
- Promoting membership in the Senior Lawyers Section for ongoing support, resources and community.
- Updating the *Planning Ahead Handbook* for members planning to transition out of the active practice of law.
- Developing a *Transition out of Practice Letter* to send to members who are 55 and older to provide information about the resources, services and processes for transitioning out of the active practice as well as information about how to stay connected to the legal community.
- Developing a transition out of practice worksheet to expand our recently completed *Mentorship Curriculum Guide*.

Update on Recruitment for General Counsel

As discussed at the January BOG meeting, WSBA's current General Counsel/Chief Regulatory Counsel Jean McElroy will be returning to just one job and the title of Chief Regulatory Counsel as we move to split these functions and hire a new General Counsel. Screening is currently underway for more than two dozen candidates for the position. The first round of interviews will be conducted by the Executive Director and Director of Human Resources. As with all our executive level candidates, finalists will be referred for a three-step interview process that includes an interview with the Executive Management Team, an interview with the Office of General Counsel staff, and an interview open to any interested staff in the organization. The BOG will also be given the opportunity for a "fit interview" when a final candidate has been selected. The posting will remain open until an offer is finalized.

Director Activity Report (attached)

Executive Committee Action (attached)

WSBA Demographics Report (attached)

Correspondence and Other Informational Items (attached)

Media Contacts Report (attached)

Update on Various Court Rules (attached)

WSBA
OFFICE OF THE EXECUTIVE DIRECTOR

Paula C. Littlewood
Executive Director

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ACTIVITY REPORT

January 28, 2017 – March 10, 2017

Current Service on Boards and Committees

Local: Board for Judicial Administration (BJA) Policy and Planning Committee; University of Washington School of Law Leadership Council, Executive Committee Member; University of Washington School of Law Public Interest Law Association Board of Advisors.

National: Institute for the Advancement of the American Legal System (IAALS) Board of Advisors.

International: International Institute of Law Association Chief Executives (IILACE), Secretary/Treasurer and Member of Program Committee.

Meetings with Other WSBA and External Constituents

Board for Judicial Administration Meeting	February 17
Board for Judicial Administration Policy and Planning Committee Conference Call re Goals	March 3
Legal Community Leaders	5
New Lawyers and Law Students	4
Other	2

WSBA- and BOG-Related Meetings:

BOG Executive Committee Meetings	3
BOG Leadership Meetings with Local Bar and Bench in Olympia	March 8
BOG Leadership Meeting with Governor Inslee	March 8
BOG Meeting in Olympia	March 9
BOG Meeting with Supreme Court	March 10
BOG Personnel Committee Meeting	March 2
BOG President Weekly Calls	5
Calls with Pam Inglesby to BOG District Candidates	February 22 & 23
Limited License Legal Technician (LLLT) Program	4
Limited License Legal Technician (LLLT) Board meeting with Supreme Court	March 8

Washington State Bar Foundation Board of Trustees Retreat	March 2
WSBA Budget & Audit Committee Meeting	February 16
Other	2

Staff-Related Meetings:

All-Manager Meeting	March 14
Executive Management Team Meetings	4
New Hire Lunch	February 15
Random Acts of Pizza (R.A.P.)	February 22
Weeklies with Communications Department and Communications Core Team and Retreat	6
Weeklies with Staff Direct Reports	7
Other	11

National/International-Related Meetings:

International Institute of Law Association Chief Executives (IILACE) Executive Committee Conference Call	March 15
International Institute of Law Association Chief Executives (IILACE) Program Committee Conference Call	February 27
National Association of Bar Executives (NABE) Conference	Jan 31-Feb 2
Western States Bar Conference (WSBC)	2
Bar Leaders Institute Phone Call with David Tabak	February 24

Presentations

Future of the Profession Panel at Association of Professional Responsibility Lawyers (APRL) Midyear Meeting in Miami	February 3
Limited License Legal Technician (LLLT) Presentation with Steve Crossland and Ellen Reed at Edmonds Community College	March 2, 2017
Professionalism Presentation at Seattle University School of Law (2)	March 7

Organizational Events

Goldmark Reception	February 16
Goldmark Award Luncheon	February 17
Welcome at Decoding the Law Forum	March 2, 2017

WSBA Member Licensing Counts* 3/1/17 3:39:39 PM GMT-08:00

Member Type	In WA State	All
Active Attorney	25,575	31,687
Educational Purposes	2	2
Emeritus	98	104
Foreign Law Consultant	14	20
Honorary	348	393
House Counsel	163	167
Inactive Attorney	2,281	5,375
Indigent Representative	8	10
Judicial	611	629
LLLT	20	20
LPO	934	957
Military	8	8

Misc Counts	
All License Types **	39,373
All WSBA Members	39,165
Active Attorneys in Washington	25,575
Active Attorneys in western Washington	21,596
Active Attorneys in King County	14,410
Active Attorneys in eastern Washington	3,138
New/Young Lawyers	6,630
MCLE Reporting Group 1	8,118
MCLE Reporting Group 2	9,590
MCLE Reporting Group 3	9,099

By District	All	Active
0	3,260	2,035
1	2,775	2,333
2	1,888	1,551
3	2,001	1,697
4	1,333	1,131
5	2,945	2,437
6	3,109	2,617
7N	5,043	4,358
7S	6,738	5,617
8	2,064	1,755
9	4,566	3,902
10	2,661	2,254
	38,383	31,687

By Section ***	All	Previous Year
Administrative Law	269	235
Alternative Dispute Resolution	380	394
Animal Law	117	115
Antitrust, Consumer Protection and Unfair Business Practice	217	211
Business Law	1,358	1,372
Civil Rights Law	203	144
Construction Law	518	521
Corporate Counsel	1,126	1,073
Creditor Debtor Rights	550	590
Criminal Law	527	505
Elder Law	693	694
Environmental and Land Use Law	818	858
Family Law	1,236	1,335
Health Law	408	387
Indian Law	325	333
Intellectual Property	963	965
International Practice	273	303
Juvenile Law	221	204
Labor and Employment Law	1,025	1,027
Legal Assistance to Military Personnel	99	106
Lesbian, Gay, Bisexual, Transgender (LGBT) Law	139	112
Litigation	1,174	1,238
Low Bono	111	126
Real Property Probate and Trust	2,331	2,356
Senior Lawyers	269	288
Solo and Small Practice	974	1,026
Taxation	656	650
World Peace Through Law	120	104

*** Per WSBA Bylaws 'Members' include active attorney, emeritus pro-bono, honorary, inactive attorney, judicial, limited license legal technician (LLLT), and limited practice officer (LPO) license types.**

**** All license types include active attorney, educational purposes, emeritus pro-bono, foreign law consultant, honorary, house counsel, inactive attorney, indigent representative, judicial, LPO, LLLT, and military.**

***** The values in the All column are reset to zero at the beginning of the WSBA fiscal year (Oct 1). The Previous Year column is the total from the last day of the fiscal year (Sep 30). WSBA staff with complimentary membership are not included in the counts.**

By State and Province	
Alabama	22
Alaska	207
Alberta	9
Arizona	308
Arkansas	13
Armed Forces Americas	1
Armed Forces Europe, Middle Eas	23
Armed Forces Pacific	21
British Columbia	88
California	1,639
Colorado	230
Connecticut	54
Delaware	4
District of Columbia	345
Florida	230
Georgia	76
Guam	20
Hawaii	124
Idaho	412
Illinois	139
Indiana	32
Iowa	32
Kansas	30
Kentucky	21
Louisiana	48
Maine	11
Maryland	115
Massachusetts	81
Michigan	69
Minnesota	96
Mississippi	5
Missouri	58
Montana	156
Nebraska	17
Nevada	136
New Hampshire	10
New Jersey	64
New Mexico	64
New York	225
North Carolina	86
North Dakota	10
Northern Mariana Islands	6
Nova Scotia	1
Ohio	72
Oklahoma	27
Ontario	13
Oregon	2,594
Pennsylvania	74
Puerto Rico	3
Quebec	1
Rhode Island	11
Saskatchewan	1
South Carolina	26
South Dakota	9
Tennessee	45
Texas	321
Trust Territories	1
Utah	155
Vermont	17
Virginia	283
Virgin Islands	2
Washington	29,867
West Virginia	7
Wisconsin	41
Wyoming	23

By WA County	
Adams	15
Asotin	27
Benton	396
Chelan	246
Clallam	149
Clark	863
Columbia	7
Cowlitz	141
Douglas	25
Ferry	13
Franklin	56
Garfield	3
Grant	133
Grays Harbor	114
Island	139
Jefferson	102
King	16,260
Kitsap	738
Kittitas	83
Klickitat	27
Lewis	120
Lincoln	14
Mason	91
Okanogan	102
Pacific	27
Pend Oreille	22
Pierce	2,239
San Juan	78
Skagit	271
Skamania	17
Snohomish	1,561
Spokane	1,860
Stevens	55
Thurston	1,513
Wahkiakum	10
Walla Walla	109
Whatcom	549
Whitman	78
Yakima	461

By Admit Yr	
1940	3
1941	2
1942	1
1944	1
1945	1
1946	2
1947	6
1948	9
1949	19
1950	18
1951	30
1952	29
1953	29
1954	29
1955	20
1956	44
1957	36
1958	43
1959	42
1960	33
1961	30
1962	35
1963	35
1964	44
1965	60
1966	68
1967	70
1968	103
1969	116
1970	125
1971	136
1972	210
1973	307
1974	294
1975	368
1976	445
1977	444
1978	498
1979	537
1980	553
1981	575
1982	557
1983	598
1984	677
1985	474
1986	735
1987	642
1988	603
1989	642
1990	781
1991	775
1992	767
1993	807
1994	826
1995	843
1996	775
1997	877
1998	818
1999	861
2000	877
2001	948
2002	1,020
2003	1,054
2004	1,063
2005	1,077
2006	1,120
2007	1,189
2008	1,105
2009	1,014
2010	1,102
2011	1,085
2012	1,122
2013	1,262
2014	1,399
2015	1,674
2016	1,341
2017	225

WSBA Demographics Report* 3/1/17 3:58:31 PM GMT-08:00

By Years Licensed**	
Under 6	8,177
6 to 10	5,588
11 to 15	5,176
16 to 20	4,238
21 to 25	4,010
26 to 30	3,377
31 to 35	2,921
36 to 40	2,479
41 and Over	2,417
Total:	**38,383**

By Firm Size	
Solo	5,608
Solo in Shared Office or	1,689
Government/ Public Secto	4,774
In House Counsel	2,798
2-5 Lawyers in Firm	4,777
6-10 Lawyers in Firm	1,991
11-20 Lawyers in Firm	1,385
21-35 Lawyers in Firm	898
36-50 Lawyers in Firm	612
51-100 Lawyers in Firm	703
100+ Lawyers in Firm	2,097
Respondents	**27,332**
No Response	**11,063**
All License Types	**38,395**

By Ethnicity	
American Indian / Alaska Native	242
Asian	1,374
Black/African descent	618
Caucasian	23,843
Hispanic/Latina/o	668
Multi Racial	766
Other	134
Pacific Islander	52
Respondents	**27,697**
No Response	**10,698**
All License Types	**38,395**

By Gender	
FEMALE	11,806
MALE	17,288
Respondents	**29,094**
No Response	**9,301**
All License Types	**38,395**

By Disabled Status	
N	14,742
Y	877

By LGBT	
N	14,617
Y	952

By Age	All *	Active
21 to 30	2,047	1,967
31 to 40	8,876	7,967
41 to 50	9,223	7,799
51 to 60	8,388	6,917
61 to 70	7,528	5,755
71 to 80	1,772	1,172
Over 80	561	110
Total:	**38,395**	**31,687**

*** Includes active, educational purposes, emeritus, house counsel, foreign law consultant, honorary, inactive, indigent representative, judicial, non-member emeritus, and military.**

**** Includes active, emeritus, house counsel, foreign law consultant, honorary, inactive, judicial, non-member emeritus, and military.**

By Practice Area	
Administrative/regulator	2,129
Agricultural	210
Animal Law	109
Antitrust	282
Appellate	1,515
Aviation	136
Banking	432
Bankruptcy	1,069
Business/ Commercial	5,024
Civil Litigation	5,126
Civil Rights	980
Collections	578
Communications	216
Constitutional	593
Construction	1,287
Consumer	733
Contracts	3,994
Corporate	3,343
Criminal	3,889
Debtor-creditor	974
Disability	665
Dispute Resolution	1,328
Education	461
Elder	922
Employment	2,725
Entertainment	310
Environmental	1,293
Estate Planning/ Probate	3,480
Family	2,886
Foreclosure	544
Forfeiture	74
General	2,889
Government	2,645
Guardianships	891
Health	913
Housing	276
Human Rights	305
Immigration & Naturaliza	967
Indian	582
Insurance	1,673
Intellectual Property	2,153
International	893
Judicial Officer	354
Juvenile	885
Labor	1,089
Landlord/ Tenant	1,279
Land Use	763
Legal Ethics	270
Legal Research & Writing	671
Legislation	371
Litigation	4,347
Lobbying	161
Malpractice	766
Maritime	289
Military	360
Municipal	901
Non-profit/tax Exempt	545
Not Actively Practicing	1,654
Oil, Gas & Energy	180
Patent/ Trademark/ Copyr	1,254
Personal Injury	3,298
Real Property	2,339
Real Property/ Land Use	2,287
Securities	780
Sports	148
Subrogation	72
Tax	1,289
Torts	2,054
Traffic Offenses	735
Workers' Compensation	705

By Languages Spoken	
Afrikaans	4
Akan /twi	4
Albanian	1
American Sign Langu	10
Amharic	13
Arabic	46
Armenian	6
Bengali	11
Bosnian	5
Bulgarian	13
Burmese	2
Cambodian	6
Cantonese	92
Cebuano	3
Chamorro	3
Chaozhou/chiu Chow	1
Chin	1
Croatian	16
Czech	7
Danish	18
Dari	1
Dutch	20
Egyptian	1
Farsi/persian	52
Fijian	1
Finnish	7
French	662
French Creole	2
Fukienese	3
Ga/kwa	2
German	412
Greek	27
Gujarati	12
Haitian Creole	1
Hebrew	35
Hindi	78
Hmong	1
Hungarian	13
Ibo	4
Icelandic	1
Ilocano	9
Indonesian	10
Italian	147
Japanese	197
Kannada/canares	3
Khmer	1
Korean	216
Lao	6
Latvian	6
Lithuanian	4
Malay	2
Malayalam	8
Mandarin	305
Marathi	3
Mongolian	1
Navajo	1
Nepali	3
Norwegian	37
Not listed	25
Oromo	3
Other	23
Persian	20
Polish	33
Portuguese	108
Punjabi	52
Romanian	17
Russian	221
Samoan	7
Serbian	15
Serbo-croatian	5
Sign Language	23
Singhalese	1
Slovak	2
Spanish	1,654
Spanish Creole	7
Swahili	3
Swedish	53
Tagalog	60
Taishanese	2
Taiwanese	15
Tamil	7
Telugu	3
Thai	13
Tigrinya	3
Tongan	1
Turkish	9
Ukrainian	35
Urdu	33
Vietnamese	80
Yoruba	7

WSBA

Paula C. Littlewood
Executive Director

direct line: 206-239-2120
fax: 206-727-8316
e-mail: paulal@wsba.org

January 30, 2017

Representative Matt Shea
State of Washington House of Representatives
PO Box 40600
Olympia WA 98504-0600

Dear Representative Shea,

Thank you for your letters to the Washington State Bar Association and the Disciplinary Advisory Round Table dated January 18, 2017, regarding American Bar Association (ABA) Model Rule 8.4(g).

Washington State's Rules of Professional Conduct (RPC) contain provisions prohibiting discriminatory acts and conduct manifesting bias or prejudice. These provisions, RPC 8.4(g) and 8.4(h), were adopted in 1993 and 2000, respectively. I have enclosed a copy of these rules, together with accompanying Comment [3].

Neither WSBA nor the Disciplinary Advisory Round Table is presently considering any amendments to Washington's RPC 8.4 based on the ABA's amendment to the Model Rule.

Sincerely,

Paula C. Littlewood
WSBA Executive Director

Charles K. Wiggins
Justice, Washington Supreme Court
Chair, Disciplinary Advisory Round Table

Enclosure

cc: Mary E. Fairhurst, Chief Justice, Washington Supreme Court

Washington State's Rules of Professional Conduct 8.4(g) & (h)

- **Rules 8.4(g) & (h)**

It is professional misconduct for a lawyer to:

***

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, lawyers, or LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.

***

Comment [3] . . . Legitimate advocacy respecting the factors set forth in paragraph (h) does not violate paragraphs (d) or (h). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

***

[Originally effective September 1, 1985; amended effective September 17, 1993; October 31, 2000; October 1, 2002; September 1, 2006; April 14, 2015.]

STATE REPRESENTATIVE
4th LEGISLATIVE DISTRICT
MATT SHEA

State of
Washington
House of
Representatives

ENVIRONMENT
RANKING MEMBER

JUDICIARY
ASSISTANT RANKING MEMBER

TRANSPORTATION

January 18, 2017

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

To Whom It May Concern:

As a member of the Washington State House of Representatives and practicing attorney, I wish to know whether the recently amended American Bar Association (ABA) Model Rule 8.4 is currently being or will be considered or reviewed by the Washington State Bar Association in 2017 and if you have received any correspondence on the matter. It is my understanding that section (g) of the recently adopted ABA Model Rule 8.4:

- violates the first amendment rights of attorneys, including free speech, freedom of association, and free exercise rights;
- threatens discipline for conduct "related to the practice of law," whereby attorneys may be disciplined, even if their conduct is not prejudicial to the administration of justice;
- limits lawyer autonomy in decisions to accept or decline a representation.

According to ABA Model Rule 8.4, it is professional misconduct for a lawyer to:

> *(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;*
>
> *(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;*
>
> *(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;*
>
> *(d) engage in conduct that is prejudicial to the administration of justice;*
>
> *(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;*
>
> *(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or*

LEGISLATIVE OFFICE: 437 JOHN L. O'BRIEN BUILDING, PO BOX 40600, OLYMPIA, WA 98504-0600 • 360-786-7984
E-MAIL: Matt.Shea@leg.wa.gov • www.houserepublicans.wa.gov/Shea
TOLL-FREE LEGISLATIVE HOTLINE: 1-800-562-6000 • TDD: 1-800-635-9993

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

Given the many free speech issues implicated, the rule is almost certainly subject to constitutional challenge. As a Washington State Bar Association, you have an important task ahead in considering the new amendatory language to ABA Model Rule 8.4. I urge you to reject the adoption of the recent amendments to ABA Model Rule 8.4 and its comments.
Thank you for your service.

Sincerely,

MATTHEW T. SHEA
Washington State Representative, 4th District

On February 8, 2017, the attached letter was also sent to:

Chief Judge George B. Fearing – Court of Appeals, Division III

Judge Michael T. Downes – Superior Court Judges Association

Judge G. Scott Marinella – District and Municipal Court Judges' Association

Clerk Barbara Christensen – Washington State Association of County Clerks

WSBA
WASHINGTON STATE BAR ASSOCIATION

Paula C. Littlewood
Executive Director

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e-mail: paulal@wsba.org

February 8, 2017

Chief Judge Ricardo S. Martinez
United States Courthouse
700 Stewart Street, Suite 13134
Seattle, WA 98101 – 9906

RE: Request for Chief Judge to designate member to Washington State Bar Association Civil Litigation Rules Drafting Task Force

Dear Chief Judge Martinez:

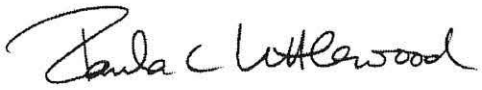
As you may be aware, on November 18, 2016, the Washington State Bar Association (WSBA) Board of Governors approved the formation of a Civil Litigation Rules Drafting Task Force. This action culminated a lengthy process which began with the formation of the Escalating Cost of Civil Litigation Task Force (ECCL) in 2011. The ECCL was formed to assess the costs of civil litigation in Washington courts and to develop recommendations to control them. The ECCL Task Force issued its final report in June 2015 and presented it to the WSBA Board of Governors (BOG).

Following an in depth process of vetting and consideration of public and member input, the Board took final action on the ECCL report in July 2016. The BOG issued a report on each of the Task Force's recommendations, approving some and rejecting others. It became clear that many of the Board-supported recommendations would require implementing amendments to the Superior Court Rules and/or the Civil Rules for Courts of Limited Jurisdiction.

The Civil Litigation Rules Drafting Task Force Charter requires it to include a representative of the Federal Judiciary, if available to serve. Magistrate Judge Paula L. McCandlis has expressed interest in volunteering to serve on the Task Force. Of course, we defer to you as to whomever you wish to designate, but wanted to let you know Magistrate Judge McCandlis has expressed interest. Please let us know by letter or email who you wish to designate. We will then forward the nomination to the BOG for appointment at its March 9th meeting. Please let us know, however, if you will need additional time in identifying your designee.

Thank you in advance for your participation in this endeavor.

Sincerely,



Paula C. Littlewood
Executive Director, WSBA
Paulal@wsba.org

Ken Masters
Chair, Civil Litigation Rules Drafting Task Force
ken@appeal-law.com

cc: Robin Haynes WSBA President (via email only)
Kevin Bank, WSBA Staff liaison (via email only)
Sean-Michael Davis, BOG liaison (via email only)

February 15, 2017

Clerk of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504

To Whom It May Concern,

The Access to Justice Board strongly supports the Legal Foundation of Washington's proposed change to Court Rule 23, which would increase the percentage of residual funds disbursed for civil legal aid in our state from 25% to 50%.

The stark results of the 2015 Civil Legal Needs Study Update reveal that over 70% of low income households experience at least one civil legal need annually, and only 24% of low-income people in our state who need legal aid will be able to access services. While not a predictable revenue stream, by increasing the percentage of class action residuals from 25% to 50%, it would alleviate a huge burden on under-funded legal aid programs while potentially providing some additional resources for innovation in the delivery system.

The Access to Justice Board recognizes that access to the civil justice system is a fundamental right and works to achieve equal access for those facing economic and other significant barriers. An increase to the residual funds would help get our state closer to achieving equal access. We encourage the Court to adopt this proposed change.

If you have any questions or need more information, please contact Diana Singleton, Access to Justice Manager, at dianas@wsba.org or 206-727-8205.

Respectfully,

Geoffrey Revelle, Chair
Access to Justice Board

cc: Paula Littlewood, Washington State Bar Association

February 15, 2017

SENT VIA ELECTRONIC MAIL TO janet.garrow@kingcounty.gov

The Honorable Janet E. Garrow
King County District Court

Dear Judge Garrow:

Thank you for your invitation to support the proposed amendments to RCW 12.40. We appreciate you having taken the time to meet with our Rules Committee and share information that was helpful for their review of the proposed amendments.

While we do not have any concern with the proposed amendments from the perspective of low income persons using small claims court as plaintiffs, we do have some concerns about whether the benefits to such persons may be offset by the risk that more low income persons could find themselves as defendants in small claims court and that the proposed amendments could make it harder for them to avoid unjust outcomes. However, the Access to Justice Board does not oppose the proposed amendment.

If you have any questions or need more information, please do not hesitate to let us know. You can reach Diana Singleton, Access to Justice Manager, at dianas@wsba.org or 206-727-8205.

Respectfully,

Geoffrey Revelle, Chair
Access to Justice Board

cc: Paula Littlewood, Washington State Bar Association

WSBA
BOARD OF GOVERNORS

Mario M. Cava
Governor, At-Large (B)

phone: 206.830.5684
e-mail: mario.cava@gmail.com

February 28, 2017

Via E-Mail Only
Ms. Kelli Schmidt, Chair
WSBA Civil Rights Section
PO Box 18654
Seattle, WA 98118
Kelli.Schmidt@protonmail.com

Re: HB 1783 (Legal Financial Obligations); HB 1800 (Voting Rights Act)

Greetings Ms. Schmidt:

We appreciate your ongoing collaboration with Legislative Affairs Manager Alison Phelan, and your attention to the WSBA Legislation and Court Rule Comment Policy.

On Friday, February 24, 2017, the BOG Legislative Committee (BLC) considered the Civil Rights Section's requests for authorization to comment publicly regarding HB 1783 (Legal Financial Obligations) and HB 1800 (Voting Rights Act).

Having carefully considered your written materials, the BLC determined that both bills satisfied the threshold requirements of GR 12.1(c)(2). The BLC authorized the Civil Rights Section to comment publicly regarding HB 1783 in consultation with Ms. Phelan. Authorization was more limited in scope with regard to HB 1800, and the BLC requests that you work closely with Ms. Phelan to prepare a letter of support on behalf of the Civil Rights Section. Given that HB 1800 is not yet scheduled for a public hearing, the BLC requests that you seek authorization from the committee in advance of offering public testimony.

Please feel free to contact me directly with any questions regarding this decision.

Very truly yours,

Mario M. Cava
Chair, BOG Legislative Committee

cc: WSBA BOG Legislative Committee
Alison Phelan, WSBA Legislative Affairs Manager
Robin Haynes, WSBA President
Paula Littlewood, WSBA Executive Director

MMC/mc

March 3, 2017

Clerk of the Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

To the Clerk of the Supreme Court:

The Access to Justice (ATJ) Board supports the goal of the proposed General Rule 36 – to reduce discrimination in judicial proceedings. The ATJ Board recognizes that access to justice should extend to all participants in judicial proceedings. This includes jury venire members. The United States Supreme Court recognized in Batson vs. Kennedy that discrimination in jury selection violates the rights of both the litigants and prospective jurors. Discrimination in jury selection on any basis is contrary to access to justice.

As outlined in the materials filed by the sponsors of proposed GR 36, experience demonstrates that the three-step analytical framework for trying to identify discrimination in jury selection set forth in Batson vs. Kennedy and its progeny is not working. Improvement is needed. And it would appear to the ATJ Board that it is better to have a procedure that over-protects against discrimination than the present one that allows discrimination to remain unaddressed. The ATJ Board defers to the many advocates that have contributed to the proposed GR 36 as to whether it strikes the right balance in active litigation.

The ATJ Board also supports the sponsors' decision to amend proposed GR 36 to include gender based discrimination as provided in their comment to their proposal. In jury selection, discrimination on the basis of gender often goes unaddressed.

If you have any questions or need more information, please contact the ATJ Board Manager, Diana Singleton, at dianas@wsba.org and 206-727-8205.

Respectfully,

Geoffrey Revelle, Chair
Access to Justice Board

cc: Paula Littlewood, Washington State Bar Association

GR 9 COVER SHEET
Suggested Change to the
GENERAL RULES
Rule 36 – Jury Selection

Submitted by the American Civil Liberties Union of Washington

A. **Name of Proponent:** American Civil Liberties Union of Washington

B. **Spokesperson:** Sal Mungia, Gordon Honeywell and Thomas and ACLU-WA Cooperating Attorney; and La Rond Baker, ACLU-WA Staff Attorney.

C. **Purpose:** Proposed General Rule 36 ("GR 36") is a new rule meant to protect Washington jury trials from intentional or unintentional, unconscious, or institutional bias in the empanelment of juries.

In *State v. Saintcalle*, the Washington State Supreme Court expressed concerns that the federal *Batson v. Kentucky* test provides insufficient protections to potential jurors of color from biased use of peremptory challenges. [1] *Batson* created a standard under which a court can only sustain a challenge to a peremptory strike after three conditions are satisfied: (1) "the person challenging the peremptory must 'make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose"; (2) the striking party must "come forward with a [race-]neutral explanation' for the challenge"; and (3) the court must "determine if the defendant has established *purposeful* discrimination.".[2] *State v. Saintcalle*, 178 Wn.2d 34, 42, 309 P.3d 326 (2013) (citations omitted) (alteration in original) (emphasis added).

Batson was the United States Supreme Court's solution to the failures of the previous test for determining whether a peremptory strike was invalid because of bias. However, over the years it has become evident that *Batson* fails to adequately protect potential jurors and the justice system from biased use of peremptories. [3] This is because *Batson* requires parties to meet an extremely high bar to show that a peremptory challenge was motivated by bias. *Batson* requires attorneys

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[1] *State v. Saintcalle*, 178 Wn.2d 34, 36, 309 P.3d 326 (2013). *See Batson v. Kentucky*, 476 U.S. 79, 106 (1986), 106 S. Ct. 1712, 90 L. Ed. 2d 69 (Marshall, J., concurring) (noting that "'seat-of-the-pants instincts' may often be just another term for [unconscious] racial prejudice"); *Miller-El v. Dretke*, 545 U.S. 231, 268, 125 S. Ct. 2317, 162 L. Ed. 2d 196 (Breyer, J., concurring) (racial bias "may be invisible even to the prosecutor exercising the challenge") *See also* Antony Page, *Batson's Blind–Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. Rev. 155, 161 (2005) ("[U]nconscious and unintentional" bias may result in racially-motivated peremptory challenges.).

[2] *Batson*, 476 U.S. at 93-94, 96-97, 98. *See also Johnson v. California*, 545 U.S. 162, 168, 125 S. Ct. 2410, 162 L. Ed. 2d 129 (2005).

[3] *Saintcalle*, 178 Wn.2d at 43 (criticizing *Swain v. Alabama*, 380 U.S. 202, 223-24, 85 S. Ct. 824, 13 L. Ed. 2d 759 (1965) (holding that a party alleging discriminatory jury selection must demonstrate a long-standing practice of purposeful discrimination in order to succeed with an equal protection claim), *overruled by Batson*, 476 U.S. 79).

to allege, and judges to find, purposeful discrimination and fails to acknowledge that bias can be subtle, institutional, or inadvertent.[4] The Washington State Supreme Court in *Saintcalle* explained that "it is evident that *Batson*, like *Swain* before it, is failing us."[5] The Court recognized there was ample data demonstrating that racial bias in the jury selection process remained "rampant":

> Twenty-six years after *Batson*, a growing body of evidence shows that racial discrimination remains rampant in jury selection. In part, this is because *Batson* recognizes only "purposeful discrimination," whereas racism is often unintentional, institutional, or unconscious. We conclude that our *Batson* procedures must change and that we must strengthen *Batson* to recognize these more prevalent forms of discrimination.

Saintcalle, 178 Wn.2d at 36.

The *Saintcalle* court based its concerns on "[a] growing body of evidence . . . that *Batson* has done very little to make juries more diverse."[6] This evidence included empirical studies that indicate that discriminatory jury selection is a problem nationwide.[7] It also included the fact that "[i]n over 40 cases since *Batson*, Washington appellate courts have *never* reversed a conviction based on a trial court's erroneous denial of a *Batson* challenge."[8]

Legal scholars have also long noted *Batson*'s failure to effectively eradicate discrimination in peremptory challenges.[9] This failure is especially pressing when one considers issues of unconscious racism.[10, 11]

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[4] *Saintcalle*, 178 Wn.2d at 46-49, fn. 3 ("It is now socially unacceptable to be overtly racist. Yet we all live our lives with stereotypes that are ingrained and often unconscious, implicit biases that endure despite our best efforts to eliminate them." (citing Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. Rev. 465, 471 (2010))).

[5] *Id.* at 44.

[6] *Id.*

[7] *See, e.g.*, Mary R. Rose, *The Peremptory Challenge Accused of Race or Gender Discrimination? Some Data from One County*, 23 Law & Hum. Behav. 695, 698-99 (1999) (60 percent of peremptory challenges were used against black jurors, who made only 32 percent of the jury pool); Catharine Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post*-Batson *North Carolina Capital Trials*, 97 Iowa L. Rev. 1531, 1550-1557 (2012); Equal Justice Initiative, *Illegal Discrimination in Jury Selection a Continuing Legacy*, at 12 (Aug. 2010) (80 percent of qualified African Americans peremptorily struck in capital cases in a county that is 27 percent African American), *available at* http://www.eji.org/files/EJI%20Race%20and%20Jury%20Report.pdf; David C. Baldus et al., *The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis*, 3 U. Pa. J. Const. L. 3, 52-53, 73, n.197 (2001) (Philadelphia prosecutors struck 51 percent of black jurors versus only 26 percent of non-black jurors); Shamena Anwar et al., *The Impact of Jury Race in Criminal Trials*, The Quarterly Journal of Economics, at 1017-1055 (May 2012) (having a black member of the venire results in more equitable conviction rates for white and non-white defendants).

[8] *Saintcalle*, 178 Wn.2d at 45-46.

[9] *See, e.g.*, Andres G. Gordon, *Beyond* Batson v. Kentucky: *A Proposed Ethical Rule Prohibiting Racial Discrimination in Jury Selection*, 62 Fordham L. Rev. 685, 686 (1993) ("Attorneys have become adept at rebutting

GR 36 addresses this problem by employing a test that utilizes an objective-observer standard. Under GR 36, the trial court would find a peremptory strike invalid if an objective observer could find that race or ethnicity was a factor for a peremptory challenge. GR 36 also gives trial courts the necessary latitude to protect the justice system from bias by granting courts the freedom to raise objections to a peremptory strike *sua sponte*. It would also bring greater diversity to juries, so that juries in Washington are more representative of the communities they serve.[12] The rule would also improve the appearance of fairness and promote the administration of justice.

The Washington State Supreme Court has the flexibility to "extend greater-than-federal *Batson* protections" through its rule-making authority. [13, 14] Other states have adopted court rules dealing with the *Batson* issue.[15]

GR 36 preserves the use of peremptory challenges as part of the right to a jury trial while at the same time addressing racial bias in jury selection.[16] The comment section provides guidance to the judiciary and attorneys about how to apply the rule. By adopting this rule, Washington will ensure that its justice system is not improperly tainted by bias, protect Washingtonians from discrimination, ensure diversity in juries, and address systemic, institutional, and unintentional racism in jury selection.

D. **Hearing:** A hearing is not requested.

E. **Expedited Consideration:** Expedited consideration is not requested.

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prima facie cases of discrimination by creating 'acceptable' reasons for their strikes."); Matt Haven, *Reaching* Batson*'s Challenge Twenty-Five Years Later: Eliminating the Peremptory Challenge and Loosening the Challenge for Cause Standard*, 11 U. Md. L.J. Race Religion Gender & Class 97, 97 (2011); Karen M. Bray, *Reaching the Final Chapter in the Story of Peremptory Challenges*, 40 UCLA L. Rev. 517, 520 (1992); Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of* Batson*, and Proposed Solutions*, 4 Harv. L. & Pol'y Rev. 149, 150 (2010).

[10] For commentary on unconscious racism and implicit bias in peremptory challenges, *see generally* Haven, *supra* note 9 at 116; Bennett, *supra* note 9 at 158-165.

[11] Haven, *supra* note 9, at 116.

[12] The absence of non-white jurors matters, as studies indicate that diverse juries tend to consider more perspectives and spend more time deliberating than all-white juries. Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition in Jury Deliberation*, 90 J. Personality and Soc. Psych. 597, 609 (2006).

[13] *Saintcalle*, 178 Wn.2d at 37 (citing *State v. Hicks*, 163 Wn.3d 477, 492, 181 P.3d 831 (2008).

[14] *Id.* at 55 (citing *State v. Templeton*, 148 Wn.2d 193, 212-13, 59 P.3d 632 (2002)) (noting also that a rule "might be the most effective way to reduce discrimination and combat minority underrepresentation in our jury system").

[15] *See, e.g.*, N.Y. Code Crim. Proc. § 270.25; Tex. Code Crim. Proc. Art. 35.261; Minn. R. Crim. P. 26.02; La. Code Crim. Proc. Art. 795.

[16] *See Batson*, 476 U.S. at 85-86; *Saintcalle*, 178 Wn.2d at 50. *See also Powers v. Ohio*, 499 U.S. 400, 409, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991).

RULE 36. JURY SELECTION

(a) **Scope of rule.** This procedure is to be followed in all jury trials.

(b) A party may object to an adverse party's use of a peremptory challenge on the grounds that an objective observer could view race, ethnicity, or gender as playing a role in the use of the peremptory challenge. The court may also raise this objection on its own.

(c) When such an objection is made, the party exercising the peremptory challenge must articulate on the record the reasons for the peremptory challenge.

(d) After evaluating the reasons given to justify the peremptory challenge in light of the entire voir dire process, if the court determines that an objective observer could view race, ethnicity, or gender as playing a role in the use of the peremptory challenge, then the peremptory challenge shall be denied.

Comment

[1] The purpose of this rule is to eliminate the unfair exclusion of potential jurors based on race, ethnicity, or gender. Eliminating the appearance of racial, ethnic, and gender bias in the empanelment of juries is necessary because such an appearance undermines public confidence in the justice system. This rule is consistent with R.C.W. 2.36.080(4) which states that a citizen shall not be excluded from jury service on account of race, color, or sex. RCW 2.36.080(4).

[2] This rule responds to problems with the *Batson* test described in *State v. Saintcalle*, 178 Wn.2d 34 (2013), and establishes an "objective observer" standard for determining whether a peremptory challenge is invalid instead of the standard articulated in *Batson v. Kentucky*, 476 U.S. 79 (1986). This rule also supports one of the underlying

goals of the jury selection process which is to ensure the appearance of fairness. *State v. Saintcalle*, 178 Wn.2d at 76 (Gonzalez, J. concurring.) For purposes of this rule it is irrelevant whether it can be proved that a prospective juror's race, ethnicity, or gender actually played a motivating role in the exercise of a peremptory challenge.

[3] An objective observer is one who is aware that purposeful discrimination and implicit, institutional, or unconscious bias have resulted in the unfair exclusion of potential jurors based on race, ethnicity, and gender in Washington State. As with the appearance of fairness doctrine for the recusal of judges, it is sufficient if an objective observer could view race, ethnicity, or gender as playing a role in the exercise of the peremptory challenge.

[4] In determining whether an objective observer could view race, ethnicity, or gender as a factor in the use of the peremptory challenge, the court shall consider the entire voir dire process including the following: (a) the number and types of questions posed to the prospective juror, which may include consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the alleged concern or the types of questions asked about it; (b) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the potential juror against whom the peremptory challenge was used in contrast to other jurors; and (c) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party.

[5] Because historically the following reasons for peremptory challenges have operated to exclude minorities from serving on juries in Washington, there is a presumption that the following are invalid reasons for a peremptory challenge: (a) having prior contact with law enforcement officers; (b) expressing a distrust of law enforcement

or a belief that law enforcement officers engage in racial profiling; (c) having a close relationship with people who have been stopped, arrested, or convicted of a crime; (d) living in a high-crime neighborhood; (e) having a child outside of marriage; (f) receiving state benefits; and (g) not being a native English speaker.

[6] The following reasons for peremptory challenges also have historically been used to perpetuate exclusion of minority jurors: allegations that the prospective juror was sleeping, inattentive, staring or failing to make eye contact, exhibited a problematic attitude, body language, or demeanor, or provided unintelligent or confused answers. If any party intends to offer one of those reasons, or reasons similar to them, as the justification for a peremptory challenge, that party must provide reasonable notice to the court and the opposing party so the behavior can be verified and addressed in a timely manner. A lack of corroborating evidence observed by the judge or opposing counsel verifying the behavior shall be considered strongly probative that the reasons given for the peremptory challenge are invalid.

SPOKANE COUNTY COURT HOUSE

Superior Court of the State of Washington
For the County of Spokane

Department No. 5

Michael P. Price
Judge

Kati Dorman
JUDICIAL ASSISTANT

Crystal Hicks
COURT REPORTER

1116 WEST BROADWAY • SPOKANE, WA 99260-0350
(509) 477-4766 • FAX (509) 477-5714
dept5@spokanecounty.org

January 25, 2017

Ms. Robin Haynes
Washington State Bar Association President
PO Box 14758
Spokane Valley, WA 99214-0758

Dear Robin,

On behalf of Spokane County Superior Court, I would like to thank you for the opportunity to meet with the WSBA Board of Governors at today's luncheon.

I know my judicial colleagues agree with me that the opportunity to share our concerns and our ideas with the Board is invaluable and certainly helps us as a bench to do the best work that we can for the citizens of Spokane County.

I look forward to the opportunity to work with you and the Board going forward, and I thank you again for your courtesy and consideration today.

Very Truly Yours,

Michael P. Price
Presiding Superior Court Judge

cc: Ashley Callan, Spokane County Superior Court Administrator

ANGUS LEE
LAW FIRM, PLLC
9105A NE HWY 99, Suite 200
Vancouver, WA 98665
Phone: 360-635-6464 Fax: 888-509-8268

Sunday, February 12, 2017

Robin Haynes
President, WSBA
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
Via email: Robin@giantlegal.net

Paula Littlewood
Executive Director, WSBA
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
Via email: paulal@wsba.org

RE: DEMAND FOR VOTE

Dear Mrs. Littlewood and President Haynes:

This letter is to demand that the dues petition be submitted to the WSBA membership for a vote. The WSBA clearly has no discretion in this matter and no authority to refrain from submitting this matter to the membership.[1]

WSBA Bylaw VIII.A.3 provides: "all qualifying petitions **will be** put to a vote of the active membership within 90 days of the date that the petition was filed." Bylaws, WSBA, VIII.A.3 (emphasis added). The word "will" is synonymous in the English language with the word "must," which means "is required to." Bylaws, II.E.12. If the Bylaws afforded the WSBA staff or the BOG discretion regarding these matters the word "may" would have been used in the Bylaws instead of "will."

You, Mrs. Littlewood, as the Executive Director are obligated to fulfill the duty placed on you by Bylaw VIII.A.3. Likewise, the WSBA BOG and President are obligated to direct you to comply with Bylaw VIII.A.3, and have no authority to direct you to ignore that duty.

The primary function of a referendum is to express popular will and petition for the redress of a grievance. Many jurisdictions allow "advisory" referendums for exactly this

[1] A writ of mandamus may be issued to "compel the performance of an act which the law especially enjoins as a duty resulting from an office." RCW 7.16.160. Courts possess inherent power to protect individual citizens from arbitrary actions that occur when governing statutes and policies are not followed, even though a constitutional right is not violated by the arbitrary actions. *Williams v. Seattle Sch. Dist. No. 1*, 97 Wn.2d 21 5, 222, 643 P.2d 426 (1982).

purpose. There is no reason to believe that the WSBA referendum would not serve the same purpose. Therefore, whether or not the dues could be rolled back is not determinative of whether or not to submit the matter to the membership for a vote. The Bylaws grant this right of redress with absolutely no equivocation. Therefore, the only reasonable approach is to comply with the duty placed on the WSBA by permitting the referendum to proceed, and then decide what action to take after the vote. Considering that you have allocated over two million dollars in fiscal year 2017 for "communication," a vote on the dues petition is not even remotely cost prohibitive.

The Bylaws do not prohibit the BOG from overturning or modifying its own actions after hearing the will of the membership. The BOG, on its own initiative, could still vote to change the fees in light of the wisdom and wishes of the membership.

When GR 12.1(b)(22) was proposed for consideration it appears that the publicly stated position from the WSBA in NW Sidebar was that the suggested amendment "... does not address **in any way** the member referendum provisions, which are contained in the WSBA bylaws."[2] In light of the WSBAs public affirmation to its members, it has a moral obligation to hold a vote.

Kindly submit this matter to a vote of the membership as soon as possible, or provide a legal basis for refraining from doing so.

Sincerely,

D. Angus Lee

CC: WSBA BOG

[2] https://nwsidebar.wsba.org/2013/03/18/gr12-license-fee/ (emphasis added).

WSBA
BOARD OF GOVERNORS

Robin L. Haynes
President

phone: 509.979.2672
e-mail: robin@giantlegal.net

February 16, 2017

Mr. D. Angus Lee
Angus Lee Law Firm PLLC
9105A NE Highway 99, Suite 200
Vancouver, WA 98665

Dear Mr. Lee,

We have received and reviewed your letter requesting that the license fee petition that you filed with the WSBA be put to a vote of the WSBA membership.

Your letter quotes only a portion of the relevant WSBA Bylaw. In whole, the relevant section of the Bylaws provides:

> VIII. MEMBER REFERENDA AND BOG REFERRALS TO MEMBERSHIP
> A. MEMBER REFERENDA
>
> ...
>
> 2. Any Active member may file a petition for a referendum. All petitions must meet the following requirements:
>
> a. The petition must set forth the exact language of the proposed resolution, bylaw amendment, or modification/reversal of the BOG action.
>
> b. The petition must be signed by at least five percent of the Active membership of the Bar at the time the petition is filed.
>
> c. The petition must comply with GR 12. The BOG will determine, within 30 days of the filing of a petition for a referendum, if the subject of the petition falls within the requirements of GR 12.
>
> d. If the subject of the petition seeks to reverse or modify final action taken by the Board of Governors, then the petition must be filed with the Executive Director within 90 days of the final action.
>
> e. All petitions for a referendum must be filed with the WSBA Executive Director.
>
> 3. All qualifying petitions will be put to a vote of the Active membership within 90 days of the date that the petition was filed.

(emphases added)

Before the BOG is required to put a referendum to a vote of the Active membership, it must first be established that the petition meets all of the requirements of Art.VIII.A.2.

In this case, the Board of Governors determined that the petition did not comply with GR 12. GR 12.1(a) provides that the WSBA strives to "(10) Operate a well-managed and financially sound association, with a positive work environment for its employees."

In addition, GR 12.1(b)(22) provides that the WSBA may establish the amount of the license fees, and that "The amount of any license fee is subject to review by the Supreme Court for reasonableness and may be modified by order of the Court if the Court determines that it is not reasonable."

In this case, the fact that the Court has determined that the license fee proposed by the petition would not be reasonable is an indicator that a) the WSBA would not be able to "operate a well-managed and financially sound association" as described in GR 12.1(a)(10), and (b) that the fee that would be set by the petition referendum would not be reasonable. Therefore, the petition did not "qualify" to be put to a vote of the Active membership.

For this reason, and because conducting a referendum vote on a petition to set fees in an amount and using a method that is not "reasonable" according to the Court's order, after the Court has already decided that the license fees that were set by the BOG were reasonable, is wasteful of members' money and WSBA staff time. It is not conducive to "operating a well-managed and financially sound association" for the BOG to agree to spend the members' license fees on such a vote.

Furthermore, consistent with the Bylaws, the Board made its GR 12 determination within 30 days of the completed filing of the petition. On December 20th, WSBA received a box of hard copy petitions from you. A significant portion of the petitions that were provided were signed electronically using a Docusign default signature font, and the information that you included with the petitions to allow the WSBA to verify those signatures was corrupted and could not be accessed by WSBA to conduct the verification. In this situation, there was no way for WSBA to determine whether the petition signatures were unique and verifiable; we determined this fact through discussions with Docusign.

In response to our request for a non-corrupted file, you promptly provided us with a new file. This documentation to allow us to determine that the signatures were unique and verifiable signatures of Active WSBA members was received on December 27th; based on this, December 27th is the completed filing date, i.e., the date the petition with verifiable signatures was filed for purposes of counting time. (Working diligently through the process of determining the names and Bar numbers of signers, determining whether they were members in Active status, and verifying that the signatures were those of unique Active members, WSBA was able to determine on December 30th that the number of Active members signing the petition met the qualifying number specified in the Bylaws.)

Based on this series of events, December 27th is the date of the completed filing of the petition. The BOG's action was taken at the BOG's meeting on January 26, 2017.

Sincerely,

Robin L. Haynes
WSBA President

Paula C. Littlewood
WSBA Executive Director

Margaret Shane

From: Angus Lee <angus@angusleelaw.com>
Sent: Thursday, February 16, 2017 5:39 PM
To: Margaret Shane
Subject: Re: Correspondence re License Fee Petition
Attachments: Email littlewood 1229.pdf; Email from WSBA in re Update on License Fee Petition.pdf; Email Paula LIttlewood dec2117.pdf

Ms. Shane:

Please help me ensure I understand the WSBAs position.

The WSBA received petitions on the 20th that were later determined to have been valid and the WSBA believes that it can establish a constructive filing date at a later time based on when the WSBA confirmed the signed petitions that were filed on the 20th were valid?

The bylaws clearly speak to a date the petitions are filed, not confirmed or certified by the WSBA.

What authority do you have in the bylaws or otherwise to support this constructive filing date based on certification?

Please see the attached email from the WSBA wherein you state that the petition was received on the 20th. Please see the attached email from the Executive Director Littlewood to Chief Justice Madson on the 21st. Please see the attached email from Executive Director Littlewood saying that any vote must be 90 days from December 20th, making it very clear that the WSBA acknowledges that the filing date was December 20th. Notice that in not one of these emails is there discussion of corrupted certifications.

Who at Docusign did you communicate with? Please provide any internal memos, emails, notes, or other records, documenting communications with Docusign in relation to the dues petition.

Who, by name, confirmed the original certification DVD was corrupted and how? Please provide any internal memos, emails, notes, or other records, documenting communications regarding corrupted certifications in relation to the dues petition.

I look forward to hearing back from you.

Angus

Angus Lee Law Firm, PLLC
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contains a specific statement to that effect and do not disclose anything to the Firm in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of the Firm, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

On Feb 16, 2017, at 4:38 PM, Margaret Shane <Margarets@wsba.org> wrote:

Good afternoon Mr. Lee –

Please find attached the PDF of a letter from President Haynes and Executive Director Littlewood in response to your letter of February 12, 2017, regarding the license fee petition. A hard copy will follow in the mail.

Please let me know if you have any difficulty accessing the attached document.

Thank you,
Margaret

<image001.png>

Margaret Shane | Executive Assistant
Washington State Bar Association | 206.727.8244 | cell 206-727.8316 | margarets@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact karar@wsba.org.

<02-16-17 Letter to Angus Lee.pdf>

From: Paula Littlewood
To: Keown, Julie
Subject: RE: WSBA Materials January 4th En Banc
Date: Friday, December 30, 2016 11:08:00 AM

Can't wait. Sure will miss working with you....

Thanks,
Paula

From: Keown, Julie [mailto:Julie.Keown@courts.wa.gov]
Sent: Friday, December 30, 2016 10:14 AM
To: Paula Littlewood
Subject: RE: WSBA Materials January 4th En Banc

Thank you Paula. See you "next year."

Julie

From: Paula Littlewood [mailto:PaulaL@wsba.org]
Sent: Thursday, December 29, 2016 11:35 PM
To: Tracy, Mary; Keown, Julie; Madsen, Justice Barbara A.
Cc: Robin Haynes
Subject: WSBA Materials January 4th En Banc

Justices,

Attached here please find materials related to the license fee petition that has been circulated among the WSBA membership.

We have received a set of petitions and are in the process of certifying them. To qualify a referendum, 5% of the Active membership has to sign the petition (1604 members). The petition delivered to WSBA was circulating via DocuSign. In that the majority of petitions were signed with DocuSign's default font for a signature, we have been using the DocuSign certification information submitted by the sponsor of the petition to verify the petitions and insure that each was signed individually.

The petitions were submitted by member Angus Lee.

We should know by January 4th if the petition has qualified to submit a vote of the issue to the membership. We received the petitions on December 20th so the election must be held no later than March 20th if so.

President Haynes and I look forward to meeting with you all on January 4th. Attached here you will find the following:

- Information circulated to WSBA staff on the proposed license fee increase and the

referendum process

- A message sent to the membership from the WSBA Executive Committee during the time we knew the petition was circulating
- Information on WSBA's budget and license fee history
- A sample of several of the petitions

If there is additional information we can provide, please don't hesitate to let me know.

Thanks,
Paula

From: **WSBA** email@wsba.org
Subject: Update on License Fee Petition
Date: January 6, 2017 at 1:38 PM
To: D Lee Angus@angusleelaw.com

First and foremost, we would like to thank everyone for taking the time since the Board's September decision on license fees to share your feedback with us through email, member calls, and our online chat. We also want to update you on where we are at with the recently circulated petition related to that decision.

As previously communicated, on September 29th, the Board of Governors approved lawyer license fees for 2018, 2019, and 2020. On December 20th, WSBA received a petition for a referendum, since determined to have been signed by at least 5% of the active membership, to reject the amount set for the 2018-2020 license fees and to require that future increases of the license fee not be a greater percentage than the Consumer Price Index increase for Seattle.

In response to member input and an evolving profession, the Board has implemented changes in WSBA's programming since the 2012 license fee referendum while advancing our core mission and fulfilling our obligations in court rule. The fees set by the BOG in September reflect the cost of supporting the organization as it works to ensure competent and qualified legal professionals who serve and protect the public.

Pursuant to GR 12.1(22), the Washington Supreme Court reviews the lawyer license fees set by the Board of Governors for reasonableness. The Supreme Court has been regularly updated on the changes implemented and the basis for the Board's September decision on license fees. On January 5th, the Court entered an order determining that the fees set by the Board of Governors for 2018, 2019, and 2020 are reasonable. The order further states that the lawyer license fees proposed by the license fee rollback petition, if the petition were to pass, would not be reasonable both as to the level of fees that it proposes and as to the requirement that future license fee increases be tied to the consumer price index.

Given that a vote by the active membership to pass such a referendum would be moot, the Board of Governors will discuss at its January 26-27 meeting in Spokane whether holding the referendum vote is appropriate in light of the Court's order.

Again, thanks to all of you for your continued engagement with WSBA. We look forward to continuing the dialogue about how best to support you and the public through WSBA's programs and resources.

Robin L. Haynes — President

Paula C. Littlewood — Executive Director

To receive limited messages
Please send an email to email@wsba.org with "limited" in the subject line.
In the body of the email, please specify how you would like your email limited (see below).

To opt out of CLE information
Please indicate by option number your choice from the two options below:
- Option 1 — I would like to opt out of receiving ANY CLE information, including WSBA CLE and non-WSBA CLE providers.
- Option 2 — I would like to receive ONLY section-sponsored CLE information for sections to which I belong.

To opt out of non-CLE information
Please indicate by adding "opt out of non-CLE information" in the body of your email.

To prevent your email from being published
If you do not want your email address published in the online Lawyer Directory, please send an email to email@wsba.org with "unpublished" in the subject line.

Official WSBA communication
All members will receive the following email, which is considered official:
- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

From: Paula Littlewood
To: Barbara Madsen
Cc: Robin Haynes
Subject: FW: Update on License Fee Petition
Date: Wednesday, December 21, 2016 12:08:22 AM

Hi Chief,

We received the box of petitions today from Angus Lee (see update below). The language is as follows:

WSBA LICENSE FEE ROLLBACK PETITION

PROPOSITION: "The increases in annual license fees voted by the Board of Governors for the years 2018 to 2020 are hereby rejected. The fee amount for a given year shall not be increased by a greater percentage than the consumer price index (CPI) shall have increased during the calendar year ending 12 months previous to the effective date of the increase. The consumer price index shall be as defined as the Seattle Area CPI for all Urban Consumers (CPI-U), issued by the U.S. Bureau of Labor Statistics."

I'll let you know as soon as Regulatory Services has determined if it's certified. Robin and I will plan to attend the en banc on January 4th unless the referendum is not certified.

I believe I'm picking Robin up at the airport at 9:00 so that would get us to Olympia about 10:30 – let us know if that timing is all right, etc.

Thanks,
Paula

From: Paula Littlewood
Sent: Tuesday, December 20, 2016 5:16 PM
To: Everyone
Subject: Update on License Fee Petition

All,

I wanted to let you know we received a box of petitions today that, if certified, will put a vote to the membership asking to nullify the Board's decision in September setting license fees for 2018-2020. It further ties any future increases in license fees to the Puget Sound's Consumer Price Index (CPI).

The petitions are now with Regulatory Services staff who will certify if there is the requisite number of signatures required under the WSBA Bylaws (about 1600 valid signatures from active members are required). If there are enough valid signatures and the referendum is certified, the election will be held 90 days from today.

As you know, we have held a number of member calls this week and last as well as an online chat last week with the President and me. Member engagement will continue – whether the referendum is certified or not.

I will let you know as soon as possible when RSD has finished its review, which we anticipate will be before the end of this week.

As always, if you have questions or would like more information, please let me know.

Thanks,
Paula

WSBA

BOARD OF GOVERNORS

Robin L. Haynes
President

phone: 509.979.2672
e-mail: robin@giantlegal.net

February 23, 2017

Mr. D. Angus Lee
Angus Lee Law Firm PLLC
9105A NE Highway 99, Suite 200
Vancouver, WA 98665

Dear Mr. Lee,

Thank you for your recent correspondence. The letter that was sent to you previously explains the method in which WSBA determined the filing date of the petitions. The copies of emails that you attached that were sent to the Supreme Court do not describe a "filing" date; they state that WSBA received petitions on December 20th.

As we explained, the box of petitions that we received on the 20th did not contain sufficient information for WSBA to be able to determine that the petitions were actually signed by individual WSBA members. Without the verification information, WSBA could not determine whether individuals signed and submitted the petitions or whether, for instance, one person sat at a computer and inserted names and Bar numbers onto the petitions, signed them with the default font, and submitted them.

Further, the date that WSBA verified the signatures (December 30th) is not the filing date; the date that WSBA had received both signed petitions and sufficient verification information from you to show that the petitions were individually signed (December 27th) is the filing date.

Sincerely,

Robin L. Haynes
WSBA President

Paula C. Littlewood
WSBA Executive Director

Report of the Limited License Legal Technician Board to the Washington Supreme Court

FEBRUARY 2017

Limited License Legal Technician Board
c/o Washington State Bar Association
1325 4th Ave., Ste 600
Seattle, WA 98101-2539

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Gregory R. Dallaire
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Nancy Ivarinen
Genevieve Mann
Dr. Ruth Walsh McIntyre
Amy Riedel
Elisabeth M. Tutsch
Andrea Jarmon, BOG Liaison

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WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

MEMORANDUM

We look forward to meeting with the Supreme Court on March 8th. The primary purpose of our meeting with you on March 8th is threefold: to consider the next practice area to be approved by the Supreme Court (Court) in which Limited License Legal Technicians (LLLTs) may be authorized to practice; to discuss enhancements to the current practice area that we will be submitting to the Court; and to update you on the current status of the program.

It is always a pleasure and honor to meet with the Court to gain your input and thoughts.

We will not recap the history of the program, but have attached last year's report herein, which provides a comprehensive review of the efforts of the LLLT Board over its first three years.

Suggested Next Practice Area: Estate and Healthcare Law

During the past year we have been extremely busy vetting a number of proposed practice areas with an eye toward meeting the significant unmet civil legal need and to give LLLTs additional "arrows in their quiver" to expand their businesses and provide additional service to the consuming public.

LLLT board member Greg Dallaire chaired our new practice area committee. His strategy, very similar to the Practice of Law Board 10 years ago, was to bring in subject matter experts in various practice areas to seek information about the feasibility of LLLTs to practice in certain substantive law areas and conduct an initial assessment as to whether LLLTs could be properly trained in a limited scope and regulated to provide services in those areas. The areas of inquiry were: Housing Law, Consumer Law, Immigration Law, Administrative Law and, of course, the area that we concluded merits your consideration as the next new practice area, Estate and Healthcare Law. This process took several months of meetings. Without reaching a conclusion on the appropriateness of adding these as additional practice areas, I believe it is safe to say that the committee found that to some degree all areas reviewed would seem appropriate for further consideration in the future.

The new practice area committee recommended Estate and Healthcare Law to the LLLT Board and the Board approved further study and discussion on the practice area. The committee then began the task of determining how the scope of this practice area might be limited such that the needs of the consumers in this practice area might be met while at the same time assuring that the consumers will be protected. It is through that process that the LLLT Board has reached this juncture.

With your approval, we will continue to refine the limited scope of this next practice, an outline of which is listed as Attachment 2. We are asking the Court for approval to move forward and do more work in this practice area. After continued work with stakeholders, we will come back to you for adoption of the practice area in the form of proposed regulations.

The starting point of the LLLT Board's analysis was whether or not there is an unmet need in regards to these legal issues. The Civil Legal Needs Studies of 2003 and 2015 were consulted and the committee found that both studies concluded that there was significant unmet need in this practice area. Data was also reviewed from the Gonzaga Law School Elder Law Program gathered over the last 5 years. That data revealed that of the 1027 cases handled by the program that 68% of the cases dealt with wills and estates (wills, testamentary trusts, health care directives and powers of attorney). Health care directives, guardianships, social security and Medicaid collectively accounted for an additional 8% of the cases handled. When the Committee to Define the Practice of Law was in the process of creating GR24, it became quite apparent that most, if not all, hospitals and nursing homes were engaged in the unauthorized practice of law with their consistent practices of having patients sign health care directives and powers of attorney. While nearly all of this information is obtained from sources addressing very low income consumers, it also supports the need and demand for these services for persons of moderate means.

Another consideration taken into account when making the decision to propose this practice area is the availability of law professors to teach the practice area classes required for licensure. For example, in the past that may have not been true in the area of immigration law. It is vitally important for the LLLT Board to coordinate efforts with the law schools to make sure that our needs are capable of being met with adequate notice to the law schools.

In arriving at this conclusion, the LLLT Board has sought and received input from a variety of sources. A presentation was made the Board of Governors at its January meeting. The LLLT Board also held a Town Hall Meeting to allow all members of the WSBA to attend in person or attend via webcast in order to ask questions and provide comments.

As with the family law practice area, it is our hope the Court will approve the concept of Estate and Healthcare Law as the next practice area. After the Court approved the family law concept, the Board worked with stakeholders to define the scope and necessary curriculum for teaching the practice area. Similarly, the Board will work with stakeholders to define the scope within Estate and Healthcare Law and then submit relevant regulations to the Court for approval.

Enhancements to the Family Law Practice Area

The LLLT Board has received extensive feedback regarding the domestic relations scope of practice from LLLTs, family law practitioners, LLLT students, and the professors who teach the LLLT practice area education through the University of Washington School of Law. These comments raised important questions; in response, the LLLT Board decided to reexamine the scope prohibitions now effective for family law LLLTs. The LLLT Board created the Family Law Advisory Committee, chaired by Nancy Ivarinen, to examine these issues. The Family Law

Advisory Committee took into account the opinions and experiences of LLLTs, family law lawyers, other legal professionals, and educators as they reviewed the scope prohibitions, deliberated extensively, and decided that certain prohibitions in the domestic relations scope of practice should be altered.

The most notable of these proposed changes allow family law LLLTs to assist clients with certain court proceedings, as well as negotiating on behalf of their clients under specified conditions. Other proposed changes include participation in alternative dispute resolution proceedings, clarification of the prohibition on dividing retirement assets, allowing LLLTs to work with agreed and uncontested nonparental custody matters, permitting work with contested major modifications and contested nonparental custody through the adequate cause hearings, and allowing division of a single family residential dwelling under certain conditions. The committee and the LLLT Board believe that these changes will allow LLLTs to offer more robust services to clients in need, ease judicial administrative burdens, and increase the efficiency of the LLLT's services.

If approved, a special training seminar will be developed to train currently licensed LLLTs in the new scope areas and for incoming LLLTs the training will be incorporated into the law school curriculum.

Update on Current LLLTs

As we move forward to roll out the next practice area for licensure, it may also be helpful for the Court to know what our current numbers are for the existing practice area. At the present time the following data reflects the status of the LLLT license:

Licensed LLLTs	20
Enrolled in 4th Practice-area Education Cohort	21
LLLTs Working in Lawyer-Owned Firm	9
LLLTs Working in LLLT-Owned Firm	11
Completed Education/Eligible for Exam	18
Passed Exam – Finishing Experience	6
Applications for March 2017 Exam	6

It is believed that there are between 100 and 200 LLLT candidates taking the "core classes" at the community college level. The LLLT Board has recently approved an additional school, Whatcom Community College, to offer the core classes. As you are also aware, the "waiver" allowing paralegals with 10 or more years of experience to forego the core classes and proceed with the rest of the requirements, thus taking two years off the time line for becoming licensed, has been extended.

There are several states giving serious consideration to adopting of a similar rule (Oregon, Utah, Colorado, Minnesota, New Mexico, California, and Florida) and several states and provinces who have made inquiries (Vermont, Manitoba, British Columbia, and Alberta).

In addition we have recently received the rough draft of the Public Welfare Foundation's evaluation of the LLLT program. As soon as that report is finalized we will forward a copy to you for your consideration. Preliminarily, the report was very supportive and some of the suggestions made for improvement are already done or underway.

One final matter we would like to address is the roll out of future practice areas. Assuming the Court wishes the LLLT Board to continue to recommend additional practice areas as quickly as possible, we would propose the following: 1) that the LLLT Board have under consideration several practice areas for vetting (it would be helpful to have preliminary feedback as to whether the Court has input one way or the other about which practice areas the Board should consider); 2) the LLLT Board will develop a timeline for adoption of new practice areas that takes into consideration the amount of time that each stage in the process takes to reasonably accomplish the work of that stage. The LLLT Board would also appreciate your feedback regarding how long the Court would like to consider and process recommendations for new practice areas.

Again, we appreciate the opportunity to meet with you. It is an honor and pleasure to do so. We encourage you to adopt this new practice area and to do so not later than the end of May so that the remaining work can be completed so as to allow the classes to be taught this fall.

Sincerely,

Stephen R. Crossland
Chair
Limited License Legal Technician Board

ATTACHMENTS

ATTACHMENT 1

FY 2017 LLLT BOARD ROSTER

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

FY 2017 LLLT Board Roster

NAME	Position	Term Expiration
Stephen R. Crossland	Chair	9/30/2018
Brenda Cothary	Public	9/30/2019
William E. Covington	Member	9/30/2017
Gregory R. Dallaire	Member	9/30/2018
Caitlin Davis Carlson	Public	9/30/2017
Jeanne J. Dawes	Member	9/30/2019
Lynn K. Fleischbein	Member	9/30/2018
Nancy Ivarinen	Member	9/30/2017
Genevieve Mann	Member	9/30/2019
Professor Gail Hammer	Member	9/30/2019
Elisabeth M. Tutsch	Member	9/30/2017
Ruth Walsh McIntyre	Public	9/30/2019
Amy Riedel	Public	9/30/2018
BOG LIAISON		
Andrea Jarmon		
WSBA STAFF		
Ellen Reed		

ATTACHMENT 2

OUTLINE OF NEW PRACTICE AREA PROPOSAL

OUTLINE OF PROPOSED NEW PRACTICE AREA

The Limited License Legal Technician (LLLT) Board has approved the following outline of a potential new LLLT practice area. The new LLLT practice area proposal is called "Estate & Healthcare Law". The summary of the proposed scope of practice is as follows:

Outline of Estate & Healthcare Law LLLT Practice Area	
Scope	**Permitted Actions**
Estate planning on non-taxable estates	• Drafting wills based on LLLT Board approved forms • Transfer on death deed • Designation of beneficiaries of non-probate assets • Creation of community property agreements based on LLLT Board approved forms • Revocation of community property agreements • Healthcare directives
Probate on non-taxable estates when not contested	• Completion of small estate affidavit • Completion of LLLT Board approved forms • Presentation of agreed or uncontested orders • Completing uniform transfer to minor act provisions • Completion of affidavit of surviving spouse
Power of Attorney	• Limited & durable powers of attorney, including for healthcare and minor children • Revocation of powers of attorney
Guardianships when not contested	• Completion of LLLT Board approved forms in uncontested guardianships • Presentation of agreed or uncontested orders • Transition planning for disabled minors
Vulnerable Adult Protection Orders (VAPO)	• Preparation of LLLT Board approved forms • Presentation and assistance at initial hearing for temporary order
Government benefits	• Representation in administrative hearings (where not prohibited by agency rules and regulations) • Negotiation and document preparation for applications, denials, disputes, and overpayments for social security benefits, Medicare, Medicaid, home health care, long term care, and other government benefit programs • Assistance with total and permanent disability discharge for student loan debts
Health insurance benefits	• Advice and assistance with health insurance disputes, including negotiation and writing appeal letters • Assistance with Charity Care applications and denials

ATTACHMENT 3

OUTLINE OF PROPOSED CHANGES TO DOMESTIC RELATIONS SCOPE

OUTLINE OF ENHANCEMENTS TO DOMESTIC RELATIONS SCOPE

The Limited License Legal Technician (LLLT) Board has approved the following outline of suggested amendments to the LLLT domestic relations scope of practice. The summary of the changes are as follows:

Outline of Changes to Domestic Relations Practice Area	
Subject	**Recommendation**
Third Party Declarations	• LLLTs may assist third parties with drafting declarations but do not have to sign them, as long as they are drafted with the third party and signed by the third party.
Major Modifications	• LLLTs may assist with contested major modifications up to the point of the adequate cause hearing.
Nonparental Custody	• LLLTs may assist with contested or uncontested nonparental custody to the point of the adequate cause hearing.
Retirement Assets	• LLLTs shall not advise or assist clients with the preparation of QDROs or supplemental orders dividing retirement assets or include language within a decree of dissolution to effectuate division of retirement assets when funds would be transferred from the account holder to another party. LLLTs may advise as to retirement asset allocation.
Real Estate Division	• LLLTs may assist with gathering information on the value and potential encumbrances on a home. LLLTs may assist client with determining property division and division of a single family residential dwelling which has less than twice the homestead exemption in equity (currently $125, 000 – see RCW 6.13.030).
Alternative Dispute Resolution	• LLLTs may prepare paperwork related to mediation, arbitration and settlement conferences and accompany the client to the conferences providing there is a third party neutral conducting the conference.
Negotiations	• LLLTs may communicate with opposing parties or third parties regarding procedural issues. If communicating with a pro se opposing party, they should do so in writing. • LLLTs may negotiate on behalf of their client if they have prior written consent from the client defining the parameters of the negotiation.
Appearances in Court and Administrative Tribunals	• LLLTs may present agreed, uncontested and default orders on the ex parte or motion calendar and attend trial setting calendar hearings. • LLLTs may represent clients at administrative hearings if the hearing relates to an issue within the permitted scope. • LLLTs may appear and assist a pro se client with a motion hearing for the issues that are within the scope of their practice. They would be permitted to speak to factual or legal issues. Permitted hearings would include: ➢ Protection Orders ➢ Hearings on Motion for Temporary Orders ➢ Enforcement of Orders ➢ Modification of Child Support & Post-Secondary Child Support

ATTACHMENT 4

FLYER FOR LLLT BOARD TOWN HALL

WSBA TOWN HALL

LIMITED LICENSE LEGAL TECHNICIANS

The Washington Supreme Court's LLLT Board invites you to weigh in on a proposed new practice area — estate and health-care law — and proposed additional scope to the current LLLT practice area (family law).

When
Wednesday, February 15, 2017
3:30 p.m. – 5:00 p.m.

Where
WSBA Conference Center
1325 Fourth Ave., Suite 600
Seattle, WA 98101
& via webcast at www.WSBA.ORG/LLLT

LEARN MORE ABOUT LIMITED LICENSE LEGAL TECHNICIANS:
www.WSBA.ORG/LLLT

WASHINGTON STATE
BAR ASSOCIATION

APPENDICES

APPENDIX A

2016 LLLT BOARD REPORT TO THE SUPREME COURT

Report of the Limited License Legal Technician Board to the Washington Supreme Court

The First Three Years

February 2016

Limited License Legal Technician Board
c/o Washington State Bar Association
1325 4th Ave., Ste 600
Seattle, WA 98101-2539

WSBA Administrative Staff:
Jean K. McElroy, General Counsel & Chief Regulatory Counsel
Robert W. Henry, Associate Director of Regulatory Services
Ellen Reed, Program Lead & Staff Liaison
(206) 727-8289 ●ellenr@wsba.org

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Executive Summary

The Purpose of This Report

This report provides information on the past development, current status, and future of the Limited License Legal Technician (LLLT) Program. Evaluation of the Program has been a continuous priority for the LLLT Board since the inception of the Program and that work is outlined in this report.

The first several pages of this report comprise an executive summary that is intended to give the Court a general overview of the content. The main topics discussed are the work of the LLLT Board, the development of the LLLT program, pending issues with the Court, potential changes to APR 28 that may be requested by the Board, and the Board's agenda for 2016; all of these subjects are explored in more detail in subsequent sections of this report.

Work of the LLLT Board

When the LLLT Board began its work in January 2013, it identified three important criteria that it has used to evaluate each of its recommendations to the Supreme Court: affordability, accessibility, and academic rigor. The Board concluded that the pathway to becoming an LLLT must be affordable and accessible in order to encourage equality and diversity within the profession. Equally important, the services of LLLTs must be affordable and accessible for community members with legal needs. Finally, the program must be academically rigorous to ensure that LLLTs have the knowledge and skills to deliver high-quality legal services and meaningfully expand access to justice for the public.

The LLLT Board understood it to be the preference of the Court that the program be operational as expeditiously as practicable. The Board found that in order to adhere to a tightly paced timeline while crafting a high quality program, each component of the program needed to be considered in great detail while being developed concurrently and efficiently. In order to accomplish this task, the LLLT Board created several committees, each with a Board member with relevant expertise appointed as Chair. The committees that have been responsible for much of the substantial program development are the Scope of Practice Committee, the Admissions and Licensing Committee, the Rules of Professional Conduct Committee, and the Examination Committee. Individual reports on these committees are included in this report and are intended to provide a detailed account of the work of the LLLT Board.

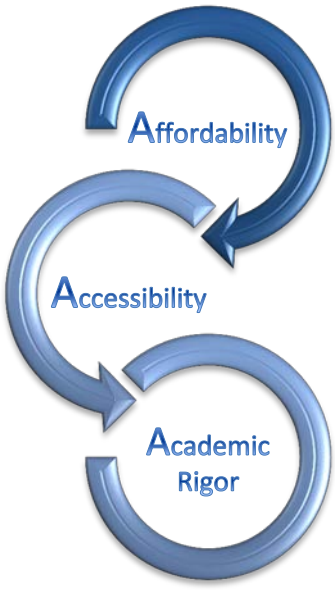


Figure 1. Three A's

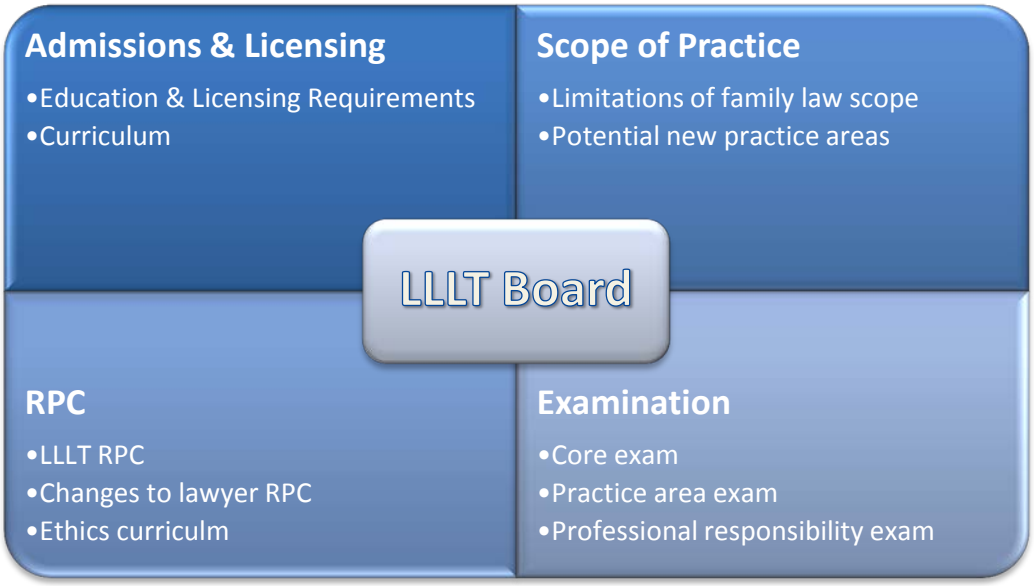


Figure 2. Committee Project Assignments

Board members were involved with the work of several committees, regularly resulting in up to three meetings each month above and beyond their monthly day-long Board meetings. The LLLT Board was greatly assisted in its efforts by a dedicated group of non-Board member volunteers who have been instrumental in developing the LLLT program. The work of the Board has also been critically advanced by partnerships with educational institutions.

Developing the LLLT Program

The LLLT Board began work in January 2013 with the mission of implementing APR 28. The tasks included recommending a practice area; defining the scope within that practice area; creating a curriculum that ensures that LLLTs are properly trained to deliver the services within the approved scope; developing rules of professional conduct for LLLTs; and developing examinations to properly test the applicants to assist in protecting the public by assuring the applicants' qualification to be issued an LLLT license.

Taking its lead from the Court's June 2012 Order authorizing the LLLT program, the LLLT Board recommended family law as the first practice area for LLLTs. The Court approved that decision in early March of 2013. The LLLT Board moved quickly to develop the fundamentals of the LLLT program, focusing initially on the scope of the family law practice area that would provide the foundation for LLLT licensure in any practice area. The Board also created relationships with ABA-approved paralegal schools that wanted to offer the LLLT core curriculum and worked with them to align their paralegal curriculum to the learning objectives that were developed for LLLTs. Also in 2013, a committee began work to create the rules of professional conduct for LLLTs.

In 2014, the practice area curriculum was defined and the first and second cohorts of practice area classes began. The rules of professional conduct were adopted by the Court and the Board examined the lawyer RPC to ensure concordance with the new LLLT practice. The administrative

framework for the program's fees and applications were developed. The LLLT Board also launched into its most time-consuming projects - writing both a professional responsibility examination and the LLLT licensing exam.

In 2015, the first and second licensing exams were conducted, the first LLLTs were licensed, and the Board began refocusing its efforts from laying the foundation for the program into supporting and regulating an existing profession. Tasks included recommending expansion of the institutions that are able to offer the LLLT education, developing additional components of the regulatory structure such as a discipline system, and proposing rule amendments to address potential issues raised by students studying to be LLLTs, or discovered in the detailed work of the committees.

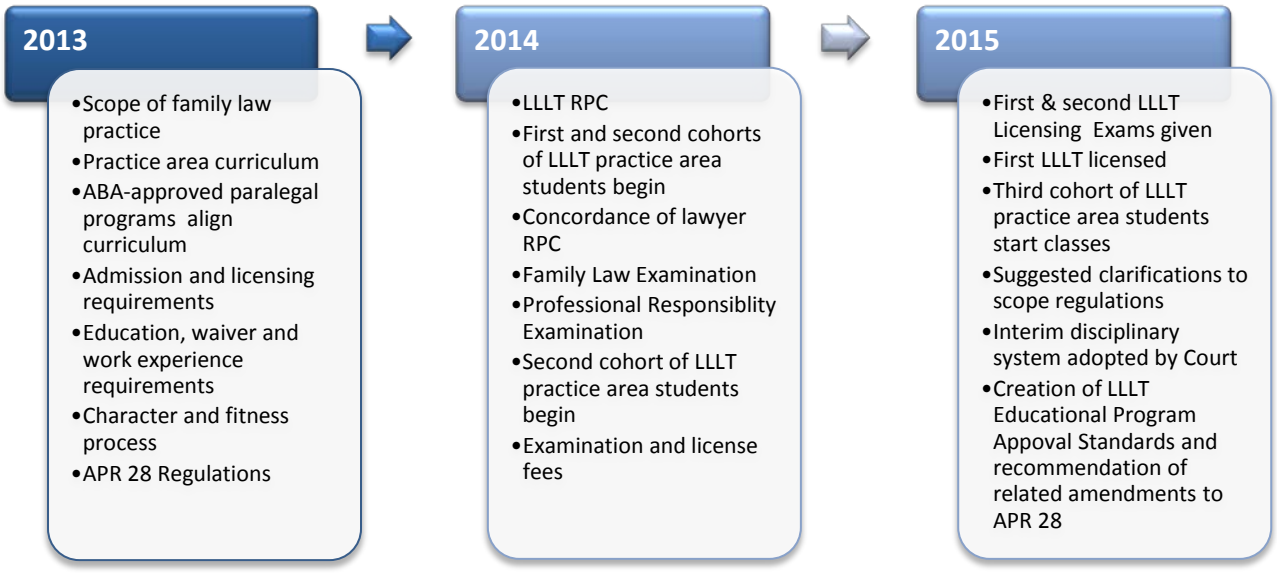


Figure 3. Program Development Timeline

These objectives were accomplished while drafting and seeking rule changes and approval from the Court; speaking, writing and appearing in hundreds of venues to promote the program and educate consumers, potential LLLT students, interested schools and consumers; and making presentations nationally to bar associations, ABA bodies, state supreme courts, law schools and other interested entities regarding this groundbreaking program. Each of the LLLT Board members and several Washington State Bar Association (WSBA) staff members have participated heavily in outreach for the program. There has been extensive coverage of the program in the news, legal journals, and other forms of media.

The Board sees the continued expansion and growth of the LLLT program as key to its success. To have a meaningful impact on access to justice in the state of Washington, more LLLTs must be licensed and their areas of practice must be expanded. The public must be made aware of this new option for legal services as LLLTs are licensed to practice and new practice areas

developed, so that the public seeks services as they become available. If the program does not continue to expand and grow, it runs the risk of not attracting enough legal professionals to achieve its desired goal of expanding access to justice in Washington state. Similarly, because it is a new profession, the Board continues to evaluate and seek change when necessary for the success of the program. The Board plans to continue to work diligently in 2016 to expand, improve, and promote the program.

Issues before the Court

Currently, there are three suggested rule amendments pending before the Court. Suggested amendments to APR 28 C, D and Regulation 3 are intended to expand the accessibility of the LLLT educational pathway by allowing the Limited License Legal Technician core curriculum to be offered at non-ABA approved paralegal and legal studies programs that have been approved in accordance with the proposed LLLT Educational Program Approval Standards, and thereby expand the number and geographic placement of schools that may offer the LLLT core curriculum.

Another proposed amendment before the Court is APR 28 (F)(8), which permits an LLLT to "draft legal letters…if the work is reviewed and approved by a Washington lawyer." This amendment is intended to clarify the type of letters written by LLLTs that must be approved by a Washington lawyer. The Board has also submitted an amendment to Regulation 2, which would allow an LLLT to prepare a document that includes an issue outside the scope of the LLLT's authorized practice under certain circumstances if disclosures are made. This amendment would allow LLLTs to serve clients who may not choose to go to an attorney for an issue that is beyond the LLLT's scope, while keeping within their approved scope of practice.

The Board has recently voted on several proposed amendments to APR 28 that have not yet been transmitted to Court. These potential amendments address background check requirements for LLLTs in Appendix APR 28 Regulation 5, the physical address requirement in APR 28 G (1), and the composition of the LLLT Board that is addressed in APR 28 C (1).

Future Development

The Board plans to carefully consider many issues in the upcoming year. As the program has developed, many suggestions have been made by stakeholders and LLLT candidates that the Board will be discussing. Among other topics, the Board plans to discuss the next practice area for LLLTs, the possibility of proposing authorization of limited court appearances and negotiations, addressing family law scope questions that have emerged as the LLLTs enter practice, ensuring financial aid is available for the practice area classes, and the possible extension of the limited time waiver for the core educational requirements.

The LLLT Board

Steve Crossland, Chair of the LLLT Board

- Solo attorney from Cashmere; areas of practice include probate, estates, and real estate

Brenda Cothary

- Legal services manager at the Office of Administrative Hearings; former president of the Washington State Paralegal Association

Professor William Covington, Chair of the Admissions and Licensing Committee

- University of Washington School of Law

Greg Dallaire, Chair of the Scope of Practice Committee

- Retired attorney; former Chair of LFW Board, member of ATJ Board and Executive Director of Evergreen Legal Services

Caitlin Davis Carlson

- Executive Director of the Legal Foundation of Washington

Ellen Dial, Chair of the Rules of Professional Conduct Committee

- Retired partner from Perkins Coie; areas of practice included real estate, business, and transactions

Jeanne Dawes

- Attorney in Spokane; areas of practice include estates, guardianships, probates, and real property, and business law

Lynn Fleischbein

- Attorney from Kitsap county; areas of practice include family law, estates, and probate

Nancy Ivarinen, Chair of the Examination Committee

- Attorney from Bellingham; areas of practice include landlord/tenant and family law

Dr. Ruth Walsh McIntyre, Ed.D.

- Retired from career in media and education; long-time advocate for a variety of issues within the legal profession

Janet Olejar

- Attorney and legal educator; former director of the paralegal program at Tacoma Community College

Elisabeth Tutsch

- Senior Attorney with Northwest Justice Project in Yakima; areas of practice include landlord tenant, housing matters, administrative law, family law, and access to public benefits

All of the LLLT Board members have been deeply involved in the creation of the program and the work of the committees. The LLLT Board is composed of nine attorneys and four public members. One of the Board members holds a legal educator position. The LLLT Board has been fortunate to have a group of members with diverse experience and expertise, each of whom brings a unique perspective and skill set to the collective work of the Board. Despite differences in opinion and focus, the Board works together respectfully and collaboratively. The entire Board is committed to making the program successful for the public, the Court, the LLLTs, the Washington State Bar Association (WSBA), and for the legal profession.

Much of the work done by the LLLT Board is best captured by reporting in a detailed fashion on the work of the four principal committees which made critical recommendations to the Board during the development of the license. The committees that have been responsible for much of the substantial program development projects are the Admissions and Licensing Committee, chaired by Professor William Covington; the Scope of Practice Committee, chaired by Greg Dallaire; the Rules of Professional Conduct Committee, chaired by Ellen Dial; and the Examination Committee, chaired by Lupe Artiga and subsequently by Nancy Ivarinen.

Each committee followed a similar process in order to complete its projects. The committees invited experts and stakeholders to participate in its discussions, many of whom worked with the committee on a continuous basis. After topics were considered in committee and detailed recommendations were drafted, the recommendations were presented at a full Board meeting where the Chair of the committee explained the reasoning behind the course of action being recommended to the Board. After discussion, items were placed on the Board's monthly consent agenda, typically for the following meeting. If the recommendation was adopted, it was put into a final format (e.g., a suggested amendment or a rule) and transmitted to the Court for approval. If the recommendation was not adopted, it was directed back to the committee for further consideration.

Figure 4. Committee Process

The committee reports were authored by the committee chairs and seek to explain the general nature of the projects assigned to the committee, the most important recommendations made by the committee, and the future projects the committee plans to undertake.

Scope of Practice Committee Report

Committee Work from 2013 to 2015

At its initial meeting, the LLLT Board reviewed the September 2003 *Washington State Civil Legal Needs Study* findings, the Practice of Law Board's Family Law Subcommittee Report of 2007, and the Supreme Court's Order of June 2012 that authorized the creation of LLLTs. In that Order, the Court referenced family law in most of its examples of how the new rule could benefit the profession and the consuming public. The Board concluded that family law was the appropriate recommendation to the Court as the practice area for this new undertaking. During the same session, the Board created a Scope of Practice Committee.

Scope Committee Members

- Greg Dallaire, Chair
- Paul Bastine, Judge (Ret.)
- Rita Bender, Skellenger Bender PS
- Lupe Artiga, NJP & former Board Member
- Jeanne Dawes, Board Member
- Lynn Fleischbein, Board Member
- Ellen Dial, Board Member
- Ellen Reed, former Board member

The Scope Committee held its original meeting in February 2013. During its first four-hour discussion, seminal decisions were reached regarding the types of domestic relations actions appropriate for family law LLLTs. They were:

- Dissolution of Marriage Actions;
- Legal Separation Actions;
- Parenting and Support Actions;
- Parentage Actions;
- Intimate Domestic Relationship Actions; and,
- Domestic Violence Actions.

Committee members concluded the following types of actions were not appropriate for family law legal technicians:

- Defacto Parentage Actions. These actions require careful research, do not have pattern forms associated with them, and require appearances in court; and
- Nonparental Custody Actions. These actions require appearances in court, drafting motions, and working outside of pattern forms.

The committee also reviewed and approved the Washington state pattern forms for use by LLLTs and approved several other forms and/or documents used to initiate actions that could be prepared by a family law LLLT. Committee members examined each step in the dissolution process using the informal format of an "anatomy of a dissolution" and "anatomy of a custody action". Starting with presentations by Ms. Fleischbein, nearly every aspect of a case was carefully analyzed to determine whether the LLLT should or could practice that component of the law within the scope of APR 28. Generally, the committee operated by consensus and all recommendations were passed on to the Board for a final decision.

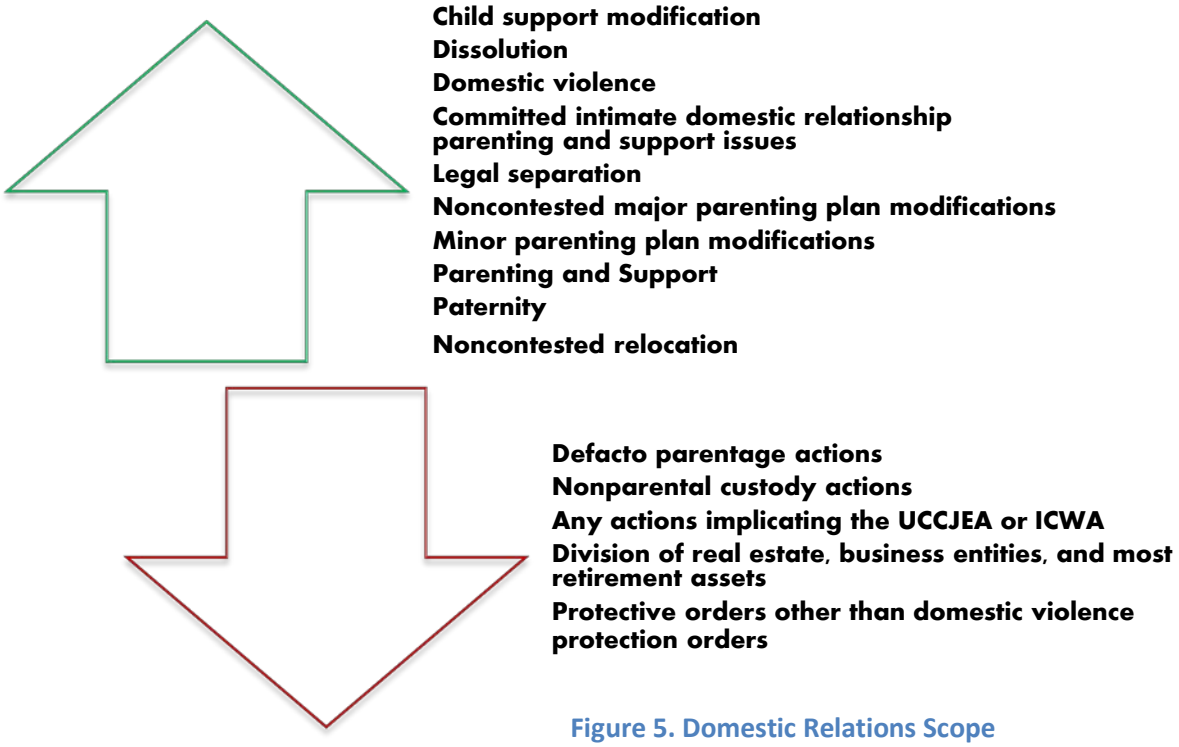


Figure 5. Domestic Relations Scope

Committee members could not reach consensus on the constraints in APR 28 concerning negotiation and court appearances (although the full Board has subsequently discussed this issue, see *infra*). Examples considered include scheduling a date for a hearing with opposing counsel or responding to a question directed to an LLLT by a judge. As a result, committee members decided that APR 28 could only be interpreted as not permitting any communication at all by an LLLT with an opposing counsel or party. Likewise, while it was determined that an LLLT could accompany a client to court, the LLLT must not announce his/her presence to the court, respond to questions from the court or do anything more than be a member of the audience during a proceeding.

After completing its work in July 2013, the committee reconvened in December 2014, as questions had arisen from students and teaching staff that required further clarification. At this session, committee members heard concerns regarding issues of real property division, particularly the family home; retirement issues that require supplemental orders; issues around written instructions from an attorney under Regulation 2A; issues related to committed intimate relationships; and, issues about explaining the meaning of legal letters to clients.

After considering these concerns, committee members recommended to the Board a few changes that would clarify and/or address these and other matters raised at the meeting. Some other matters remain unresolved. In a follow-up conference call in February 2015, members discussed the definition of retirement assets in APR 28 Regulation 2 and whether or not the language should be adjusted to more clearly prohibit LLLTs from working with ERISA and similar types of retirement accounts. This issue is still under discussion by the Committee.

All told, the Scope Committee met eight times. Each meeting was approximately four hours in duration, was well attended and participatory. Additionally, many more informal discussions took place among committee members and with others interested in the committee's work.

Scope Issues before the Court

As referenced later in the section "Issues before the Court", the Scope Committee recommended changes to APR 28 F (8) and Regulation 2, regarding the issue of the definition "legal letters" and forms that contain issues beyond the scope of practice, respectively. These changes are currently pending with the Court.

2016 Agenda of the Scope Committee

In 2016, the Scope Committee anticipates creating proposed comments to the rules, which will address some scope questions in the family law practice area. The committee also plans to delineate the borders of the next LLLT practice area before recommending it to the Supreme Court. When the next LLLT practice area is approved by the Court, the committee will define the scope of the practice area and recommend a regulation to APR 28 outlining the new scope of practice in a detailed manner.

Admissions and Licensing Committee Report

Committee Work from 2013 to 2015

The Admissions and Licensing Committee's ("ALC") charge is the establishment of admissions standards and education requirements for persons interested in being LLLTs. Two philosophies underlie the ALC's work:

- Unlike that of paralegals, the work of LLLTs will not be overseen by licensed attorneys; therefore, protection of the public must always be kept in mind; and
- LLLT education should be affordable, accessible and academically rigorous.

Admissions and Licensing Committee Members

- Professor William Covington, Chair
- Caitlin Davis Carlson, Board Member
- Janet Olejar, Board Member
- Steve Crossland, Board Chair
- Brenda Cothary, Board Member
- Elisabeth Tutsch, Board Member
- Marie Bruin, State Board of Community and Technical Colleges
- Professor Patricia Kuszler, University of Washington School of Law
- Judi Maier, Univeristy of Washington
- Mark Baum, South Sound Community College
- Nancy Ivarinen, Board Member
- Terry Edwards, Skagit Valley College
- Layne Russell, Clark College
- Scott Haddock, Edmonds Community College

The experiences and expertise of paralegal educators, law school faculty members, practicing attorneys, a former president of the Washington Paralegal Association and representatives of the public were employed in designing admissions criteria, curriculum and standards that educational institutions must meet to qualify for offering LLLT instruction programs. The committee also benefited from the input of Executive Director Paula Littlewood, Chief Regulatory Counsel Jean McElroy, and Chief Disciplinary Counsel Doug Ende. Working groups composed of committee members and outside experts were used to consider a pro bono requirement (declined), to determine the appropriate examination requirements (three exams: one for the core curriculum, one on professional responsibility, and another for the practice area in which the LLLT will be licensed) and to consider course alignment among those schools offering the core LLLT education.

In keeping with the ideal of protecting the public, the ALC recommended that to qualify for LLLT status the applicant must:

- At a minimum possess an associate level degree;
- Complete 45 credits of core curriculum in paralegal studies as defined in the regulations;
- Complete 15 credits of practice area course work;
- Have 3,000 hours of work experience under the supervision of a licensed Washington attorney;
- Pass a rigorous core curriculum examination;

- Pass a rigorous practice area examination;
- Pass a rigorous professional responsibility examination;
- Be of good moral character and provide proof of financial responsibility.

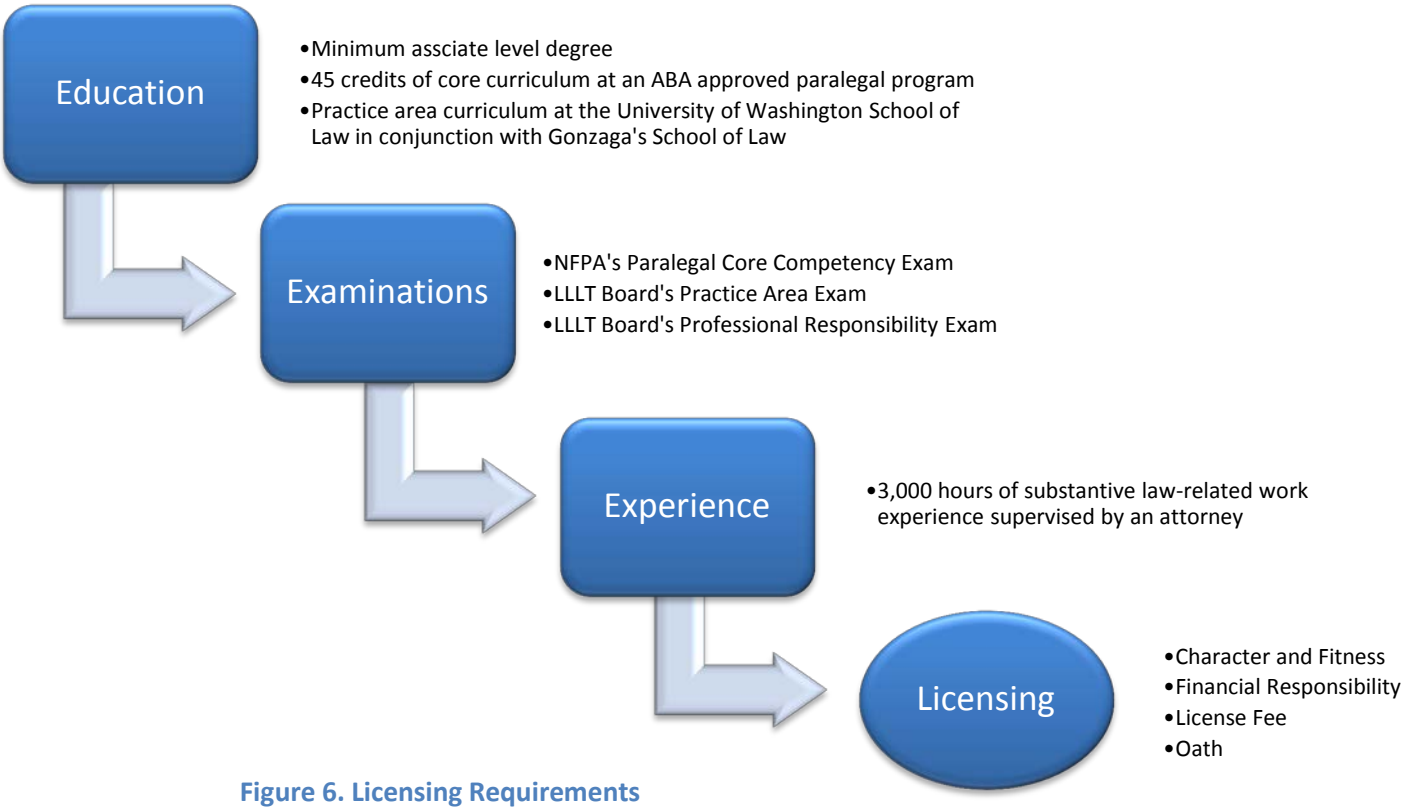


Figure 6. Licensing Requirements

The process of establishing qualifications included discussions of: acceptability of educational credentials (must be from an accredited educational institution); number of acceptable transfer credits (limited to 30); definition of a "credit hour" (450 minutes based on a ten week quarter); the nature of the work experience which will be recognized (must be primarily law-related and not administrative); and the elements making up the examinations (the core exam is multiple choice; the practice area exam contains multiple choice questions, essays and a performance test).

A significant discussion arose over the idea of temporary waiver of the associate degree requirement and credits for courses taken previously. Those favoring the waiver cited the need to have a large initial cadre of LLLT candidates; those opposed raised the issues of changes in the law and the need to ensure that LLLTs are equipped to provide their clients with the most current, up to date information. Eventually, a waiver was approved that will be in place until December 31st, 2016, and allows candidates with 10 years of substantive legal work experience under the supervision of a licensed attorney who have met certain examination and certification requirements to waive the AA and 45 credits of core curriculum and proceed directly to the practice area courses.

In keeping with an aspect of the second philosophical point (academic rigor) the ALC recommended:

- The 45 credits of core curriculum are taught only at those colleges with an American Bar Association (ABA) approved paralegal program (note: the ABA-approved paralegal program designation provided a readily available system for qualifying educational institutions, but see below for discussion of a new proposed accrediting system);
- The 15 credits of practice area curriculum are taught only at one or more of the three law schools located in Washington State;
- The core curriculum consists of seven courses: Introduction to Law; Civil Procedure; Legal Research and Writing; Contracts; Professional Responsibility; Law Office Procedures; and Interviewing and Investigation Techniques;
- The practice area curriculum consists of three courses: Family Law I, II and III.

Again, vigorous discussions ensued on the following topics, which were resolved as shown after each topic: where the core curriculum can be taught (academic rigor trumped accessibility in the decision to confine this teaching to the four community colleges with ABA approved paralegal programs, though the committee agreed to revisit this decision in 4-6 months; see more information on this development below); where the teaching of practice area curriculum should take place (again, academic rigor was the reason for deciding to confine this to the state's law schools); how to credit weight the core curriculum courses (so long as the total number of credits earned is 45, divergence in credit weighting was determined to not be a barrier); and whether completion of the core curriculum should be a prerequisite for taking practice area courses (it was decided to allow students to take practice area courses while also studying the core curriculum if the students meet certain criteria).

Curriculum Workgroup Members

Professor Patricia Kuszler, University of Washington School of Law

Professor Terry Price, University of Washington School of Law

Professor Thomas Andrews, University of Washington School of Law

Professor Lisa Kelly, University of Washington School of Law

Professor Karen Boxx, University of Washington School of Law

Professor Gail Hammer,Gonzaga University School of Law

Justin Sedell, Seattle University School of Law

Professor Julie Shapiro, Seattle University School of Law

Professor Deirdre Bowen, Seattle University School of Law

Brenda Williams, University of Washington School of Law

Kathy Kline, University of Washington School of Law

The ALC established 88 learning objectives that must be met by some combination of the classes making up the "core curriculum." It was determined that a passing grade would be considered satisfactory for moving on from one course to the next. The Curriculum Workgroup was formed by the Washington law schools to design the practice area curriculum.

The major task brought before the ALC and discussed for the last eight months has been the establishment of standards for allowing non-ABA endorsed institutions to teach the core curriculum. After much

discussion, standards were established covering program management, program design, faculty, program services, facilities, and library and legal resources, which if met, would warrant allowing non-ABA approved institutions to teach the core curriculum. The Standards allow the LLLT Board to delegate the power to review and approve programs to a third party. The LLLT Board has created a partnership with the State Board of Community and Technical Colleges (SBCTC) to fill the role of the third party delegate. The SBCTC carries out educational program review and approval for colleges across the state and is a logical and experienced body to which to delegate the LLLT educational program review and approval. In addition, the SBCTC played a very active part in assisting in the creation of the LLLT Educational Program Approval Standards (Standards) with the intent of fulfilling the role of the delegate responsible for the program approval process. Currently two institutions have expressed interest in seeking approval per these standards; a working group of the ALC is assembling an application.

Admissions and Licensing Issues before the Court

As discussed above, the ALC has been working to expand access to the core curriculum for LLLTs. In December 2015, the LLLT Board recommended that the Supreme Court authorize changes to APR 28 C, D and Regulation 3 that would allow non ABA-approved paralegal programs approved under the Standards to offer the LLLT core curriculum. These rule changes are currently pending with the Court.

2016 Agenda of the Admissions and Licensing Committee

The ALC sees as its future tasks:

- Ensuring that LLLT education is affordable, accessible and academically rigorous;
- Taking steps to encourage paralegals to seek the core course LLLT endorsement;
- Promoting the LLLT program in such a way as to maximize the number of persons going from completion of core curriculum to enrollment in practice area course work; and
- Developing a curriculum for a new practice area once approved.

Rules of Professional Conduct Committee Report

Committee Work from 2013 to 2014

The Rules of Professional Conduct (RPC) Committee held its first meeting in July 2013. The Committee represented a broad cross-section of the legal community. In light of the requirements of APR 28 that LLLTs would be held to the same standard of care as lawyers, would have the attorney/client privilege, and would be subject to the same IOLTA rules as lawyers, the Committee determined that the LLLT RPC should be based on the Lawyer RPC. Issues that would be particularly challenging were identified. The Committee decided to create working groups that would be responsible for in-depth analyses of the rules; assignments of Titles of the Lawyer RPC were subsequently made to the various work groups.

Rules of Professional Conduct Committee Members

- Ellen Dial, Chair
- Greg Dallaire, Board Member
- Cailin Davis Carlson, Board Member
- Janet Olejar, Board Member
- Elisabeth Tutsch, Board Member
- Steve Crossland, Board Chair
- Doug Ende, Chief Disciplinary Counsel, WSBA
- Professor Brooks Holland, Gonzaga University School of Law
- Vicky Chen, Perkins Coie LLP
- Deborah Perluss, Northwest Justice Project
- Nan Sullins, Liaison to the Court

Over the course of the next twelve months, meeting monthly, the Committee considered each of the rules of the Lawyer RPC, its applicability - or not - to LLLTs, the changes to the lawyer version of the rule that would be necessary to reflect a new form of legal practitioner, and comments to the new rules to guide both LLLTs and lawyers in understanding how to interpret and apply the LLLT rules. The Committee also considered what new rules were needed to reflect the unique nature of an LLLT practice. Working groups, which met between Committee meetings, led the discussion of the rules that had been assigned to them. Discussions were vigorous and thorough, as the members of the Committee brought differing perspectives and insights to the task.

As the Committee brought to a close its initial discussion of a specific rule, the rule and its draft comments were presented to the LLLT Board for comment and consideration. Board questions and comments were brought back to the Committee for further discussion. Through this process, the Committee discussed at length each aspect of the conceptual framework of the proposed LLLT RPC and the specific rules that flowed from it. For some of the rules, those discussions were pursued over a period of many months, as the Committee members' understanding of the ethical implications of an LLLT legal practice matured and new ideas were brought to light.

In mid-2014, WSBA's Chief Disciplinary Counsel Ende convened a second group of experts in legal ethics - "the concordance group" - to review the Lawyer RPC in light of the soon-to-be completed draft LLLT RPC. In the last few months of the Committee's work, the concordance group and the Committee were working in tandem, allowing for the sharing of additional insights into how lawyers and LLLTs, and the rules governing their conduct, would work together.

Neither the decisions of the Subcommittee nor the interim votes of the Board were unanimous. Over the year of Committee and work group meetings, the issues were identified, explored, discussed, debated and decided by majority votes. The existence of differing points of view spurred the Committee to ever-deeper thought and discussion.

The Committee met for the last time in July 2014, to complete its recommendations to the Board. By that time, members of the full LLLT Board had seen each draft rule and comment, were familiar with the issues being discussed and debated, and had already had many opportunities to provide questions and comments to the Committee. When the LLLT Board next met to consider the Committee's recommended draft in full, it approved the draft unanimously. The Board forwarded that recommendation to the Court on August 18, 2014, nineteen days after the final meeting of the RPC Committee. The Court requested that the WSBA collect comments on the LLLT RPCs. Comments were collected per the Court's instruction and forwarded to the Court for review on January 5, 2016.

The work of preparing an entire set of proposed rules requires precision, enormous attention to detail and skilled drafting. The Committee was aided greatly by the volunteer work of Vicky Chen, a lawyer at Perkins Coie in Seattle. Ms. Chen attended meetings, compiled drafts, contributed thoughtfully to the Committee's discussions and watched carefully over the language of the draft to assure consistency, clarity and accuracy. The Committee and the Board are greatly indebted to Ms. Chen for her excellent work.

2016 Agenda of the Rules of Professional Conduct Committee

Currently, the RPC committee does not have any meetings planned. Should large-scale scope changes occur, such as LLLTs being able to negotiate or appear in court in some limited fashion, changes to the RPCs may be required. The committee also may reconvene if any clarifications to the RPCs are needed, should questions from practicing LLLTs arise.

Examination Committee Report

Committee Work from 2013 to 2015

The Examination Committee began its work in July of 2013. The committee was initially chaired by Lupe Artiga, a Senior Attorney at Northwest Justice Project. Ms. Artiga was on the original LLLT Board and practices family law. Ellen Reed, then a paralegal working in civil legal aid, chaired the Committee when Ms. Artiga left the Board; when Ms. Reed began working as the staff liaison to the LLLT program for the WSBA, Nancy Ivarinen took over the Examination Committee. Though the examination committee included several Board members who were family law practitioners, they recognized the need to involve more attorneys with family law expertise from a variety of geographic areas in the exam writing process. To that end, the WSBA put out a call for volunteers to assist in creating the exam. A group of dedicated family law attorneys, professors, and psychometricians became the Family Law Examination Workgroup that expended many hundreds of hours in drafting, reviewing, approving, and grading the questions.

Examination Committee and Workgroup Members

- Nancy Ivarinen, Chair
- Jeanne Dawes, Board Member
- Dr. Ruth Walsh McIntyre, Board Member
- Lynn Fleischbein, Board Member
- Ellen Reed, former Board member and committee Chair
- Lupe Artiga, NJP, former Board Member and Chair of Committee
- Charles Szurszewski, Connolly Tacon & Meserve
- Lianne Malloy, Assistant Attorney General
- Camille Schaefer, Family Law CASA of King County
- Melissa Shaw, University of Washington School of Law/Themis Bar Review
- Alan Funk, Wechsler Becker LLP
- Grace Huang, Washington State Coalition against Domestic Violence
- Kimberly Loges, Attorney at Law
- Kathy Marshall, Attorney at Law
- Ron Mattson, Attorney at Law
- Jennifer Summerville, Northwest Justice Project
- Professor Lynn Daggett, Gonzaga University School of Law

APR 28 requires LLLTs to pass a core education exam, a practice area exam, and a professional responsibility exam in order to gain licensure. The Examination Committee and the LLLT Board consulted with psychometricians and experienced test writers to ensure they had the necessary background information to begin making decisions regarding the LLLT examinations. The entire LLLT Board participated in a weekend-long retreat, read articles about test writing, and listened to presentations from the National Conference of Bar Examiners, the WSBA Board of Bar Examiners, Professor Terry Price of the University of Washington School of Law, and WSBA staff who had participated in grading and writing the Limited Practice Officer and Bar exams.

Selection of Core Education Exam. Because of the unique nature of the LLLT scope of practice and RPCs, the examination committee quickly determined it would not be possible to use an existing exam for either the practice area or the professional responsibility exams. In contrast, several existing national paralegal organizations have tests for proficiency in paralegal core education. Those tests reflect the curriculum of ABA-approved paralegal programs. The committee began investigating which of those paralegal certification exams might work for testing the proficiency of LLLT candidates' core education knowledge.

After comparing examinations from the National Federation of Paralegal Associations (NFPA), the National Federation of Legal Assistants, and NALS (the Association for Legal Professionals), the committee determined that the Paralegal Core Competency (PCC) Exam, offered by the NFPA, was the appropriate test to demonstrate proficiency in the core LLLT subject areas. The committee interviewed a representative from the NFPA in order to fully explore the rigor and methodology of the PCC exam.

Practice Area Exam. The Committee decided that the licensing exam would be given twice a year, in order to provide a flexible timeline for the completion of licensing requirements. Using the scope of the LLLT family law practice area and the topics covered by the practice area education, the committee crafted an exam that was four and a half hours in length and used three different testing formats; multiple-choice, essay, and a performance test. The exam format is similar to that of the Uniform Bar Exam, which Washington uses for lawyer admission.

During the process of creating the exam blueprint the committee consulted with experienced family law practitioners, and weighted the topics in terms of importance in actual practice. The most crucial topics were assigned the highest number of questions. The committee then determined the distribution of topics required in each exam. Testing experts advised the Board that the number of multiple choice questions in the exam bank should be at least three times the number of items needed for each exam, due in part to the need to have a relatively fresh mix of questions on each exam to prevent cheating. With this background and based on the exam blueprint, the exam writing process began.

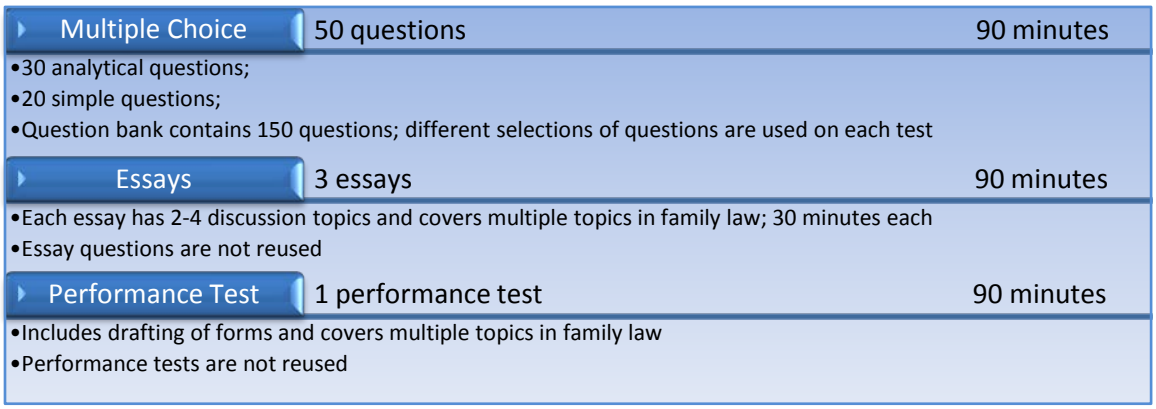
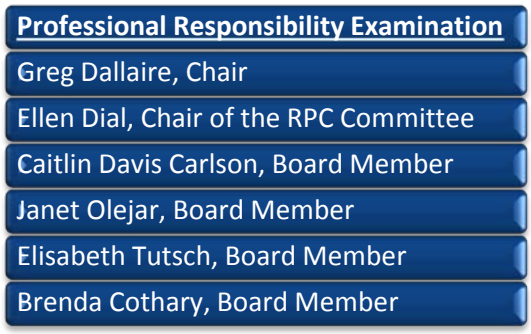


Figure 7. Practice Area Exam

Exam Writing Process. The entire LLLT Board participated extensively in the creation of the family law examination. At a retreat in May 2014, the Board worked in groups to write questions based on the topics in the family law examination blueprint. Each Board member received question writing assignments subsequent to the exam retreat. Examination committee members then met on a monthly basis to edit and approve the questions. Each question had to be approved in two separate meetings in order to be ready for use on the exam. Thousands of hours were spent drafting and approving questions; several committee members individually dedicated somewhere around 200 hours in 2014 and 2015 to creating the practice area exam.

Professional Responsibility Exam. The professional responsibility exam was created following the same process as the family law exam. Work began as soon as the LLLT RPCs were completed. The committee decided to model the professional responsibility exam structure loosely on the Multistate Professional Responsibility Examination, and therefore chose to have forty multiple choice questions on each exam. Like the practice area exam, the committee created a multiple choice question bank with enough questions for three exams, so that each exam administration can offer a distinct mix of questions. The questions the committee drafted test the entirety of the Limited License Legal Technician Rules of Professional Conduct.



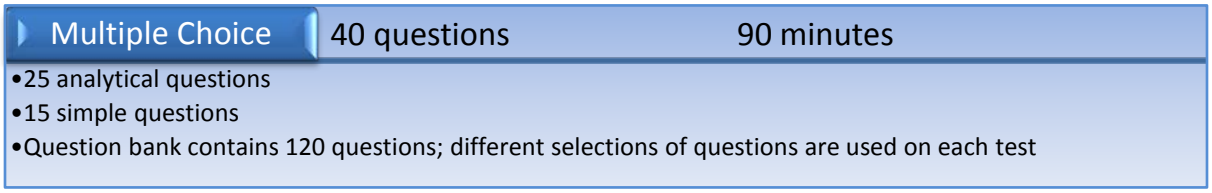


Figure 8. Professional Responsibility Exam

Study Guide. The committees also created study guides intended to assist LLLT students as they prepared for the professional responsibility and family law licensing exams. The family law study guide was developed in consultation with the professors who had taught the family law curriculum to ensure complete concordance between what the LLLTs were learning and what they were being tested on. Both study guides are available for free online.

Administration of 1st and 2nd Exams. The first LLLT licensing exam was administered in May 2015. Nine candidates took the tests. All of the candidates passed the professional responsibility exam and seven passed the family law exam. The second LLLT licensing exam was given in September 2015. Fifteen candidates took the exams; ten candidates passed the practice area exam and all candidates passed the professional responsibility exam.

Quality Review and Future Development. The first practice area exam and professional responsibility exam were pre-tested by a group of lawyers and a law student who took a one

hour CLE on the scope of the LLLT practice and RPC. The tests were also reviewed by Professor Lynn Daggett, a psychometrician at Gonzaga University School of Law. The second exams were also reviewed by Professor Daggett and by Ergometrics, an exam writing company.

Given the intensive work involved in the creation of the practice area and professional responsibility examinations, the Board determined that it was not sustainable to have volunteers perform all the necessary exam creation and maintenance on an ongoing basis. The WSBA investigated several testing companies to determine if there was a company that could take over review and maintenance of the question banks and creation of new essay and performance test questions. In the summer of 2015, the WSBA contracted with a Washington state exam writing firm, Ergometrics, to assist the LLLT Board and WSBA staff with exam administration and development.

2016 Agenda of the Examination Committee

In 2016, the examination committee plans to continue to work with Ergometrics on drafting new questions, assigning weight to each question and maintaining the mix of questions for each of the family law subject areas recommended by the family law practitioners. Each practice area examination requires new essay and performance test questions, so Ergometrics will be consulting with the Examination Committee on an ongoing basis to develop new examinations biannually.

The LLLT Program Today

Today, the LLLT program is fully operational. It has a regulatory structure, rules of professional conduct, a fully developed educational pathway, a licensing exam, and practicing LLLTs. The program is having a profound effect on the legal profession within the state, country, and global community.

Current LLLTs and LLLT Candidates

Of the nine LLLTs currently licensed and operating, five have started independent businesses and four LLLTs work for firms. In addition to starting her own business, one of the LLLTs works with a local legal aid program and the local Superior Court. Six of the nine LLLTs have ten years or more of paralegal experience. They are distributed geographically across eight counties.

There are 8 additional candidates who have passed the licensing exam and are earning their experience hours, 17 candidates eligible to take the practice area exam, and 19 students enrolled in the practice area education. Many of the potential candidates for LLLT licensure also represent diverse areas of the state. Several candidates come from areas with per capita income between 150-200% of the federal poverty level, such as Tenino, Ephrata, and Kelso, and will presumably practice there after licensure.

Core Curriculum Programs

ABA-approved programs. The "LLLT program core curriculum" refers to the 45 credits of curriculum, including classes in seven focus areas, which must be taken at an ABA-approved paralegal or legal studies program by those wishing to pursue the LLLT license. The "core curriculum" also includes 14 credits of legal electives. The LLLT program core curriculum is designed to provide LLLTs with a background in legal studies that will give them a solid foundation for limited practice in any area of law. There are currently four ABA-approved paralegal programs in Washington State. All of the ABA-approved paralegal schools have now aligned their paralegal curriculum to allow students to complete the LLLT core curriculum at their schools.

Figure 9. LLLT Core Curriculum Required Focus Areas

Number of students. Because LLLT core curriculum aligns closely with the paralegal degrees and certificates offered at ABA-approved paralegal programs, community college educators have been unable to track exact numbers of students who are planning to pursue the LLLT license. However, class enrollments have led educators to estimate that somewhere between one hundred to two hundred students currently enrolled in ABA-approved paralegal programs are completing courses in the LLLT core curriculum classes.

Limited Time Waiver. As discussed in the Admissions and Licensing Committee report, Regulation 4 of APR 28 designates that until December 31st, 2016, prospective LLLTs with 10 years of more of substantive law-related work experience who are actively certified with a LLLT Board-approved national paralegal certification organization (which requires passage of a national paralegal certification examination) may have the AA requirement and the 45 credits of core curriculum waived and may move directly into the practice area education. The limited time waiver was designed to attract highly experienced paralegals to the LLLT pathway. 17 candidates have qualified to take the practice area education under the waiver.

Practice Area Curriculum

The LLLT practice area curriculum is specific to the area of licensure and will be defined individually for each practice area. For family law, the curriculum workgroup developed a fifteen credit cycle of courses based on the prescribed scope of the domestic relations practice area. At this time, the practice area education is being offered through the University of Washington School of Law as a three quarter series of five credit classes. The classes are available online, through an interactive learning platform, and are offered in the evenings in order to provide greater accessibility to working students. The classes are co-taught between a law professor and a practitioner, which allows LLLT students to become familiar with both the theoretical underpinnings of the law and its actual practice. The University of Washington School of Law has completed two cycles of the LLLT practice area curriculum and began the second quarter classes of its third cohort in January 2016.

Affordability of Education

The LLLT license is an economical choice for anyone wishing to pursue an independent legal career. The University of Washington School of Law significantly lowered its per credit rate in order to offer the LLLT practice area education at an affordable price. Because the classes are offered as a continuing education certificate rather than having students actually matriculate, the students are saved significant costs in fees; unfortunately, this system also means that most forms of financial aid are not available to the practice area students. At the community college level, the total cost of an AA degree at most of the Washington state colleges is around $10,000 not including housing costs. Many students enter the program with an AA or a BA, or are able to use financial aid throughout their community college education. The LLLT Board plans to work towards ensuring that LLLT students can access financial aid throughout their LLLT education.

Figure 10. Affordability of Education

Regulation of LLLTs

Discipline. The Board is forming a Discipline Committee in accordance with the Court's approval in January 2016 of an interim LLLT discipline system based on the Rules for Enforcement of Limited Practice Officer Conduct Rules (ELPOC). The LLLT Board will have a three to five member standing Discipline committee, which may have non-Board members appointed to it by the Court as needed.

Mandatory Continuing Legal Education. APR 28 Regulation 14 sets the minimum credit hour requirement for LLLTs per license year (10 credits) and designates the date upon which proof of compliance is due. Regulation 14 also states that standards for approval of continuing education courses, procedures for reporting attendance, sponsor duties, and fees will be set by policies of the LLLT Board. The LLLT Board has designated an MCLE committee (made up of Board members) and is in the process of finalizing MCLE policies or regulations.

MCLE Committee
- Jeanne Dawes
- Dr. Ruth Walsh McIntyre
- Brenda Cothary

Character and Fitness. The Character and Fitness Committee will conduct any hearings regarding any character and fitness issues and will be made up exclusively of LLLT Board members.

Sustainability

The LLLT program generates revenue by charging for the processing of applications for waivers, exams, and licensing. The fees for the waiver application are $150. The fees for the licensing exam (combining both the professional responsibility and practice area exams) are $300. The fee for licensing and license renewal is $175. Total revenue for the program as of December 2015 was $11,187.50. Total expenses (direct and indirect) through that date were $473,405.25. Given the flexible timing of when applicants can apply for the licensing process, it is difficult to predict when the program will be able to completely cover its own costs. Considering that the LLLT program core curriculum enrollment is estimated to be between one hundred and two hundred current students currently, it is reasonable to project that the program will have paid back WSBA and be self-sustaining within five to seven years.

Impact of the LLLT Program

From its initial inception, the LLLT program has had a profound impact on the national and global conversation about how to increase access to justice. The innovative approach adopted by this Court is allowing others to see that it is possible to change the range of options for addressing the scarcity of legal services for moderate and low-income people. A multitude of other states have consulted with the LLLT Board and the WSBA regarding the possibility of licensing limited practitioners in their own jurisdiction. Utah's Supreme Court just approved the creation of a similar legal paraprofessional called a "limited paralegal practitioner". California, Colorado, Florida, Minnesota, New Mexico, and Oregon have also taken steps toward creating similar programs. The collaboration among the LLLT Board, WSBA, and other states leads the Board to hope that LLLTs will one day enjoy a license that is portable in a way that is comparable to lawyers. The Board and WSBA staff have also received inquiries into how to start an LLLT program from Canada, Australia, and Trinidad, among other countries.

Opportunities for Lawyers. In their outreach efforts, the LLLT Board and WSBA staff have seen a significant shift towards support of the program as familiarity with the license grows. Several firms and lawyers, including a recent WSBA Board of Governors member, have paid for their paralegals to take the practice area education. Many attorneys have expressed belief that having LLLTs in their firm or as part of their referral network will increase the number of clients who walk through their doors since many clients who might never come to an attorney due to cost or other issues may be more likely to contact an LLLT for legal help.

Jen,

Thank you from the bottom of my heart for your help! I was panicked this time last week and I am beyond grateful for your being able to help me though I no longer live in Bellingham and within the very tight time limits we had.

I felt like such a deer in headlights after court yesterday-- an emotional five years were resolved--fiiinally! We have gone in to court so many times and made zero progress that this is almost surreal.

I also speak from the heart of a relieved mother for the stress and struggle that ended. Hope and newness took its place.

Congratulations on the success of this trial. You had mentioned it was the first LLLT case in the state to go to trial. Your services were exactly what I needed to move forward. I am thankful that I came across someone who knew of you, and everything worked out. I cant wait to get back to being ME!!

Beyond Grateful,

T

-Feedback from client of LLLT Jen Petersen, #104. Jen helped the client prepare her documents for trial, which the client attended pro se. Shared with permission.

Issues Before the Court

The following issues are currently pending before the Court:

Support from the Supreme Court: Pending Rule Amendments

APR 28 (F) (8) Scope of Practice Authorized by Limited Practice Rule. APR 28 (F) (8) permits an LLLT to "draft legal letters…if the work is reviewed and approved by a Washington lawyer." The Board believes that the intent of the rule is to prohibit an LLLT from writing letters containing legal advice that are intended to be read by persons other than the client unless the work is reviewed and approved by a Washington lawyer, but that it is not the intent of the rule to imply that LLLTs may send any letter to a client only after it has been reviewed and approved by a lawyer. The Board suggested an amendment to clarify that the type of letters written by LLLTs that must be reviewed and approved by a Washington lawyer are letters that set forth legal opinions and that are intended to be read by persons other than the client.

Regulation 2: Issues Beyond the Scope of Authorized Practice. As currently written, Regulation 2 prohibits an LLLT from completing any document that involves an issue outside the scope of their authorized practice. The result is that a client who elects not to engage a lawyer is left without effective assistance in completing a document that may be essential to their case, and may have only one subsection containing an issue outside of the scope of the LLLT's practice. Under the proposed amendment, the LLLT would be able to prepare the document under those circumstances, but would still be prohibited from advising the client regarding the issue that lies outside of the authorized scope of the LLLT's practice. The LLLT would be obligated to complete any portion of the document that involves such an issue only at the client's direction. If the Court approves this amendment to the scope regulation, it will significantly expand LLLTs' ability to serve clients who cannot afford to consult a lawyer for any portion of their legal problem.

APR 28 C, D and Regulation 3: Expansion of the Core Curriculum. As discussed in the Admissions and Licensing Committee report, in December 2015 the LLLT Board recommended that the Supreme Court authorize changes to APR 28 that would allow non ABA-approved paralegal programs to offer the LLLT core curriculum. The LLLT Board has crafted "LLLT Educational Program Approval Standards", which will be applied in a review process coordinated by the State Board of Community and Technical Colleges. Should the Court authorize these changes, programs approved under the "LLLT Educational Program Approval Standards" at Washington's twenty-nine technical and community colleges will be able to apply for approval to offer the LLLT core curriculum, thereby significantly improving and supporting the accessibility tenet of the LLLT education. This process will allow a geographically diverse set of schools to offer the established LLLT education to their local population, and give potential LLLTs who may be working or have families more options for how and when they complete their core curriculum education.

Other Suggested Amendments Forthcoming to the Court

The Board has voted to approve the following suggested amendments and plans to submit them to the Court:

Background Check Requirements. The current requirements for LLLT licensure require that LLLT candidates submit fingerprints to the FBI for the purpose of a criminal history check. Several current applicants for LLLT licensure have fingerprints which we have been told are not sufficiently clear to allow the FBI to conduct a background check due to a history of physical labor and/or age. The FBI has also stated that WSBA is not authorized to receive fingerprint check results directly and thus must set up an alternative process for receiving fingerprints or get legislative authorization to have the results sent to WSBA. The proposed amendment to Appendix APR 28 Regulation 5 allows the LLLT Board and WSBA to conduct background checks by whatever means are deemed appropriate to the individual applicant.

Physical Address Requirement. LLLT candidates who plan to work from home and who live in rural areas where mail is not delivered have expressed concern about the requirement in APR 28 G (1) for LLLTs to have "a principal place of business having a physical street address for the acceptance of service of process in the State of Washington." Many of the LLLT candidates who plan to work with victims of domestic violence do not want to publicly disclose their home address due to safety concerns. Other LLLT candidates who work from home in rural areas cannot receive mail service at their homes, but do have a P.O. box which they can check regularly. Allowing LLLTs the flexibility to work from home rather than requiring them to have a physical principal place of business where they can receive mail increases their ability to lower their overhead and offer low cost legal services. Due to this, the LLLT Board voted to change the language of the rule to allow an LLLT to either have a principal place of business with a physical street address or to designate a resident agent in the state of Washington for the acceptance of service of process.

Board Composition. Per APR 28 C (1), the LLLT Board is composed of "active Washington lawyers" and "nonlawyer Washington residents." LLLTs do not fit into the first of these categories, and the LLLT Board believes that the intent of the Supreme Court in designating four of the Board appointments for "nonlawyer" residents was to include the voices of the public rather than to potentially create an entire Board with licenses, however limited, to practice law. The Board believes the perspective of LLLTs will be integral in promoting the ongoing success of the program, as LLLTs would likely be in a position to provide valuable insight into how their role can increase access to justice for the public. LLLTs also are ideally placed to advise the Board regarding their continuing efforts to make sure that the program succeeds in its goals of being affordable, accessible, and academically rigorous. The Board wants to ensure that there are no barriers to LLLTs' participation in the leadership of the program imposed by the rule language governing the composition of the LLLT Board, and therefore suggests a substantive amendment to the language of APR 28 C (1). These changes to the language of the rule governing the composition of the LLLT Board will allow LLLTs to join the Board as part of the nine positions designated for legal professionals with a full or limited license to practice law.

Future Development

Program Evaluation

The LLLT Board plans to evaluate the LLLT program on an ongoing basis, using its own data collection and outside studies of the program as sources. The Public Welfare Foundation is also conducting a study of the program with researchers Rebecca Sandefur and Thomas Clarke. The Board will use the results of the study to evaluate the program and plan project development. Currently, a Harvard Law student is writing a law review article on the program and asking for feedback from all of the LLLT candidates and the current LLLTs.

Next Practice Area Recommendation

It is critical that the LLLT program offer multiple practice areas in the future. If LLLTs have a variety of practice areas, they are much more likely to be able to sustain a viable business. If they are limited both in the scope and in the area of their practice, it may be very difficult to find sufficient clientele if they are practicing anywhere outside of a large city. Also, there are many people who would like to become LLLTs who are not drawn to practicing in the area of family law. There are many other areas of civil legal need where LLLT practice could make a critical difference in providing services to low and moderate income people.

Possible practice areas for LLLTs have been discussed on an ongoing basis since before the program came into existence. In 2008, the Practice of Law Board issued reports from four subcommittees who had crafted recommendations on the advisability of licensing a limited practitioner in elder law, landlord tenant law, immigration law, and family law. Since its inception in 2013, the LLLT Board has also received extensive feedback from sections and organizations representing these and other practice areas. The Board discusses pros and cons of potential practice areas on a frequent basis and considers several important criteria when considering practice areas:

Civil Legal Need. The Board first looks to civil legal need among low and moderate income individuals, using the 2003 Civil Legal Needs Study and the 2015 Civil Legal Needs Study Update as sources of information.

Sustainability. The Board attempts to weigh if the area will attract enough clients to allow LLLTs to earn sufficient fees to be self-sustainable, and if it will attract enough LLLTs that it will be sustainable for the WSBA to administer.

Implementation. Finally, in regards to implementation, the Board considers if there are resources available to develop the curriculum and examinations within the existing structure of the program. One of the most important considerations is whether there is available faculty at the Washington law schools who are able to provide instruction in the area of law being considered.

With those criteria in mind, the LLLT Board has carried on an ongoing discussion around the feasibility of the initial practice areas investigated by the Practice of Law Board (housing, immigration, and elder law), as well as looking into additional possibilities.

Figure 11. Creating a New Practice Area

Elder/Aging and Disability Law

The Board's ongoing discussion of "elder law" as a potential practice area has led them to consider their first priority in investigating the next LLLT practice area. Elder law appears to work well within the parameters of the LLLT program. Certain limited tasks were recommended by the Practice of Law Board committee, including non-contested guardianships, basic estate planning, probate, and vulnerable adult proceedings. Various practitioners in this area have also brought ideas to the Board on an ongoing basis of how LLLTs could be utilized in this area.

In the Board's letter of October 9, 2015, to the Supreme Court, it suggested that it would like to begin investigating the creation of a new practice area that would incorporate elements of estate planning, guardianship, probate, government entitlement programs such as Medicare and Medicaid, and aspects of health care law that assist the health care consumer, rather than creating a practice area that focused exclusively on what has been commonly known as "elder law". In the 2003 legal needs study, legal needs by problem area that could be addressed by a practitioner who was trained in these areas would potentially account for 23% of all legal needs reported[1]. In the 2015 study, the need for these services is even more apparent: 33.6% of all of

[1] Task Force on Civil Equal Justice Funding *The Washington State Civil Legal Needs Study, September 2003* (p. 33, Fig. 10) 23% figure combines legal areas in the study denoted by "estates and trusts," "health problems," "elder abuse," "disability problems," and "benefit problems."

the legal problems reported relate to these issues[2]. In fact, the area of "health problems" (which primarily relates to issues with health insurance) had the largest percentage change of any legal problem area, going from 7% of all substantive legal problems reported in 2003 to 20.5% in 2015[3]. The LLLT Board believes that authorizing a LLLT practice area that touches these aspects of elder and health care law could be of great benefit to low and moderate income individuals in Washington, and sees concrete support for that belief in the 2015 Civil Legal Needs Study Update.

The Board also believes that this practice area could provide a self-sustaining practice for LLLTs and attract sufficient LLLTs to help make the LLLT program self-sustaining. Many attorneys who live in rural areas are able to have viable practices by combining family law and "elder law," which presents a hopeful model for forecasting that LLLTs may be able to create sustainable practices in traditionally underserved geographic areas. Additionally, curriculum development and implementation of this practice area could occur rapidly, as there is sufficient law school faculty to instruct in these areas.

Issues for the LLLT Board in 2016

Court Appearances. Many different entities, including many judges, have suggested that LLLTs should be allowed to appear in court in some limited fashion. The Board intends to explore this option within the current family law scope of practice and as they contemplate crafting a new area in which to license LLLTs. The Board will initially explore the idea of LLLTs appearing with their clients in order to answer factual questions from the judge or commissioner regarding forms and procedure. Other types of representation in hearings may be considered as the Board gathers more information and carefully studies the pros and cons of recommending that the Court adjust this prohibition. Preliminarily, the Board feels that carefully considered changes to this prohibition could benefit clients and may also assist in the processing of cases in the legal system.

Negotiations. The current prohibition against LLLTs negotiating for their clients has created significant questions in the practice of family law. LLLT clients who may be in the midst of a nasty dissolution or custody battle, or even a domestic violence dispute, may find themselves in the position of being contacted by their spouse or abuser because of the legal proceeding, when it would clearly be in their best interest to have a neutral third party be the contact person. The Board also feels that it should consider whether it would be better to have an LLLT negotiate directly with an opposing party's attorney than it is to have a pro se party do so, and also whether it would be much easier for the attorney to deal with a legal professional rather than a pro se layperson. For LLLTs who are multilingual, being able to negotiate with opposing

[2] Social & Economic Sciences Research Center, Washington State University *June 2015 Civil Legal Needs Study Update* (p. 19, table B.2) 33.6% figure includes legal areas in the study denoted by "estate planning," "health care," and "access to government benefits."
[3] Social & Economic Sciences Research Center, Washington State University *June 2015 Civil Legal Needs Study Update* (p. 22, table 4)

parties may allow them to provide essential services to clients who speak the same language(s) they do but may not speak English.

Family Law Scope Questions. As the law school has taught family law and the LLLT Board has crafted an exam around the particular scope of practice in which LLLTs are authorized, it has become apparent that there are some important questions created by the scope prohibitions that will require further discussion and consideration. Though the Board considered the scope of practice carefully, after field testing a huge variety of situations, it is clear that the Board was unable to contemplate every possibility in advance and will need to consider and discuss these additional issues. The Board may also address the authority of LLLTs to engage in real property matters. The Board feels that in doing so, they can potentially improve service by LLLTs in family law and perhaps the next proposed practice area as well.

Extension of Limited Time Waiver. A variety of different stakeholders have proposed indefinitely extending the limited time waiver that allows paralegals with active paralegal certification and 10 years or more of substantive work experience to enter the practice area education without completing the AA requirement or the 45 credits of core curriculum.

Financial Aid. The Board also feels it would be very helpful if it could assist in finding sources for financial aid for LLLTs in the practice area education. The lack of financial aid appears to be the largest barrier to students in continuing their education as they transition from the core curriculum at the community college level to the practice area curriculum at the law school level.

Conclusion

As the Board moves into 2016, it looks forward to continuing to develop the LLLT program into a model for similar programs across the country and the world. The creation of the LLLT program has truly changed the national dialogue within the legal profession about who should be providing legal services and what those professionals will look like in the 21st century. The adoption of APR 28 and implementation of the Program has also created a culture of innovation in Washington state, with many ideas being brought forward to the LLLT Board and WSBA as to how these new legal professionals might be used to advance service to the consumer in our state. The Board is deeply committed to making the LLLT program into an exemplar of how change can benefit legal consumers and legal professionals.

APPENDIX B

NEW PRACTICE AREA COMMITTEE MEETING MINUTES

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
NEW PRACTICE AREA COMMITTEE

Meeting Minutes for June 16th, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
10:00 a.m. to 12:30 p.m.

Committee members in attendance were Greg Dallaire, Amy Riedel, Caitlin Davis Carlson, and Sheila O'Sullivan. Lynn Fleischbein, Jeanne Dawes, and Elisabeth Tutsch participated by phone.

Also in attendance were Bobby Henry, Associate Director of Regulatory Services, and Ellen Reed, LLLT Program Lead.

Call to Order/Preliminary Matters

The meeting was called to order at 10:06 am**.**

- Roster and Committee Structure

Committee Chair Greg Dallaire discussed the structure of the committee and the expectations for its members. He is working on recruiting an administrative law judge to serve on the committee.

Anatomy of a Practice Area

Committee Chair Dallaire explained some of the criteria that are considered when creating a recommendation for a new area of LLLT practice. He also discussed the previous communication from the LLLT Board to the Supreme Court regarding the next practice area.

In October 2015, a letter was sent to the Court introducing the Board's intention to explore a practice area related to estate planning, guardianship, probate, government entitlement programs such as Medicare and Medicaid, and aspects of health care law that assist the health care consumer. A discussion took place as to whether additional practice areas should be explored. It was determined that the committee will use the areas outlined in the October letter as the foundation of the new practice area, and then add or take away information as needed. The

remainder of the meeting was spent discussing the "Anatomy of a Practice Area" document, which will serve as a tool to craft recommendation of the next practice area to the LLLT Board. Members added many areas and subtopics to the document and plan to continue discussing the boundaries of the practice area and the criteria for approval at the next meeting.

Adjournment and Next Meeting

The meeting was adjourned at 12:21 pm. Upcoming meetings will be held from 9:30am-12:30pm on July 21st, August 11th, and September 15th at the Washington State Bar Association offices.

WSBA

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
NEW PRACTICE AREA COMMITTEE

Meeting Minutes for July 21st, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
9:30 a.m. to 12:30 p.m.

Committee members in attendance were Greg Dallaire, Steve Crossland, Jeanne Dawes, and Judge Lorraine Lee. Lynn Fleischbein and Elisabeth Tutsch participated by phone.

Also in attendance was Bobby Henry, Associate Director of Regulatory Services.

Anatomy of a Practice Area

Committee Chair Dallaire presented a document created in a previous committee meeting which explores the anatomy of a new LLLT practice area that may encompass aspects of elder law, health care law, and work related to government benefits.

The remainder of the meeting was spent editing the "Anatomy of a Practice Area" document, which will serve as a tool to craft a recommendation to the LLLT Board. Members added many areas and subtopics to the document and plan to continue discussing the boundaries of the practice area and the criteria for inclusion of each legal area at the next committee meeting.

Next Meeting

The next meeting will be held from 9:30am-12:30pm on September 15th at the Washington State Bar Association offices.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

NEW PRACTICE AREA COMMITTEE MINUTES
September 15, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
1:30 p.m. to 4:30 p.m.

Committee members in attendance were the Hon. Lorraine Lee, Sheila O'Sullivan, Kameron Kirkevold, Greg Dallaire, and Steve Crossland. Jeanne Dawes, Lynn Fleischbein, and Elisabeth Tutsch attended by phone.

Also in attendance were Sherrie Saunders of Northwest Justice Project, Bobby Henry, Associate Director of Regulatory Services, and Ellen Reed, LLLT Program Lead.

Call to Order/Preliminary Matters

The meeting was called to order at 9:37 am.

- Approval of Minutes from July 21st & June 16th

The committee meeting minutes from July and June were unanimously approved.

Discussion of Selection Criteria

Chair Dallaire gave the committee an overview of the LLLT practice area selection criteria. Guidelines for the selection of practice areas were developed by the LLLT Board; examples include whether the practice area represents an area of high unmet need for legal services, whether an LLLT may effectively represent clients in the given practice area wihtin the limited scope, and whether the practice area can be economically viable for solo LLLTs. Chair Dallaire also emphasized the LLLT Board's commitment to making the program affordable, accessible, and academically rigorous. Chair Dallaire and LLLT Board Chair Steve Crossland clarified that the guidelines presented don't represent the totality of the questions that may be considered by the Committee, the LLLT Board or the Supreme Court in the selection of a new practice area.

Administrative Law Components of Practice Area

Judge Lorraine Lee gave an overview of administrative law in Washington state and presented information from a Washington State Auditor's Office report on administrative appeals. Sherrie Saunders also explained various types of administrative law hearings.

The committee than discussed specific administrative processes in turn and reached certain conclusions:

- Supplemental Security Income Benefits (Application, Denial, Overpayments): It is unlikely that a LLLT could form a viable practice area only doing administrative appeals

related to SSI, because the potential awards are small. It is likely that there is a high need for these services, but also probable that all of the clients who need these services are eligible for legal aid.

- Social Security Disability Insurance Benefits and Social Security Retirement Benefits (Application, Denial, Overpayments): It is likely that a LLLT could form a viable practice area only doing administrative appeals related to SSDI or SSA, because the potential awards are large. That said, it is unclear if there is legal need in this area; there are attorneys who specialize in these cases.
- Veterans Benefits (Application, Denial): The VA has its own processes for qualifying representatives (see http://www.va.gov/ogc/accreditation.asp) which a LLLT would have to complete in order to represent clients. There is definitely a need for services, but it unclear whether potential clients would be able to hire anyone to assist them.
- Child care benefits, emergency assistance, food assistance, designation of representative payees, and housing benefits (Application, Denial): It is unlikely a client would be able to pay for help while seeking these services, although it is likely there is need for assistance in this area.
- Aging Out of Foster Care: It is unlikely a client would be able to pay for this service. This is also arguably not administrative law; benefits would be provided by Dept. of Commerce.

The committee decided that there should not be a standalone practice area called "administrative law" due to the varied nature of administrative law and the diversity of agencies and processes involved. The committee also has no wish to advocate for restricting any lay representative from advocating in administrative law processes (i.e. restricting an administrative practice to LLLTs).

The committee recommends that the prohibition in APR 28 against LLLTs representing in formal adjudicative proceedings be lifted; however, the committee believes it would be best to balance lifting that prohibition by providing training for LLLTs regarding specific aspects of administrative law within their practice area education.

Adjournment

The meeting was adjourned at 11:35pm. The next meeting will be held on October 20, 2016 at 9:30am at the WSBA headquarters.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

NEW PRACTICE AREA COMMITTEE MINUTES

October 20, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
9:30 a.m. to 12:30 p.m.

Members attending in person were Kameron Kirkevold, Sheila O'Sullivan, Greg Dallaire, Steve Crossland, and the Hon. Lorraine Lee. Members attending on the phone were Jeanne Dawes, Elisabeth Tutsch, and Caitlin Davis Carlson.

Also in attendance were Steven Schindler of Perkins Coie and Andrew Heinz of Barron Smith Daugert, as well as LLLT Program Lead Ellen Reed and Associate Director of Regulatory Services Bobby Henry.

Call to Order/Preliminary Matters

The meeting was called to order at 9:37 a.m.

- Approval of Minutes from September 15, 2016

The meeting minutes from September 15, 2016 were approved.

Discussion of Selection Criteria

Committee Chair Greg Dallaire explained the various criteria considered by the LLLT Board when selecting LLLT practice areas.

Potential Practice Areas for LLLTs

- "Simple" Wills

Practitioners agreed that wills are typically more complex than they appear to the client, and that it is important that even clients with few assets are able to talk to a qualified service provider who can identify and explain potential issues. The committee discussed the idea that a statutory will could provide a template for a "simple" will. Practioners suggested that "simple" wills could allow clients to take actions such as choosing their own personal representatives, providing for the personal representative to act without bond and without intervention of the court, naming guardians for their minor children, disposing of tangible personal property, and creating a generic supplemental needs trust for beneficiaries who may be receiving public benefits.

The committee thought there may be a benefit to providing LLLTs with a standard form which could be used while interviewing clients with estate planning needs. The committee also discussed taxable estates (including credit shelters and marital trust provisions) and decided that they should be excluded from LLLT practice.

- Trusts

Generally, the committee felt that trusts should be outside the LLLT scope; however, they agreed that LLLTs should be able to serve as trust protectors and trustees. The committee will continue to consider a possible exception of allowing LLLTs to create testamentary supplemental/special needs trusts. The committee will also continue to discuss whether LLLTs should be able to create community property agreements. The committee agreed that LLLTs should be able to assist with revocation of community property agreements.

- Probate

The committee agreed that small estate affidavits should be inside LLLT scope. In regards to other probate issues, the committee felt that the LLLT scope should be limited by what can be accomplished using forms.

- Guardianship

The committee agreed that contested guardianships should be outside of the scope. Uncontested guardianships with no assets should be allowed, including transition planning for disabled minors. Uncontested guardianships with assets could be included, but may need to be limited based on the type of assets.

- Vulnerable Adult Protection Orders (VAPO)

The committee noted that the VAPO process is very form driven and lay practitioners commonly assist with this issue. The committee concluded that LLLTs should be able to help fill out initial forms requesting a VAPO and advise a pro se on how to prepare for their hearing.

- Tax Issues

The committee felt that complex tax issues should be beyond the LLLT scope. LLLTs could advise on basic tax considerations or could be certified independently by the IRS to give advice on more complex issues.

Adjournment and Next Meeting

The meeting was adjourned at 12:34 p.m. The next meeting is scheduled for the morning of Thursday, November 17th at WSBA headquarters.

WSBA

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

NEW PRACTICE AREA COMMITTEE
Meeting Minutes for November 17, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
9:30 a.m. to 12:30 p.m.

Members present were Sheila O'Sullivan, Kameron Kirkevold, Steve Crossland, and Greg Dallaire. Genevieve Mann, Jeanne Dawes, Jessica Neilson, Elisabeth Tutsch, and Caitlin Davis attended by phone.

Also present were Ellen Reed, LLLT Program Lead, Bobby Henry, Associate Director of Regulatory Service, LLLT Board member Ruth Walsh McIntyre, and Julia Kellison of Northwest Justice Project.

Call to Order/Preliminary Matters

The meeting was called to order at 9:33 a.m.

- Approval of meeting minutes from October 20, 2016

The meeting minutes of October 20, 2016 were approved.

- Project Plan Update

Committee Chair Greg Dallaire explained that the committee meeting schedule for the next few months will be more robust than usual. The LLLT Board is hoping to present a new practice area to the Supreme Court in spring 2017. The committee will plan to finalize a recommendation of the practice area subject matter in December 2016.

Potential Practice Areas for LLLTs

The committee focused its discussion on consumer law.

- Consumer Information

The committee agreed that it would be helpful and appropriate for LLLTs to inform consumers of their rights under the Fair Debt Collection Practices Act and the Fair Credit Reporting Act and to inform judgment-proof clients of their rights.

- Bankruptcy

Bankruptcy does not seem to be an appropriate area for LLLT service, as those who advise or represent in bankruptcies must be attorneys admitted to the federal bar.

- Minor Claims for Damages

Although this area is not overly complex, the committee noted that negotiation (currently prohibited for LLLTs) is essential when dealing with claims for damages and therefore this area was not suitable for LLLT practice.

- Small Claims Court Preparation and Enforcement of Judgments

Various committee members identified assistance with preparing for small claims court and collecting judgments awarded in small claims court as an area of huge unmet legal need. More scrutiny may be required to determine if this area is appropriate for LLLT practice, as contingency fees are currently prohibited for LLLTs and may be necessary in order to create an economically viable practice in this area.

- Auto fraud

While there is a significant need, auto fraud is not an appropriate area for LLLT practice because the law in this area is highly complex and litigation and negotiation are essential tools.

- Legal Financial Obligations

There is a significant need for services in the area of legal financial obligations (LFOs). The committee concluded that working with LFOs may be appropriate for LLLTs, but recognized that most of the potential clientele in this area may be unable to pay for assistance.

- Hardship Discharge of Student Loans

Assisting clients with hardship discharges for student loan debt was also found to be an area that would not support an economically viable practice. LLLTs could assist in the administrative process and help those who qualify to reach an income-sensitive repayment plan. Linking this issue to other areas of consumer practice might be worth exploring further.

- Medical Debt & Health Law

All committee members agreed that medical debt is an enormous problem for the low and middle income population, and there might be a role for LLLTs in helping assert charity care defenses and providing assistance disputing health care bills and being billed incorrectly for services. It was also pointed out that an LLLT could potentially act as a liaison to the Department of Social and Health Services or long term care facilities as well as potentially assisting with Medicaid spenddowns. The problem again was the economic challenge of this kind of practice for an LLLT.

- Consumer Law as a "Standalone" Practice Area

The committee concluded that, although certain aspects of consumer law could be successfully incorporated into another practice area, it would be difficult to make "Consumer Law" an economically viable practice area.

Adjournment & Next Meeting

The meeting was adjourned at 12:22 p.m. The next meeting will be held on December 15th from 9am-1pm at the Washington State Bar Association.

WSBA

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
NEW PRACTICE AREA COMMITTEE MEETING MINUTES
December 15, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
9:00 a.m. to 1:00 p.m.

Members present were Greg Dallaire, Hon. Lorraine Lee, Kameron Kirkevold, and Steve Crossland. Members attending remotely were Lynn Fleischbein, Jeanne Dawes, Genevieve Mann, and Jessica Neilson.

Also present were LLLT Board Member Nancy Ivarinen, Ellen Reed, LLLT Program Lead, and Bobby Henry, Associate Director of Regulatory Services.

Call to Order/Preliminary Matters

The meeting was called to order at 9:07 a.m.

- **Report Back From Other Meetings**

Chair Dallaire reported back on the recent recommendations of the Family Law Advisory Committee. The committee is proposing to authorize LLLTs licensed in domestic relations to engage in limited negotiations and court appearances. Chair Dallaire also discussed the project schedule of the LLLT Board and emphasized that the committee will be very active in upcoming months.

- **Approval of Meeting Minutes**

The meeting minutes from November 17, 2016 were unanimously approved.

Discussion of Practice Area Proposal

The New Practice Area Draft Recommendation was distributed and the committee began discussing specific aspects of the proposed scope. Over the course of the meeting, the committee substantially redrafted the proposed scope of practice, adding in transfer of death deeds and presentation of agreed and uncontested orders in guardianship and probate matters. The committee also clarified the language of each topic within the "Life and Healthcare Planning Law" scope and made many notes as to forms which will need to be created, and which aspects of the scope (such as will drafting) will need to be primarily limited by the forms themselves.

Discussion ensued regarding certain aspects of the scope, such as long-term Medicaid planning, guardianship, probate, and vulnerable adult protection orders. Arguments against

inclusion of those matters in the scope centered on current availability of services, complexity of the law, and the potential impacts of inexpert legal counsel. The committee eventually decided to recommend against including long-term Medicaid planning, but also decided that guardianships, vulnerable adult protection orders, and probate matters should be included and that limited presentation of documents in court should be permitted in these areas.

Adjournment & Next Meeting

The meeting was adjourned at 12:59 p.m. The next meeting will be held on January 5th at 9am at the headquarters of the Washington State Bar Association.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
NEW PRACTICE AREA COMMITTEE MEETING MINUTES
January 5, 2017

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
9:00 a.m. to 1:00 p.m.

Members present were Greg Dallaire, Sheila O'Sullivan, Caitlin Davis Carlson, Jessica Neilson, Hon. Lorraine Lee, and Kameron Kirkevold. Members attending remotely were Lynn Fleischbein, Steve Crossland, Jeanne Dawes, and Genevieve Mann.

Also present were Bobby Henry, Associate Director of Regulatory Services, and Ellen Reed, LLLT Program Lead.

Call to Order/Preliminary Matters
The meeting was called to order at 9:06 a.m. The meeting minutes for the meeting from December 15, 2016 were approved.

Project Plan for New Practice Area
Chair Greg Dallaire explained the process for starting a new LLLT practice area and introduced his memorandum on the need for LLLT assistance in estate planning, probate, guardianships and healthcare.

Practice Area Proposal
Committee members offered ideas and voted on the name of the new practice area, which was tentatively titled "Estate & Healthcare Law". Specifics of the practice area were discussed and practitioners offered recommendations regarding the exact language of the outline and draft of the court rule which will create the new practice area. Practitioners also discussed suggested limitations and necessary inclusions regarding forms which will be needed in each aspect of the Estate and Healthcare Law practice area.

Concern was expressed for licensing LLLTs to work with probate matters due to the complexity and the availability of current services in this area, and with having LLLTs involved with the Vulnerable Adult Protection Order (VAPO) process. Other participants disagreed with the concerns regarding the VAPO process, noting the lack of access to legal services in this area, and confidence that the complexity of complying with the evidentiary standard will be carefully taught at the law school. The outline of the Estate and Healthcare Law practice area was edited and formally approved as a recommendation of the committee.

Adjournment and Next Meeting

The meeting was adjourned at 12:22 p.m. The next meeting will be held on January 19, 2017 at 9am at the Washington State Bar Association.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
NEW PRACTICE AREA COMMITTEE MEETING MINUTES
January 19, 2017

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
9:00 a.m. to 12:00 p.m.

Members in attendance were Kameron Kirkevold, Greg Dallaire, Steve Crossland, and Caitlin Davis Carlson. Members attending by phone were Jeanne Dawes, Elisabeth Tutsch, the Hon. Lorraine Lee, and Lynn Fleischbein.

Also in attendance were Jean McElroy, General Counsel and Chief Regulatory Counsel, Bobby Henry, Associate Director of Regulatory Services, Ellen Reed, LLLT Program Lead, Erin Sperger of Legal Wellspring, and Rory O'Sullivan, Managing Attorney at the King County Housing Justice Project.

Call to Order/Preliminary Matters

The meeting was called to order at 9:05 a.m.

- Meeting Minutes

The meeting minutes from January 5, 2017 were approved.

Estate and Healthcare Law Practice Area Recommendation

The committee discussed the Estate and Healthcare Law proposal and answered questions from staff regarding various details of the recommendation, especially in regards to what forms the Board will need to create and approve if they decide to move forward with recommending the practice area.

Discussion of Housing Law as Potential Practice Area

The committee invited housing law practitioners Erin Sperger and Rory O'Sullivan to answer questions and speak with them about the potential pros and cons of a real property or landlord/tenant LLLT practice area. The committee looked at the economic viability of a LLLT housing law practice area and gleaned insights from PR actioners in relation to several topics:

- Private Landlord/Tenant

The committee thought there was a potential to create a volume-based practice which includes giving legal advice and assistance for evictions and disputes. The committee concluded that though a "facilitator" LLLT practice model which was housed in the courts and helped tenants facing housing issues might be extremely helpful and responsive to an urgent need, as otherwise it may be difficult for a LLLT to earn sufficient income doing housing law without serving primarily landlords. Negotiation would be required for effective practice in this area. Advice and preparation of lease agreements may also be a valuable service, although it should most likely be limited to residential leases as commercial leases can be very complex.

- Landlord/Tenant: Subsidized Housing

Subsidized housing is very complex, but there is a huge need for people who can assist tenants in the grievance hearing process and for assistance with negotiating with the public housing authorities. It is doubtful that working in this area could be economically viable for an LLLT absent employment by a legal service provider or within a facilitator model.

- Landlord/Tenant: Manufactured Housing

Manufactured housing is also quite complex and the need for services in this area is urgent. This may be economically viable for LLLT practice.

- Code Compliance

Various cities provide guidance for navigating code compliance issues in rentals, but there is certainly a need for more legal service providers in this area. Private practitioners in this area often give brief advice about this issue or assist with responding to notices of violation issued by municipalities, but it may be difficult to generate fees from providing assistance in this area.

- Foreclosure

Foreclosure laws change often and may be overly complex for LLLT practice, although there may be some potential to carve out a specific section of foreclosure defense which LLLTs could assist with. There does not appear to be a need for LLLTs to serve as trustees.

- Real estate

There could be an economically viable LLLT practice in regards to advising on real estate contracts. The committee also discussed LLLTs providing advice regarding earnest money, boundary disputes, easements, and seller financing. It is unclear how much the need in this area is already being filled by real estate agents, and whether or not boundary disputes and issues related to seller financing may be too litigation heavy to be appropriate for LLLT practice.

- Construction

The committee discussed whether or not LLLTs may be able to provide helpful services in regards to homeowner disputes with remodelers/contractors. It was pointed out that there are forms publically available for creating design/build contracts, and that even assisting clients with drafting these contracts may provide a significant deterrent to future litigation in this area.

Adjournment and Next Meeting

The meeting was adjourned at 12:06 p.m. The next meeting will be held on February 16 at 9 a.m. at the WSBA headquarters.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

NEW PRACTICE AREA COMMITTEE MEETING MINUTES

February 16, 2017

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
9:00 a.m. to 12:00 p.m.

Members attending in-person were Greg Dallaire, Sheila O'Sullivan, the Hon. Lorraine Lee, Genevieve Mann, and Steve Crossland. Jeanne Dawes attended remotely.

Also in attendance were Eric Bakken of the US Department of Homeland Security, Michele Carney of Carney & Marchi, Verna Seal of Garvey Schubert Barer, LLLT Board member Ruth Walsh McIntrye, RSD Associate Director Bobby Henry, and Ellen Reed, LLLT Program Lead.

Call to Order/Preliminary Matters

The meeting was called to order at 9:03 am. The meeting minutes from January 19, 2017 were approved.

Estate and Healthcare Law Practice Area

The committee received a report from Greg Dallaire and Steve Crossland on the recent Town Hall meeting which was held to discuss the idea of creating an Estate and Healthcare Law practice area. The committee also discussed the comments received regarding the proposal and strategies for how to move forward in evaluating the potential scope of practice.

Discussion of Immigration Law as Potential Practice Area

Eric Bakken, Verna Seal, and Michele Carney responded to questions and educated the committee about potential opportunities and concerns regarding the possibility of licensing LLLTs to practice immigration law.

- Legal Need

The subject matter professionals felt that there was a huge need for direct representation in removal proceedings. They also saw a need for assistance with various other aspects of immigration law, especially asylum, naturalization, and citizenship proceedings. There doesn't appear to be a need for additional service providers in regards to employment-based petitions or workplace compliance, as employers are typically able to cover the costs associated with an attorney's services in these areas. Though the subject matter professionals expressed concern about the complexity of immigration practice and the potential for inexperience to cause harm, it was noted and agreed that help from trained practitioners would provide better access to justice than the current lack of services.

- Federal Preemption

The committee looked at whether or not LLLTs could potentially practice immigration law, given that practice is under the jurisdiction of the federal court system and any representatives must meet federal accreditation standards. Practitioners assisted in analyzing the possible categories of representatives; the committee ultimately concluded that it was possible that LLLTs may be able to be accredited to practice immigration law for the federal bar under the "attorney" category, as they meet the definition "members in good standing of a state bar association".

- Forms-Based Practice

The practitioners recommended that LLLT practice be primarily focused on forms-based immigration procedures. The naturalization process, citizenship process, applications for benefits, and potentially the affirmative asylum process could be well-suited to LLLT assistance. Forms which were suggested as appropriate for LLLT practice include I-90, I-131, I-129F, I-130, I-130, I-751, I864, and N-400. Some other possibilities which may be appropriate include I-589 and EOIR 42 (when there are no criminal actions in the past of the applicant).

Adjournment

The meeting was adjourned at 12:05 p.m. The next meeting date is to be decided.

APPENDIX C

FAMILY LAW ADVISORY COMMITTEE MEETING MINUTES

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

FAMILY LAW ADVISORY COMMITTEE
Meeting Minutes for June 23, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
1:00 p.m. to 4:00 p.m.

Committee members attending in person were Nancy Ivarinen, Jen Petersen, Steve Crossland, and Rita Bender. Members attending remotely were Lynn Fleischbein, Jeanne Dawes, Professor Gail Hammer, and BOG liaison to the LLLT Board Andrea Jarmon.

Also present were Ellen Reed, LLLT Program Lead, Bobby Henry, Associate Director of Regulatory Services, Thomas Clarke of the National Center for Superior Courts, and Professor Rebecca Sandefur.

Call to Order/Preliminary Matters

The meeting was called to order at 1:05 pm.

- Committee Structure & Roster

Committee Chair Nancy Ivarinen explained the mission of the Family Law Advisory Committee, which is to keep the examination and practice area curriculum updated as to changes in family law case law and to recommend changes to the family law scope of practice.

Possible Expansion of the LLLT Scope

- Negotiations

LLLTs and family law professors have raised numerous questions around the prohibition on negotiations in the LLLT domestic relations scope of practice. Many LLLTs want to be able to assist the clients in drafting letters for settlement negotiations. Other LLLTs have had clients who are not comfortable acting as their own advocates and the LLLTs would like to be able to negotiate settlements on behalf of those clients. LLLTs would also like to be able to talk to the opposing party or their attorney to confirm factual elements of the case. The committee discussed various aspects of negotiation in LLLT practice and seemed to feel that authorizing some amount of negotiation would improve LLLT practice.

- Mediation

LLLTs and family law professors have recommended that LLLTs be permitted to participate in the mediation process. Generally, the committee felt that there are more safeguards in place in a mediation process than in a court appearance or a typical negotiation and seemed to think that it would be appropriate to allow LLLTs to attend mediations. Committee members Jeanne Dawes, Jen Peterson, Ellen Dial, and BOG Liaison Andrea Jarmon will create a recommendation for the

next meeting which addresses expanding the scope of practice to allow mediation and possibly some form of negotiation.

- Court Appearances

Two levels of "court appearances" were discussed; first, allowing LLLTs to represent clients at administrative hearings such as child support hearings, and secondly allowing LLLTs to appear in superior court hearings. The committee was generally of the opinion that it makes sense to allow and train LLLTs to appear at administrative hearings. The committee also thought it might be beneficial for LLLTs to appear at all types of hearings (aside from trials) to answer factual questions or present agreed orders. The committee discussed the distinction between the LLLT providing support and explanation of forms at hearings versus mounting a legal argument; the committee was more comfortable with the LLLT role in court if they were to answer factual questions rather than act as an advocate. After the rest of the recommendations for scope are discussed the committee will revisit this topic and see how it fits into the expanded family law practice.

- Real Property Limitations

Committee chair Nancy Ivarinen has created a draft real property disposition form which could be used when an LLLT divides property in a dissolution. There have been widespread reports from LLLTs that the prohibition against dividing real property causes numerous problems when serving clients seeking a dissolution. Committee members agreed that the prohibition was problematic and should be addressed. Committee members Jeanne Dawes and Ellen Dial and Committee Chair Nancy Ivarinen will work together to create a recommendation before the next meeting of the committee.

- Retirement Assets

The prohibition against retirement assets has proved difficult for some LLLTs, especially those in areas where many workers are unionized or have pensions. The retirement benefit restriction is confusing for the LLLTs; the scope regulation as written prohibits division of some simple types of assets and allows division of some more complex types of assets such as ERISA plans. These plans are extremely complicated and it is common for family law attorneys to refer them to colleagues who specialize in retirement asset division rather than handling them personally. The committee agreed that the language should at the very least be clarified and they were open to exploring changing the retirement prohibition. Committee members Jen Petersen and Lynn Fleischbein will work on new language for the scope regulation to present at the next committee meeting.

- Major Modifications

The committee felt that it would make sense to allow LLLTs to work on major contested modifications up to the point of the adequate cause hearing. There is not necessarily any need to negotiate in anticipation of adequate cause, so it might be possible to change this prohibition even if the prohibition on negotiation is not lifted. The committee was undecided on whether LLLTs should be allowed to represent their clients at the adequate cause hearing, but seemed to be in agreement that the LLLT would have to withdraw from representation when action went to trial.

- Nonparental Custody Actions

Various practitioners have come forward to request that LLLTs be allowed to work on uncontested nonparental custody matters, citing a great need for this assistance around the state. The committee seems open to pursuing this, perhaps by having in LLLTs working on contested nonparental custody matters up to the point of the adequate cause hearing or taking non-contested matters to completion. Committee members Rita Bender and Jen Petersen will prepare

recommendations regarding the potential changes to LLLT scope for major modifications and nonparental custody.

- Protection Orders

Currently, LLLTs cannot work with any type of protective orders besides Domestic Violence Protective Orders and restraining orders within the context of a family law case. The Committee seems open to pursuing expanding the scope of the LLLT practice to include more types of restraining orders, although other protection orders are not necessarily related to domestic relations. Professor Gail Hammer and Committee Chair Nancy Ivarinen will write a recommendation regarding this issue for the next meeting.

Other Questions

- May LLLTs draft 3rd party declarations? If so, must they sign?

The committee agreed that 3rd party declarations were acceptable documents for the LLLT to draft without signing, as long as they are drafted with the 3rd party and signed by them.

- May LLLTs act as a scrivener for their clients?

This will be taken up as part of the negotiation prohibition.

- Can the requirement that clients sign all pleadings be lifted?

The committee felt strongly that this requirement should remain as is, as it provides a powerful protection against malpractice for LLLTs.

- Will the Board approve a Motion to Revise Form?

Committee Chair Nancy Ivarinen will work on creating a pattern form for motions to revise.

Additional Issues for Committee Discussion

It was suggested that this committee should discuss lifting the prohibition on contested relocations at their next meeting.

Adjournment and Next Meeting

The meeting was adjourned at 3:36 pm. The next meeting of the committee will be July 21st from 10:30am-12:30pm.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

FAMILY LAW ADVISORY COMMITTEE
Meeting Minutes for July 21, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
10:30 p.m. to 12:30 p.m.

Committee members present were Jennifer Petersen, Nancy Ivarinen, Jeanne Dawes, Rita Bender, and Ellen Dial. Members participating by phone were Lupe Artiga and Professor Gail Hammer.

Also present were Board member Ruth Walsh McIntyre, Professor Terry Price, Professor Patricia Kuszler, and LLLT Program Lead Ellen Reed. LLLT Board member Lynn Fleischbein also participated by phone.

Call to Order/Preliminary Matters

The meeting was called to order at 10:37am.

- **Meeting Minutes**

The meeting minutes from June 23, 2016 were approved unanimously.

Discussion of Issue Statements on LLLT Family Law Scope Issues

- Negotiations/Mediation

The committee discussed possible parameters of LLLT negotiation and participation in mediation, using the issue statement created by the committee members as a starting point for discussion. The committee decided that they would vote to recommend that communication regarding procedural matters be permitted, with the caveat that LLLT communication with pro se opposing parties should be only in writing. This recommendation will be placed on the August LLLT Board consent agenda for a vote. According to feedback from LLLTs, the perceived prohibition on procedural matters often ends up reducing the efficiency of their services and in some cases costing their clients more money. The committee discussed whether or not there were any required changes to the RPC that should accompany this change; at this time, the committee believes that there is no flat prohibition against speaking with the other side in LLLT Rules of Professional Conduct.

The committee plans to continue the discussion of LLLT negotiation and participation in mediations at the next meeting, including whether or not there should be different provisions in place depending on what type of legal professional (lawyer or LLLT) the LLLT is speaking with, or whether they should only be permitted to negotiate regarding specific domestic relations matters.

- Major Modifications

The committee voted to approve that LLLTs should be able to handle contested major modifications up to the point of the adequate cause hearing (they would not be permitted to work on post-adequate cause contested matters including trials). This recommendation will go to the August LLLT Board consent agenda for a vote.

- Nonparental custody

The committee voted to approve that LLLTs will be able to work with uncontested nonparental custody matters, including filing temporary orders and status reports. This recommendation will go to the August LLLT Board consent agenda for a vote. The committee was not able to agree on whether or not LLLTs should be permitted to work with contested nonparental custody. Committee member Jennifer Petersen will write a statement in support of allowing LLLTs to provide services in contested nonparental custody matters and Lupe Artiga and Lynn Fleischbein will write a statement against lifting the prohibition. Both statements will be presented to the Family Law Advisory Committee at their August meeting and the matter will be decided by vote.

- Protection Orders

The committee was unable to come to an agreement on whether or not LLLTs should be permitted to work with all types of protection orders. Most members support the idea, but were unsure if there was a good way to fit the orders into the domestic relations practice area, as they do not specifically apply to family law issues. The committee will continue this discussion at their next meeting.

Adjournment and Next Meeting

The meeting was adjourned at 12:43pm. The next meeting will be held in early August at the WSBA; exact timing will be determined by schedule poll, as the many members were not present.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

FAMILY LAW ADVISORY COMMITTEE
Meeting Minutes for August 10, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
2:00 p.m. to 4:00 p.m.

Members attending in person were Nancy Ivarinen, Ellen Dial, and Jennifer Petersen.

Members attending remotely were Lupe Artiga, Jeanne Dawes, and Professor Gail Hammer.

Also in attendance were Professor Terry Price, Professor Patricia Kuszler, Professor Karen Boxx, Ellen Reed, LLLT Program Lead, and Bobby Henry, Associate Director of Regulatory Service.

Call to Order/Preliminary Matters

The meeting was called to order at 2:07pm.

- **Minutes**

The meeting minutes of July 21, 2016 were approved unanimously.

Discussion of LLLT Family Law Scope Issues

- Contested Nonparental Custody

The committee began discussion by looking at statements arguing for and against allowing LLLTs to take contested nonparental custody cases. The discussion will resume at the next meeting of the committee.

- Permitting LLLTs to Divide Real Estate

The committee engaged in a detailed discussion of the pros and cons of expanding the LLLT scope of practice to include real property. They discussed various aspects of the process of dividing real property and came to several conclusions in regards to suitability of these tasks for LLLT practice:

- Completing Legal Description of Real Estate

    - The LLLT will need to record the tax parcel number or the full legal description of the property. This is a ministerial task and the committee was generally in favor of expanding permissible LLLT scope to include it. The committee felt that this task could easily be covered in the practice area curriculum, or could be a good subject for a CLE.
- Providing direction to the client to establish the market value of the property
    - The value could be based on the agreement of the parties, on an appraisal, or through an estimate by a certified management accountant, rather than on the judgment of the LLLT. It is unclear if this qualifies as the practice of law. The committee is generally in favor of allowing LLLTs to do this. The educators present expressed a belief that this topic can easily be covered in the practice area curriculum.
- Listing mortgage(s) on the property, as well as any liens or encumbrances
    - This is a ministerial task and the committee was generally in favor of allowing LLLTs to do it. The LLLT will may need to search public records or get the title report in order to complete this task, or explain how to establish the current balance of the mortgage with the client. The committee felt that this task could easily be covered in the practice area curriculum by a CLE.
- Identifying whether debt attached to real estate is separate or community
    - Characterization of property and debt is already covered in the practice area curriculum.
- Using the value minus encumbrances to determine the client's estimate of the equity
    - The committee was generally in favor of allowing LLLTs to do this. The committee felt that this task could easily be covered in the practice area curriculum or a CLE.
- Helping the client with finding competent evidence (e.g., documents and witnesses) to establish the value or other issues related to the real estate
    - The committee was generally in favor of allowing LLLTs to do this. The committee felt that this task could easily be covered in the practice area curriculum or a CLE.
- How to structure marketing and occupancy during sale of a property
    - The committee felt that LLLTs can easily become competent to address these issues. This could be a good subject for a CLE.
- If the property is to be retained by one of the parties, advising the client on terms such as refinancing, occupancy, how to accomplish an equalizing payment, and what happens in the event one party fails to follow through – e.g. fails to market the home or refinance within the required time
    - The committee generally felt that joint ownership after dissolution/tenancy in common agreements, separation agreements, and equitable liens should not be handled by LLLTs.

Adjournment and Next Meeting

The meeting was adjourned at 4:01 pm. The next meeting will be on October 19, 2016 from 2-4pm at WSBA headquarters.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

Family Law Advisory Committee Minutes
October 19, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
2:00 p.m. to 4:00 p.m.

Committee members present were Nancy Ivarinen and Jen Petersen. Members attending remotely were Professor Terry Price, Jeanne Dawes, and Professor Gail Hammer. Also in attendance was Ellen Reed, LLLT Program Lead.

Call to Order/Preliminary Matters

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

- Meeting Minutes

The meeting minutes from August 10th, 2016 were approved.

Discussion of LLLT Family Law Scope Issues

- Representation at Child Support Hearings

The committee discussed the possibility of authorizing LLLTs to represent clients at administrative child support hearings and decided that this would be an appropriate expansion of scope for LLLT practice.

- Other Administrative Law Hearings Related To Domestic Relations

The committee also discussed other administrative hearings that relate to family law, such as administrative hearings for a loss of a professional license due to back child support. At this time, the committee is only recommending that LLLTs be allowed to advocate in hearings which were directly related to the topics covered in the LLLT practice area curriculum in domestic relations.

- Real Property Limitations

The committee continued its discussion about the possibility of changing the LLLT domestic relations scope prohibitions to allow LLLTs to advise regarding division of real estate. The committee agreed to recommend that LLLTs be allowed to assist with gathering information on the value and potential encumbrances on a home. The committee also determined that they wanted to create a form or checklist which the LLLTs could use to assist in issue-spotting while gathering facts about property involved in a dissolution. The committee will continue to work on a recommendation regarding this issue in upcoming meetings.

- Presentation of Agreed Orders

The committee decided that it would be appropriate to authorize LLLTs to present agreed and default orders (in accordance with local rules currently in place which allow paralegals to present these orders).

Adjournment and Next Meeting

The meeting was adjourned at 3:53 p.m. The next meeting is scheduled for the afternoon of Wednesday, November 16th at WSBA headquarters.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

FAMILY LAW ADVISORY COMMITTEE
Meeting Minutes for November 16, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
2:00 p.m. to 4:00 p.m.

Members present were Rita Bender and Nancy Ivarinen. Professor Gail Hammer, Professor Terry Price, Jeanne Dawes, Jen Petersen, and Professor Karen Boxx attended by phone.

Also present were Jean McElroy, General Counsel and Chief Regulatory Counsel, Bobby Henry, Associate Director of Regulatory Services, and Ellen Reed, LLLT Program Lead.

Call to Order/Preliminary Matters

The meeting was called to order at 2:09 p.m.

- Meeting Minutes

The meeting minutes of October 19th were approved with the addition of Bobby Henry as a meeting participant.

Discussion of LLLT Family Law Scope Issues

- Division of Real Estate

The committee voted to allow LLLTs to divide single family residential real estate, provided that the home has equity less than twice the homestead exemption (currently set at $125,000). The committee will continue to develop a form that LLLTs must use when evaluating value and encumbrances of real estate. The form will essentially serve as a CR2A and should be signed by both parties and the preparer, and may need to be filed under seal if it contains confidential information.

- Clarification of Retirement Asset Division Prohibition

The committee discussed the current language regarding the prohibition against dividing retirement assets. The committee determined that the current rule could be read as prohibiting dividing certain types of simple retirement assets while allowing division of more complex plans, such as IRAs and government retirement plans. The committee worked on clarifying the

language of the retirement asset prohibition to make it clear that LLLTs may advise as to retirement asset allocation, but that LLLTs shall not advise or assist clients with the preparation of QDROs or supplemental orders dividing retirement assets, or include language within a decree of dissolution to effectuate division of retirement assets when funds would be transferred from the account holder to another party.

- Contested Nonparental Custody

The committee voted to recommend that LLLTs may work with contested or uncontested nonparental custody to the point of the adequate cause hearing.

- Updating LLLTs as to Scope Changes

The committee discussed several ideas for how to ensure that LLLTs who are currently licensed will be informed as to potential changes in the scope of the LLLT license and become trained to deal with issues which may have been outside of the LLLT scope at the time of their education. The committee would like to organize mandatory CLE programs on any subjects which are implicated in a newly expanded scope of practice which would be carefully planned to correlate to license renewal.

Adjournment & Next Meeting

The meeting was adjourned at 3:58 p.m. The next meeting will be held on December 14 from 2-4pm at the WSBA headquarters.

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

FAMILY LAW ADVISORY COMMITTEE MEETING MINUTES

December 14, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
2:00 p.m. to 4:00 p.m.

Members in attendance were Nancy Ivarinen and Rita Bender. Jen Petersen, Lynn Fleischbein and Jeanne Dawes attended by phone.

Also in attendance were Professor Terry Price, Ellen Reed, LLLT Program Lead, and Bobby Henry, Associate Director of Regulatory Services.

Call to Order/Preliminary Matters

The meeting was called to order at 2:05 p.m. The meeting minutes from November 16, 2016 were approved by consensus.

Review of Retirement Language

Committee member Jen Petersen and Rita Bender presented a draft of the language intended to clarify the prohibition on retirement asset division. Committee members noted that the language may need to be amended to address additional issues in the event of a default. This language will be further defined in the rule drafting process.

Discussion of LLLT Family Law Scope Issues

- Mediation

The committee voted to authorize family law LLLT participation in alternative dispute resolution, mediation, arbitration, and settlement conferences in the areas in which LLLTs are otherwise authorized to practice. The LLLT would be permitted to accompany and advise the client. The committee also recommended that LLLTs be permitted to prepare paperwork related to these proceedings.

- Negotiations

The committee voted unanimously to allow LLLTs to negotiate on behalf of their clients for issues within the scope of the domestic relations practice, provided that they receive advance agreement from the client defining the parameters of issues the LLLTs may negotiate and what the client's ultimate goals are. LLLTs, like lawyers, must consult with their client before accepting an agreement on behalf of their client and should make this clear when defining the parameters of the negotiation.

- Court Appearances

Numerous LLLTs have reported that their pro se clients are unable to navigate the court process or clearly articulate what happened at their hearings, despite extensive training and preparation by the LLLT. Confusion or anxiety on the part of the clients while in court has often resulted in the inadvertent creation of procedural issues in their cases. These issues could be easily avoided if LLLTs were able to provide technical assistance to the client during court hearings. After discussion, the committee voted to allow LLLTs to attend and assist pro se clients with motion hearings for issues that are within the scope of their practice. This includes protection orders, modification of child support, post-secondary child support, enforcement of orders, temporary orders, and trial setting calendar proceedings. The committee discussed the way in which they envisioned the LLLT assisting the client in court. While there would not be specific restrictions on what the LLLT could say to the court, the LLLT's role would be to assist the client in their presentation of their case. LLLTs would continue to be restricted from assisting or attending trials, although they will still be able to prepare trial paperwork for any issues within their scope.

- Advising regarding Property in Committed Intimate Relationships (CIR)

The committee discussed whether or not LLLTs should be allowed to advise on property division in CIR actions. The committee determined that the current prohibition related to the advising on jointly acquired property in CIRs should stand as it is currently written.

Adjournment

The meeting was adjourned at 4:00 p.m. The next meeting will be determined after the LLLT Board has voted on the recommendation for the adjustments to the family law practice area.

APPENDIX D

FAMILY LAW ADVISORY COMMITTEE WHITE PAPERS

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: LLLT Board
From: Rita Bender, Jen Petersen
Date: July 2016
Re: Family Law Scope – Major Modifications

Issue
Should LLLTs be able to do major modifications even when the terms of the modification are not agreed in advance of the representation?

Relevant Section of APR 28
B. Domestic Relations.

1. Domestic Relations, Defined. For the purposes of these Regulations, domestic relations shall include only: (a) child support modification actions, (b) dissolution actions, (c) domestic violence actions, except as prohibited by Regulation 2(B)(3), (d) committed intimate domestic relationship actions only as they pertain to parenting and support issues, (e) legal separation actions, (f) major parenting plan modifications when the terms are agreed to by the parties before the onset of the representation by the LLLT, (g) minor parenting plan modifications, (h) parenting and support actions, (i) paternity actions, and (j) relocation actions, except as prohibited by Regulation 2(B)(3).

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3. Prohibited Acts. In addition to the prohibitions set forth in APR 28(H), in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:

c. shall not advise or assist clients regarding:

vi. major parenting plan modifications unless the terms were agreed to by the parties before the onset of the representation by the LLLT;

Reasoning for Prohibiting Contested Major Modifications
Source: 2013 LLLT Board Scope Committee
Major contested modifications were seen to be reliant on negotiation, which was prohibited for LLLTs.

Argument for Allowing Major Modifications
Source: Practicing LLLT

- Why is it within scope to advise and assist with a parenting plan in a contested divorce (where the parties will need to negotiate on this issue, etc.), but not in a major modification unless the parties are in agreement? This is inconsistent.

Recommendation for Family Law Advisory Committee
Both the non-parental custody (RCW 26.10) statute and major modification of parenting plan or custody decree in context of dissolution (RCW 26.09) require an adaquate cause hearing, and a showing of a change in circumstances, absent agreement of the parties. However, *Link v. Link*, 165 Wash. App. 268, (2011), held that the statue requiring a parent moving for custody modification with regard to a non-parent's prior award of custody, must show that a substantial change in circumstances had occurred as well as adequate cause for heaing on her motion, violated due process. The Court of Appeals distinguished in this regard as between two parents, both of whom have equal parenting rights, and a parent and non-parent in non-parental custody suit.

In both the major modification pursuant to RCW 26.09 and the nonparental custody pursuant to RCW 26.10, an investigator is appointed to report to the court if the modification or custody order is not agreed, and if the parties move beyond the threshold hearing.

LLLTs are permitted to advise and assist in issues related to parenting plans and child support in contested dissolution of marriage.

The LLLTs are permitted to represent clients under the present LLLT rules in child support modifications but may not advise or assist clients regarding major parent plan modifications.

Admission and Practice Rule (APR) 28 B. Domestic Relations as defined, includes in scope of practice for LLLTs "only: (a) child support modification actions, (b) dissolution actions, (c) domestic violence actions… (d) intimate domestic relationsip actions only as they pertain to parenting and support issues, (e) legal separation actions, (f) major parenting plan modifications when the terms are agreed to by the parties before the onset of the representation by the LLT, (g) minor parenting plan modifications, (h) parenting and support actions, (i) paternity actions, and (j) relocation actions, except as prohibited by Regulation 2 (B) (3)."

Admission and Practice Rule (APR) 28 B e prohibits LLLTs from providing legal services in defacto parentage or nonparental custody actions.

The result of this is that clients cannot obtain advice from the LLLT as to the relevant issues which will be before the court for determination at an adequate cause hearing, in order to rule as

to whether the case should proceed or be dismissed. The client is left to negotiate terms of major parenting plan modifications without either receiving advice or the assistance of the LLLT in arguing the issues at an adequate cause hearing. Representing a client in a court proceeding is prohibited by the Limited Practice Rule 28, H (5). Negotiation is prohibited under Rule 28, H (6), unless permitted by GR 24 (b), which would allow serving as a court house facilitator, serving as a mediator, arbitrator or facilitator, assisting in completion of court forms for a protection order, such other activities that the Supreme Court has determined by published opinion …or have been permitted under a rgulatory system established by the Supreme Court.

The distinction as to which cases the LLLT can assist in regarding the issues leading up to the adequate cause determination and including negotiation prior to that hearing does not seem to be based upon significant differences in the type of case, but rather on a drafting error in the rule.

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: Family Law Advisory Committee
From: Jen Petersen
Date: July 2016
Re: Family Law Scope – Retirement Assets

Issue
Should the prohibition on division of retirement assets be lifted or clarified? Should all retirement benefit division be prohibited?

Relevant Section of APR 28
REGULATION 2

3. Prohibited Acts. In addition to the prohibitions set forth in APR 28(H), in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:

    c. shall not advise or assist clients regarding:

        i. division of owned real estate, formal business entities, or retirement assets that require a supplemental order to divide and award, which includes division of all defined benefit plans and defined contribution plans.

Reasoning for Prohibiting Division of Retirement Assets
Source: 2013 LLLT Board Scope Committee
Many types of retirement asset division were seen as too complex to be appropriately taught within the time period allotted in the LLLT practice area curriculum. It was also seen as too risky for LLLTs to undertake in their practice at the time of the initial recommendations on scope.

Argument for Allowing Division of Retirement Assets
Source: Family Law Professors/Practicing LLLTs

- Not being able to advise/assist when there is real property or certain retirement benefits is a challenge. If the parties have reached an agreement about the award/division of these assets, or there is a default, they shouldn't be forced to engage and pay an attorney for "advice." It defeats the purpose of APR 28.

- This prohibition is at the same time overly broad and overly narrow. There are many Qualified Domestic Relations Order (QDRO) specialist lawyers in the United States that family law attorneys rely on to craft the QDROs, without any difficulty. If the LLLT could rely on the same services, then this should not be read overly broadly to prohibit them as a speaking agent to procure the QDRO. The students could also easily learn how to draft QDROs. Of course, advice about how the funds should be divided would probably fall outside their scope, since there will probably be community property issues. But once the decision about how the funds should be divided is made, it's more a ministerial process than a legal one, and the QDRO forms are easier to complete than most of the other forms they will be completing.
- The prohibition is overly narrow because there are a number of other retirement plans (such as those from municipalities) that do not require a QDRO and yet are more complicated and potentially more risky for the LLLT, but are not prohibited. The wording of the limitation would keep ERISA plans out but not IRAs, which as others point out can be more difficult than ERISA plans. The government (including military) plans and IRAs probably should be outside their scope of practice. Additionally government plans - that would include police and firefighter pensions, can be extremely complex and could certainly show up in an LLLT's client's situation. If the Court believes that the LLLTs should not be involved in property division <u>at all</u>, then the rules should be simplified to take that out of the Scope of Practice. As this regulation stands now, the LLLT can wade into property division but cannot adequately perform the tasks, and potentially incur risks that are not prohibited by the rules. That seems like a no-win situation.

Ideas for Resolving this Issue
Source: 2015 Scope Committee
In December 2014 and February 2015 the Scope Committee discussed whether to recommend to the Board that Regulation 2 prohibit all division of retirement assets. After much discussion, the Committee identified three tiers of retirement benefits:

- Tier 1: IRAs that do not require a QDRO
- Tier 2: 401ks, Thrift Savings Plans (defined contribution plans that require QDRO)
- Tier 3: A defined benefit plan including pension plans, and, any state or other governmental or private retirement plan that includes both defined benefit and defined contribution

Given the difficulty of Tiers 2-3, the Committee recommended they should be outside the scope, while Tier 1 should be within the scope, meaning IRAs would be within the scope but other retirement accounts that require a QDRO or QDRO-like order would be outside the scope. This would require an amendment to Regulation 2B(3)(c)(1). Additionally, the Committee recommended that the language regarding "supplemental orders" in Regulation 2B(3)(c)(1) be revised given that it is unclear what this means. Committee members Lynn Fleischbein and Rita Bender drafted revised language:

Reg 2B(3)(c)(i). "LLLTs licensed to practice in domestic relations shall not advise or assist clients regarding division of formal business entities, or owned real estate, except with regard to a family residence with a value under $_____. They shall not advise or assist clients regarding division of retirement assets that require a supplemental order to divide and/or award,

including defined contribution plans which require a QDRO, such as 401K plans, Thrift Savings Plans, and defined benefit plans, including pension plans, and state or other governmental or private retirement plans which have both defined benefit and defined contribution provisions. However, the LLLTs may advise or assist clients regarding the division of Individual Retirement Plans."

Recommendation for Family Law Advisory Committee

Not being able to engage the services of an LLLT to advise/assist in a dissolution action because certain retirement benefits exist, especially where the account is of little value (or with little to no community interest in the instance of a short term marriage), defeats the purpose of APR 28. If the parties have reached an agreement regarding the award of these assets, there is a default, or the parties have gone to trial and the Court has ordered the award of the asset, parties shouldn't be forced to engage and pay an attorney for "advice" or "assistance" completing the final documents. LLLTs should be permitted to simply "award" retirement assets and IRAs in the decree upon default, an agreement of the parties, or by award of the court following trial.

Similar to the proposal regarding the division of real estate, language that shall be included with the award in the decree could easily be developed for the LLLT. Such language should include:

1) which party is responsible for preparing the QDRO or supplemental order (if one is necessary);
2) how the cost of the QDRO preparation is to be paid;
3) by what date certain the QDRO should be prepared; and,
4) the remedy for failure to follow through.

The supplemental order required to accomplish the division can easily be prepared by an attorney, especially as attorney firms specializing in QDRO preparation exist and are relied upon by many practicing family law attorneys.

Reg 2B(3)(c)(i). "LLLTs licensed to practice in domestic relations shall not advise or assist clients regarding division of formal business entities, or owned real estate, except with regard to a family residence with a value under $_____. LLLTs shall not advise or assist clients with the preparation of QDROs or supplemental orders dividing retirement assets or include language within a decree of dissolution to effectuate division of retirement assets, including defined contribution plans, 401K plans, Thrift Savings Plans, defined benefit plans, pension plans, and state or other governmental or private retirement plans which have both defined benefit and defined contribution provisions. However, LLLTs may include language awarding retirement assets in a decree of dissolution if: the respondent has defaulted; the parties agree upon the award; or, awarded by the court following trial. The award language in the decree shall include: 1) which party is responsible for preparing the QDRO or supplemental order; 2) how the cost of the QDRO or supplemental order preparation is to be paid; 3) by what date the QDRO or supplemental order should be prepared; and, 4) the remedy for failure to follow through with preparation of the QDRO or supplemental order. LLLTs may advise or assist clients regarding the division of Individual Retirement Plans."

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: Family Law Advisory Committee
From: Jeanne Dawes, Nancy Ivarinen, Ellen Dial
Date: July 2016
Re: Family Law Scope – Real Property Limitations

Issue
Should the prohibition against division of real property be lifted?

Relevant Section of APR 28
3. Prohibited Acts. In addition to the prohibitions set forth in APR 28(H), in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:

c. shall not advise or assist clients regarding:

i. division of owned real estate, formal business entities, or retirement assets that require a supplemental order to divide and award, which includes division of all defined benefit plans and defined contribution plans.

Reasoning for Prohibiting Division of Real Property
Source: 2013 LLLT Board Scope Committee
Real property division was prohibited because it was seen as too complex to be taught in the 15 credits allotted for the practice area curriculum. The committee also believed that the potential for harm to the client from inadequately trained legal assistance in property division was a significant risk.

Argument for Allowing Real Property Division
Source: Practicing LLLTs/Family Law Professors

- Not being able to advise/assist when there is real property or certain retirement benefits is a challenge. If the parties have reached an agreement about the award/division of these assets, or there is a default, they shouldn't be forced to engage and pay an attorney for "advice." It defeats the purpose of APR 28.
- Incorporating some simple curriculum into the existing LLLT education about understanding a legal description would appear to be a solution. Furthermore, in the new Decree of Dissolution form that is currently open for comments (FL Divorce 241), the

Real Property Judgment Summary (Section 2) merely requires either the Assessor's property tax parcel or account number or the legal description, and an indication of who gets the property. This is even less technical than the current form. Copying the legal description of a piece of property onto a mandatory form does not require an extended understanding of real estate law. It is a ministerial act. A remedy might be amending APR 28, Regulation 2(B)(3)(c)(i) be amended to: "shall not advise or assist clients regarding: (i) division of owned real estate, beyond what is necessary to complete the mandatory forms…."

Recommendation to the Family Law Advisory Committee

LLLTs are allowed to complete a form provided by the court (see APR 28 F 6). Because most family homes have mortgages and the processes for refinancing, selling or creating a lien are fairly complex, LLLTs could be limited to assisting the client with completing a standard form. The form would be for LLLTs and not necessarily one of the mandatory forms. A very preliminary draft of a proposed form is attached. The concept for the form is from an LPO form that under APR 12, LPOs can complete because the form is approved and posted on the WSBA website. The committee should ask the LLLT Board and the Supreme Court to allow LLLTs to use the "Real Property Disposition" form as a mechanism to divide real property in domestic relations cases.

Questions to Consider

1. Will it be problematic to add additional subjects into the practice area curriculum?
2. How would the current LLLTs adjust to this change? Would we create special educational resources for them or require additional testing?
3. How would this change affect the potential liability of the LLLTs?
4. Would the LLLT need to prepare any deeds or other forms which are not family law forms?
5. Would this change require any additional amendments to APR 28 or the LLLT RPC beyond the language in APR 28 Regulation 2?

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: LLLT Board
From: Rita Bender, Jen Petersen
Date: July 2016
Re: Family Law Scope – Nonparental Custody

Issue
Should LLLTs be allowed to handle nonparental custody cases?

Relevant Section of APR 28
REGULATION 2 B. Domestic Relations.

1. Domestic Relations, Defined. For the purposes of these Regulations, domestic relations shall include only: (a) child support modification actions, (b) dissolution actions, (c) domestic violence actions, except as prohibited by Regulation 2(B)(3), (d) committed intimate domestic relationship actions only as they pertain to parenting and support issues, (e) legal separation actions, (f) major parenting plan modifications when the terms are agreed to by the parties before the onset of the representation by the LLLT, (g) minor parenting plan modifications, (h) parenting and support actions, (i) paternity actions, and (j) relocation actions, except as prohibited by Regulation 2(B)(3).

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3. Prohibited Acts. In addition to the prohibitions set forth in APR 28(H), in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:

   b. shall not provide legal services:

      i. in defacto parentage or nonparental custody actions;

Reasoning for Prohibiting Nonparental Custody Actions
Source: 2013 LLLT Board Scope Committee
The Scope Committee recommended that nonparental custody actions should be prohibited for LLLTs because these actions require appearances in court and working outside of the pattern forms. Case law around this issue was seen to be very complex at the time.

Argument for Allowing Nonparental Custody Actions
Source: Practicing LLLTs

- Parental rights are not being terminated and NPC cases are very similar to any other custody proceeding.
- The paperwork is overwhelming – even more so than divorce, etc.
- NPC is an epidemic in Washington. Referrals to volunteer clinics are coming in from CPS, the Courts (through CHINS and Youth-at-Risk petitions), schools, other social service agencies, etc. It has been reported that over 53,000 children in Washington live with a guardian other than a parent. Very few have any "legal" custody which causes huge problems with medical, educational, housing (for guardians w/ HUD housing), insurance, etc. Child in Need of Services cases and dependencies are often resolved through nonparental custody with relatives and family friends, who generally cannot afford to hire an attorney. These are folks who have taken a child into their home, usually without any financial assistance from the state, and agree to keep them if they aren't able to return to their parents. The cost to hire an attorney is great, and the pro se process daunting. This is an area in which LLLTs could offer a much needed service at a more affordable price to a group of very deserving community members.
- Nonparental forms are available as mandatory forms.
- The instructions for Non-Parental Custody are on washingtonlawhelp.org.
- As a court facilitator, I routinely assist with nonparental custody forms, which are pattern forms. It seems completely random that this is not part of scope.

Questions to Consider

- Does effectively handling a nonparental custody case require court appearances? If so, should the scope regulation regarding court appearances be amended?
- Should non-contested nonparental custody be allowed and contested matters be prohibited?
- If the information is available on washingtonlawhelp.org, should a LLLT be able to assist a client with following those instructions and filling out the form?
- Should the rule be amended to include that a LLLT may assist a client with forms from a Washington State QLSP if the legal aid programs are unable/unwilling to assist because of income or program issues?

Recommendation for Family Law Advisory Committee
Admission and Practice Rule (APR) 28 Reg. 2(B)(3)(b)(i) prohibits LLLTs from providing legal services in defacto parentage or nonparental custody (NPC) actions. However, unlike defacto parentage actions, RCW 26.10.015 mandates the use of approved pattern forms in NPC filings. APR 28F(6) specifically authorizes the use of approved forms as being within the LLLTs scope of practice authorized by the limited practice rule. The prohibition regarding NPC actions makes no sense given the statutory requirement regarding the use of approved mandatory forms.

Agreed NPC matters are accomplished similarly to any other agreed matter that is currently within the LLLTs permitted scope, i.e. an agreed major modification. The rule should be amended to allow LLLTs to assist with agreed NPC matters.

Similar to a Major Modification, **Contested NPC matters,** require a hearing to determinate adequate cause to proceed with the matter upon filing the NPC petition (RCW 26.10.032). However, unlike other LLLT permitted custody matters, NPC matters require more than meeting the "best interests of the child" standard, which may have been the reason for the initial prohibition. *In re Custody of E.A.T.W. and E.Y.W.* 168 Wn.2d 335 (2010), held that the NPC statute requires the nonparent to submit an affidavit (1) declaring the child is not in the physical custody of one of its parents or neither parent is a suitable custodian *and* (2) setting forth facts supporting the requested custody order. The facts supporting the requested custody order must show adequate cause that the parent is unfit or that placing the child with the parent would result in actual detriment to the child's growth and development. Increasing the statutory requirement only increases the difficulty for pro se parties to successfully represent themselves.

LLLTs should be permitted to assist NPC pro se parties in contested matters consistent APR 28 F at least up to properly noting the adequate cause hearing or, alternatively, responding to an adequate cause petition. In addition, it would likely be of benefit to the Court to permit LLLT assistance with proposed pattern form orders for presentation at the adequate cause hearing (i.e. Order on Adequate Cause, Temporary Custody Order and Order Appointing GAL).

Effectively handling contested NPC matters does not require court appearances any more than effectively handling contested issues in a dissolution, which is within the LLLTs current permitted scope. The adequate cause hearing is based up on the information contained in the mandatory form petition. With the assistance of an LLLT a pro se litigant would have a better understanding of the necessary elements to meet, or defeat, the threshold for an adequate cause determination and address those elements appropriately in the petition or response. Additionally, LLLT assisted pro se parties would aid judicial efficiency by appearing at the hearing with the appropriate proposed orders.

As with currently authorized scope of practice matters, if the scope regulation regarding court appearances were amended, LLLTs would greatly assist pro se parties and the Court by conveying appropriate, relevant <u>fact</u> information in a clear and concise manner at the adequate cause hearing, which would contribute to the efficiency of our Court system. It would also be of great benefit to pro se parties if LLLTs could present agreed orders on ex parte calendars, by quickly and correctly finalizing NPC matters.

Ultimately, for both agreed and contested NPC matters, consistent with the scope of practice authorized under with APR 28F, LLLTs would aid in judicial efficiency by helping pro se parties navigate the complex legal system.

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: Family Law Advisory Committee
From: Lynn Fleischbein, Lupe Artiga
Date: August 2016
Re: Argument Against Allowing Contested Nonparental Custody

Issue
Should LLLTs be allowed to handle contested nonparental custody cases? The Family Law Advisory Committee is recommending that LLLTs be able to handle noncontested nonparental custody cases, but has not agreed on a recommendation regarding contested cases. Two sides of the argument will be presented for the Board's consideration.

Relevant Section of APR 28
REGULATION 2 B. Domestic Relations.

1. Domestic Relations, Defined. For the purposes of these Regulations, domestic relations shall include only: (a) child support modification actions, (b) dissolution actions, (c) domestic violence actions, except as prohibited by Regulation 2(B)(3), (d) committed intimate domestic relationship actions only as they pertain to parenting and support issues, (e) legal separation actions, (f) major parenting plan modifications when the terms are agreed to by the parties before the onset of the representation by the LLLT, (g) minor parenting plan modifications, (h) parenting and support actions, (i) paternity actions, and (j) relocation actions, except as prohibited by Regulation 2(B)(3).

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3. Prohibited Acts. In addition to the prohibitions set forth in APR 28(H), in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:

   b. shall not provide legal services:

      i. in defacto parentage or nonparental custody actions;

Reasoning for Prohibiting Nonparental Custody Actions
Source: 2013 LLLT Board Scope Committee
The Scope Committee recommended that nonparental custody actions should be prohibited for LLLTs because these actions require appearances in court and working outside of the pattern forms. Case law around this issue was seen to be very complex at the time.

Recommendation from Family Law Advisory Committee

A. Support for expansion to contested Nonparental Custody matters
Admission and Practice Rule (APR) 28 Reg. 2(B)(3)(b)(i) prohibits LLLTs from providing legal services in defacto parentage or nonparental custody (NPC) actions. However, unlike defacto parentage actions, RCW 26.10.015 mandates the use of approved pattern forms in NPC filings. APR 28F(6) specifically authorizes the use of approved forms as being within the LLLTs scope of practice authorized by the limited practice rule. The prohibition regarding NPC actions makes no sense given the statutory requirement regarding the use of approved mandatory forms.

Agreed NPC matters are accomplished similarly to any other agreed matter that is currently within the LLLTs permitted scope, i.e. an agreed major modification. The rule should be amended to allow LLLTs to assist with agreed NPC matters.

B. Arguments against expansion to contested Nonparental Custody matters.
LLLT's should not be allowed to practice law involving contested NPC proceedings. Washington courts have acknowledged that nonparental custody is an extraordinary remedy, since it abridges a parent's constitutional rights. Only under "extraordinary circumstances" does there exist a compelling state interest that justifies interference with parental rights. *In re Custody of Shields, 157 Wn.2d 126, 142-143, 136 P.3d 117 (2006).* In fact Washington courts have equated nonparental custody actions with parental termination proceedings because both actions place a parent's interest in the custody and care of a child at stake. *See in re Custody of C.C.M., 149 Wash.App.184, 205, 202 P.3d 971 (2009).*

Although RCW 26.10.015 mandates the use of approved pattern forms in NPC filings, NPC actions cannot be equated to other family law actions. Unlike other family law petitions, these proceedings require a higher level of legal analysis and argument given the potential impact on parental rights. LLLTs do not possess the legal research skills, courtroom experience, and case interpretation skills necessary to be able to adequately vet the cases at the outset, and assist effectively in a majority of contested cases. These cases are considered one of the most complex by practicing family law attorneys, whether in private practice or legal services.

The first legal issue confronted almost immediately in contested cases is whether "adequate cause" exists for the petition. While the substance of this hearing does contain factual argument, the purpose of the hearing is for the court to determine whether the petitioner(s) meet the high legal burden to be able to go forward. The standard for this "adequate cause" hearing is different and more stringent than an adequate cause hearing in a parenting plan modification case. It is an entirely different legal standard even though the term of art is the same and argument at such a hearing is primarily legal and case-dependent.

Involved in the adequate cause hearing may also be the issue of whether the case, at the outset, would involve making a competent and adequate assessment about the existence of "actual detriment" which is not statutorily defined, as well as meeting a higher "clear and convincing" legal standard. The courts have stated that this burden is so substantial that, when properly applied, it will only be met in extraordinary circumstances. *Id. at 204*. In discussing the actual detriment standard, the Supreme Court has stated that whether placement with a parent will result in actual detriment to a child's growth and development is a highly fact-specific inquiry, and precisely when actual detriment outweighs parental rights must be determined on a case-by-case basis. *Custody of Shields, 157 Wash.2d at 143, 136 P.3d 117*.

Contested nonparental custody cases continue to be high-stakes complex cases that even when litigated by an attorney at the outset, can result in additional motions pending trial, sometimes due to erroneous application of the law by family law commissioners, and/or motions brought by the parties who are contesting. Stripping someone of custody against their will most often results in a heavily litigated matter that proceeds to trial in nearly all cases. This differs from a dissolution case where parties typically settle with a parenting plan. Therefore, it is imperative that an adequate record be established from the beginning of the contested case if an attorney or pro se is to litigate successfully to trial.

In reviewing the Washington Supreme Court Order dated June 14, 2012 regarding adoption of limited practice rule for Limited License Legal Technicians, it states that LLLT's are "under the rule adopted today, authorized to engage in very discrete, limited scope and limited function activities. Many individuals will need far more help than the limited scope of law related activities that a limited license legal technician will be able to offer. These people must still seek help from an attorney." Providing legal services to persons engaged in a nonparental custody action will absolutely go beyond what the Washington Supreme Court envisioned as discrete limited function work. To effectively assist a petitioner or respondent in a contested nonparental custody action requires that the professional be highly competent in terms of meeting the evidentiary burdens required, and correct interpretation of case law.

For those that argue that having some representation is better than having nothing in these cases, it is not true. Failure to be able to properly analyze these cases as they come in or lacking the inability to understand, apply, and argue the law properly are barriers to an LLLT even understanding the level of risk in such cases. Of the family law cases, these are the most technical and require the highest level of analysis of law and fact. Paying for bad or uninformed advice could actually harm parties because parties expect their representative knows and understands the area of law, but if done wrong the whole case can die early on when it may have been a valid case but approached incorrectly. The court will also likely not be able to rectify errors because an LLLT provided representation.

Finally, it is also difficult to wrap one's head around whether the level of understanding of the law or the ability to synthesize the law and fact can even be taught in the limited curriculum we have or whether the student would have enough perspective to understand it.

These are the most technically difficult cases in the world of family law.

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: LLLT Board
From: Amended by Jen Petersen and Rita Bender
Date: August 2016
Re: Family Law Scope – Argument for Contested Nonparental Custody

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Issue
Should LLLTs be allowed to handle contested nonparental custody cases? The Family Law Advisory Committee is recommending that LLLTs be able to handle noncontested nonparental custody cases, but has not agreed on a recommendation regarding contested cases. Two sides of the argument will be presented for the Board's consideration.

Relevant Section of APR 28
REGULATION 2 B. Domestic Relations.

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3. Prohibited Acts. In addition to the prohibitions set forth in APR 28(H), in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:

   b. shall not provide legal services:

      i. in defacto parentage or nonparental custody actions;

Reasoning for Prohibiting Nonparental Custody Actions
Source: 2013 LLLT Board Scope Committee
The Scope Committee recommended that nonparental custody actions should be prohibited for LLLTs because these actions require appearances in court and working outside of the pattern forms. Case law around this issue was seen to be very complex at the time.

Recommendation for Family Law Advisory Committee
Admission and Practice Rule (APR) 28 Reg. 2(B)(3)(b)(i) prohibits LLLTs from providing legal services in defacto parentage or nonparental custody (NPC) actions. However, unlike defacto parentage actions, RCW 26.10.015 mandates the use of approved pattern forms in NPC filings. APR 28F(6) specifically authorizes the use of approved forms as being within the LLLTs scope of practice authorized by the limited practice rule. The prohibition regarding NPC actions makes no sense given the statutory requirement regarding the use of approved mandatory forms.

Agreed NPC matters are accomplished similarly to any other agreed matter that is currently within the LLLTs permitted scope, i.e. an agreed major modification. The rule should be amended to allow LLLTs to assist with agreed NPC matters.

Similar to a Major Modification, **Contested NPC matters,** require a hearing to determinate adequate cause to proceed with the matter upon filing the NPC petition (RCW 26.10.032). However, unlike other LLLT permitted custody matters, NPC matters require more than meeting the "best interests of the child" standard, which may have been the reason for the initial prohibition. *In re Custody of E.A.T.W. and E.Y.W.* 168 Wn.2d 335 (2010), held that the NPC statute requires the nonparent to submit an affidavit (1) declaring the child is not in the physical custody of one of its parents or neither parent is a suitable custodian *and* (2) setting forth facts supporting the requested custody order. The facts supporting the requested custody order must show adequate cause that the parent is unfit or that placing the child with the parent would result in actual detriment to the child's growth and development. Increasing the statutory requirement only increases the difficulty for pro se parties to successfully represent themselves.

LLLTs should be permitted to assist NPC pro se parties in contested matters consistent APR 28 F at least up to properly noting the adequate cause hearing or, alternatively, responding to an adequate cause petition. In addition, it would likely be of benefit to the Court to permit LLLT assistance with proposed pattern form orders for presentation at the adequate cause hearing (i.e. Order on Adequate Cause, Temporary Custody Order and Order Appointing GAL).

Effectively handling contested NPC matters does not require court appearances any more than effectively handling contested issues in a dissolution, which is within the LLLTs current permitted scope. The adequate cause hearing is based up on the information contained in the mandatory form petition. With the assistance of an LLLT a pro se litigant would have a better understanding of the necessary elements to meet, or defeat, the threshold for an adequate cause determination and address those elements appropriately in the petition or response. Additionally, LLLT assisted pro se parties would aid judicial efficiency by appearing at the hearing with the appropriate proposed orders.

As with currently authorized scope of practice matters, if the scope regulation regarding court appearances were amended, LLLTs would greatly assist pro se parties and the Court by conveying appropriate, relevant fact information in a clear and concise manner at the adequate cause hearing, which would contribute to the efficiency of our Court system. It would also be of great benefit to pro se parties if LLLTs could present agreed orders on ex parte calendars, by quickly and correctly finalizing NPC matters.

Ultimately, for both agreed and contested NPC matters, consistent with the scope of practice authorized under with APR 28F, LLLTs would aid in judicial efficiency by helping pro se parties navigate the complex legal system.

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: Family Law Advisory Committee
From: Nancy Ivarinen, Professor Gail Hammer
Date: July 2016
Re: Family Law Scope – Protection/Restraining Orders

Issue
Should LLLTs be able to work with anti-stalking orders, sexual assault protection orders, vulnerable adult protection orders, and anti-harassment orders?

Relevant Section of APR 28
Regulation 2
3. Prohibited Acts. In addition to the prohibitions set forth in APR 28(H), in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:

c. shall not advise or assist clients regarding:

iv. anti-harassment orders, criminal no contact orders, anti-stalking orders, and sexual assault protection orders in domestic violence actions;

Reasoning for Prohibition
Source: 2013 LLLT Board Scope Committee
These orders do not fall within the sphere of domestic relations. LLLTs are allowed to work with domestic violence protection orders.

Argument for Amendment
Source: Board Member

- Anti-Stalking and Sexual Assault POs are usually for cases where a DVPO would not be applicable, but can be tangentially related to family law issues.
- LLLTs providing services for vulnerable adults and those who need anti-harassment orders would also be very beneficial. LLLTs could help petitioners and respondents - many of whom cannot afford a lawyer but would greatly benefit from some technical guidance, particularly when preparing their initial or responsive declarations.
- In any protection order hearing, the declaration of the petitioner is the primary basis for granting or denying the PO. Assistance from an LLLT would help clients (whether Petitioner or Respondent) get the important information before the court. Very few of the

PO parties have attorneys and yet this can literally be a life or death issue. GR 24 allows anyone to help so long as they don't charge a fee - the expansion of the LLLT scope would allow them to charge a fee and provide a valuable service to the client and the court.

- Also, in violation of the separation of powers, the legislature declared in RCW 7.92.090: Victim advocates shall be allowed to accompany the victim and confer with the victim, unless otherwise directed by the court. Court administrators shall allow advocates to assist victims of stalking conduct in the preparation of petitions for stalking protection orders. Advocates are not engaged in the unauthorized practice of law when providing assistance of the types specified in this section. This is a legislative indication for use of non-lawyers in this type of action.

Recommendation for Family Law Advisory Committee

Revise regulation 2B(1)(c) to remove the "except as prohibited by Regulation 2B(3)" clause and remove 2B(3)(c)(iv). An affirmative statement authorizing LLLTs to complete all types of protection orders and protection order hearings, including RCW 26.50 (DVPO); RCW 7.90 (Sexual Assault PO); RCW 7.92 (Stalking PO); RCW 74.34 (Vulnerable Adult PO); RCW 10.14 (Anti-harassment), should be added into APR 28 Regulation 2.

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: LLLT Board
From: Ellen Reed
Date: December 2016
Re: Family Law Scope - Mediation

Issue
Should LLLTs be able to attend mediations?

Relevant Sections of APR 28
G. Conditions Under Which A Limited License Legal Technician May Provide Services

(3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician, that includes the following provisions:

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

H. Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

Reasoning for Prohibiting Participation in Mediation
Source: 2013 LLLT Board Scope Committee
Negotiation (another prohibited act) was seen as an essential part of mediation.

Argument for Allowing Mediation
Source: Family Law Professors

- According to the Administrative Office of the Courts statistics, on average 96% of family law cases settle and less than 4% go to trial. It would be a significant help to the clients to permit the LLLTs to assist with their mediations.
- There are built in safeguards because the mediator is present to make sure the process is carried out appropriately. Sending a client into the mediation without any support, when that person may or may understand the nature of the process or the details of their case, seems to set up the client for failure. If clients are required to get counsel for mediations, then the LLLT will consequently be of less importance to the client and likely will not be engaged.
- Although the existing curriculum does not include in-depth materials on preparing for mediations, that can easily be incorporated in the future, or a CLE can be presented to give the LLLTs the additional information on preparing for, and representing a client in, mediation.

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: LLLT Board
From: Ellen Reed
Date: December 2016
Re: Family Law Scope – Negotiation/Communication

Issue
Should LLLTs be able to negotiate on behalf of their clients?

Relevant Section of APR 28
B (4) "Limited License Legal Technician" (LLLT) means a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client.

H. Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(6) Negotiate the client's legal rights or responsibilities, or communicate with another person the client's position or convey to the client the position of another party, unless permitted by GR 24(b);

G. Conditions Under Which A Limited License Legal Technician May Provide Services

(3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician, that includes the following provisions:

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative

proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

Reasoning for Prohibiting Negotiation
Source: Practice of Law Board Recommendation, LLLT Board Recommendation
Negotiation was initially seen as an area which should be prohibited for LLLTs in order to draw a bright line between representation by a lawyer and pro se assistance by an LLLT.

Argument for Allowing Negotiation
Source: LLLT Board/Practicing LLLTs

- The current prohibition against LLLTs negotiating for their clients has created significant questions in the practice of family law. LLLT clients who may be in the midst of a nasty dissolution or custody battle, or even a domestic violence dispute, may find themselves in the position of being contacted by their spouse or abuser because of the legal proceeding, when it would clearly be in their best interest to have a neutral third party be the contact person. The Board also feels that it should consider whether it would be better to have an LLLT negotiate directly with an opposing party's attorney than it is to have a pro se party do so, and also whether it would be much easier for the attorney to deal with a legal professional rather than a pro se layperson. For LLLTs who are multilingual, being able to negotiate with opposing parties may allow them to provide essential services to clients who speak the same language(s) they do but may not speak English.

Feedback from LLLTs
"*The inability to negotiate on [a clients] behalf, especially when opposing counsel may be involved…is particularly counterproductive from several aspects in my opinion. Having the ability to communicate with an opposing pro se litigant or their counsel would be tremendously helpful in avoiding hearings that may not be heard. I recently had two cases with an opposing litigant who was represented by counsel. Had the opportunity to negotiate with counsel been part of my admission to practice, I strongly feel that the likelihood of my client having to go to court on several minimal issues may have been adverted by the entry of an agreed order. This could have reduced costs for my client and the opposing client along with negating the need to take off work to appear at the hearing. The second issue surrounding the inability to negotiate in some limited manner affects the judicial system. With court hearings being typically full for weeks in advance, I find myself having to set unnecessary hearing for my clients in order to "reserve" a spot on the docket so that their issue may be heard only to have the parties agree after the deadline for filing would have occurred, thus creating unnecessary work on my behalf and taking valuable docket space. Issues such as financial restraints, spousal support, and even child support are issues that can be agreed upon in advance and only those pertinent issues remaining could be set for a hearing thus reducing the daily caseload for the courts. My clients are already managing a lower income than most, having to take off work for a morning (typically 9-noon) to sit in the courtroom hoping their case will be heard on an issue that could be agreed upon between a LLLT and counsel seems inhibiting to both the client and the courts. Lastly, I believe that in addition of limited negotiating on a client's behalf, it would also be beneficial so that a LLLT may communicate with counsel after a hearing or be present at the hearing for a client so that we as LLLT's may type up what is to be ordered by the court. The game of telephone tends to come into play here with my client telling me what "they" think had*

been ordered by the court only to leave me researching and reading the minutes from the hearing to type up the court order. Short of ordering the transcript and reading pages of verbose language to determine what transpired, I am stuck in a position of giving my clients orders that may be inaccurate or incorrect to provide to opposing counsel. What can transpire is the opposing counsel saying these orders are not correct, which may lead my client to doubt their choice in choosing a LLLT over an attorney, or what more typically happens is another hearing must be set for presentation of the orders where my client must take off work again to argue their position on what the court had ordered at the previous hearing.

"*The mechanics of even mailing documents to the other side…is that forbidden communication? What if the matter is uncontested? I had a disso that was uncontested, but the OP completed the joinder portion of the petition incorrectly because I couldn't help show him where he needed to check the boxes.*"

WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: LLLT Board
From: Ellen Reed
Date: December 2016
Re: Family Law Scope – Court Appearances

Issue
Should LLLTs be able to represent clients in court?

Relevant Sections of APR 28
B. (4) "Limited License Legal Technician" (LLLT) means a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client.

G. Conditions Under Which A Limited License Legal Technician May Provide Services

(3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician, that includes the following provisions:

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

H. Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

Reasoning for Prohibiting Court Appearances
Source: POLB Recommendation to Supreme Court
The LLLT license that was originally proposed to the Supreme Court by the Practice of Law Board (POLB) was limited to document preparation and advice. The Court adopted the limitations of the license as proposed by the POLB.

Argument for Considering Allowing Court Appearances
Source: LLLT Board
Many different entities, including many judges, have suggested that LLLTs should be allowed to appear in court in some limited fashion. The Board intends to explore this option within the current family law scope of practice. Preliminarily, the Board feels that carefully considered changes to this prohibition could benefit clients and may also assist in the processing of cases in the legal system.

Feedback from LLLTs:
"The case that really left me feeling bad was as follows: I was assisting an older client that had married a gal more than two years ago; she accessed money from his bank accounts and then disappeared after six months. He hadn't heard from her and didn't know where she was but was desperate to get divorced. A petition was filed and a process server found her and she was served. She filed a Response. Several things happened in-between, including discovery which she failed to answer and a Motion to Compel which she failed to respond to or appear at. Instead of entering other orders (and ultimately striking her pleadings which is what I wanted to happen), the court waived the procedures and set it for trial assignment the next week. My client forgot to go. We noted it up again and my client forgot to go. We noted it up again and he finally went and got a date (the wife never attended any hearings). We lost a few weeks of time during all of that – but finally got a trial date and I prepared all of the documents necessary (although I didn't expect that the wife would attend.) My client died a few days before his trial date. The wife came out of the woodwork, evicted my client's adult child from my client's home and took all of his vehicles (all owned prior to the marriage). He had no will, but she apparently was named personal representative of his estate and swooped in to take everything. All of that to say – that if I could have gone over and gotten his trial date the first time and we had not lost weeks in the process – he would have had his trial, been divorced and it may have prevented the wife from doing what she did. It would be very helpful to many people if we could help with hearing assignments and even taking documents over for an ex parte signature so they don't have to pay a $30 signing fee instead."

"My biggest concern for my clients is when they go to court alone. Many of them don't understand the court procedures. I am not asking to argue their case, but it stinks when a Judge/Commissioner asks procedural questions and the client does not know how to answer. For example, even though the court was provided a full set of working papers which includes proof of service, the court will ask, "Did you personally serve the other party?" and the client will say yes. The court will ask how and the client doesn't differentiate that personal service means a process server, not mailing and not by email. Another example is I give my client a binder of the exact copy of the working copies I give the court. The court however has not always reviewed the paperwork or will ask the client questions about the paperwork filed. Even though I go through the binder with the client before a hearing, the clients are nervous and become forgetful of what we talked about. I have seen them fumble through the binders and one time a client gave the Commissioner the wrong order to sign off on. He had two proposed orders depending on what the Judge decided and handed her the wrong one."

"What I have found to be ….. frustrating is the inability to be able to go over to get trial date for a client when it is likely the other party isn't going to show up either (which results in it being stricken from the docket and having to be re-noted causing delays). My input to the board is that there should be a mechanism that allows us to do that – or allows us to ask our local court for permission to do that in circumstances where a client is significantly disadvantaged because they don't have someone to stand in for them for that simple task."

Proposal for Expansion of LLLT Scope to Limited Court Appearances
Source: Board Member

- LLLTs may appear at any protection order hearing
  - RCW 26.50 (DVPO)
  - RCW 7.90 (Sexual Assault PO)
  - RCW 7.92 (Stalking PO)
  - RCW 74.34 (Vulnerable Adult PO)
  - RCW 10.14 (Anti-harassment)
- Hearings on Motion for Temporary Orders
  - Temporary Parenting Plan
    - LLLTs will have prepared the motion and assisted with the declarations which will place the facts before the court. Speaking to the motion is primarily a factual issue.
  - Temporary Child Support
    - Child Support Orders are math, and possibly argument about imputation of income or residential credit. Mostly this hearing is a factual/math issue and the LLLT will have already prepared the financial declarations and CS worksheets.
  - Temporary Maintenance
    - This would address need and ability to pay - on a temporary basis, this is usually a determination made by the court based on the net income of the obligor and frequently decided at the same time as the CS Order.
- Enforcement of Orders (e.g. OTSC for non-compliance with temporary orders)
  - This would arise when an existing court order is in place and the opposing party is not complying with the court order. An OTSC generally requires personal service on the opposing party and the LLLT would have already drafted the Motion and Declaration which would indicate the purported noncompliance. Or the LLLT would have drafted the responsive declaration to an OTSC for the factual basis showing either compliance or inability to comply. The administrative system is overburdened and DCS welcomes help with enforcement of CS Orders -- and the LLLT could assist petitioners or respondents.
- Presentation of agreed orders on the motion or ex parte calendar
- Appearance at any administrative child support hearing
  - While possibly permitted under existing administrative rules, the specific authorization would clarify that the LLLT can be a representative and not just a "support person."
- Modification of Child Support (whether court ordered or an administrative CS order being entered and modified in court).

Other Questions

- Should LLLTs be able to attend settlement conferences?
    - Will the LLLT have sufficient expertise to advise a client at the settlement conference?
    - Should they be allowed to accompany the client, but not in a speaking/advocacy role (some settlement conference judges only allow the parties and their lawyers in; some don't let the attorneys speak and will only conduct settlement discussions with the parties who can then ask their attorney for advice)?

APPENDIX E

COMMENTS REGARDING PROPOSED CHANGES

C. Thomas Tuohy (2007)
Deane W. Minor
Kara M. Kruse
Renee M. DeFreece
Melanie C. Griffin
Justin Morgan
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Attorneys at Law

February 14, 2017

Kameron L. Kirkevold
Chair of WSBA Elder Law Section
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154

Re: LLLT Program Expansion

Dear Mr. Kirkevold,

I have reviewed Mr. Dewey Weddle's thoughtful description of the pitfalls in having an expansion of the LLLT program into estate planning in the same manner as was done with family law.

I come to the discussion after 34 years of practice, much of which has been in the real estate and family law areas. I supported the LPO Program and the family law LLLT programs. The scope of work authorized in both the LPO and family law LLLT areas are narrow enough to avoid the kinds of problems described by Mr. Weddle.

In the estate planning arena, what concerns me is relying on the LLLTs to provide the analysis on what instruments are the best way to achieve the desired result. Mr. Weddle's letter emphasizes that point.

I have a suggestion that could potentially address many of the concerns raised by Mr. Weddle and others who have provided input. Do not allow the LLLT to decide what instruments to use. Require the LLLT to work in the office of an estate planning attorney who would do that analysis and then direct the LLLT on what documents to prepare for the attorney's review.

The approach might seem to lose some of the cost-savings advantages of allowing LLLTs to work independently, but that "loss" would be far outweighed by the benefit of having the client receive the proper final product.

Estate planning is a very different field than family law, where the mandatory forms make it much less likely that the wrong instrument will be utilized. The possible expansion of the LLLT program into the estate planning realm needs to address that crucial difference.

Yours very truly,

TUOHY MINOR KRUSE PLLC

Deane W. Minor
DWM:le

Cc: Steve R. Crossland
Chair of the LLLT Board
Crossland Law offices
PO Box 566
Cashmere, WA 98815-0566

Cc: Ellen Reed,
LLLT Program Lead
Washington State Bar Association
1325 fourth Avenue, Suite 600
Seattle, WA 98101-2539

Cc: Susan L. Carlson,
Clerk of the Supreme Court
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Olympia, WA 98504-0929

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February 14, 2017

The Honorable Chief Justice
Mary E. Fairhurst
Washington State Supreme Court
PO Box 40929
Olympia WA 98504-0929

Re: Expansion of the Limited Licensed Legal Technicians (LLLT) Program

Dear Chief Justice Fairhurst:

I am writing to you regarding my concern over the expansion of the LLLT program into the area of "Estate and Healthcare Law." I am an attorney who has practiced exclusively in Elder Law, Estate Planning, Guardianship and Probate and Trust Administration, including contested Guardianships and Probates for over 20 years. I am currently a member of the Elder Law Section of the Washington State Bar Association. I am a member of the National Academy of Elder Law Attorneys (NAELA) and I am serving my second term on the Board of the Washington Academy of Elder Law Attorneys (WAELA).

The LLLT Program was started to address the problem of unmet access to justice issues in Washington. This is the text from the WSBA website explaining the purpose of the LLLT Program:

> Washington is the first state in the country *to offer an affordable legal support option to help meet the needs of those unable to afford the services of an attorney*. **Legal Technicians**, also known as Limited License Legal Technicians (LLLT), are currently trained and licensed to advise and assist people going through divorce, child custody and other family-law matters in Washington. They are able to consult and advise, complete and file necessary court documents, help with court scheduling, and support a client in navigating the often confusing maze of the legal system. Think of them like nurse practitioners, who can treat patients and prescribe medication like a doctor- well-trained, qualified and competent professionals who can provide you with the help you need. (Emphasis added).

I want to start by saying that access to justice is a concern that I have had for years. I support access to justice and contribute to organizations that serve this need. I am a Volunteer Lawyer in Spokane County for Guardianship matters. I know that there is more that lawyers can do to address this need and I believe it is all of our responsibility to do so. The LLLT Program is something that I support if it meets an access to justice need in our community. But the expansion into this area of the law is not supported by the evidence in the scientific studies of access to justice needs in Washington. Therefore, I am asking that the Supreme Court reject the expansion that the LLLT Board has proposed into the area of "Estate and Healthcare Law."

Probate Administration is an area that does not suffer from an inability to obtain attorney services or access to justice. By definition, any estate that is subject to probate must have more than $100,000 net value or have real estate. There is no access to justice problem or an inability to afford legal services for this area of the law. It appears that probate administration for non-taxable estates was added to the LLLT proposal simply to increase the "economic viability" of the new LLLT area of practice. Mr. Crossland the Chairman of the LLLT Board, has stated the following in his public summary of this proposal:

> "After weighing the unmet need for legal services, the ability of a limited practitioner to provide effective representation, *and the economic viability of the practice area*, the committee concluded that "Estate and Healthcare Law" should be the next practice area for the LLLT profession."

Memorandum from Steve Crossland, LLLT Board Chairman and Ellen Reed, LLLT Lead Staff and Liaison to LLLT Board to the WSBA President and Board of Governors, January 9, 2017. (Emphasis added).

The areas that touch and concern advising elderly and vulnerable clients is the most concerning for me. Improper advice can lead to loss of assets, loss of opportunities to provide for surviving spouses and disabled children and grandchildren. This is not an area of the law that most attorneys will work in if they do not regularly practice in the area. Seattle University is introducing a Masters of Law program for Elder Law. How can a Legal Technician reach the level of knowledge and competency that will allow them to work in this complex area of the law?

Wills, Trusts and comprehensive estate planning is not a 'fill in the form' exercise for most attorneys. Even in the area of non-taxable estates there are considerations of blended families, separate and community property, and disability of family members who may inherit, including surviving spouses. Special Needs Planning is one of the most complex areas of the law with many traps for the unwary and unintended consequences. Some of the consequences are financially devastating to families who lose the coverage of public services for their loved ones.

I am not concerned that introducing LLLTs into this area of the law will diminish my law practice, but I am concerned that Washington citizens will not get the best representation in the complex issues presented by this kind of planning.

I appreciate the opportunity to present my concerns to you and the other justices as you make this important decision and ask that you reject this proposal.

Very Truly Yours,

Jane G. Bitz
Attorney at Law

Cc: Steve Crossland, LLLT
Ellen Reed, LLLT Program Lead

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February 16, 2017

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Re: LLLT Program Expansion

Dear Board and Mr. Kirkevold:

Thank you for taking the time to consider this input. I was originally inspired to write on this topic after reading the February 10, 2017 letter from lawyer Dewey W. Weddle of Anacortes and his suggestion I add my voice, but strongly endorse his comments as well.

1. The Crossover Issue. The author of this letter has had 33 years of practice primarily in family law, but has transitioned over the past 15 years to doing estates and trust law more or less exclusively. As I have had this perspective of both fields I sense I have a particularly unique posture from which to comment.

Family law is fact driven. Getting your case before the court in particular in those very important early hearings is really the most important aspect of the enterprise. While there is considerable law on the topic, I have found the field to be remarkably discretionary and judges tend to fashion relief appropriate to the facts and based on the law.

Estates law is law driven. Results accrue before the matter ever gets to court. People die; that fact is inescapable and the law that follows that death is well settled and permanent. Medicaid is likewise law driven. There are no equitable considerations. The will is the will. The gift is made before the Medicaid application was made, and the ineligibility period is fixed. These are just two examples and I am sure there are more which could illustrate my point that there are things a judge just can't fix.

I also note it is recommended the domestic LLLT can only go as far as the adequate cause hearing in child custody modifications. In estate law, there is no stopping point beyond which a more seasoned hand can right things. The will is the will, the trust is the trust, and a non-probate transfer is even more immediate and irretrievable once the man has passed and the death certificate is issued.

Being able to see what one is doing with a community property agreement, having a foot in each camp of the practice is what being a lawyer is all about. Yet as I understand the educational foundation for the technician, he or she will not have training in the impact of this document in a family law setting.

We are told these would be addressed on approved forms, and that estates law lends itself to a form based practice. I have forms I have developed over years of experience. I modify them, in particular the powers of attorney, on a regular basis based on the experiences in the field in a practice where I see many different kinds of issues. The forms we are going to see approved will not have this quality. The approved forms will not be flexible to the posture of the client or experience in the field.

The estates field is complex with complex concepts, and after 15 years I still am learning. At the very least I can see the client as a whole; all the elements of their lives as they touch on the law. Two years of non-specific training, plus 9 months of an on- line law school in a narrow scope, and 3,000 hours of supervision by a lawyer in a field that is not necessarily the same is not the same thing as producing a person who can think broadly like a lawyer and understand the complex legal threads of each document.

2. The Town Hall Meeting. While I attended the Feb 15th online, I noted the number of persons of significant background in these fields who took the time to be there in person raising hard questions about the expansion of the program could not be ignored and lent credibility to the concern. None of these people appeared to endorse the program.

Chairs of various sections of the bar appeared to voice their concerns as well. How long does it take to understand the concept of tax basis, impacts of gifting, etc? Longer that the current program allows, seemed to be the answer.

These participants included a Superior Court Judge, who essentially was asking where the evidence was that the initial program had actually achieved the goals we were reminded of throughout the forum, meeting unmet legal needs in a competent fashion? The answer is there is no data. The comments from the Supreme Court that adopted the program in 2012 she referenced echo in my ears: *that this was an experiment and that it would not have an appreciable impact on the practice of law.* We don't know the answer to either of those questions.

Professor Boxx from the University of Washington cautioned the amount of time required to teach family law is less than estates and trusts, and even then she is concerned the curriculum her law school offers doesn't adequately campus the topic. She also pointed out how many lawyers are sued for malpractice in this field, and how long a tail there is to discover the error. She did not appear to endorse the expanded project.

Apparently the procedure before the Court now is to have them approve an expansion of the program, then work on curriculum. Given the comments from academia and others it seems this is backwards. My experience tells me this means that notwithstanding the reservations of the bar and academia that nine months is inadequate to learn the ways of estates and trusts, the curriculum will be shaved down to fit that time rather than have the Court have a curriculum presented for approval, and an order issued requiring it no matter how long it takes. This procedure does not adequately address Professor Boxx's concerns.

3. The Human Nature Issue. I have wealthy clients with a clearly taxable estate that call me up and tell me they just need a simple will. They really believe they are just simple folk, yet they are not. Instead, they are a source of revenue for the government if not properly handled. While the proposal exempts the taxable estate from LLLT practice, I know people will decide for themselves what they need, and lacking the background the LLLT is likely to cross the centerline regularly because the couple is in the office and what are they going to do? Many, many people at the Town Hall Meeting were concerned the LLLT is not just placed in a technician role, but is instead a counselor at law- that is what your average citizen is going to expect.

The LTTT Board said at the town hall meeting Feb. 15th 2017 that the primary goal is to extend legal services to person of moderate means. Everyone thinks they are of moderate means. By endorsing an estate practice LLLT, we put our stamp of approval on a hybrid between Legal Zoom and a real lawyer. This hybrid will be perceived by the

client as able to do everything a lawyer can do, which is not the case, no matter how many times you tell a client the issue is more complex than they want to believe. That is just human nature.

4. Conclusion. I fear in our desire to extend legal services to members of the public who may, due to circumstances, not be able to travel to or afford competent assistance with these issues have elected to compromise on the competence standard, and in the process weakened the standards for the whole.

The message of the proposed expanded program to the estate planning *pro se* client is that they have competent help. Based on the comments at the town hall we cannot say that is really the case.

The proposals are compassionate but as yet not supported by adequate evidence this program will actually address any unmet need while maintaining appropriate standards and therefore should be rejected.

Sincerely,

Mark T. Patterson II

MTPII:ckl

cc: Steve R. Crossland
Chair of the LLLT Board

Ellen Reed
LLLT Program Lead

Susan L. Carlson
Clerk of the Supreme Court

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February 13, 2017

Susan L. Carlson
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Ellen Reed, LLLT Program Lead
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: LLLT Program Expansion Proposal – Estate and Health Care

Dear Ms. Carlson and Ms. Reed:

I am a retired judge (Lincoln County District Court) who has practiced Elder Law for about 20 years and I continue in the active practice of Elder Law. I am a long-term member of the Washington Academy of Elder Lawyer Attorneys. I concur with many of the statements which other members of WAELA have submitted against passage of the above-referenced proposal.

There is no question that LLLT's are needed to help those who are underrepresented in some areas of law. I saw this need daily in my courtroom. It would be nearly impossible, however, for the court to grant a limited license in: "governmental benefits"; representation of clients in court VAPO hearings; or in advising the elderly on proper estate planning documents, without creating a disservice to our elderly public. I can certainly see where routine real estate closings and even routine dissolution of marriage cases can and should be adequately addressed by LLLT practitioners.

The area of "governmental benefits", for example, is horrendously complicated. It is aggravated by constant major government program changes which are made frequently (at least bi-yearly). This is done both by changes in federal statutes and rule changes and by Washington State rule changes. I have assisted clients on many occasions to maximize government benefits; however, in order to do so I have had to study this area of law and attend numerous CLE seminars on a constant basis (including a 3-day Unprogram by WAELA each year). Most non-elder law attorneys do not have the expertise to advise concerning the eligibility for government benefits; much less can it be expected that LLLT's could do so. Many, if not most, clients who are in need of counseling in this area are individuals with assets which need to be preserved so that, for example, many important expenses which Medicaid and other programs will not pay for can be funded within the rules. Oftentimes the payment for this advice comes in conjunction with a "spend down" of assets which can lead to Medicaid eligibility. Clients are far more interested in funding legal advice as part of a "spend down" which results in protecting their remaining assets than in funding a "spend down program" in a way that simply dissipates

their resources.

In summary, to a large extent, this proposal is therefore a solution to a problem which does not exist (people having assets to protect can and do obtain qualified advice from elder law attorneys) and/or it is a proposal whose objective cannot be achieved because of the rapidly changing and complex law involved.

I am afraid that the objective of reducing the burden on the courts also would not be achieved because of the number of lawsuits which will need to be resorted to in order to correct the errors that will come from practitioners who may be blessed with a legal status but who are not equipped to come up to the standard of practice which will be expected of them.

Very truly yours,

JOSHUA F. GRANT

Via Email

cc: Steve R. Crossland, LLLT Chair

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February 13, 2017

Kameron L. Kirkevold
Chair, WSBA Elder Law Section
Helsell Fetterman LLP
1001 Fourth Avenue, Ste. 4200
Seattle, WA 98154

Re: Proposed LLLT expansion to Estate and Health Care law

Dear Mr. Kirkevold,

I am an attorney licensed in Washington State practicing estate planning, probate, and tax law. I am writing to urge you to reject the proposal to expand LLLT services to Estate and Health Care law.

I well remember my first probate case. It was also my first TEDRA case, since it proceeded to trial for resolution of a will contest brought by one of the decedent's sons. The decedent, by all accounts a sharp-witted woman who rarely lost an argument, made her will a few years prior to her death when she was scheduled for surgery. Like many, she was required by her medical team to execute a Power of Attorney and also strongly advised to make a will. As she was having a notary help her execute the Power of Attorney she inquired about making a will. Did she need to consult an attorney? No, was the reply. Not unless she anticipated that someone would challenge her will. The notary proceeded to download a form will from the Internet and assist her in filling it out.

Among other errors, the notary failed to correctly identify the testatrix in the title of the will, failed to ensure the provisions of the will conformed to one another, and failed to discover that she intended to disinherit one of her three children. He thought nothing of the fact that one of the named beneficiaries, the testatrix' caregiver son, handwrote the key provisions onto the form document. The testatrix left the notary's premises with a will inaccurately entitled "Last Will and Testament of Shirley Doe." The document contained conflicting provisions making a specific gift of "all of my estate" to two of her sons, whose names were handwritten by one of those two sons, and a boilerplate residuary clause leaving the remainder of her estate to "all of my descendants in equal shares." Her third son was not named in the will, and no mention made of her intent to exclude him from her estate.

It is impossible to know for sure, but I strongly believe that had the decedent's will been properly drafted by a trained attorney, no challenge would have been raised by the omitted heir. What actually

occurred was that the three sons were thrown into bitter conflict, and during the year-long legal battle following her death, the decedent's friends, neighbors, and many casual acquaintances were drawn in as well. The omitted heir's attorney argued that the decedent's caregiver son had unduly influenced her to disinherit his brother, and that the specific gift provision should be stricken from the will because it was written in his handwriting. A mountain of testimony countered this theory, airing painful family history and private matters in open court. In the end her will was upheld but her family irreparably harmed by the "helpful" notary.

Estate planning entails so much more than simply choosing the proper form document and assisting the client in filling in the blanks. I cannot state strongly enough my opposition to expanding the LLLT program to include estate planning. I understand the intent is to provide low-cost services to underserved communities, a goal I fully support. But low-cost services can come at a high price. I know from the bitter experience of my clients that even a "simple" will must be carefully crafted or risk painful and expensive consequences to the very beneficiaries for whom the testator hopes to provide peace of mind. I hope that the Bar will explore alternate means to provide these services to underserved communities while protecting against the risk of errors by non-attorneys.

As an estate planner, I am constantly learning. I draft and re-draft my form documents as the black-letter law evolves or is interpreted by cases, I create custom language for every client, and I even obtained an LL.M. in Taxation to ensure I have the knowledge and capability necessary to perform this work. I take pride in the work product my clients receive, and I also take pride in offering no-cost initial consultations and discounted flat fees for low and moderate income clients.

Again, I urge the Board and the Supreme Court to reject the proposal to allow these services to be provided by LLLTs.

Best Regards,

Sara D. Longley, J.D., LL.M.

Cc: Steve Crossland, Chair, LLLT Board
Ellen Reed, LLLT Program Lead
Susan L. Carlson, Clerk of the Supreme Court

Ellen Reed

From: Alexis Singletary <alexis@singletarylawoffice.com>
Sent: Monday, February 13, 2017 3:38 PM
To: Limited License Legal Technician
Subject: LLLT Estate and Healthcare Law practice area

Follow Up Flag: Follow up
Flag Status: Completed

Dear Sirs/Madams:

My schedule will not allow me to attend in person the Town Hall set for 2/15/17. I hope to attend via webcast. My comments here were previously submitted to my BOG Rep Andrea Jarmon:

From: Alexis Singletary
Sent: Tuesday, January 24, 2017 5:05 PM
To: 'ajarmon@jarmonlaw.net'
Subject: RE: Board of Governors meeting, 1/26/17-1/27/17

Dear Governor Jarmon,

I am in your district. I am writing to express to you my concerns regarding the 'Estate and Healthcare Law' expansion for LLLTs. I am a member of the Executive Committee of the King County Guardianship and Elder Law Section, and I have practiced in the area of estate planning and estate/trust administration for 16 years . Of course, I frequently attend continuing education programs so that I can stay current of changes to the law in my practice areas which include elder law, estate planning, guardianship, probate, and trust administration. I work hard in my practice to ensure that my advice and documents provided to my clients is of the utmost value based on my knowledge and expertise.

I only learned today of the proposed expansion of the LLLT program and the agenda item on the BOG meeting at Gonzaga University this week. *I ask that you not support this program expansion.* This program is a grave disservice to the citizens of our state as these are legal issues which can only be properly addressed by a competent attorney. Moreover, I am concerned about the lack of training and supervision of these individuals. I understand that LLLTs are held to the same standard of care and RPCs as lawyers, but how does the LLLT Board plan to protect clients from conflicts of interest, undue influence, etc.? Unfortunately, more and more as our society ages, this area of law is rife with cases of people exploiting vulnerable adults, an issue that trained attorneys are aware of and prepared to protect against. I would estimate that the malpractice premiums would be more for LLLTs, not less, than real attorneys. As part of the Estate LLLT program, will technicians be required to obtain malpractice insurance?

I understand that part of the proposal for the LLLT education in the estate and healthcare law expansion area is to be 2-3 classes targeted in the particular practice area, much like the Family Law LLLT program. As we all know, family law in law school is an elective after you have been indoctrinated by at least a full year of arduous drilling to "think like a lawyer" and issue-spot for potential problems or pitfalls in any given case. Family law or trusts/estates are not simply stand alone silos. The practice of law is more than a trade school! An important distinction from the family law LLLT cases is that they all go through the courthouse door in one form or another. There is ultimately a Judge or Commissioner who signs Orders and makes sure the pleadings are OK for entry. In the Estate Planning field, there is no such safeguard on LLLT's work. Thus, when an important estate document is improperly completed because the LLLT has used cookie-cutter forms not appropriate for the client's circumstances, the only recourse is going to be court involvement to clean up the mess, thereby further taxing our judicial system unnecessarily and costing the client's family additional unnecessary cost and expense.

Among my many concerns, I note that an individual under this program would be able to do estate planning for non-taxable estates. I would estimate that this would include at least 95% of our population. I rarely, if ever, draft a Will which is 'simple.' I am not aware of any data or even anecdotal evidence regarding underserved individuals in the proposed LLLT practice areas, i.e., the need for this expansion. Is this data even available? My colleagues and I devote countless hours of pro bono time to the underserved. If this service needs to be expanded, we should have that conversation so our communities can be served.

In short, I do not simply "prepare documents" for my clients. I spend a great deal of time with each client to properly assess his or her situation so that I can provide the best recommendations to the client in light of his or her goals and the legal options available. Of course, you can order forms from the internet, too; but the estate planning and probate profession is much more than simply putting a name in a blank on a form. There are numerous considerations that are unique to each client that cookie-cutter LLLT Board approved "forms" are simply not going to address in the best interests of our citizens. Just because an estate is non-taxable does not mean that we can "fill in the blank" without other important considerations that a client would need to address, such as planning for a child with special needs. How are the Estate forms to be structured? Will they be like the LPO forms where the document cannot be changed? Or will the Estate LLLT be able to alter the forms? Will the forms be mandatory or simply "model"?

I would be happy to discuss these issues with you further. In the interim, I urge you to not support this expansion and to urge your fellow governors to do the same. I am proud to be a member of the Washington State Bar Association. However, I am told that among national elder law and estate planning practitioners, our bar association is becoming the laughing stock of members of other state bars, in part because of the ever increasing parsing of legal services into tiny bits of "one size fits all", which truly misses the mark of the "counselor" at law services of our profession.

Thank you for your time and consideration.
Alexis

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Ellen Reed

From: Bob McDaniel <bmcdan0977@yahoo.com>
Sent: Thursday, February 02, 2017 11:57 AM
To: Limited License Legal Technician
Subject: Comments

Follow Up Flag: Follow up
Flag Status: Completed

I think this is a completely inappropriate area to extend their ability to practice to. I practiced in this area for many years. Wills and living trusts may sound easy, but as one who has had to try and deal with inexpertly drawn ones after the persons death I can tell you they need to be drafted by attys and preferably ones with considerable experience in trusts and estates. What you are proposing will only increase the chances that the wishes of the deceased cannot be carried out and result in increased litigation in families. Why increase the chance of much of an estate's assets being eaten up by litigation and the harm litigation brings to family relationships? With more and more blended families, multiple marriages, surrogates, and same sex relationships with children - the need for attorney expertise and experience is even greater. Inexpert drafting can also have tax impacts and impacts on benefits of beneficiaries. As to elder law, what are you talking about? DPAs again may seem easy. But I just participated in a pro bono workshop and my expertise as an attorney mattered. Who is appointed REALLY matters. My many years of experience in practicing elder law showed that a lot of the elder fraud is done using a financial DPA. What about those with no families, do they have the knowledge to advise about other resources? The amount charged by attorneys for their services in these areas is not inappropriate to the benefit the clients will receive from their expertise and experience, just as many other things we pay for in our lives. So if it is being proposed as a way to save client's money it is doing them a disservice. Efforts should instead be being made on the importance of estate planning and other elder law and what attorneys bring to the table for clients with their expertise and experience.
Bonnie Bayes-McDaniel
WSBA #12462

Sent from my iPhone

Ellen Reed

From: Bonnie Speir <bonnie@frslegal.com>
Sent: Thursday, February 02, 2017 10:20 AM
To: Limited License Legal Technician
Subject: New practice areas for LLTs

Follow Up Flag: Follow up
Flag Status: Completed

I confess I do not understand the Bar Association's apparent desire to shift work traditionally done by lawyers to non-lawyers. Solo practitioners and small firms are already hard pressed to stay afloat. Yet our bar dues go up. I wonder how many lawyers regret having gone into debt to obtain a legal education now when LLLT's can siphon clients away without worrying about heavy student loan debt. It is amazing to me that the Bar Association welcomed this new world and now wants to expand it. It feels as if I am paying dues to an organization actively working to eliminate my clients.

Bonnie Speir

Ellen Reed

From: Bruce Thompson <bruce@btelderlaw.com>
Sent: Thursday, February 02, 2017 10:35 AM
To: Limited License Legal Technician
Subject: LLLT estate planning proposal

Follow Up Flag: Follow up
Flag Status: Completed

This is very concerning. Non taxable estate can be as large as $5.4M for federal estate tax and over $2 Million for WA inheritance tax. Just because an estate isn't taxable doesn't mean that there are not significant complicated questions.

Almost all of my planning practice is "non taxable estates". I regularly have people call me and they frequently say, "all I need is a simple will". For years, at CLE's the bar stresses how complicated planning is and while there are short wills, there are no simple wills. The longer I practice the more issues I spot.

By dumbing down planning the WSBA is perpetuating the myth that lawyers are overpriced for no good reason.

There is the perception that "this ship has sailed" and the WSBA is actively using our dues and our resources to sabotage the economic interests of lawyers. I hope not but sadly it appears so.

Bruce
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WSBA 29026

Ellen Reed

From: Carla Higginson <carla@higginsonbeyer.com>
Sent: Monday, February 13, 2017 8:08 PM
To: Sara D. Longley
Cc: Elder Law Section; steve@crosslandlaw.net; Limited License Legal Technician; Supreme@courts.wa.gov
Subject: Re: [elder-law-section] Expansion of LLLT Program into Estate Planning

Follow Up Flag: Follow up
Flag Status: Completed

Sara, this is very well stated. I have been in practice in Friday Harbor since 1980 and could not agree more with what you say. Carla Higginson

Sent from my iPhone

On Feb 13, 2017, at 7:39 PM, author.nameemail <elder-law-section@list.wsba.org> wrote:

> Dear Mr. Kirkevold,
>
> Thank you for your hard work on behalf of our section and in turn our clients. I am very concerned about including estate planning in the list of services that may be provided by LLLTs. I believe this is an area of law that appears deceptively simple, but just as every other area of law presents many pitfalls for the less knowledgeable.
>
> Attached is my letter opposing expansion of the LLLT services.
>
> Best,
> Sara
>
> <image001.jpg>
> Sara D. Longley, J.D., LL.M.
> Attorney at Law
>
> 1734 NW Market Street
> Seattle, WA 98107
> (206) 434-5644
> Sara@longley-law.pro
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To receive the Daily Digest format, send an email to: digest-elder-law-section@list.wsba.org.

If you wish to unsubscribe, please contact the WSBA List Administrator.

<02132017 Letter opposing LLLT expansion.pdf>

Ellen Reed

From: Carole A. Grayson <cag8@uw.edu>
Sent: Wednesday, February 01, 2017 5:42 PM
To: Limited License Legal Technician; section-leaders@list.wsba.org; Steve Crossland
Subject: Concern about potential expansion of LLLT practice into "Estate and Healthcare Law"

Follow Up Flag: Follow up
Flag Status: Completed

1. I learned from a mass email sent today, February 1, by WSBA Governor Dan Bridges that "The LLLT Board anticipates submitting the proposed second practice area [of Estate and Healthcare Law] to the Supreme Court in March and welcomes further input".

   Did the LLLT Board seek input from the 28 WSBA sections -- and especially the Elder Law Section, Real Property, Probate, and Trust Section, and Health Law Section -- before moving forward with this anticipated course of action in March?

   I understand that LLLTs are supposed to enhance access to justice for Washington residents.

   I disagree with expanding LLLT practice from solely domestic relations to the proposed new practice area called "Estate and Healthcare Law". As a lawyer who has supervised slightly over 100 Rule 9 Licensed Legal Interns over the past 16 years at UW Student Legal Services, I have witnessed all manner of errors made by these highly schooled and highly motivated 3rd year law students. Fortunately, their errors have been promptly remediable by close attorney supervision. I also served on WSBA's Rule 9 Task Force. The Supreme Court amended Rule 9, consistent with our recommendations, effective January 1, 2014.

   Allowing nonlawyers to function as LLLTs, without meaningful lawyer supervision, continues to trouble me. An "Estate and Healthcare Law" LLLT can harm the public, especially financially and emotionally. Years ago, some lawyers began referring to estate planning as "the new family law", i.e., an acrimonious, challenging area of practice.

2. Despite my misgivings regarding LLLTs, I would support extending their limited license to one new area: landlord-tenant law. Advocacy by laypersons and community organizations on behalf of tenants has existed for some time in administrative forums, especially in public housing authority matters. Allowing LLLTs to engage in the limited practice of law on behalf of tenants in administrative and court matters would not be unreasonable. I encourage the New Practice Area Committee of the LLLT Board to look into this possible expansion of LLLT practice.

UNIVERSITY of WASHINGTON

Carole

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Ellen Reed

From: David A. Roberts <nklaw1@gmail.com>
Sent: Thursday, February 16, 2017 10:28 AM
To: Limited License Legal Technician
Cc: elder-law-section@list.wsba.org
Subject: LLLT in estate planning - This is a bad idea

Follow Up Flag: Follow up
Flag Status: Completed

Dear WSBA Elder Law Section:

The effort to allow LLLTs to practice in the estate planning area should be abandoned, or at least significantly modified to require attorney supervision of the LLLT. I have practiced law in Washington for over 22 years, mostly in estate planning, probate and real estate. Estate planning is too complex, with its tendrils reaching into many other areas of law, to allow an LLLT sole discretion over advising clients. The downside for clients is enormous. I agree with the opinions stated in the many letters you have received opposing LLLT practice in this area, including the letters from attorneys Sara D. Longley, Lucinda M. Dunlap, Dewey Weddle, Deane W. Minor and others. Thank you for your consideration.

Please forward this email to all involved in deciding the fate of this proposed LLLT program.

Sincerely,

David A. Roberts
WSBA #24247

--
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(360) 297-5298 - fax

Ellen Reed

From: Deane Minor <Deane@tuohyminor.com>
Sent: Friday, February 03, 2017 8:07 AM
To: Limited License Legal Technician
Subject: Estate planning

Follow Up Flag: Follow up
Flag Status: Completed

The prospect for fraud is huge. I wonder if the LLLT folks would be up to task. One way to fight fraud (by children of clients, mostly) would be lots of role playing practice. You could ask practitioners for case scenarios we've dealt with.
Deane W Minor. #12756
Sent from my iPhone

Ellen Reed

From: A. Stevens Quigley <quigley@attorneydude.com>
Sent: Tuesday, February 14, 2017 12:45 PM
To: Limited License Legal Technician

Follow Up Flag: Follow up
Flag Status: Completed

Dear Sir or Madam –

I was not bothered by limited practitioners handling real estate transactions. Historically, Washington lawyers have not been much involved in real estate closings, and the documents are fairly straight-forward.

I am a senior lawyer, so I do not have any turf to protect. I am troubled by limited practitioners in estate planning and marriage dissolution matters.

I have drafted and have probated a lot of wills. As opposed to statutory warranty deed, deeds of trust, and so on in the real estate realm, I have found that no two wills are alike. It is almost impossible to systematize their drafting. Frankly, it takes a law school education to have the knowledge to know the factual nuances. Of course, this same concern applies to other death transfers—community property agreements, deeds on death, etc.

In the course of my practice, I have looked at many marriage dissolution decrees. For the most part, pro se decrees do not fully deal with all pertinent issues. Again, the parties just are not sensitive as to what needs to be dealt with. I think this concern applies to many other aspects of a marriage dissolution proceeding. Someone with a law school education needs to oversee the drafting of these documents.

I suspect that licensing limited practitioners may actually generate more problems than are solved. People frequently come to me to resolve oversights in legal drafting. I suspect those problems would continue with limited practitioners involved.

With estate plans and marriage dissolutions, one is dealing the totality of a person's assets and liabilities (amongst other matters). This is much different from a single real estate transaction. The complexities are too many and the consequences are too great to have the matters handled without law school training.

-- A. Stevens Quigley #5787

WASHINGTON STATE BAR ASSOCIATION
Health Law Section

February 16, 2017

Mr. Stephen R. Crossland
Chair Person, WSBA Limited License Legal Technician Board
Sent via Email to sleve@crosslandlaw.net and LLLT@wsba.org

Ms. Susan L. Carlson
Supreme Court Clerk
P.O. Box 40929
Olympia, WA 98504-0929
Sent via First Class Mail

Re: Limited License Legal Technicians and Healthcare Law

Dear Mr. Crossland and Ms. Carlson:

The Health Law Section (the "Section") of the Washington State Bar Association submits the comments below on the proposed expansion of Limited License Legal Technicians ("LLLT") into the practice area of "Estate and Healthcare Law" as outlined in the Memorandum dated January 9, 2017 from the LLLT Board to the WSBA Board of Governors (the "Memo").

Initially, our evaluation and comments have been significantly hampered by the lack of readily available information on the proposed expanded scope of practice. The only significant information located on the LLLT's web site is the Memo. The Memo describes the expanded scope of practice using a table with columns for the "Scope" and corresponding "Permitted Actions," but it is unclear if this table represents rough concepts or will be used in crafting the actual language for the amendment to Court Rule APR 28. Further, the Memo does not define the problems the proposed practice expansion attempts to address. Without a definition of the problems, any comment on whether the proposal will accomplish the goals is impossible.

Presumably, the LLLT Board will use the Permitted Actions for the various Scopes in the Memo in drafting a proposed amendment to Court Rule APR 28, but as it stands, these items contain substantial ambiguities that raise serious concerns. For example, the Permitted Actions do not identify the possible clients. The phrase "Representation in administrative hearings (where not prohibited by agency rules and regulations)" seems to include representing any type of client (i.e., consumer, hospital, medical practice, health care provider, etc.) at any administrative hearing as long as there is some relationship to "Government Benefits." As another example, "Negotiation and document preparation for applications, denials, disputes, and overpayments for social security benefits, Medicare, home health care, long term care, and other government benefit programs" could be interpreted broadly (i.e., an LLLT may represent a payer

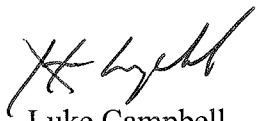
in disputes with consumers, a provider regarding disenrollment from Medicare, a medical practice debating whether it has criminal liability if it does not return a Medicare overpayment, etc.). Without a clear understanding of the intended scope of practice, the Section reserves comment on whether the LLLT's can provide competent legal advice in the expanded scope of practice. The Permitted Actions should be crafted to remove ambiguity (i.e., identify the clients as individual consumers, etc.) and appropriately target the scope at the unmet legal needs that LLLTs actually can fill.

The label of "Healthcare Law" seems overly broad and potentially misleading. If the focus is on individual consumers, we suggest a more appropriate label is "Estate Planning and Consumer Healthcare Law".

Of course, the Section leadership's comments do not raise all the concerns expressed by the Section members. For example, we heard concerns from our members that many attorneys are in fact providing the services targeted by the expanded practice scope at competitive rates, and that the primary problem is not the lack of professionals, but instead, is the basic cost that any professional has to cover (whether an LLLT or attorney) in competently providing these services. Some expressed concern that the three Washington law schools produce an ample supply (and, perhaps, an oversupply) of attorneys for the market, and that the proposed LLLT practice expansion seemed to put unfair pressure on attorneys who attended three years of law school (in addition to an undergraduate degree) at substantial personal cost in the form of tuition, lost earnings, and student loans.

While the Section has concerns about the implementation of LLLTs in the practice area of Healthcare Law, if the implementation is proceeding, we believe our participation in the process is necessary and beneficial. Our Section members have invaluable subject matter expertise and experience that is of critical benefit to the LLLT Board as it makes decisions about the scope of practice and training of LLLTs in Healthcare Law. We invite that the LLLT Board contact us to discuss our involvement in this process.

Sincerely,



Luke Campbell
Treasurer, Health Law Section
Washington State Bar Association

Montgomery Purdue Blankinship & Austin PLLC
701 Fifth Avenue, Suite 5500
Seattle, WA 98104

cc: Rajeev Majumdar, Board of Governors Liaison to the Health Law Section (via email: rajeev@northwhatcomlaw.com)
Andrew Jarmon, Board of Governors Liaison to the LLLT Board (via email:ajarmon@jarmonlaw.net)
Health Law Section Members (via email: healthlaw-section@list.wsba.org)

Ellen Reed

From: Jamia Burns <jamia@jamiaburnslaw.com>
Sent: Wednesday, February 08, 2017 7:01 PM
To: Limited License Legal Technician
Subject: Limited license legal technician - Estate Planning

Follow Up Flag: Follow up
Flag Status: Completed

Dear WSBA,

It would not be in the best interest of the residents of Washington State to allow LLLT's to prepare wills. Wills should be carefully crafted to reflect the needs of the particular client. In my Estate Planning practice, I find that my clients needs vary greatly and a "one size fits all" form would rarely be appropriate. An LLLT is not qualified to discuss all of the estate planning options, including revocable trusts, irrevocable trusts, and special needs trusts. Without the proper guidance, a client could end up with a basic will that does not meet their needs. Estate planning is extremely complicated, when done properly.

Respectfully,

Jamia S. Burns
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Ellen Reed

From: janet@elderlawwithcare.com
Sent: Wednesday, February 08, 2017 11:08 AM
To: Limited License Legal Technician
Cc: elder-law-section@list.wsba.org
Subject: Estate and Health Care Law Proposal

Follow Up Flag: Follow up
Flag Status: Completed

Dear WSBA Board of Governors,

I am an Elder Law attorney and I work exclusively in the areas of guardianship, estate planning and Medicaid planning. I reviewed the proposal regarding LLLTs providing these services, and was horrified at the thought of our elderly population and their families receiving these services without careful and knowledgeable legal advice. It has been my experience for several years that most attorneys are not at all familiar with the intricacies of these areas of law. There are several online and other quick fixes out there that can cause significant unanticipated consequences. Competent legal advice is crucial to these clients.

In an attempt to familiarize people with the complexities involved, I participate in as much information as I can provide for attorneys, other professionals, and the general population; and I am contacted several times a week by other attorneys with related questions. And still, a huge amount of my time is spent undoing mistakes made in estate planning, guardianships, and attempts at Medicaid eligibility. There is no financial gain to me to object to non-lawyers providing these types of services. A significant portion of my firm's income comes from correcting unfortunate mistakes and dealing with financial entities who will not accept boilerplate documents. The more mistakes that are made by non-lawyers just increase my job security. But it is not fair or helpful to the elderly population or their families to offer up individuals who cannot give them needed legal advice and potentially cause such damaging consequences. Adequate services in these areas are not accomplished by help with merely filling out forms. If that were the case, Legal Zoom, washingtonlawhelp.org and court websites would take care of most people. For an aging population, estate planning, Medicaid and guardianship are all intertwined. It is not possible for legal technicians to provide services that will adequately benefit people unless they are also giving legal advice.

All of this essentially boils down to care for vulnerable people - getting it, paying for it and keeping everyone safe. One phrase in a document that would work for most people can cause someone in another set of circumstances severe financial and emotional consequences. Rather then access to justice, this proposal is a disservice to our aging and vulnerable population. It is just another quick fix.

If people are going to use non-lawyers to address these complex issues on standard forms and without legal advice, they are at risk of future financial and emotional harm. Why is our association participating in this problem? It is hard enough to get most clients to work on preparing an appropriate estate plan. It is almost impossible to get people to plan for a chronic illness and issues inherent with that scenario. Legal technicians certainly have a place in the legal world, but this proposal is not it.

Janet McClanahan Moody
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Ellen Reed

From: Jessica Beck <jessica@kruegerbecklaw.com>
Sent: Wednesday, February 15, 2017 3:14 PM
To: Limited License Legal Technician
Subject: LLLT New Practice Area

Follow Up Flag: Follow up
Flag Status: Completed

Dear Bar Association,

Unfortunately I will be unable to attend the webcast and town hall regarding the expansion of the LLLT program into the new practice area of "Estate and Healthcare Law." Like many of my colleagues, I understand the need to provide affordable legal services and access to justice, which is why I volunteer with organizations that provide pro bono legal services to those who need them most. In 2014, ELAP (Eastside Legal Assistance Program) honored me as their volunteer of the year. I don't mention this to earn praise, but to illustrate my commitment to providing pro bono estate planning services.

The discussion around adopting this new practice area, particularly around allowing legal technicians to draft and execute Wills, Powers of Attorney, and other estate planning documents, gives rise to many serious concerns I have about the well-being of the clients who would be served by legal technicians practicing in this area.

Since graduating law school in 2011 I have been serving clients exclusively in the areas of estate planning and probate. In my relatively short time as an attorney I have served all types of estate planning clients, from the pro bono client who has no assets to the high net worth client. Each client, even those with little to no assets, presents a unique set of circumstances that a practitioner must be able to evaluate and competently address, drawing, sometimes, on knowledge of many areas of law, not just family law and estate planning concepts.

In fact, I have found that many of my pro bono clients bring complex estate planning problems that rival those of my high net worth clients, not because of the tax and asset issues they present, but because of the complex family dynamics, international/immigration issues, capacity issues, and many other issues they bring when they come to me to draft a "simple Will." I would argue there is no such thing as a simple Will, no such thing as a client whose needs can be filled by a form, and no such thing as an estate planning client who can be adequately be served by someone who does not have a law degree. I've seen the results of Wills drafted online or without proper legal advice, and I've been party to the Will Contests and acrimonious probates that result, which give rise to much higher legal fees and permanently tear families apart.

The cost of malpractice insurance for an estate planning practitioner is so high not because of insurance company greed, but because of the lasting affect our work has on our clients and because of the complexity of the issues we deal with and advise clients on. I ask that you reconsider allowing legal technicians to practice in this area of law, for the reasons above and many more.

Respectfully,

Jessica Beck
WSBA #44185

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Ellen Reed

From: Jill E. Bliss <jbliss@hsblawyers.com>
Sent: Wednesday, February 15, 2017 8:52 AM
To: Limited License Legal Technician
Subject: Limited Legal License Technicians

Follow Up Flag: Follow up
Flag Status: Completed

Dear Bar Association- I was hoping to attend this afternoon's webcast of the discussion of proposal LLLT for Estate Planning, but have ended up with a schedule conflict. I have practiced law since 1988, primarily in the Estate Planning/Probate arena. I handle "Mom and Pop" Wills and also complex and taxable estates.

The Bar Association's new proposal gives rise to serious concerns about the best interests of the clients. In my almost 30 years of practice, I have seen hundreds of Wills and Estate Planning documents and many of those drafted by other counsel. While the majority of Wills or Estate Planning documents will meet the legal standard of care, I have found that several have not been drafted with the necessary care required of counsel. These Wills have led to family disputes and in a few cases have cost families thousands of hours of heartache, not to mention the thousands of dollars expended to resolve differences in Wills that are drafted with ambiguous terms. Crafting estate planning documents is a technical art and even the most simple of Wills take the care and in depth client discussion involving: 1) determining what the client desires; 2) anticipating future complications with those desires; 3) working through the "what if's" with the client; 4) dealing with real estate (and many times complex title concerns because prior deeds have interfered or convoluted title to real property); 4) identification of charitable organizations and if a charitable arm is part of such organization (we spend a fair amount of time checking on this issue before drafting Wills); 5) determining if there is an estate tax issue; 6) dealing with multi-state properties; and most importantly 7) having the experience to properly craft a Last Will to meet the client's needs and desires.

I have, myself, been guilty of crafting a less than perfect Last Will that did not precisely address the "what if" circumstances. I'd like to believe that I no longer make those mistakes after years of practice, but none of us are perfect. However, I am strongly convinced that nothing short of a legal education will allow for the precise drafting necessary to effectuate even the most simple of Wills. As I tell my staff and law clerk, "There is no such thing as a legal form." Each form must be carefully tailored to the client. I am less than confident that the training necessary to consistently draft quality estate planning documents comes from Bar training in a discrete area of law, but rather the law school experience. On a daily basis, I draw from my knowledge of real estate, community property, business law, taxation and the like to carefully craft estate planning documents.

With all due respect, I have little confidence that a Limited License Technician has the ability and breath of legal knowledge to draw upon the lessons learned in law school to consistently craft estate planning documents for clients. Further, every lawyer experiences the "springboard effect" where a client meeting ends up delving into areas of law that do not directly address a Last Will, but that tangentially relate to the planning. I do not believe that a client can be well served by a LLLT's advise in those tangential areas. Isn't it really the client that we are worried about here?

I will also state, that while I am generally opposed to LLLT in the domestic relations area for many of the reasons described above, I believe that this area of practice is more formed up, so to speak, with the FamilySoft computer program. (Although as I stated previously, there is no such thing as a legal form). This limited license is here to stay, and we must deal with it. But, estate planning is much different because estate planning documents endure the test of time and are with our clients for years, not just during a discrete period of time during a dissolution proceeding. We must plan with flexibility and intelligence for our client's future- this takes a trained professional's consideration of many areas of law.

I understand the need for affordable legal services and access to justice. I believe that the Bar would have an interest in making sure that clients receive both an affordable option, along with competent legal advice. Perhaps there is another way to "skin this cat," by engaging in Affordable Estate Planning Clinics where lawyers can volunteer to draft at least 5 low cost or no-cost Wills per year. I would gladly take that pledge. I would also gladly work on a program to make that happen.

Thank you for your kind consideration and I am happy to discuss my comments further, as I recognize that a simple email does not envelop all that needs discussion in this arena.
Best,
Jill Bliss

Jill E. Bliss

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Ellen Reed

From: Joe Scalone <JoeScalone5000@LIVE.COM>
Sent: Thursday, February 02, 2017 11:23 AM
To: Limited License Legal Technician
Subject: New practice area for LLLTs, "Estate and Healthcare Law."

Follow Up Flag: Follow up
Flag Status: Completed

LLLT Board

I strongly support the proposed new practice area for LLLTs, "Estate and Healthcare Law."

I feel responsible for legal technicians in Washington. In the early 1990s I made a similar proposal to the WSBA. It was summarily rejected. So I wrote to the Washington State Supreme Court under rule GR 9 and asked them to change their rules. The Court wrote a letter to the Bar asking them to consider my suggestions. The Bar formed a committee and asked me to testify. I convinced the committee to move forward, after voting in my favor by one vote, on the consideration of licensing legal technicians. After many years of wrangling, we now have licensed legal technicians.

My practice at the time was estate planning law. I wrote thousands of wills, trusts and other estate planning documents. I noticed that many folks needed, but could not afford estate planning. It is about time that we progressed our rules in this area toward providing affordable, high quality legal services for more citizens of our great state. I applaud the effort and fully support the practice area.

Regards

Joe Scalone
Joescalone5000@live.com
(425) 213-9120
LinkedIn: https://www.linkedin.com/in/joescalone
Twitter: https://twitter.com/jscalone
Blog: http://focusthetelescopes.blogspot.com/

Ellen Reed

From: john@panesko.com
Sent: Sunday, February 12, 2017 11:23 AM
To: Steve@CrosslandLaw.net; Limited License Legal Technician
Subject: LLLTs writing wills/trusts

Mr. Crossland & Board members:

I am a small-town attorney with low-income clients. The LLLT proposal for estate planning has good intentions but it creates huge problems that will hurt people. LLLTs might accurately help clients sign powers of attorney, but letting them draft wills and trusts is recklessly dangerous. The LLLTs would have to deal with these minefields:

1. If there are children from a prior marriage, what do you write to protect their inheritance from claims of the spouse? Can you then ethically write an estate plan for the spouse?

2. If there are Medicaid eligibility issues on the horizon, what kinds of legal ownership should be considered to best prepare the client's assets for that transition?

3. If the client wants her Boeing IRA to go to her new husband, does Washington's "super-will" provision overrule the existing IRA beneficiary designation?

4. If any of the client's heirs are on disability programs which would be disrupted by the inheritance, what legal options avoid such disruption?

5. What provisions should be in place to protect the persons and estates of potential future children?

6. What options are available to avoid Washington estate tax and what are the current and future tax consequences of each option?

7. If the client has significant ownership or management of an on-going business, what documents are needed to deal with death or disability?

8. If the clients only want to pay for two wills that leave part of each estate to their (separate) children, and they think they signed a community property agreement, do you write the wills?

9. If the wife signed a prenuptial agreement years ago, how will it impact her proposed estate plan?

10. If newly-married clients both signed to refinanced "his" house, how does he leave the house to just his kids, not to his spouse or her kids?

To draft a will/trust you need to know family law, medicaid law, conflicts with federal law, disability law, guardianship law, tax law, divorce law, and business law in addition to

estate law. The clients' total lifetime wealth is at risk if you don't have all the right answers. One mistake and lives are ruined. Estate planning ain't Tiddly-Winks.

Mistakes by LLLTs "licensed by the Washington Supreme Court" will reflect on all lawyers in this field. It's like putting high school players on the Seahawks team. The good players will look bad because of the mistakes of those who aren't equipped do the job. You will hurt us all.

I write testamentary trusts for $199, so I'm not afraid of the low-cost competition. I care about the people in my town; they're my friends and neighbors. Telling them to trust LLLTs to write their estate plans is outrageously reckless of you. I've reviewed hundreds of wills and trusts written by lawyers and far too many of them have problems caused by lack of knowledge. Bringing LLLTs into this field makes the situation worse, not better.

When low-income clients come in crying with estates screwed up by LLLTs, can I give them your phone numbers so you will fix their problems?

John Panesko, #5898
Chehalis, WA

Ellen Reed

From: Judith A. Maier <jmaier@omnitekwa.com>
Sent: Wednesday, February 08, 2017 11:23 AM
To: email
Cc: Limited License Legal Technician
Subject: RE: An Update from WSBA Board Governor Christina A. Meserve

Follow Up Flag: Follow up
Flag Status: Completed

Christine,

I just received your email. First, thank you for providing it. It was, indeed, enlightening. After reading it, I am appalled by two proposals.

The first is the rule change to permit LLLTs to appear in court on behalf of their clients. A mere 1-year program that has very little, if any, focus, on court appearances and nearly none on oral advocacy or written advocacy is poor preparation for one to appear in court on behalf of any client. This further erodes the practice of Family Law and the attorneys who have spent countless amounts of money, time, and effort to succeed in law school and to pass a bar exam both of which demand far more than a mere 1 year of online study. (It is my understanding that the ABA looks without favor on online programs and in fact, will not even approve an online paralegal program, and for very good reasons. So why would we think that this online preparation is even acceptable?) This is unacceptable to the profession of law. Further, the low enrollment in the LLLT program thus far, coupled with the less than stellar performance of those students on the final exam, followed by the even lower number of LLLTs who have actually entered "practice" demonstrates that this is program has not been successful and that its chances of success in the future are dim at best. To consider expanding it is pure folly! To say that I am against this proposal is an understatement, and I would expect that the Family Law Bar feels as I do. Not only is this an intrusion in to their livelihoods, it foists incompetent individuals on an unknowing and unprepared public at possibly one of the most vulnerable times in their lives.

Second, to even think for a moment that a 1-year, online prepared individual could be capable of dispensing even the most basic of advice in the complex areas of Estate and Health Law is beyond my comprehension. I have an MBA and a JD; I have sufficient academic credits to sit for the CPA exam, and I have practiced in the area of Health Care Risk Management, and I would not consider practicing in these complex areas without first obtaining an LLM in those areas of law. What are you thinking? Foisting a 1-year "online trained", ill-prepared person on the public is doing the public no service at all and is, in fact, is doing the public a great disservice. I would be shocked if the Estate and Health Care Section was supporting this proposal. This is yet another intrusion into our livelihoods that lacks any possibility of actually helping the public and actually creates ample opportunities for harming it.

What has our profession come to? Is it willing to debase itself to this level in order to pander to the comments of the media? If we are serious as a profession about helping those in need, then we should be looking for ways to achieve it within our ranks, not by creating categories of para-individuals who are unsupervised and lack the requisite skill and knowledge to properly advise an unknowing client. Why would a prospective law school student even consider the expense and time of law school given that you are producing all of these para-individuals? We are already aware of the debt undertaken by the average law school student and the all too often lack of that student's ability to repay it. To further erode that student's earning capability by this nonsense is a grievous undertaking by those we have elected to represent us.

These two proposals deserve to be unanimously rejected by the Board. In fact, they should never have been given any time at all because they are not worthy of consideration.

Judith Maier, MBA, JD

From: WSBA [mailto:email@wsba.org]
Sent: Wednesday, February 8, 2017 9:35 AM
To: Judith A. Maier <jmaier@omnitekwa.com>
Subject: An Update from WSBA Board Governor Christina A. Meserve

The Board of Governors met in Spokane on January 26 & 27. Our meeting was held at the Hemmingson Center on the Gonzaga campus, where we were welcomed by Law School Dean Jane Korn. Gonzaga has four alumni on the Board of Governors, and we were joined at the meeting by several local practitioners.

Local Hero Award. The WSBA's Local Hero Award was given to retired Superior Court Judge Gregory Sypolt. Judge Sypolt was unable to attend but the award was accepted on his behalf by his wife, Molly, and his longtime judicial assistant, Karen Bachmeier.

Section Bylaws. In September, a number of changes were made to the WSBA Bylaws. Article XI, however, was deferred to the November meeting and then deferred again to January. The Bylaw Amendments are the result of the recommendations of the Sections Workgroup. The primary goal of the amendments is to standardize policies regarding officers, executive committee member terms, and elections. While the original recommendations of the Sections Workgroup were made without section involvement, the reconstituted workgroup had representation from large, medium, and small sections. Just as a reminder, approximately 10,000 of the Bar's 38,000 members belong to one or more sections.

Limited License Legal Technicians (LLLTs). The LLLT Board chair introduced a second proposed practice area for LLLTs, "Estate and Health Care Law". Section leadership in the Elder Law section had been advised that this was coming before the Board of Governors for information. The LLLT Board anticipates submitting the proposed second practice area to the Supreme Court in March. Additional input from members will undoubtedly be provided. More information is may be found at www.wsba.org/LLLT and comments may be emailed to LLLT@wsba.org..

As part of the Executive Director's report, we were also advised that there are proposed changes to the "prohibited acts" provisions for LLLTs who practice in family law. These came from the Family Law Advisory Committee of the LLLT Board. The proposal includes allowing LLLTs to appear in court.

Practice of Law Board. The Board of Governors heard from the chair of the Practice of Law Board and reviewed the Board's 2016 activities. The Practice of Law Board has a complicated history. At one point, the Supreme Court suspended its operations, then lifted the suspension provided that the Board focus on educating the public on how to receive competent legal assistance, recommend new avenues for non-lawyers to provide legal services, receive and refer complaints alleging the unauthorized practice of law, and draft advisory opinions.

Referendum on License Fees. In December, the WSBA received approximately 1,800 signatures on

a proposed referendum to roll back the license fees. The Supreme Court, in early January, issued an order that the 2018-2020 license fees were reasonable and that the proposed referendum was unreasonable. The issue then became whether the Board of Governors should instruct the WSBA to go forward with the referendum anyway. Given the cost ($10,000 plus staff time), and given that the vote results would be moot because of the court's order, the Board of Governors voted to not go forward with a vote. The Board of Governors is, however, interested in engaging with members on what programs, if any, can be eliminated as a cost-cutting measure.

Shifting Demographics. Day two of the meeting was dedicated to a generative discussion on the shifting demographics of our membership. Of the Bar's 38,000 members, 7,500 are ages 61-70 and another 8,400 are ages 51-60. Almost half of the Bar's membership will transition out of the practice in the next 10 to 15 years. We heard from members of the Senior Lawyer's Section (yes, that is a thing) about inactive license fees, emeritus license fees, and ways in which the WSBA can support retiring members.

Day of Remembrance. The Board of Governors passed a resolution for Day of Remembrance, in recognition of the 75th anniversary of executive order 9066, which resulted in the internment of more than 120,000 Japanese Americans. Lawyers and members of the public who fought the actions at the time as well as many years later to vacate unlawful convictions were recognized.

As always, if you have any questions or comments, please do not hesitate to contact me at meservebog@yahoo.com or at 360-943-6747.

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Please send an email to email@wsba.org with "limited" in the subject line.
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• Mandatory Continuing Legal Education (MCLE) reporting-related notifications
• Election materials (Board of Governors)
• Selected Executive Director and Board of Governors communications

Ellen Reed

From: June Weppler <wepplerlawfirm@gmail.com>
Sent: Thursday, February 09, 2017 7:36 AM
To: Limited License Legal Technician
Subject: Comments on LLLT

Follow Up Flag: Follow up
Flag Status: Completed

I personally know one LLLT, whose hourly rate is $175, I also know many attorneys who take in low bono clients for much lower rates than that. Many attorneys starting out solo have rates comparable to $175. This is the area that I have a problem. Attorneys with many more years of schooling, the bar exam, and an enormous student debt have to compete with LLLTs who are not substantially more affordable than attorneys. How does it benefit the public and the legal profession? Expanding LLLT's practice areas is fine, as long as their fees are capped to a level that is meaningful for people with limited means and does not directly compete with low bono/ newer attorneys.

--
June Shin Weppler
Attorney at Law

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Practice Areas:
Collaborative Family Law
Mediation
Estate Planning
Probate and Trust Administration

Ellen Reed

From: jelder81@gmail.com on behalf of Justin Elder <justinelderlaw@gmail.com>
Sent: Thursday, February 09, 2017 5:48 AM
To: Limited License Legal Technician
Subject: Terrible

Follow Up Flag: Follow up
Flag Status: Completed

Adding the estate and healthcare law LLLT is an awful idea. Consumers already devalue attorneys in this arena and LLLTs will only make this worse. Is the WSBA trying to make things MORE difficult for attorneys in these lean times? Shame on you.

Justin Elder

Ellen Reed

From: Kathryn Felice Peterson <Kathryn@smobrian.com>
Sent: Thursday, February 09, 2017 10:47 AM
To: Limited License Legal Technician
Subject: Concerns Regarding LLT Proposed Changes to Domestic Relations Practice Area

Follow Up Flag: Follow up
Flag Status: Completed

Dear Sir or Madam:

I am writing today to express my gave concerns about the committee-proposed changes to Washington's LLLT program.

As an initial matter, domestic relations law is complex and touches on a vast array of legal specialties including: taxation, real estate, international treaties, bankruptcy and immigration. In California, for example, family law is a legal specialty and the California State Bar requires **attorneys** to pass a certification exam (in addition to the bar exam) and take more continuing legal education than a general practitioner before holding themselves out as specializing in family law. Even becoming a paralegal in California requires a certificate program approved by the bar. And yet, the Washington committee is currently proposing that pretty much anybody should be able to handle a divorce from soup-to-nuts (as long as the case settles on the eve of trial).

Giving somebody a 45-credit course load and a webcast on civil procedure is woefully short of what is required to protect members of the public at any kind of negotiation or court appearance. Even at something as innocuous sounding as a calendaring hearing, other topics may be raised and a client's rights can be seriously affected.

Likening LLLT's to Nurse Practitioners (as the committee has done) is truly comparing apples and oranges. In Washington, an Advanced Registered Nurse Practitioner must have a bachelor's degree in addition to attending Nurse Practitioner's school which is 74 credits. The LLLT's in Washington are only required to go to a 2-year community college and then take 45-credits and some webcasts – before affecting a child's life – before putting somebody's personal liberty at stake. I concur that the proposed LLLT training should be sufficient to assist in form selection and preparation but it is not sufficient to practice law.

For these reasons, I have strong objections to the following committee-proposed changes:

LLLT's should not be attending ADR as this is negotiating on behalf of a client; negotiations of any kind should be limited to those licensed to practice of law.

LLLT's should not be permitted to appear in court under any circumstances, at any time. Of particular concern, is Protection Orders – where people's lives and livelihood are at stake. Likewise "enforcement of orders" includes Contempt Hearings which are quasi-criminal proceedings and personal liberty is at stake. It is not the case that having "some training" is better than no training at all. Indeed, the old adage that "a little knowledge is a dangerous thing" is more true than ever when we are talking about jail time and the safety of children.

In sum, the committee's proposal fails to recognize the complexity of family law and the rights and liberties at stake. The solution to a public need for representation are low-cost and no-cost legal clinics not unleashing under-trained quasi-lawyers into the court system.

Thank you for your time and consideration.

Kathryn F. Peterson
Attorney at Law
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OLYMPIA ESTATE LAW

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February 16, 2017

To: Steve R. Crossland, Chair of the LLLT Board
Ellen Reed, LLLT Program Lead
Susan L. Carlson, Clerk of the Supreme Court

Dear Mr. Crossland, Ms. Reed, and Madame Clerk:

I am writing to oppose the expansion of LLLTs into the area of Estate and Health Care Law.

As an attorney who is newer to this area of practice, I have spent (and continue to spend) many hours studying and attending CLEs to familiarize myself with the complexities facing our aging population, and consulting with attorney mentors. Allowing non-lawyers to assist clients with estate planning, long-term care planning, and guardianship is likely to lead clients to believe they are getting their affairs in order when, in fact, failing to consult with an attorney may cause them devastating financial loss and serious unintended consequences down the road.

Each client has a unique situation, and custom drafting must be considered for all clients. Many, if not most, of the clients who come in thinking their situation is "simple" are surprised by the number of issues they have never thought about before meeting with me. I fear for those who may go to see an LLLT, and leave with a set of "pre-approved" legal documents without the benefit of having an attorney evaluate their situation.

I urge you to not expand the LLLT program to this practice area, as I strongly believe that it would be a great disservice to our most vulnerable elders.

Sincerely,

Richelle Little
WSBA 39687

cc: Kameron Kirkevold, Chair of the WSBA Elder Law Section

ELG
ELDER LAW GROUP PLLC

February 9, 2017

Ellen Reed
LLLT Program Lead
Washington State Bar Association

Sent via Email to:
lllt@wsba.org and
ellenr@wsba.org

Re: LLLT "Estate & Healthcare Law" Practice Area Proposal

Dear Ms. Reed:

We are writing to express our grave concerns regarding the proposed expansion of the Limited License Legal Technician (LLLT) program into the area of "Estate & Healthcare Law." We are providing a copy of this letter to each Justice of the Washington State Supreme Court as well as the Chair of the LLLT Board and the Section Chairs of the WSBA Elder Law Section and WSBA Probates and Trusts Section. Our office practices exclusively in the area of Elder Law, including Estate Planning, Medicaid, and Probate Administration. Elder Law serves the needs of one of the most vulnerable segments of our population. These vulnerable adults are among those harmed the most if this proposal is approved and LLLTs are allowed to begin working in these legal areas.

We do not believe that there has been adequate discussion among members of the bar regarding the appropriateness of expanding the LLLT program to include this practice area. There has been no public forum for response, and the LLLT board has not openly solicited input (although input has been provided) by members and sections of the bar. In fact, only recently and after much pressure from the bar membership did the LLLT board announce that it is hosting a town hall meeting on February 15th, 2017. Therefore, we are writing to you directly to express our concerns regarding this new practice area for LLLTs.

Initially, we wish to share some general concerns regarding the necessity for LLLT service in these practice areas. The LLLT program exists to provide resources for persons who cannot afford a lawyer but do not qualify for legal aid programs. The program was developed in response to a problem identified in part by the Civil Legal Needs Study in 2003 (2003 CLNS), which was recently updated in 2015 (2015 Update).

That study identified areas of legal needs that affect the low and moderate income members of our community. In the original study, in households which had at least one legal problem in the previous year, Estate Planning constituted only 11.3% of those legal

problems. When the numbers were updated in 2014, that percentage was 17.2%. By contrast, housing issues and landlord/tenant disputes constituted 27.8% and 41.3%, respectively. (*2015 Update, pg 7*) Consumer and financial issues constituted 37.6% and 27.0%, respectively. (*2015 Update, pg 7*) In fact, of the areas listed, only education issues represented a smaller percentage of legal problems. (*2015 Update, pg 7*)

Additionally, the 2003 Legal Needs Study examined which groups of people were most likely to seek legal assistance and have those needs met. The attorney assistance rates were highest for Family Law, but Estates and Trusts were second on that list. That means that the needs of people who have estate and trust issues are being met at higher rates by attorneys than any area other than family law. (*2003 CLNS, pg 26*) Additionally, that study found that vulnerable seniors were the demographic most likely to receive attorney assistance, with all seniors as the fifth most likely demographic. (*2003 CLNS, pg 27*)

In short, both the 2003 Legal Needs Study and the 2015 update to that study show that the rate at which these issues are experienced by lower and middle income families in Washington is low. There is a much larger need for assistance in other areas, such as Housing, Health Care, and Employment. The LLLT program was created to grant more people the access to justice they need and deserve. This latest proposal area does not address those access to justice issues. A detailed and well-researched analysis of these studies and other data was provided to Steve Crossland, LLLT Board Chair, by the WSBA Elder Law Section in April 2016 (attached to this letter), but none of their concerns have been addressed.

Those members of our state who need assistance with Elder Law but do not have significant resources can seek free legal advice from Columbia Legal Services, Northwest Justice Program, University Legal Assistance, and other programs staffed by attorneys and providing pro bono services. Those same legal service programs routinely provide assistance with Vulnerable Adult Protective Orders and Guardianships.

If a person has resources such that those legal services agencies are unavailable to them, many lawyers will provide services that include individual attention and asset preservation assistance. Those persons who need that type of estate planning have the means to hire an attorney. Probates in the State of Washington are not required unless the estate contains real estate or more than $100,000 in directionless property. It is difficult to make a case that those estates cannot afford to pay attorney fees.

Many of our colleagues have written to express their concerns with regard to representation by non-lawyers where a person's civil rights can be affected, as in a Guardianship. Many have also written to express their apprehensions about Powers of Attorney prepared by non-lawyers, which documents cannot be corrected after a person loses capacity.

Our firm's greatest concern as Elder Law attorneys who focus on leveraging government benefits, however, is the proposal to allow LLLTs to handle Medicaid applications, denials, disputes, and hearings. Medicaid is an extraordinarily intricate and difficult area of practice. Even attorneys who practice regularly in Estate Planning and other areas of Elder Law often elect not to practice in the area of Medicaid benefits due to its complexity. There is far more involved than just filling out and submitting the application and obtaining benefits. Without proper planning, spouses can be impoverished and people who have very little can lose everything. The clearest way we can express these complications is to provide some examples from clients who came to us after having received assistance from a non-lawyer in applying for Medicaid.

1. **Virginia and Paul**: Virginia and Paul were a married couple with two properties: their home and a piece of land they purchased many years previously as an investment. This investment land had a value of approximately $50,000. Paul became very ill and was forced to move into a skilled nursing facility while Virginia remained in their home. Their estate was modest: a little bit of savings in the bank, their home, and the piece of investment land. A non-lawyer assisted them with the Medicaid application, which was approved. The non-lawyer was then done assisting the couple. Paul lived and received care in the skilled nursing facility for a long time, and the state perfected a TEFRA[1] lien on the properties in Virginia's and Paul's names. This included the investment property and their home, in which Virginia still lived. Paul's income was paid almost entirely to the facility for his care, so Virginia eventually needed to sell the other property to pay her living expenses. When she sold the investment property, the State received the sale proceeds to satisfy the TEFRA lien, so Virginia was left with nothing from the sale. If the Medicaid application had been done by a skilled Elder Law attorney, all of the property owned by Paul and Virginia would have been transferred out of Paul's name before or immediately after Medicaid approval. Virginia would have been able to keep the money she desperately needed from the sale of the investment property that she desperately needed to pay her living expenses. By the time Virginia came to us, all we could do was help her to remove the remaining TEFRA lien on her home. The other money was gone, leaving her impoverished.

2. **Ed and Sally**: Ed and Sally had a little money in savings and their home. Sally fell ill and needed to move into a Skilled Nursing Facility while Ed remained at home. Sally and Ed went to a non-lawyer who prepared and filed a Medicaid application for them. Ed did not want to live in their home without his wife and planned to move to an apartment and sell their family home. After Sally was approved for Medicaid, Ed moved out of the family home and sold it. The non-lawyer did not advise Ed and Sally that the home should be transferred to Ed after Medicaid approval. Thus, once the home sold, half of the proceeds belonged to Sally. Sally was suddenly over-resourced for Medicaid and lost her benefits. Sally and Ed came to us for help at this point. We had to reapply for Sally's benefits, but

[1] TEFRA: Tax Equity and Fiscal Responsibility Act – a law which enables, under certain circumstances, Medicaid to place a lien on a Medicaid recipient's real property even during the Medicaid recipient's lifetime.

now that the couple had the proceeds from the sale of their home in the bank, Sally was not financially eligible for Medicaid benefits. Ed therefore was forced to purchase a single premium immediate annuity that paid out over five years, depriving him of the management of his assets and subjecting them to possible recovery by the State of Washington if he did not live that long. All of this extra work and loss of money was unnecessary, avoidable, and was the direct result of a non-lawyer preparing a Medicaid application without providing proper and thorough legal advice.

As a post-script, Ed did not survive the five year term of the annuity, so the state became the beneficiary, rather than their family.

3. **Ann**: The third example is a common one we see in our practice. Ann is an elderly widow who has lived at home but who now must move to an assisted living facility. Ann has worked hard and saved her money. Ann owns her home and has $250,000 in the bank. She has a retirement account out of which she takes required minimum distributions. Ann has two children, one of whom is a disabled adult with cerebral palsy named Jim. Jim has been disabled all of his life and is unable to work. He receives SSI income and Medicaid medical benefits. Jim is 45 years old. Ann has found an assisted living facility that will take Medicaid if she qualifies financially. Ann is reluctant to spend down all of the money she has saved because she had intended to leave it for Jim to help with his care needs. The Medicaid rules allow a gift to a disabled child that will not interfere with Medicaid benefits. Therefore, Ann knows she can give the money and the house to Jim. Ann finds a non-lawyer who can assist her with the Medicaid application. As part of the preparation of the application, the non-lawyer asks about gifts that Ann has made and properly discloses in the application that Ann gifted money and a home to her disabled son Jim. Ann is approved and begins receiving Medicaid benefits. However, Ann's needs have not actually been served. Jim, her disabled son, has now been gifted property that makes him ineligible for SSI income. As a result, Jim quickly spends through all of the money his mother gifted to him and is once again broke, with no increase in his quality of life. Ann's needs have not been served because she was seeking not only assisted living for herself, but to make life better for her disabled son.

Let us suppose instead that Ann learns that she can gift that money and the house to a *Medicaid compliant trust* for her disabled son's benefit. Ann goes to a non-lawyer to prepare the trust and apply for Medicaid for herself. The non-lawyer, acting in an Estate Planning capacity, prepares a trust or obtains an approved Trust form. Ann transfers her money and home and retirement to that Trust for Jim's benefit, and then applies for Medicaid. If that non-lawyer is an LLLT licensed under the proposal outlined for "Estate & Healthcare Law", he or she will have had courses in basic estate planning (for non-taxable estates) and Medicaid applications. He or she will not have learned about trusts, tax law, or retirement benefits. The non-lawyer will be responsible for analyzing the Trust to see if Ann's

retirement account will take a large tax hit and cost the trust thousands of dollars. The non-lawyer will be responsible for deciding if the trust is Medicaid compliant so that Ann's gift to that Trust will not make her ineligible for benefits for years with no money left to pay for her care. The non-lawyer will be responsible for ensuring that the Trust contains the proper provisions to prevent the loss of Jim's SSI benefits. In short, without any knowledge of trusts, taxes, retirement benefits, or needs-based benefits requirements, the non-lawyer has no way to differentiate between an effective Trust and a time-bomb. Ann could gift all her money and property to a Trust for the benefit of Jim, and they could *both* lose their government benefits.

These are just a few examples intended to illustrate the complexity of this area of the law. In all three situations, the answer to the client's problem seems simple but is actually very complicated. Not only would an LLLT have difficulty assisting these clients with their needs, but he or she would have difficulty even recognizing that the situation is beyond their ability. This lack of recognition is the most dangerous aspect of these situations.

Furthermore, the LLLT proposal does not even cover the area of Estate Recovery with respect to Medicaid benefits. Without examining possible Estate Recovery issues, it is not possible to provide competent counsel concerning Medicaid. Without a thorough understanding of the entire Medicaid process and proper planning to protect assets, clients could very easily lose everything. This is far too great a risk to take with our elderly and vulnerable population.

As a further testament to how complicated these areas of practice are, Seattle University has recently announced an LLM in Elder Law, showing that this material is difficult enough to warrant a Master of Laws degree. The courses offered for the degree are as follows:

- Understanding an Aging Population
- Representing an Aging Client
- Guardianship and Its Alternatives
- Public Benefits and the Elderly
- Elder Law
- Advanced Elder Law
- Trusts and Estates
- Trusts and Estates Drafting Lab
- Health Law and the Elderly
- Estate Planning
- Gift and Estate Tax
- Trusts and Estates Clinic
- Indian Trusts and Estates Clinic
- Community Property

Many of these Masters-level classes share concepts, work, and practice with the newly proposed LLLT area. These are not areas of work that can be undertaken without a thorough understanding of the consequences of any one action, be it in a non-taxable estate or a Medicaid application.

Proper Estate Planning – able to protect hard earned and saved assets – cannot be prepared purely with pre-approved forms. Applications for to provide Medicaid benefits for senior citizens must take into account so much more than the prima facie evidence of eligibility. The must consider the far-reaching consequences of every step of the the application, not only for the applicant but also their loved ones. As evidenced in the examples above, not doing so can very easily result in severe consequences, such as the impoverishment of a spouse or loss of benefits for a disabled child.

The danger inherent in the proposed LLLT expansion is not that clients will receive subpar advice regarding these issues. The real danger is the risk that clients will receive *incomplete* advice from someone who just isn't trained in or knowledgeable on the wide range of issues each case will present. The real danger is that the lack of issue spotting will be discovered too late.

This proposal involves great risk to some of the most vulnerable members of our state, and there is little information to suggest we need such a program in the first place. We have yet to see a study on the first LLLT area of practice (Family Law) and its successes and/or failures.

We respectfully request that the Court not approve this area of practice and instead urge the LLLT Board to expand the program to those areas of practice where the need is greatest.

Sincerely,

ELDER LAW GROUP PLLC

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February 15, 2017

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Ellen Reed, LLLT Program Lead
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: LLLT Program Expansion Proposal – Estate and Health Care

Dear Ms. Carlson and Ms. Reed:

I am a Washington attorney, formerly a chair of the Elder Law Section of the WSBA, a former clerk to Judges Jack Scholfield and Marshall Forrest of the Washington Court of Appeals (Division I), and a former clerk to Judge Barbara Rothstein of the US District Court.

I write in my personal capacity as an attorney who practices in the area of elder law and healthcare, including estate planning, probate, guardianship, and trusts and estates, and related litigation. I have served as guardian ad litem numerous times in guardianship and estate matters, and have been involved in many contested court cases in superior court in Washington. I am toward the end of my practice, and thus my position expressed here would have little or no pecuniary impact on my practice.

The new areas of law proposed for Estate and Healthcare Limited License Legal Technicians are very complicated. Here are some of my notes as to each category:

Estate planning	I have litigated a number of wills. Wills can be improperly drafted, or badly executed in many ways. The use of forms will not avoid these problems. Whether to use transfer on death deeds and beneficiary designations is not straightforward – it involves careful analysis of the client's wishes and circumstances, considering taxes, tax basis, applicability or not of trusts (revocable or irrevocable), apportionment, Medicaid planning, special needs issues, changeable circumstances, capacity, and potential for abuse or undue influence. Community property agreements are tantalizing to the uninformed; often dangerous; and are rarely (albeit sometimes) beneficial.

Probate on non-taxable estates	I have been involved in many litigated probate disputes. A "non-taxable" estate may be worth millions of dollars. Agreed and uncontested orders are possible and are commonly used, but involve careful consideration of who the parties are, how served, what matters are addressed and careful wording that involves tax considerations, creditor rights, indemnity clauses, and scope of representation, to name a few. Lawyers have to puzzle their way through these issues, beginning with "who do I represent?" Would "agreed and uncontested orders" include TEDRA agreements? TEDRA agreements are often complicated.
Powers of attorney	I have testified in court on an abusive use of a power of attorney where the abuser went to prison. Prosecutors say that powers of attorney are too powerful, and often become the document of choice for financial abusers. Especially with the new power of attorney statute, RCW 11.125, powers of attorney are not straightforward. Use of a "form" may work some of the time, but forms are dangerous because they cannot address the gift, liability, tax, and abuse issues that vary from case to case.
Guardianships	Guardianships are often "uncontested". They are also a hot topic in the public eye, and the perennial subject of legislative proposals. Guardianships can serve inappropriately as mini will contests. I have litigated many guardianship matters, including with a jury. Some began as "uncontested". Generally, guardianships are to be avoided, but how and why must to be carefully thought out, something best done by an attorney with a broad range of experience in trusts and other elder law issues.
VAPO	I have litigated VAPO matters. These have real consequences, including the possible complete loss of a person's right to inherit under the slayer statute, or their right to their livelihood.
Government Benefits	I used to practice Medicaid law, but no longer do so because of complexity and ever changing nature of governmental benefits. This is not an area for non lawyer technicians.
Health Insurance	In this category, I express no opinion, as it may indeed be an area that a technician can practice in.

Thank you.

Sincerely,

Karl L. Flaccus

Ellen Reed

From: Kremer, Lisa <LKremer@gth-law.com>
Sent: Wednesday, February 08, 2017 3:11 PM
To: Limited License Legal Technician
Subject: FW: An Update from WSBA Board Governor Christina A. Meserve

Follow Up Flag: Follow up
Flag Status: Completed

Lisa Kremer
Attorney at Law
T 253 620 6429
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From: Kremer, Lisa
Sent: Wednesday, February 08, 2017 10:05 AM
To: 'WSBA'
Cc: 'ctm@olylaw.com'; 'meservebog@yahoo.com'
Subject: RE: An Update from WSBA Board Governor Christina A. Meserve

Ms. Meserve,
I am extremely disappointed that your email did not say that the Elder Law Section is opposed to the LLLT proposed practice area of Estate Planning, rather than just that we have been informed. I am extremely disappointed that the WSBA website does not appear to have the Elder Law Section's letters posted. For your assistance, here is the link to the Elder Law Section's letters regarding this unwise proposal:
http://www.wsba.org/Legal-Community/Sections/Elder-Law-Section/Announcements

As a probate litigator, I am well aware of the damage poor planning can wreak on families after a loved one has died. The Elder Law Section's position is summed up in Carla Calogero's April 13, 2016 letter to Stephen Crossland and Susan Carlson: "The preference of the Section is that instead of authorizing non-attorneys to practice in the complex areas of Elder Law, efforts should be made to support increased funding for legal aid organizations, reduced rate services, pro bono programs, and law school clinics. Unlike the limited license practicioner proposal, such programs provide invaluable access to lawyers."

This proposal will be a bonanza for probate litigators, but devastating to families who won't realize the effects of poor planning until years later, when they are dealing with a death in the family.

Sincerely,
Lisa Kremer

Lisa Kremer
Attorney at Law

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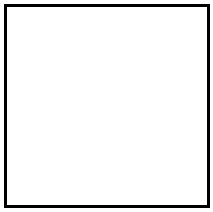
From: WSBA [mailto:email@wsba.org]
Sent: Wednesday, February 08, 2017 9:35 AM
To: Kremer, Lisa
Subject: An Update from WSBA Board Governor Christina A. Meserve



The Board of Governors met in Spokane on January 26 & 27. Our meeting was held at the Hemmingson Center on the Gonzaga campus, where we were welcomed by Law School Dean Jane Korn. Gonzaga has four alumni on the Board of Governors, and we were joined at the meeting by several local practitioners.

Local Hero Award. The WSBA's Local Hero Award was given to retired Superior Court Judge Gregory Sypolt. Judge Sypolt was unable to attend but the award was accepted on his behalf by his wife, Molly, and his longtime judicial assistant, Karen Bachmeier.

Section Bylaws. In September, a number of changes were made to the WSBA Bylaws. Article XI, however, was deferred to the November meeting and then deferred again to January. The Bylaw Amendments are the result of the recommendations of the Sections Workgroup. The primary goal of the amendments is to standardize policies regarding officers, executive committee member terms, and elections. While the original recommendations of the Sections Workgroup were made without section involvement, the reconstituted workgroup had representation from large, medium, and small sections. Just as a reminder, approximately 10,000 of the Bar's 38,000 members belong to one or more sections.

Limited License Legal Technicians (LLLTs). The LLLT Board chair introduced a second proposed practice area for LLLTs, "Estate and Health Care Law". Section leadership in the Elder Law section had been advised that this was coming before the Board of Governors for information. The LLLT Board anticipates submitting the proposed second practice area to the Supreme Court in March. Additional input from members will undoubtedly be provided. More information is may be found at www.wsba.org/LLLT and comments may be emailed to LLLT@wsba.org..

As part of the Executive Director's report, we were also advised that there are proposed changes to the "prohibited acts" provisions for LLLTs who practice in family law. These came from the Family Law Advisory Committee of the LLLT Board. The proposal includes allowing LLLTs to appear in court.

Practice of Law Board. The Board of Governors heard from the chair of the Practice of Law Board and reviewed the Board's 2016 activities. The Practice of Law Board has a complicated history. At one point, the Supreme Court suspended its operations, then lifted the suspension provided that the Board focus on educating the public on how to receive competent legal assistance, recommend new avenues for non-lawyers to provide legal services, receive and refer complaints alleging the

unauthorized practice of law, and draft advisory opinions.

Referendum on License Fees. In December, the WSBA received approximately 1,800 signatures on a proposed referendum to roll back the license fees. The Supreme Court, in early January, issued an order that the 2018-2020 license fees were reasonable and that the proposed referendum was unreasonable. The issue then became whether the Board of Governors should instruct the WSBA to go forward with the referendum anyway. Given the cost ($10,000 plus staff time), and given that the vote results would be moot because of the court's order, the Board of Governors voted to not go forward with a vote. The Board of Governors is, however, interested in engaging with members on what programs, if any, can be eliminated as a cost-cutting measure.

Shifting Demographics. Day two of the meeting was dedicated to a generative discussion on the shifting demographics of our membership. Of the Bar's 38,000 members, 7,500 are ages 61-70 and another 8,400 are ages 51-60. Almost half of the Bar's membership will transition out of the practice in the next 10 to 15 years. We heard from members of the Senior Lawyer's Section (yes, that is a thing) about inactive license fees, emeritus license fees, and ways in which the WSBA can support retiring members.

Day of Remembrance. The Board of Governors passed a resolution for Day of Remembrance, in recognition of the 75th anniversary of executive order 9066, which resulted in the internment of more than 120,000 Japanese Americans. Lawyers and members of the public who fought the actions at the time as well as many years later to vacate unlawful convictions were recognized.

As always, if you have any questions or comments, please do not hesitate to contact me at meservebog@yahoo.com or at 360-943-6747.

To receive limited messages
Please send an email to email@wsba.org with "limited" in the subject line.
In the body of the email, please specify how you would like your email limited (see below).

To opt out of CLE information
Please indicate by option number your choice from the two options below:
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Please indicate by adding "opt out of non-CLE information" in the body of your email.

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All members will receive the following email, which is considered official:
• Licensing and licensing-related materials
• Information about the non-CLE work and activities of the sections to which the member belongs
• Mandatory Continuing Legal Education (MCLE) reporting-related notifications
• Election materials (Board of Governors)
• Selected Executive Director and Board of Governors communications

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February 24, 2017

Susan L. Carlson
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Ellen Reed, LLLT Program Lead
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: LLLT Program Expansion Proposal – Estate and Health Care

Dear Ms. Carlson and Ms. Reed:

I am a retired judge (Lincoln County District Court) who has practiced Elder Law for about 20 years and I continue in the active practice of Elder Law. I am a long-term member of the Washington Academy of Elder Lawyer Attorneys. I concur with many of the statements which other members of WAELA have submitted against passage of the above-referenced proposal.

There is no question that LLLT's are needed to help those who are underrepresented in some areas of law. I saw this need daily in my courtroom. It would be nearly impossible, however, for the court to grant a limited license in: "governmental benefits"; representation of clients in court VAPO hearings; or in advising the elderly on proper estate planning documents, without creating a disservice to our elderly public. I can certainly see where routine real estate closings and even routine dissolution of marriage cases can and should be adequately addressed by LLLT practitioners.

The area of "governmental benefits", for example, is horrendously complicated. It is aggravated by constant major government program changes which are made frequently (at least bi-yearly). This is done both by changes in federal statutes and rule changes and by Washington State rule changes. I have assisted clients on many occasions to maximize government benefits; however, in order to do so I have had to study this area of law and attend numerous CLE seminars on a constant basis (including a 3-day Unprogram by WAELA each year). Most non-elder law attorneys do not have the expertise to advise concerning the eligibility for government benefits; much less can it be expected that LLLT's could do so. Many, if not most, clients who are in need of counseling in this area are individuals with assets which need to be preserved so that, for example, many important expenses which Medicaid and other programs will not pay for can be funded within the rules. Oftentimes the payment for this advice comes in conjunction with a "spend down" of assets which can lead to Medicaid eligibility. Clients are far more interested in funding legal advice as part of a "spend down" which results in protecting their remaining assets than in funding a "spend down program" in a way that simply dissipates

their resources.

In summary, to a large extent, this proposal is therefore a solution to a problem which does not exist (people having assets to protect can and do obtain qualified advice from elder law attorneys) and/or it is a proposal whose objective cannot be achieved because of the rapidly changing and complex law involved.

I am afraid that the objective of reducing the burden on the courts also would not be achieved because of the number of lawsuits which will need to be resorted to in order to correct the errors that will come from practitioners who may be blessed with a legal status but who are not equipped to come up to the standard of practice which will be expected of them.

Very truly yours,

JOSHUA F. GRANT

Via Email

cc: Steve R. Crossland, LLLT Chair

February 13, 2017

Susan L. Carlson
Clerk of the Supreme Court
P. O. Box 40929
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Ellen Reed, LLLT Program Lead
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: **LLLT Expansion – Estate and Health Care**

Dear Susan and Ellen:

There is not a single practitioner in my market area, which covers over 300,000 people, who is able to focus a full-time practice solely on Estate Planning and Probate. There is not enough work in these practice areas. While many of the most respected lawyers in this market would like to limit their practice to these areas they simply can't make a decent living without accepting cases in other areas of practice.

I have struggled for 13 years of my life to try and get to a point where I might be able to say with a straight face that I am doing well in my profession. I am hopeful that I will be able to focus my practice increasingly on Estate Planning and Probate as many practitioners retire in the next decade. I love serving clients of limited means and offer affordable rates, payment plans, and for the most part good legal advice.

I am extremely disappointed that the most important part of my practice would be handed off to an LLLT. Most of my cases do not involve 'taxable estates'. Will an LLLT be required to obtain an opinion of a Lawyer or CPA on the question of taxability before they can proceed to represent the individual or estate? Estate valuation is not exactly the easiest aspect of this otherwise undemanding, paint by the numbers, area of the law. Will LLLT's be allowed to give tax advice on taxation issues other than the death tax? While I always advise my clients to use a CPA for their estates it would be very difficult to properly advise even some of the smallest estates, both before and after death, without understanding the basics of capital gains, the step-up in basis, excise tax and the exemptions, IRA distribution rules, etc.

I currently have opportunities to expand my practice in a couple of different directions including municipal and health care law (representing entities). My preferred career goal is to continue to focus on Estate Planning and Probate, but it seems that may be a poor choice given the proposed regulatory changes. **It would be helpful to members of the Bar for business and career planning to know what areas of practice will be securely reserved for lawyers.** While I am completely opposed to the way the LLLT program is moving forward (in my opinion LLLT's should only be allowed to practice under the direct supervision of a lawyer), I believe that if the WSBA intends to continue down this path it owes a duty to its members to provide a 10 year plan for any actions that diminish the value of a law license and create increased competition in an already saturated market place. This will allow lawyers fair notice as they continue to struggle to be successful in a very competitive environment.

I will not be able to attend the workshop, but if anyone who is a decision maker on this issue would like to hear a long list of the problems this is going to create for lawyers and clients, please give me call. I am also happy to provide a long list of ways to increase access to justice in the Estate Planning and Probate world. Thank you for taking the time to consider my concerns on this issue.

Sincerely,

s/

Patrick J. Galloway
Advance Legal Services, PLLC

PJG/jjh
cc: Steve Crossland

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Heidi R. Magaro
Joe L. Snyder
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February 22, 2017

Mr. Steven R. Crossland
Chair of the LLLT Board
steve@crosslandlaw.net

Ms. Ellen Reed
LLLT Program Lead
LLLT@wsba.org

Ms. Susan L. Carlson
Clerk of the Supreme Court
Supreme@courts.wa.gov

Kameron Kirkevold
Chair of the WSBA Elder Law Section
kkirkenvold@helsell.com

RE: Proposed expansion of the LLLT program into Elder Law ("Estate and Health Care")

To Whom It May Concern:

Our firm limits our practice to the areas of estate and Medicaid planning, uncontested probate and trust administration, and uncontested guardianship. The attorneys at our firm have been serving clients in Thurston, Mason, Grays Harbor and Lewis counties for many years. We strive to provide our clients with exceptional legal advice amidst a constantly changing environment of statutes, rules, and case law at the state and federal levels. Maintaining our licenses, monitoring changes in law, updating our forms, and educating our clients is an ongoing part of our practice. We continually work to improve our internal processes and policies in an effort to keep costs and fees low for our clients.

The attorneys in our firm are involved and active in our community, hosting speaking engagements on Elder Law topics, serving on the boards of local organizations and charities, and networking with other agencies and organizations that serve our aging, elderly, disabled, and low income populations. We have worked hard to give back to our community, to educate our community, and to provide quality legal services to our community at affordable prices. Where cost is a concern

for our clients, we do not hesitate to work with our clients to set up reasonable payment plans, forgo advanced fee arrangements, and even provide pro bono legal advice and services.

In our limited area of practice, we have experienced first-hand the amount of work, fees and costs, not to mention the emotional turmoil, that results from inadequate or lack of legal advice. This generally occurs when individuals try to "DIY" an estate plan; for example: when they inappropriately handwrite changes on the Will of a dying loved one, when they incorrectly sign a Durable Power of Attorney, and when they add a non-owner to a bank account for the purpose of management assistance, later to find that the money is gone and the account closed. The cost of fixing these types of mistakes is not insignificant.

Elder Law is not simply a "fill in the blanks" practice. This area of law requires a multi-faceted, holistic approach. It is an area that is heavily dependent on issue spotting and a thorough knowledge of the law, including where it originated, how it has developed, and where it is going. These skills are acquired through a formal legal education and, often, years of supervised experience.

For the foregoing reasons, we oppose the proposed expansion of the LLLT program into the area of Elder Law (Estate and Health Care Law).

We recognize that there is a growing need for legal assistance in the area of Elder Law and we champion the ways that our state and local bar associations continue to strategize and employ tools designed to provide "access to justice." It is our position, however, that access to justice cannot be achieved through the expansion of a limited license program in the area of Elder Law. Rather, it is our position that access to justice may be better achieved through uniform laws, affordable higher education, standardized legal training and testing amongst states, involvement in our communities, educating our communities, and strong support and funding of non-profit organizations that offer free and low-cost legal advice, among other things.

Thank you for your time and consideration. Please do not hesitate to reach out to us with questions.

Sincerely yours,

Lauren A. Pitman, Attorney at Law
Bauer Pitman Snyder Huff
Lifetime Legal, PLLC

Heidi L. Raedel Magaro, Attorney at Law
Bauer Pitman Snyder Huff
Lifetime Legal, PLLC

Ellen Reed

From: Matt Purcell <mp@purcellfamilylaw.com>
Sent: Wednesday, February 08, 2017 12:54 PM
To: Limited License Legal Technician
Subject: Objection to recommendations to practice of LLTs

Follow Up Flag: Follow up
Flag Status: Completed

If you are going to propose that LLTs can appear and argue in Court on motion dockets and appear at settlement conferences/mediations then you might as well make them lawyers, make them pass the bar and make them pay full fees for apparently joining an agency MEANT FOR LAWYERS. I objected the first time around and expressed concern that this would be an opening to increase the practice of law to a non-lawyer; that's exactly what the step up recommendations do. It's insulting and offensive.

The program itself is an insult to so many who work so hard to obtain a law license; the amazing way in which the bar is out of touch with the members it is supposed to serve astonishes me.

Truly,

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Ellen Reed

From: Nancy Lee <nancy@nancyleelaw.comcastbiz.net>
Sent: Wednesday, February 15, 2017 9:45 AM
To: Limited License Legal Technician
Cc: Kirkevold, Kameron L.
Subject: Comment regarding proposed changes with LLLT

Follow Up Flag: Follow up
Flag Status: Completed

Hello,
I am a solo practitioner with a predominantly elder law practice in Puyallup. In addition to estate planning, I also provide Medicaid Long Term Care Planning for clients, as well as guardianship, disability planning, and probate. I am also Vice-President of the Washington Chapter of the National Academy of Elder Law Attorneys. I have a very busy practice and can appreciate the WSBA looking to provide quality service at an affordable price for folks who need assistance. Before moving forward with this proposed expansion of services by the LLLT, I strongly encourage you to affirmatively bring folks together who practice in this area to engage in a tabletop discussion with you about our serious concerns.

As others have expressed, the needs of people in this area require thoughtful consideration on a case by case basis to ascertain family dynamics; capacity; long term care needs (including anticipated needs); whether those needs will be in a skilled nursing facility or in-home care; existing documents; and any persons with disabilities. Medicaid rules are sufficiently complex that I routinely receive referrals from other practioners in my community to assist with this planning. Each and every variable mentioned affect the planning; potential issues that can arise; and the need to carefully craft solutions that provide the most benefit to persons while avoiding unintended consequences of a piecemeal approach to estate planning. At least two or three times a month, I meet with clients who have received poor advice with at minimum unintended consequences that require fixing; and at worst disastrous results costing people their property or depleting their resources entirely. Affordable representation is of primary concern for all of us who practice in this area, and I assure you my colleagues and I make every effort to accommodate clients at all economic means, including pro bono work.

The legal practioners who practice in this area of law are by nature called to do this work for our most vulnerable population and many of us maintain modest practices in order to serve our community with this in mind. Although I am unable to attend your town meeting today in Seattle (I have one house call for an elderly client and two other appointments today), please do not interpret this to mean that practioners such as myself are not deeply concerned about the consequences to our communities if you choose to move forward with this proposal without giving more serious discussion and thought by reaching out fairly to us to participate in the discussion.

Thank-you for your attention.

Nancy J. Lee
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Ellen Reed

From: Patrick Shirey <pshirey@lyon-law.com>
Sent: Wednesday, February 08, 2017 1:07 PM
To: Limited License Legal Technician
Subject: Estate and Healthcare Law

Follow Up Flag: Follow up
Flag Status: Completed

To whom it may concern:

Including "Estate and Healthcare Law" to the LLLT practice areas is a bad decision that will create more problems that it endeavors to resolve. The areas of practice included in "Estate and Healthcare Law" are complicated and demand a thorough legal education and the development of skills that only attorneys should provide. Too frequently, I see actual fully educated and licensed attorneys make mistakes in these areas of law. This will only get worse with LLLTs. The number of cases in which poor advice and poor drafting requires expensive and time-consuming corrective action will substantially increase—at the expense of a vulnerable population.

Don't do it.

Very truly yours,

J. Patrick Shirey
Lyon Weigand & Gustafson, PS
P.O Box 1689
Yakima, WA 98907
509/248-7220

Ellen Reed

From: Law Office of Reed Speir <reedspeirlaw@seanet.com>
Sent: Thursday, February 02, 2017 10:26 AM
To: Limited License Legal Technician
Subject: We need to limit LLLT practice, not expand it

Follow Up Flag: Follow up
Flag Status: Completed

Why am I paying due to the WSBA when the WSBA is actively working to take away my clients? As a solo practitioner it is already hard enough to make a living but the WSBA is now working to take away clients in the few areas where a lawyer could always rely on to have clients. I have no problems with clinics or other low-income attorney services, but allowing non-lawyers to offer super low-cost alternatives will do nothing but drive clients to non-lawyer service providers. Why did I go to law school? I could do the same work with less stress and more guaranteed clients if I had just waited and became an LLLT. The WSBA should not be working to take clients away from lawyers.

Reed Speir

Ellen Reed

From: Robert Pentimonti <rpentimonti@harlowefalk.com>
Sent: Wednesday, February 15, 2017 10:39 AM
To: Limited License Legal Technician
Subject: Practitioner Comment - LLLT Estate Planning Expansion

Follow Up Flag: Follow up
Flag Status: Completed

LLLT Board:

I am a long-time estate planning attorney in Tacoma. I've been in private practice for more than 20 years (15+ of which has been in Washington). I've read the proposal to expand the LLLT practice area into the estate and probate area. I believe this to be a serious mistake and something that I disagree with completely.

Admittedly there is some amount of self-interest involved for myself and my fellow estate planning practitioners. This change would certainly from a business perspective insert additional competition for legal services traditionally performed by lawyers. The practice area is already competitive with many attorneys offering these services to the community without the risk of being undercut by LLLTs seeking to enter the market.

My concern is not only about the financial damage to existing and young lawyer's estate planning practices, but more so about the risk of unqualified and poor counsel to clients in the estate planning area. I know many attorneys that do not practice in the estate planning area view my practice area as "simple" or "filling out forms", but nothing can be further from the truth. If you ask any seasoned estate planning attorney, the issues are highly complex from issues of taxation, handling conflicts of interest, understanding interrelated issues of real property law, and critical thinking to address a multitude of legal issues that arise. There is a reason that the estate planning practice area has been entrusted for generations to law school trained and experienced attorneys.

A stated goal of the LLLT program is to expand access to unserved individuals in the community. In this regard, I must say in my experience this is not the case in the estate planning arena. There are plenty of licensed attorneys in my geographical area that provide good counsel at a reasonable and affordable prices to consumers. While it is true that many people have not done adequate estate planning, but this is less a function of not having access to estate planning practitioners willing to help. It is more a case of people not wanting to address their own personal demise and appreciating the value of a well-planned estate. Every estate planning attorney I know is accepting new clients and can usually accommodate a new client immediately without any delay.

While the goals of the LLLT program seem well intentioned, I believe it is attempting to fix a problem that does not exist. In fact, I believe it will only create unintentional negative impacts to estate planning practitioners and also lead to poor quality of legal services to the community as a whole.

I am happy to address and respond to any questions the LLLT Board may have. I am glad the LLLT Board is reaching out to the trusts and estate practitioners to understand the impact of this decision. For attorneys that may not practice in this specialty, it is important to understand the complexities and challenges that it actually entails.

Respectfully submitted.

Robert D. Pentimonti
Attorney at Law

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Any advice in this communication is limited to the conclusions specifically set forth herein and is based on the completeness and accuracy of the stated facts, assumptions and/or representations included. In rendering our advice, we may consider tax and/or legal authorities that are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our advice. We will not update our advice for subsequent changes or modifications to the laws and regulations, or to the judicial and administrative interpretations thereof. The advice or other information in this document was prepared for the sole benefit of the client to whom it is specifically addressed, is not a warranty of the conclusions set forth herein, and may not be relied upon by any other person or organization.

****

Ellen Reed

From: Ronald Jackson <ron@ronaldjacksonlaw.com>
Sent: Thursday, February 02, 2017 2:10 PM
To: Limited License Legal Technician
Subject: Proposed Estate and Healthcare LLLT Practice Area

Follow Up Flag: Follow up
Flag Status: Completed

Dear LLLT Board,

I reviewed the proposal for the Estate and Healthcare LLLT Practice Area and would like to express my comments and concerns. I have been practicing estate planning and probate law for over 20 years. The one overriding lesson I have learned is the importance of the consultation with an experienced and knowledgeable lawyer. The preparation of simple wills and other basic estate documents can be relatively easy and appropriate for a paralegal to do under the guidance of an attorney. However, assessing the client's estate and particular estate planning needs, how title to assets are held, and counseling the client about appropriate estate planning options, is the crucial aspect of providing estate planning services. I do not believe this can, or should, be done by an LLLT without the supervision of an attorney.

I understand the need for simple estate planning services for people with limited means. However, I do not think we serve these people well if they are not provided some level of advice by a knowledgeable attorney.

Sincerely,

Ronald L. Jackson
Jackson Law I www.ronaldjacksonlaw.com
600 108th Ave. NE, Suite 543
Bellevue, WA 98004
Tel: (425) 646-6315
Fax: (425) 454-6310

Ellen Reed

From: Sandra Perkins <sandra@slplaw.net>
Sent: Wednesday, February 15, 2017 4:16 PM
To: Limited License Legal Technician
Subject: FW: Limited Legal License Technicians - Estate Planning

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

Dear WSBA,

I have been practicing estate planning and probate law for 37+ years, and I agree 100% with Jill Bliss's letter below. I am sorry I am swamped with work so can not write my own letter.

In my opinion, this proposal will lead to malpractice by the legal technicians (even if they have the best intentions), and heartache and legal fees for the people who use them. This is a disaster waiting to happen.

Medicaid planning is so complex that many attorneys (including me) refer it to experts. There is no way legal technicians can do that work competently, and the impact of doing it wrong is huge and draconian. Who will pay when the LLLT's screw up?

Please reconsider this proposal, to protect the public from inadequately trained legal technicians.

Sandra Perkins
Sandra Lynn Perkins, PLLC
1325 Fourth Avenue, Suite 2000
Seattle, WA 98101-2570
Telephone: (206) 381-8500
Facsimile: (206) 299-3890
sandra@slplaw.net

From: Jill E. Bliss [mailto:jbliss@hsblawyers.com]
Sent: Wednesday, February 15, 2017 1:53 PM
To: KCBA Real Property, Probate and Trust Law Discussion List
Subject: FW: Limited Legal License Technicians - Estate Planning

Listmates- I am forwarding a letter that I wrote to the Limited License Legal Technician Committee about the proposed LLLT rules pertaining to Estate Planning. While I fully support access to justice and affordable legal services, I felt compelled to write to the Committee about the proposal. If you have an opinion on this subject, I encourage you to write a letter to the Committee or attend the Town Hall and Webcast today at 3:30. You will find information on the Bar's website and my letter below.

Please forgive any duplicate emails that you receive.
Best,
Jill

Jill E. Bliss

HART SCHOENER BLISS, PS
ATTORNEYS AT LAW

12535 15th Ave NE, Suite 100
Seattle, Washington 98125
PH: (206) 524-3348 ext. 1
FX: (206) 524-0363
EM: jbliss@HSBlawyers.com

From: Jill E. Bliss
Sent: Wednesday, February 15, 2017 8:52 AM
To: 'LLLT@wsba.org' <LLLT@wsba.org>
Subject: Limited Legal License Technicians

Dear Bar Association- I was hoping to attend this afternoon's webcast of the discussion of proposal LLLT for Estate Planning, but have ended up with a schedule conflict. I have practiced law since 1988, primarily in the Estate Planning/Probate arena. I handle "Mom and Pop" Wills and also complex and taxable estates.

The Bar Association's new proposal gives rise to serious concerns about the best interests of the clients. In my almost 30 years of practice, I have seen hundreds of Wills and Estate Planning documents and many of those drafted by other counsel. While the majority of Wills or Estate Planning documents will meet the legal standard of care, I have found that several have not been drafted with the necessary care required of counsel. These Wills have led to family disputes and

in a few cases have cost families thousands of hours of heartache, not to mention the thousands of dollars expended to resolve differences in Wills that are drafted with ambiguous terms. Crafting estate planning documents is a technical art and even the most simple of Wills take the care and in depth client discussion involving: 1) determining what the client desires; 2) anticipating future complications with those desires; 3) working through the "what if's" with the client; 4) dealing with real estate (and many times complex title concerns because prior deeds have interfered or convoluted title to real property); 4) identification of charitable organizations and if a charitable arm is part of such organization (we spend a fair amount of time checking on this issue before drafting Wills); 5) determining if there is an estate tax issue; 6) dealing with multi-state properties; and most importantly 7) having the experience to properly craft a Last Will to meet the client's needs and desires.

I have, myself, been guilty of crafting a less than perfect Last Will that did not precisely address the "what if" circumstances. I'd like to believe that I no longer make those mistakes after years of practice, but none of us are perfect. However, I am strongly convinced that nothing short of a legal education will allow for the precise drafting necessary to effectuate even the most simple of Wills. As I tell my staff and law clerk, "There is no such thing as a legal form." Each form must be carefully tailored to the client. I am less than confident that the training necessary to consistently draft quality estate planning documents comes from Bar training in a discrete area of law, but rather the law school experience. On a daily basis, I draw from my knowledge of real estate, community property, business law, taxation and the like to carefully craft estate planning documents.

With all due respect, I have little confidence that a Limited License Technician has the ability and breath of legal knowledge to draw upon the lessons learned in law school to consistently craft estate planning documents for clients. Further, every lawyer experiences the "springboard effect" where a client meeting ends up delving into areas of law that do not directly address a Last Will, but that tangentially relate to the planning. I do not believe that a client can be well served by a LLLT's advise in those tangential areas. Isn't it really the client that we are worried about here?

I will also state, that while I am generally opposed to LLLT in the domestic relations area for many of the reasons described above, I believe that this area of practice is more formed up, so to speak, with the FamilySoft computer program. (Although as I stated previously, there is no such thing as a legal form). This limited license is here to stay, and we must deal with it. But, estate planning is much different because estate planning documents endure the test of time and are with our clients for years, not just during a discrete period of time during a dissolution proceeding. We must plan with flexibility and intelligence for our client's future- this takes a trained professional's consideration of many areas of law.

I understand the need for affordable legal services and access to justice. I believe that the Bar would have an interest in making sure that clients receive both an affordable option, along with competent legal advice. Perhaps there is another way to "skin this cat," by engaging in Affordable Estate Planning Clinics where lawyers can volunteer to draft at least 5 low cost or no-cost Wills per year. I would gladly take that pledge. I would also gladly work on a program to make that happen.

Thank you for your kind consideration and I am happy to discuss my comments further, as I recognize that a simple email does not envelop all that needs discussion in this arena.
Best,
Jill Bliss

Jill E. Bliss

HART SCHOENER BLISS, PS
ATTORNEYS AT LAW

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FX: (206) 524-0363
EM: jbliss@HSBlawyers.com

Ellen Reed

From: SaraEllen Hutchison <saraellen@saraellenhutchison.com>
Sent: Thursday, February 09, 2017 7:36 AM
To: Limited License Legal Technician
Subject: Re: You're invited to a Town Hall about Limited License Legal Technicians

Follow Up Flag: Follow up
Flag Status: Completed

Dear WSBA,

When you are learning how to drive, dad does not let you get behind the wheel of his brand new Tesla. You get the keys to the old Ford. As long as you don't have a license, you stick with the Ford.

The keys to estate planning practice should not be handed over to the LLLTs. Estate planning law is complex and high stakes. It is like a hike that starts out looking easy and flat, but quickly turns into a technical climb. Such responsibility should not be put in the hands of someone who is not a lawyer.

Unfortunately, many consumers think getting a will is too expensive or a bother. They print out do-it-yourself wills online or go to those outfits that sell you cheap forms. And then, after you die, if your family is lucky, there's no mess left for them to clean up. Estate litigation is expensive and heart-wrenching.

If estate planning is suddenly downgraded and diluted by letting LLLTs do it, it sends a very bad message. Estate planning could get picked up by shyster retailers selling false hope to the middle class and working poor. I'm afraid that the important service of estate planning will suddenly be offered alongside credit repair or debt consolidation until the AGs catch wind of it and shut it down.

If the WSBA wants to make quality estate planning advice more accessible, it should direct its efforts toward expanding the will clinics, where services are provided by licensed lawyers under the supervision of estate planning experts. The WSBA can also consider extending more support to young lawyers, new lawyers, and new solos so that they can get properly mentored and trained after admission to the bar. The cost barrier and steep learning curve for estate planning (and other more complex practice areas) discourage many good lawyers from offering these services at an accessible cost. Adding complex practice areas to the LLLTs is not the solution to that problem.

Please, do not add estate planning to the LLLTs.

Sincerely,
SaraEllen Hutchison

On Wed, Feb 8, 2017 at 4:32 PM, WSBA <email@wsba.org> wrote:

The Washington Supreme Court's Limited License Legal Technicians (LLLT) Board invites you to weigh in on a proposed new practice area – estate and healthcare law – and proposed additional scope to the current LLLT practice area (family law).

What: **WSBA Town Hall: Limited License Legal Technicians**

When: Wednesday, February 15, 2017, from 3:30 p.m. – 5:00 p.m.

Where: WSBA Conference Center, 1325 Fourth Ave., Suite 600, Seattle, WA 98101. Available via webcast through www.wsba.org/LLLT.

At the most recent WSBA Board of Governors meeting in January, LLLT Board Chair Steve Crossland provided an update of board activities and introduced the proposed second practice area for LLLTs, "estate and healthcare law." Governors and audience members provided input. The LLLT Board anticipates submitting the proposed second practice area to the Supreme Court on March 8. Additional information may be found at www.wsba.org/LLLT and comments may be emailed to LLLT@wsba.org.

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February 13, 2017

Kameron L. Kirkevold
Chair of the WSBA Elder Law Section
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154

Re: Expansion of the LLLT Program into Elder Law

Dear Mr. Kirkevold:

I am writing to express my concerns regarding the expansion of the LLLT program into the practice of Elder Law. By way of background, I have practiced law in Skagit County since 1999 and my primary practice areas are Elder Law, Estate Planning, and Probate. I have helped petitioners establish guardianships, and I have represented AIP's in contested guardianship proceedings. I currently represent both professional and lay guardians in several cases in Skagit and Island counties, and I have also appeared in cases in Whatcom and Snohomish counties. I have been a Title 11 Guardian ad Litem for many years. In addition to drafting Wills and Trusts for my clients, I give advice regarding qualifying for Medicaid and other programs that assist elderly clients in need.

It is more than a little troubling to hear that the WSBA is considering expanding the LLLT program into the practice of Elder law. To cite just one example of the need for experienced counsel in this practice area, a lawyer helping a client with estate planning must know whether a Will or a Trust meets the client's needs. That simple question alone involves a thorough understanding and discussion of the client's finances, health, and family status, as well as Medicaid qualification and tax issues. Are there other ways to transfer title and ownership from a decedent to a survivor without a Trust or Will? What are the advantages and disadvantages of Wills versus Trusts? Is a Will containing a Testamentary Trust preferable to a Revocable Living Trust? Is it advisable to have a Revocable Living Trust rather than a Will merely to avoid probate? Should a client appoint a single Trustee or Personal Representative or is it more advisable to appoint Co-Trustees or Co-Personal Representatives? How does one preserve assets and still qualify for Medicaid? Is it advisable to give away assets if it is likely that a client or his spouse might need long-term care? Is it advisable for a married couple to have a Community Property Agreement? Does a beneficiary who would receive a distribution from an estate have a disability and receive government benefits so that it would be advisable to direct the beneficiary's distribution to a Supplemental Needs Trust? I could go on in this vein for pages and pages. The point is that there is no one-size-fits-all answer to estate planning. Yes, anyone can draft a Will (or purchase a form over the internet or from a stationery store), but it is another thing altogether to determine whether a Will or a Trust is what the client needs.

When a client receives poor estate planning advice, the consequences can be financially and emotionally devastating, not only to the client, but also to the client's family. Elderly clients present all kinds of challenges that require skills and expertise that are acquired only through years of education and experience. It cannot be in the public interest to allow non-lawyers to enter into this complex area of the law and put at risk our elderly citizens, many of whom are already vulnerable as a result of age-related cognitive and physical decline. This is not a practice area for a novice. One can only presume that those who are in favor of this ill-advised idea are also ill-informed. I hope this letter serves to give them a better understanding of the potentially disastrous consequences of allowing LLLT's to practice in this area of the law.

Sincerely,

Dewey W. Weddle

cc: Steve R. Crossland, Chair of the LLLT Board
Ellen Reed, LLLT Program Lead
Susan L. Carlson, Clerk of the Supreme Court

Ellen Reed

From: email
Sent: Thursday, February 09, 2017 2:02 PM
To: Limited License Legal Technician
Subject: FW: You're invited to a Town Hall about Limited License Legal Technicians
Attachments: Shannon Moreau.vcf

Follow Up Flag: Follow up
Flag Status: Completed

Feedback.

Kris McCord | Service Center Representative
Washington State Bar Association | 800.945.9722 | krism@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Shannon Moreau [mailto:shannon@cozartmoreaulaw.com]
Sent: Thursday, February 09, 2017 8:55 AM
To: email
Cc: Arianna Cozart
Subject: RE: You're invited to a Town Hall about Limited License Legal Technicians

Why can't these meetings be held somewhere other than Seattle? It seems like the WSBA often excludes half the state from being able to fully participate in things like this by scheduling it in Seattle every time. Participating by 'webcast' is not the same. Washington is more than the "West Side" but it really doesn't seem like the WSBA recognizes that, which is very concerning. Please note my concerns, which I have had from the very beginning about LLLTs- that the WSBA would slowly but surely increase the scope of practice for them and thereby diminish the work and role of lawyers overall. The rest of us had to go to law school, get student loans, and pass a bar exam to practice law. We work very hard to develop our careers, only to have people with little education and practice requirements take over our profession. In my opinion they are not competent to practice law and they diminish the role and hard work of lawyers generally. Now that the WSBA is going to increase their scope of practice, even moreso. I am adamantly opposed.

Shannon Moreau
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From: WSBA [mailto:email@wsba.org]
Sent: Wednesday, February 08, 2017 4:32 PM
To: Shannon Moreau
Subject: You're invited to a Town Hall about Limited License Legal Technicians

The Washington Supreme Court's Limited License Legal Technicians (LLLT) Board invites you to weigh in on a proposed new practice area – estate and healthcare law – and proposed additional scope to the current LLLT practice area (family law).

What: **WSBA Town Hall: Limited License Legal Technicians**

When: Wednesday, February 15, 2017, from 3:30 p.m. – 5:00 p.m.

Where: WSBA Conference Center, 1325 Fourth Ave., Suite 600, Seattle, WA 98101. Available via webcast through www.wsba.org/LLLT.

At the most recent WSBA Board of Governors meeting in January, LLLT Board Chair Steve Crossland provided an update of board activities and introduced the proposed second practice area for LLLTs, "estate and healthcare law." Governors and audience members provided input. The LLLT Board anticipates submitting the proposed second practice area to the Supreme Court on March 8. Additional information may be found at www.wsba.org/LLLT and comments may be emailed to LLLT@wsba.org.

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All members will receive the following email, which is considered official:
- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

Ellen Reed

From: Sharon Rutberg <email@sharonrutberglaw.com>
Sent: Wednesday, February 15, 2017 7:10 AM
To: Limited License Legal Technician
Subject: estate and elder law proposal

Follow Up Flag: Follow up
Flag Status: Completed

Greetings –

Please let me register my opposition to the proposal to permit LLLTs to practice in the area of estate planning and elder law. These are highly nuanced areas of law that have a direct impact on the lives and well-being of individuals, including the vulnerable – children and the elderly. Practice in this area is not limited to filling in a series of forms. Care needs to be taken to develop approaches that take into account a wide range of personal and family circumstances and to craft documents that have the right effect. I urge the WSBA to leave these matters in the hands of qualified attorneys.

Thank you for your consideration.

Sharon Rutberg, J.D.

Law Office of Sharon C. Rutberg, PS
1734 NW Market St.
Seattle, WA 98107
Website: www.sharonrutberglaw.com
206-409-2604
email@sharonrutberglaw.com
Washington State Bar #47055
D.C. Bar #420576

Ellen Reed

From: vlaparker@aol.com
Sent: Wednesday, February 15, 2017 11:40 AM
To: Limited License Legal Technician
Subject: Comments

Follow Up Flag: Follow up
Flag Status: Completed

To whom :it may concern:

Attorneys have long subscribed to the ethical principal that we should give to those unable and we do. Neither the Bar nor the Supreme Court have the facts regarding that. The only item this program is based upon is faulty research. That is why the legislative process is required to vet program of this nature just as they have nurse practitioners.

Also, why do the poor have to settle for less because they are poor? That is what this program advocates.

More importantly, the Bar does not have legislative nor constitutional authority for this program. There is no evidence that technicians will cost less than attorneys. There is no identification of what attorneys charge nor an evaluation of what technicians will charge. In giving advice regarding options, a technician will miss options beyond those to which they are privy.

Vicki Lee Anne Parker,
Attorney at Law

Ellen Reed

From: Virginia Clifford <vacliffordattorney@comcast.net>
Sent: Wednesday, February 08, 2017 1:47 PM
To: Limited License Legal Technician
Subject: Elder Law Practice area

Follow Up Flag: Follow up
Flag Status: Completed

Dear Limited License Legal Technicians Board

I have become aware that this is the correct email to send comments to, and so I am forwarding an email which I sent to the Elderlaw List Serve last week. My concerns are continuing ones about the simplification of law into a matter of "filling out forms" for people. Unfortunately, two concepts don't seem to be discussed:

1. Unequal power relationships among the people coming into a LLLT or attorney's office. Who is in control of the process involving an elder is a key consideration for the LLLT, and is unaddressed in this consideration. Many children bring an elder into the office for documents to be created. The lawyers are trained in considering "who is your client" first thing, and observing the dynamics between the elder and the persons proposing to the elder that she sign the documents (giving power to them). It is an inherent conflict of interest to try to serve them both. Elder law attorneys interview the elder alone to gauge her real needs and represent the elder- this can include finding a plausible reason NOT to create the documents for elders who feel pushed into signing but are powerless to confront the children on whom they depend. **Given that all this is completely unaddressed, if you are going to permit LLLTs to create Powers of Attorney of Wills, at least limit the area of practice to drafting documents for spouses.**
2. Filling out forms is very simplistic, and an ongoing source of fraud and exploitation. The standard forms take the most authority from elders, and few children discuss that the elder has the right to cancel this power anytime. I find that most people, particularly elders, do not understand that a standard form power of attorney becomes effective on the day it is signed, and this means that their children can take (move) all their assets immediately. Most people undertaking the duty as POA (in good faith) have no clue about fiduciary duty or even the duty to avoid commingling funds. The complexities of types of gifting powers, look-back periods for Medicaid, uses and limits of Community Property Agreements (to name a few) are all involved in the picture

It is not easier access to forms that are needed, it is low bono or moderate price representation of elders in estate planning. The irony is that this is becoming more and more accessible: the surplus of lawyers and the availability of Legal Zoom and Suzie Orman forms mean that the **prices of quality documents created with care by skilled attorneys are being reduced by market forces daily. Compile a list of low bono attorneys and you will do a greater service for elders** than sending in a new group of people with skills slightly above those of the purveyors of trust mills.

Get some input from practicing estate planning attorneys before taking any steps.

Virginia Clifford, Olympia

This was my original email:

Listmates,

Attached is the Memorandum posted by the WSBA (dated January 9, 2017) by not circulated to the Bar members, for obvious reasons. It appears that the people making this proposal to have LLLTs draft Wills and Powers of Attorney have no idea how complex this area of law is. Nor are they aware of how much harm is done to elders who would be steered into a LLLTs to "sign some papers" at their children's' request (the same children who will have immediate and complete control over all their assets once the papers are signed). Elder lawyers represent the elder person and are a major buffer to protect the elder from pushy relatives. Can an LLLT do this?

I believe that there is a valid role for Legal Technicians to assist in helping the public complete forms like Guardianship reports, small estate affidavits and the like, but they should not be establishing Guardianships or managing the execution of documents which can impoverish vulnerable elders with no oversight. By the time a guardianship or VAPO action can be established, the money is long gone. I have been assigned the job of GAL in these cases, when the elder faces both financial ruin and the realization that his/her kids did this to her.

Leave this role to lawyers who can protect the elder.

Virginia Clifford

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Attorney at Law
Jonete Waters Rehmke

Paralegals
Celia Manna'a
Kim Redford

Legal Assistant
Lane Kester

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253-460-3190

March 1, 2017

Susan L. Carlson
Clerk of the Supreme Court
P. O. Box 40929
Olympia, WA 98504-0929

Ellen Reed, LLLT Program Lead
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Kameron L. Kirkevold
Chair of the WSBA Elder Law Section
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154

Re: LLLT Program Expansion Proposal – Estate and Health Care

Dear Ms. Carlson, Ms. Reed, and Mr. Kirkevold:

I have worked in law for over 31 years. First as a paralegal working in the area of estate planning and litigation for 14 years, then as an Elder Law Attorney for the past 17 years.

I am a long-term member of the Washington Academy of Elder Lawyer Attorneys, the Elder Law Section of the WSBA, and the National Academy of Elder Law Attorneys. I concur with many of the statements which other members of WAELA and WSBA have submitted against passage of the above-referenced proposal.

There is no question that LLLT's are needed to help those who are underrepresented in some areas of law. I see this on a constant basis in questions regarding Landlord Tenant Law. Most of those clients are low income and do not have the funds to hire an attorney to assist with working with their landlord on their tenant issues.

It would be nearly impossible, however, for the court to grant a limited license in:

"governmental benefits"; representation of clients in court VAPO hearings; or in advising the elderly on proper estate planning documents, without creating a disservice to our elderly public. I can certainly see where routine real estate closings, landlord tenant issues, and even routine dissolution of marriage cases can and should be adequately addressed by LLLT practitioners.

The area of "governmental benefits", for example, is horrendously complicated. It is aggravated by constant major government program changes which are made frequently (at least bi-yearly). This is done both by changes in federal statutes and rule changes and by Washington State rule changes. I have assisted clients on many occasions to maximize government benefits; however, in order to do so I have had to study this area of law and attend numerous CLE seminars on a constant basis. Most non-elder law attorneys do not have the expertise to advise concerning the eligibility for government benefits; much less can it be expected that LLLT's could do so. Many, if not most, clients who are in need of counseling in this area are individuals with assets which need to be preserved so that, for example, many important expenses which Medicaid and other programs will not pay for can be funded within the rules. Oftentimes the payment for this advice comes in conjunction with a "spend down" of assets which can lead to Medicaid eligibility. Clients are far more interested in funding legal advice as part of a "spend down" which results in protecting their remaining assets than in funding a "spend down program" in a way that simply dissipates their resources.

Another significant factor involved in helping my clients in planning for Medicaid or doing their estate planning is to do an analysis of their estate planning materials to determine if they have the powers necessary and/or the necessary provisions under their Durable Power of Attorneys or Last Will and Testament to accomplish their Medicaid planning. Each family's estate planning is different and depends on multiple areas of law as well as family dynamics to determine the best course of action. LLLT's would not have the training to discern the multiple complexities that are required to assist a family with their estate planning. It is not just a matter of filling in the blanks of the forms. I spend as much time talking about family dynamics as I do in obtaining the information for the documents. Whether you get along with your children, their spouses, if you have a disabled child, or a son or daughter on drugs, or have mineral rights in North Dakota, or a life estate interest, the list goes on and on. Having a background in multiple areas of law, plus really listening to my clients enables me to ascertain what plan might be best for them. It is not just filling in the blanks.

This does not even begin to cover all the tax planning issues that develop when working with clients managing their estate or Medicaid Planning. There is a reason why the WSBA has a two day Estate Planning Seminar each November with speakers from around the nation discussing Erisa Issues, Qualified Trusts, Grantor and Conduit Trusts, Exemption Equivalent Trusts, Portability, State and Federal Tax Exclusions among a number of topics. Estate planners have to be aware of all the issues which may be involved in assisting clients with their estate planning.

In summary, to a large extent, this proposal is therefore a solution to a problem which does not exist (people having assets to protect can and do obtain qualified advice from elder law

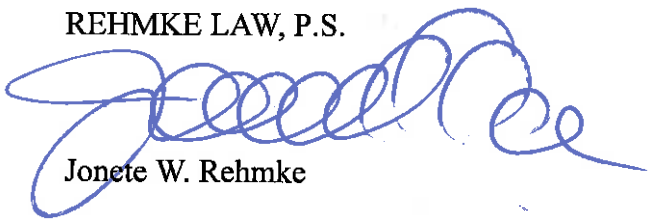
attorneys) and/or it is a proposal whose objective cannot be achieved because of the rapidly changing and complex law involved.

I am afraid that the objective of reducing the burden on the courts also would not be achieved because of the number of lawsuits which will need to be resorted to in order to correct the errors that will come from practitioners who may be blessed with a legal status but who are not equipped to come up to the standard of practice which will be expected of them.

I urge you to reject the implementation of the Estate and Health Care LLLT's. While other areas of law may benefit from this program, estate planning is not an area for limited licensed practitioners. I believe the implementation will only increase our litigation case load and cause agony to our clients, not the benefits I am sure you are anticipating.

Very truly yours,

REHMKE LAW, P.S.



Jonete W. Rehmke

cc: Steve R. Crossland, LLLT Chair
Chief Justice Mary E. Fairhurst
Associate Chief Justice Charles W. Johnson
Justice Barbara A. Madsen
Justice Susan Owens
Justice Debra L. Stephens
Justice Charles K. Wiggins
Justice Steven C. Gonzalez
Justice Sheryl Gordon McCloud
Justice Mary I. Yu

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March 2, 2017

SENT VIA EMAIL

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Mr. Stephen R. Crossland
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LLLT Program Lead
WSBA
1325 4th Ave., Ste 600
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Acting Supreme Court Clerk
PO Box 40929
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Re: Comments Regarding Expansion of LLLT Program to Elder Law

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- Limiting Market Place for Practicing Attorneys - By implying that only taxable individuals require assistance from attorneys the LLLT Program severely limits the market place for practicing attorneys.

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- Technicians are Forced to Make Legal Conclusions – Despite the fact that the intent is to limit the practice to non-taxable individuals, Technicians would still be required to determine whether an individual was taxable. Determining whether an individual is taxable is a very complicated process, requiring an up-to-date understanding of the ever expanding tax provisions governing Estates and Trusts. Making an incorrect decision may result in unnecessary payment of tax through the failure to include necessary tax savings provisions, and/or incur penalties and interest as a result of not paying tax which should have been paid. Additionally, without a formal legal education Technicians may lack the skills/experience to make necessary legal conclusions. For example, there may be unintended and dire consequences if a Technician fails to have a mastery of the terminology associated with Wills, including but not limited to: "by right of representation", the specific language required to avoid an omitted spouse or child, and language necessary to disinherit someone.

- Use of Forms is Inadequate – We all know that our clients are not one size fits all, so the fact that the program limits Technicians to approved forms seems problematic, at best. What happens when the Technician's client does not fit within the series of boxes provided? Are they able to alter the forms in these instances? Likewise, what is a Technician to do when they begin to assist someone only to find out that their situation is slightly different than what the approved forms provide? Are they required to terminate their relationship and make the client begin anew with an attorney? Lastly, there are no approved forms for Durable Powers of Attorney despite the fact that they directly impact our clients' lives by entrusting a huge amount of power to a third party with little to no oversight.

For these reasons, as well as those outlined in the Elder Law Section's letter to Mr. Crossland and Ms. Carlson dated April 13, 2016, it is my opinion that the expansion of the LLLT Program to Elder Law would be detrimental not only to myself and my fellow colleagues but also to our clientele.

Best regards,

VANDEBERG JOHNSON & GANDARA, LLP

KELLEY ANN ORR

DJ:dj

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Best regards,

JAMES A. KRUEGER

JAK:dj

February 28, 2017

President Robin Hayes
WSBA Board of Governors
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Subject: Expansion of LLLT to Estate and Health Care Law

Dear President Hayes and the WSBA Board of Governors:

On behalf of the National Academy of Elder Law Attorneys (NAELA), I am writing to express serious concerns about the proposed expansion of Limited License Legal Technician (LLLT) programs into the area of "Estate and Health Care Law" in Washington state. The intent, to expand access to legal services to middle and lower income individuals, is noble. Unfortunately, if implemented, the proposal will put people who are aging and individuals with disabilities of all ages at greater risk of improper legal counsel and drafting in situations where correcting errors may be extremely limited.

The National Academy of Elder Law Attorneys (NAELA) is a national, non-profit association comprised of 4,500 attorneys, who concentrate on legal issues affecting seniors, people with disabilities, and their families. The mission of NAELA is to establish NAELA members as the premier providers of legal advocacy, guidance, and services to enhance the lives of individuals with disabilities and people as they age. We represent over 100 attorneys in Washington state.

The purpose of requiring licensed attorneys to perform legal services is to protect consumers. Licensing does so by ensuring the professional a consumer retains meets certain ethical and competency standards. This is critical in legal services, where the market often places consumers at great disadvantage in assessing any one professional over another in advance.

Today, non-lawyers can and do assist applicants for Medicaid and other public programs, such as the Veterans aid and attendance benefits. But serious issues arise when matters require the professional judgment and skills of an attorney. This includes legal advice on issues such as the rights under Medicaid eligibility to convert or transfer property, whether guardianship or some other form of power is needed, and the law of divorce as it impacts families with a long-term care need.

When counseling individuals in need of long-term services and supports, one must understand the interaction between multiple bodies of law, such as Medicaid eligibility, Medicare, taxation of retirement benefits, family law, and trust and estates. Given these complex interactions, the potential to harm consumers due to incomplete or inaccurate advice is high. What seems to be

good tax advice, may be devastating Medicaid advice. The comprehensive training of lawyers reduces the risk of good intentions with devastating consequences.

Many of these individuals in need also face the high risk of financial abuse with fiduciary powers used to perpetrate the crime. Many of these individuals also lack capacity of some form. They may suffer dementia with purported caregivers attempting to use the legal system as a weapon to steal from these vulnerable individuals.

Given the vulnerable population at stake and the high risk of unmitigated harm due to improper legal advice and drafting, we respectfully request that the Board of Governors vote not to recommend this proposal to the State Supreme Court.

Sincerely,

Catherine Anne Seal, Esq.
President
National Academy of Elder Law Attorneys

EDMONDS WILLS & TRUSTS

♦♦♦

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March 2, 2017

Susan L. Carlson
Clerk of the Supreme Court
P. O. Box 40929
Olympia, WA 98504-0929

Ellen Reed, LLLT Program Lead
Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539

Re: LLLT Expansion into Estate Matters

Dear Ms. Carlson and Ms. Reed:

My legal practice is split evenly between estate planning and estate administration. I am writing to express my sincere concern regarding the proposal to allow LLLTs to practice in these areas. The proposed change will harm the interests of all clients needing estate related legal services.

Estate planning and estate administration can be extremely complicated legal areas, even for small estates. Blended families, public benefits, special needs, income taxes, community property laws, ERISA laws, creditors, and ethical concerns are common complexities just to name a few. Almost no estate matters fall entirely within the proposed "permitted actions" for LLLTs. That is why estate matters must be left to qualified licensed attorneys who possess *broad* training and expertise.

You have probably heard the old adage that if the only tool you have available is a hammer, you will tend to see every problem as a nail. Likewise, if LLLTs are equipped with only a handful of "Board approved forms" and "permitted actions," the LLLTs will over-prescribe those limited tools to the detriment of their clients, and fail to issue-spot where needed.

Equal access to justice is critically important to me. But creating a substandard tier of hamstrung legal practitioners to serve low-income clients will not produce justice. On the contrary, inferior legal service will produce new legal problems for low-income clients. Frankly, the LLLTs will know just enough to be dangerous.

The proposed change would also drive attorneys away from precisely the same legal practice areas identified as needing additional legal providers. How many new attorneys will elect to focus their law school training and ultimately their practice in a legal area that is open to LLLTs? Why expend all that effort, time, and money (as many of us have already done) to join such an uncertain practice area?

Therefore, I believe the net outcome of this proposed change would be that clients seeking legal assistance in estate planning and estate administration will have to choose between a shrinking pool of qualified attorneys and a growing pool of unqualified and limited LLLTs.

Thank you for your attention and consideration.

Sincerely,

Michael Biesheuvel
Attorney at Law

Cc: Steve Crossland

Jennifer Olegario
Communications Manager

206-727-8212
jennifero@wsba.org

Summary of Media Contacts

1/30 – 3/2, 2016

1.	2/6/17	Andrew Strickler, Law360	Seeking comment on LLLT with regard to Neil Gorsuch's progressive writings toward the transition and future of the profession. Paula Littlewood and Steve Crossland spoke with the reporter.

WSBA

OFFICE OF THE GENERAL COUNSEL

Kevin Bank
Assistant General Counsel

direct line: 206-733-5909
fax: 206-727-8314
e-mail: kevinb@wsba.org

To: The President, President-elect, Immediate Past-President, and Board of Governors
From: Kevin Bank, Assistant General Counsel
Date: February 22, 2017
Re: Court Rules Update

This is the regular report on the status of suggested court rules submitted by the Board of Governors and other entities to the Supreme Court. Any changes from the last report are indicated in ***bold, shaded italicized text***.

SUGGESTED RULE AMENDMENTS SUBMITTED BY WSBA TO SUPREME COURT			
RULE	**SUBJECT**	**BOG ACTION**	**COURT ACTION**
CrRLJ 2.1	Remove provisions allowing for citizen complaints	Approved for submission to the Court at BOG's September 2014 meeting.	10/23/14: No Court action yet; the proposed rule change was submitted to the Court by WSBA via letter dated 10/02/14. 11/6/14: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than April 30, 2015.

SUGGESTED RULE AMENDMENTS SUBMITTED BY WSBA TO SUPREME COURT			
RULE	**SUBJECT**	**BOG ACTION**	**COURT ACTION**
Proposed Amendments to Lawyer Rules of Professional Conduct –various suggested by LLLT Board	Proposed Amendments to Rules of Professional Conduct RPC 1.0B – Terms, and New Comments to RPC 1.5, RPC 1.8 – Conflict of Interest, RPC 1.10 – Imputation of Conflicts of Interest: General Rule, RPC 1.15A(h)(9) – Safeguarding Property, RPC 1.17 – Sale of Law Practice, Title 3 – Advocate, Title 4 – Transactions with Persons Other Than Clients, RPC 5.8 – Misconduct Involving Disbarred, Suspended, Resigned, and Inactive Lawyers, New RPC 5.9 and 5.10 – Lawyers Associated in a Law Firm with LLLTs, Title 7 – Information about Legal Services and Title 8 – Maintaining the Integrity of the Profession.	11/14/2014: Approved submission to Court.	3/24/2015: Court adopted rules effective 4/14/2015. Court also ordered WSBA to solicit and gather feedback on these rules and provide it to the court by 1/14/2016.
APR 28 Regulation 4	Proposed amendments to APR 28 Regulation 4 – Limited Practice Rule for Limited License Legal Technicians –Limited Time Waivers.	7/2016: Submitted as information only.	11/2/16: The Court adopted the rule.
ELC 2.5, ELC 2.7, ELC 3.3, ELC 3.4, ELC 4.2, ELC 5.3, ELC 5.5, ELC 5.6, ELC 6.6, ELC 9.3, ELC 10.7, ELC 10. 16, ELC Title 15, ELC 15.1	Proposed amendments to ELC 2.5 – Hearing Officers, ELC 2.7 – Conflicts Review Officer, ELC 3.3 – Application to Stipulations, Disability Proceedings, Custodianships, and Diversion Contracts, ELC	7/22/16: Approved submission to Court.	12/7/16: The Court published for comment. Comment period ends 4/30/17.

SUGGESTED RULE AMENDMENTS SUBMITTED BY WSBA TO SUPREME COURT			
RULE	**SUBJECT**	**BOG ACTION**	**COURT ACTION**
	3.4 – Release or Disclosure of Otherwise Confidential Information, ELC 4.2 – Filing; Orders, ELC 5.3 – Investigation of Grievance, ELC 5.5 – Investigatory Subpoenas, ELC 5.6 – Review of Objections to Inquires and Motions to Disclose, ELC 6.6 – Affidavit Supporting Diversion, ELC 9.3 – Resignation in Lieu of Discipline, ELC 10.7 – Amendment of Formal Complaint, ELC 10.16 – Decision of Hearing Officer, ELC Title 15 – Trust Account Examinations Overdraft Notification, and IOLTA, and ELC 15.1 – Random Examination of Books and Records.		
GR 12.1, GR 12.2, GR 12.3, GR 12.4, GR 15.5	Proposed amendments to GR 12.1 – Regulatory Objectives, GR 12.2 – WSBA Purposes, Authorized Activities, and Prohibited Activities, GR 12.3 –WSBA Administration of Supreme Court-Created Board and Committees, GR 12.4 – WSBA Access to Records, and GR 12.5 – Immunity.	*9/29/16: Approved submission to Court.*	12/7/16: The Court published for comment. Comment period ends 4/30/17.
APR 1-9; APR 11-17; APR 19; APR 20.1; APR 21; APR 22.1-22.2; APR 23; APR 23.1-23.2; APR 23.4-23.5; APR 24.1-	In the Matter of Proposed Amendments to the APR (related to Coordinated Systems for WSBA Administered Licenses to Practice Law)	*9/29/16: Approved submission to Court.*	12/7/16: The Court published for comment. Comment period ends 4/30/17.

SUGGESTED RULE AMENDMENTS SUBMITTED BY WSBA TO SUPREME COURT			
RULE	**SUBJECT**	**BOG ACTION**	**COURT ACTION**
24.3; APR 25.1-25.6; APR 26-28; APR Regulations 28; APR 28 Appendix.			

SUGGESTED RULE AMENDMENTS SUBMITTED BY OTHERS		
JISCR 13	Judicial Information System Committee (JISC) proposed amendments to this rule to define "electronic court record system," to clarify that JISC approval is required for all electronic court record systems, to provide for increased notice of proposed systems, and to require courts with alternative electronic court record systems to comply with the JIS Data Standards for Alternative Electronic Court Record Systems.	12/3/14: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than 30 days from the date of publication (Jan. 23, 2015).
CrR 8.10 and CrRLJ 8.13	Amendments to Post Trial Contact with Jurors Rules suggested by Washington Association of Criminal Defense Lawyers.	4/2/2015: Court published for Comment. Comment period ends 4/30/2016. 3/16/16: The Court amended the previous Order and extended the comment period to 5/31/16.
APR 11	The Superior Court Judges' Association recommended the Proposed Amendments to APR 11 – Continuing Legal Education.	11/4/15: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than April 30, 2016.
CrRLJ 3.2	The District and Municipal Court Judges' Association recommended the suggested amendments to CrRLJ 3.2 – Release of Accused.	12/2/15: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than April 30, 2016. ***2/9/17: The Court adopted the rule.***
GR 28	Judge Joh Antosz recommended the proposed amendment to GR 28 – Jury Service Postponement, Excusal, and Disqualification.	3/30/16: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than June 30, 2016.
New Rule GR 36	The Trial Court Advisory Board recommended the proposed amendment to New Rule GR 36 –	3/30/16: The Court entered an order to publish the proposed amendments for

SUGGESTED RULE AMENDMENTS SUBMITTED BY OTHERS		
	Trial Court Security.	comment, with comments to be submitted no later than June 30, 2016.
RAP 9.2(b)	The Office of Public Defense recommended the proposed amendment to RAP 9.2(b) – Verbatim Report of Proceedings.	4/12/16: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than June 30, 2016. 11/2/16: The Court adopted the rule.
RAP 14.2	The Appellate Cost Workgroup recommended the proposed amendments to RAP 14.2 – Who is Entitled to Costs.	6/2/16: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than August 20, 2016. ***1/4/17: The Court adopted the rule.***
CR 28(d), CR 28(e), CR 30(b)(1), and CR 80(d)	The Washington Court Reporters Association recommended the proposed amendments to CR 28(d), and new subsection (e) – Persons before whom Depositions may be taken, CR 30(b)(1) – Depositions Upon Oral Examination, and CR 80(d) – Court Reporters.	6/2/16: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than August 20, 2016. 11/2/16: The Court adopted CR 28(e).
CrR 3.4, CrRLJ 3.4	The SB 5177 Court Video Testimony Work Group recommended the proposed amendments to CrR 3.4 – Presence of the Defendant, and – CrRLJ 3.4 – Presence of the Defendant.	11/2/16: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than April 30, 2017.
New Rule GR 36	The American Civil Liberties Union of WA recommended the proposed new General Rule 36 – Jury Selection.	11/2/16: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than April 30, 2017.
GR 17, GR 30	The Court Management Council recommended the proposed amendments to GR 17 – Facsimile	11/2/16: The Court entered an order to publish the proposed amendments for

SUGGESTED RULE AMENDMENTS SUBMITTED BY OTHERS		
	Transmission, and GR 30 – Electronic Filing and Service.	comment, with comments to be submitted no later than April 30, 2017.
RAP Form 12A	The Supreme Court Clerk's Office recommended the proposed amendments to RAP Form 12A – Findings of Indigency.	12/7/16: The Court adopted the rule.
IRLJ 3.5	The District and Municipal Court Judges' Association recommended the proposed amendments to IRLJ 3.2 – Decision on Written Statement (Local Option).	12/7/16: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than April 30, 2017.
CR 23	The Legal Foundation of Washington recommended the proposed amendments to CR 23 – Class Actions.	12/7/16: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than April 30, 2017.
RAP 15.2(c)	Judge Stan Rumbaugh recommended the proposed amendments to RAP 15.2(c).	12/7/16: The Court entered an order to publish the proposed amendments for comment, with comments to be submitted no later than April 30, 2017.
RAP 9.2	***The Appellate Costs Workgroup recommended the proposed amendments to RAP 9.2 – Verbatim of Proceedings.***	***1/4/17: The Court adopted the rule.***
RAP 9.6	***The Appellate Costs Workgroup recommended the proposed amendments to RAP 9.6 – Designation of Clerk's Papers and Exhibits.***	***1/4/17: The Court adopted the rule.***
RAP 15.2	***The Appellate Costs Workgroup recommended the proposed amendments to RAP 15.2 – Determination of Indigency and Rights of Indigent Party.***	***1/4/17: The Court adopted the rule.***
Rap Form 13	***The Supreme Court recommended the proposed amendments to RAP Form 13.***	***1/4/17: The Court adopted the rule.***
CrR 3.2	***The Supreme Court recommended the proposed amendments to CrR 3.2 –***	***2/9/17: The Court adopted the rule.***

SUGGESTED RULE AMENDMENTS SUBMITTED BY OTHERS		
	Release of Accused.	

AMERICAN BAR ASSOCIATION
HOUSE OF DELEGATES

2017 MIDYEAR MEETING
MIAMI, FLORIDA
FEBRUARY 6, 2017

DAILY JOURNAL

RPT NO.	PROPOSED BY	SHORT TITLE	ACTION
10A	VIRGIN ISLANDS BAR ASSOCIATION	Urges the Supreme Court of the United States to consider racial, ethnic, disability, sexual orientation, gender identity, and gender diversity in the selection process for appointment of *amicus curiae*, special masters, and other counsel.	Approved as Revised*
10B	CONNECTICUT BAR ASSOCIATION SECTION OF INTERNATIONAL LAW NEW YORK STATE BAR ASSOCIATION SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE CENTER FOR HUMAN RIGHTS	Reaffirms and expands existing policy regarding refugees in light of the January 27, 2017 Executive Order, calls for increased funding and legislation to process and handle refugee applications, and urges Congress to pass legislation that would provide for individualized assessments of refugee applications and that they be conducted expeditiously and justly	Approved
10C	NEW YORK CITY BAR ASSOCIATION SECTION OF INTERNATIONAL LAW COMMISSION ON IMMIGRATION CRIMINAL JUSTICE SECTION SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE STANDING COMMITTEE ON INTERNATIONAL TRADE IN LEGAL SERVICES MASSACHUSETTS BAR ASSOCIATION CENTER FOR HUMAN RIGHTS	Urges the President to withdraw Executive Order 13769, and follow legal procedures and legal rights in the promulgation of future Executive Orders regarding border security, immigration enforcement, and terrorism.	Approved as Amended*

* See Attached

RPT NO.	PROPOSED BY	SHORT TITLE	ACTION
100	SECTION OF LITIGATION	Urges Congress to enact legislation to repeal the restrictions on federal student aid eligibility contained in the Higher Education Act, 20 U.S.C. § 1091(r), which affects eligibility for federal student aid based on certain drug convictions.	Approved
101	NATIONAL CONFERENCE OF FEDERAL TRIAL JUDGES JUDICIAL DIVISION APPELLATE JUDGES CONFERENCE NATIONAL CONFERENCE OF SPECIALIZED COURT JUDGES NATIONAL CONFERENCE OF STATE TRIAL JUDGES NATIONAL CONFERENCE OF THE ADMINISTRATIVE LAW JUDICIARY SECTION OF BUSINESS LAW	Urges Congress to amend Title 28 of the United States Code to authorize the appointment of additional bankruptcy judges sufficient to meet the demands within each district.	Approved as Revised*
102	STANDING COMMITTEE ON THE AMERICAN JUDICIAL SYSTEM GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION SECTION OF LITIGATION COMMISSION ON THE AMERICAN JURY SECTION OF TORT TRIAL AND INSURANCE PRACTICE	Urges all state courts to develop and implement a civil justice improvement plan to improve the delivery of civil justice guided by the Recommendations of *Call to Action: Achieving Civil Justice for All* as endorsed by the Conference of Chief Justices and urges bar associations to promote those Recommendations.	Approved
103	STANDING COMMITTEE ON PARALEGALS	Grants approval and reapproval to several paralegal education programs, withdraws the approval of three programs at the requests of the institutions, and extends the term of approval to several paralegal education programs.	Approved
104	SECTION OF INTERNATIONAL LAW	Urges the United States to ratify and implement the 2013 Arms Trade Treaty.	Approved
105	ABA REPRESENTATIVES AND OBSERVERS TO THE UNITED NATIONS RULE OF LAW INITIATIVE NEW YORK STATE BAR ASSOCIATION	Urges the United Nations, the United States and other governments and relevant international actors to develop and implement methodologies to measure and track the prevalence of sexual and gender-based violence.	Approved

* See Attached

RPT NO.	PROPOSED BY	SHORT TITLE	ACTION
106	STANDING COMMITTEE ON CONTINUING LEGAL EDUCATION COMMISSION ON LAWYER ASSISTANCE PROGRAMS LAW PRACTICE DIVISION	Adopts the *Model Rule for Minimum Continuing Legal Education (MCLE) and Comments* dated February 2017, to replace the *Model Rule for MCLE and Comments* adopted by the American Bar Association in 1988 and subsequently amended.	Approved
107	STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS CRIMINAL JUSTICE SECTION	Urges Congress to enact legislation deeming it unlawful for any governmental authority or any person acting on behalf of a governmental authority, to engage in a pattern or practice that deprives persons of their constitutional right to the effective assistance of counsel.	Withdrawn
108	STANDING COMMITTEE ON DISASTER RESPONSE AND PREPAREDNESS SECTION OF STATE AND LOCAL GOVERNMENT LAW	Urges federal, state, local, territorial and tribal governments to adopt standards, guidance, best practices, programs, and regulatory systems that make communities more resilient to loss and damage from foreseeable hazards and enhance the disaster resilience of communities.	Approved
109	STANDING COMMITTEE ON SPECIALIZATION	Accredits the Privacy Law program of the International Association of Privacy Professionals of Portsmouth, New Hampshire for a five-year term as a designated specialty certification program for lawyers.	Withdrawn
110A	SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR	Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2017 to the *ABA Standards and Rules of Procedure for Approval of Law Schools* as follows: Standard 204 (*Self Study*); Standard 303(a)(1) (*Curriculum*); Interpretation 303-1; Standard 311(d) (*Academic Program and Academic Calendar*); Standard 501 (*Admissions*); and Rules 35, 37, 38, 39, 40 and 41 (*Appeals Panel*).	Concurred
110B	SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR	Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2017 to Standard 316 (*Bar Passage*) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*.	Did Not Concur

RPT NO.	PROPOSED BY	SHORT TITLE	ACTION
111	SECTION OF INTELLECTUAL PROPERTY LAW	Supports the adoption of the nominative fair use doctrine as an affirmative defense to claims of trademark infringement and unfair competition.	Approved
112A	CRIMINAL JUSTICE SECTION	Urges the United States Department of Justice to continue its accuracy and quality assurance efforts in the area of microscopic hair analysis and urges prosecutors, similarly, to commit to a timely review of all cases in which such erroneous expert testimony was used and to consider adopting the Department of Justice's policy.	Approved
112B	CRIMINAL JUSTICE SECTION	Urges prosecutor's offices to adopt and implement internal conviction-integrity policies when an office supports a defendant's motion to vacate a conviction based on the office's doubts about the defendant's guilt of the crime for which the defendant was convicted, or about the lawfulness of the defendant's conviction.	Approved
112C	CRIMINAL JUSTICE SECTION	Urges law enforcement authorities to develop and use, prior to custodial interrogation of suspects, translations of *Miranda* warnings in as many languages and dialects as necessary to accurately and fully inform individuals of their *Miranda* rights.	Approved
112D	CRIMINAL JUSTICE SECTION	Urges the Food and Drug Administration ("FDA") to update its current policy requiring deferment of blood donations from men who have sex with men for one year after the donor's most recent sexual encounter with a man to a deferral policy based on an assessment of the risk posed by an individual based on potential recent exposures rather than on the individual's sexual orientation.	Approved as Revised*

RPT NO.	PROPOSED BY	SHORT TITLE	ACTION
113	SECTION OF FAMILY LAW COMMISSION ON IMMIGRATION SECTION OF SCIENCE AND TECHNOLOGY LAW SECTION OF HEALTH LAW SECTION OF REAL PROPERTY, TRUST AND ESTATE LAW	Urges the United States Department of State to interpret the Immigration and Nationality Act, 8 U.S.C. § 1401, to recognize those children born to intended parents, even if those legally recognized parents do not have a biological (genetic or gestational) relationship to the child, so long as at least one of the intended parents is a U.S. citizen who is legally recognized as the child's parent by the country of birth or the intended parents state of domicile and the relevant resident or physical presence requirements are met.	Approved
114	COMMISSION ON DISABILITY RIGHTS SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE SECTION OF FAMILY LAW COMMISSION ON YOUTH AT RISK	Urges governments to enact legislation and implement public policy providing that custody, visitation, and access shall not be denied or restricted, nor shall a child be removed or parental rights terminated, based on a parent's disability, absent a showing that the disability is causally related to a harm or an imminent risk of harm to the child.	Approved
115	CENTER OF HUMAN RIGHTS	Urges governments and relevant organizations to implement the recommendations set forth in the policy brief, *Allies Against Atrocities: The Imperative for Transatlantic Cooperation to Prevent and Stop Mass Killings* (May 2016).	Approved
116	SECTION OF HEALTH LAW	Urges Congress to amend Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y) and urges the Executive Branch to adopt regulations that broaden the scope of Medicare coverage by allowing for coverage for items and services that are reasonable and necessary.	Approved as Revised*
117A	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Uniform Family Law Arbitration Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved

* See Attached

RPT NO.	PROPOSED BY	SHORT TITLE	ACTION
117B	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Uniform Wage Garnishment Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
117C	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Uniform Employee and Student Online Privacy Protection Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
117D	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Revised Uniform Unclaimed Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Withdrawn
117E	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Uniform Unsworn Domestic Declarations Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
117F	NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS	Approves the Uniform Unsworn Declarations Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.	Approved
118	COMMISSION ON VETERANS LEGAL SERVICES STANDING COMMITTEE ON LEGAL ASSISTANCE FOR MILITARY PERSONNEL COMMISSION ON HOMELESSNESS AND POVERTY	Urges lawmakers at all levels to work with the legal profession to collaborate in the identification and removal of legal barriers to veterans' access to due and necessary assistance, including housing, education, employment, treatment, benefits, and services, particularly those provided by the Department of Veterans Affairs.	Approved

RPT NO.	PROPOSED BY	SHORT TITLE	ACTION
300	YOUNG LAWYERS DIVISION	Urges state, governmental agencies, territorial, tribal and legislative bodies to review their laws on luring, enticing, or intimidating minors for sexual acts to ensure that such laws explicitly address internet and other electronic means of communication.	Approved as Revised and Amended*
301	SECTION OF LITIGATION BAR ASSOCIATION OF SAN FRANCISCO CENTER ON CHILDREN AND THE LAW COMMISSION ON IMMIGRATION COMMISSION ON YOUTH AT RISK WORKING GROUP ON UNACCOMPANIED MINOR IMMIGRANTS	Urges Congress to preserve and develop laws, regulations, policies, and procedures that protect or increase due process and other safeguards for immigrant and asylum-seeking children, especially those who have entered the United States without a parent or legal guardian.	Approved

* See Attached

REVISED 10A

RESOLUTION

~~RESOLVED, That the American Bar Association urges the Supreme Court of the United States to establish a panel of attorneys, with criteria and assignment procedures that are publicly available, from which to appoint *amicus curiae*, special masters, and other counsel in proceedings before it; and~~

~~FURTHER~~ RESOLVED, That the American Bar Association urges the Supreme Court of the United States to consider racial, ethnic, disability, sexual orientation, gender identity, and gender diversity in the selection process ~~to the panel and~~ for appointment of *amicus curiae*, special masters, and other counsel.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

10C
AS AMENDED

RESOLUTION

RESOLVED, That the American Bar Association urges that the Executive Branch, while fulfilling its responsibility to secure the nation's borders, take care that any Executive Orders regarding border security, immigration enforcement, and terrorism:

~~A.~~ Respect the bounds of the U.S. Constitution;

~~B.~~ Not use religion or nationality as a basis for barring an otherwise eligible individual from entry to the United States;

~~C.~~ Adhere to the United States' international law obligations, including the 1967 Protocol Relating to the Status of Refugees of the 1951 Convention Relating to the Status of Refugees, the International Covenant on Civil and Political Rights, and international bilateral agreements and treaties, and to the principle of non-refoulement;

~~D. Comply with laws and procedures that govern and advance the orderly promulgation of Executive Orders and Executive Branch policies, including Executive Order 11,030, "Preparation, Presentation, Filing, and Publication of Executive Orders and Proclamations," as amended, and the Federal Register Act, 44 U.S.C. §§ 1501-1511;~~

~~E. Follow established inter-agency consultation processes to determine means and measures by which to address threats to national security;~~

~~F.~~ D. Facilitate a transparent, accessible, fair, and efficient system of administering the immigration laws and policies of the United States, including the adjudication of visa applications, applications for immigration benefits, and applications for entry to the United States; and ensure protection for refugees, asylum seekers, torture victims, and others deserving of humanitarian refuge;

FURTHER RESOLVED, That the American Bar Association accordingly urges the President to ~~rescind~~ withdraw Executive Order 13,769, "Protecting the Nation from Foreign Terrorist Entry into the United States," dated January 27, 2017; and

FURTHER RESOLVED, That so long as Executive Order 13,769 remains in effect, the American Bar Association urges the Executive Branch to ensure full, prompt, and uniform compliance with court orders addressing Executive Order 13,769.

REVISED 101

RESOLUTION

RESOLVED, That the American Bar Association urges Congress to amend Title 28 of the United States Code to authorize the appointment of additional bankruptcy judges sufficient to meet the demands within each district~~; and for other purposes~~;

FURTHER RESOLVED, That the American Bar Association urges Congress, as recommended by the Judicial Conference of the United States, to convert certain temporary bankruptcy judges to permanent bankruptcy judges in the District of Delaware, the Eastern District of Michigan, the Southern District of ~~Delaware, Michigan,~~ Florida, the District of Maryland, the District of Nevada, the Eastern District of North Carolina, the District of Puerto Rico, the Western District of Tennessee, and the Eastern District of Virginia and to authorize the appointment of additional bankruptcy judges in the District of Delaware, the Eastern District of Michigan, and the Middle District of Florida; and

FURTHER RESOLVED, That the American Bar Association urges Congress, in the event that Title 28 is not amended before the temporary bankruptcy judgeships expire in May 2017 ~~in needed time~~, to consider, as recommended by the Judicial Conference of the United States, a one-year extension of seven judgeships, which includes two positions in Delaware, two in the Southern District of Florida ~~Southern~~, one in the Eastern District of Virginia, one in the Eastern District of Michigan ~~Eastern~~ and one in the District of Puerto Rico.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

REVISED 112D

RESOLUTION

RESOLVED, That the American Bar Association urges the Food and Drug Administration ("FDA") to update its current policy requiring deferment of blood donations from men who have sex with men for one year after the donor's most recent sexual encounter with a man to a deferral policy based on an ~~individual risk~~ assessment ~~or other similar policy that does not result in disparate treatment of men who have sex with men~~ of the risk posed by an individual based on potential recent exposures rather than on the individual's sexual orientation; and

FURTHER RESOLVED, That the American Bar Association urges ~~federal, state, local, territorial, and tribal governments to enact and adopt legally sound and~~ the FDA to develop and implement validated tools for assessing individual risk, to ensure the safety of the blood supply in light of the most up-to-date testing technology that can reliably indicate the presence of HIV and other blood-borne pathogens within a short period of time after an individual has been exposed.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

REVISED 116

RESOLUTION

RESOLVED, That the American Bar Association urges Congress to amend Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y) and urges the Executive Branch to adopt regulations that ~~to~~ broaden the scope of Medicare coverage by allowing for coverage for items and services that are reasonable and necessary: (a) for the diagnosis, prognosis or treatment of current or future conditions, illnesses, or injuries; or (b) to improve the functioning of a malformed or impaired body member or function; or (c) to mitigate against the future onset or severity of any prognosticated illness, injury or condition, taking into account supporting scientific evidence and evidence-based recommendations supporting their use; and

FURTHER RESOLVED, That the American Bar Association urges Congress to define "prognosis" as the forecasting of the likelihood of or probable course of any current or future illness, injury or condition.

DELETIONS STRUCK THROUGH; ADDITIONS UNDERLINED

300
AS REVISED AND AMENDED

RESOLUTION

RESOLVED, That the American Bar Association urges state, governmental agencies, territorial, ~~and~~ tribal ~~legislatures and~~ ~~legislatures~~ and local legislative bodies to review their laws ~~and engage stakeholders to ensure that legal prohibitions~~ ~~and engage stakeholders to ensure that legal prohibitions~~ on ~~the~~ ~~the~~ luring, ~~or~~ enticing, or intimidating ~~of a~~ minors for sexual acts to ensure that such laws explicitly address ~~the use of the~~ ~~the use of the~~ internet and other electronic means of communication~~.~~; and

FURTHER RESOLVED, That the American Bar Association urges state, territorial, tribal and local legislative bodies to engage stakeholders in the process of reviewing their laws on luring or enticing minors for sexual acts.

DELETIONS STUCK THROUGH; ADDITIONS UNDERLINED

WSBA

MEMORANDUM

TO: The President, President-elect, Immediate-Past President, and Board of Governors

FROM: The Committee of Professional Ethics

RE: Revised Advisory Opinion

DATE: February 16, 2017

INFORMATION ONLY: no action requested.

The attached Revised Advisory Opinion was adopted by the Committee on Professional Ethics at its February 10, 2017, meeting. The purpose of this revision was to update and advance the analysis of general counsel responsibility for an in-house lawyer who is not a part of the general counsel's legal department. A pre-publication copy is provided for the BOG's information.

Attachments:

- Advisory Opinion 2219 (REVISED February 10, 2017)

WSBA

Advisory Opinion: 2219 [REVISED]
Year Issued: 2012 [Revised 2017]
RPC(s): RPC 1.0, 5.1(a)-(c), 5.5 (d)(1)
Subject: Corporate In-House General Counsel Responsibility for Another In-House Lawyer who is Not in the Same Legal Department

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This opinion address the supervisory responsibility of a corporate in-house general counsel (the "General Counsel") for another in-house lawyer-employee who is not a part of General Counsel's legal department but will nonetheless give legal advice to the corporation on at least some occasions (the "Other Lawyer").

BACKGROUND

General Counsel is licensed in Washington and is an employee of Corporation who represents Corporation from an office in its Washington headquarters. Other Washington-licensed lawyers work with General Counsel as a part of Corporation's in-house Legal Department.

Recently, Corporation hired Other Lawyer but did not place Other Lawyer in the Legal Department or otherwise subject Other Lawyer to control by General Counsel. Other Lawyer is not licensed in Washington but is licensed and in good standing in another United States jurisdiction. Corporation has decided to give Other Lawyer the title "Staff Attorney" even though Other Lawyer is not a member of the Legal Department.

General Counsel has questions about whether, or to what extent, he is responsible for assuring that Other Lawyer acts consistently with the RPCs. Although General Counsel has sought to place Other Counsel in the Legal Department or otherwise to have Other Counsel become subject to General Counsel's direct or indirect control, Corporation has refused to take either step.

DISCUSSION

1. RPC 5.5(d)(1): Authorized In-House Practice

RPC 5.5(d)(1) governs practice by in-house counsel employed in Washington who are only licensed in another state:

> (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
> (1) are provided to the lawyer's employer or its organizational affiliates and are (i) provided on a temporary basis and (ii) not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Comments [16] and [17] to RPC 5.5 explain that:

> [16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.
>
> [17] [Washington revision] In Washington, paragraph (d)(1) applies to lawyers who are providing the services on a temporary basis only. If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer must seek general admission through APR 3 or house counsel admission under APR 8(f).

It follows that unless Other Lawyer's practice is authorized by federal preemption, is authorized by other law or constitutes a temporary practice in Washington, Other Lawyer must obtain general or in-house counsel admission in order to avoid engaging in the unauthorized practice of law ("UPL"). This would include holding Other Lawyer out as "Staff Attorney."

It also follows that if Other Lawyer is engaged in UPL, General Counsel would need to pay attention to RPC 5.5(a), which provides that: "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." General Counsel's status as an employee of Corporation who has neither direct nor indirect supervisory responsibility for Other Counsel's activities would not place General Counsel in violation of RPC 5.5(a). The answer would be different if, for example, General Counsel undertook to work with Other Counsel on a legal matter that required Other Counsel to engage in UPL or to be held out as licensed to practice in Washington if he is not.

This opinion is limited to General Counsel's supervisory responsibilities. Moreover, the CPE does not give advice on violations of law outside the RPCs. But we note that General Counsel, by virtue of his/her role as counsel for an entity under RPC 1.13, has other duties that may be triggered if Other Lawyer is practicing law in Washington on the entity's behalf without a license to do so, as contemplated by GR 24 and RPC 5.5(d)(1). Other Lawyer may also be in violation of RCW 2.48.180. At a minimum, General Counsel's duty of competent representation under RPC 1.1 might require General Counsel to advise his/her client of Other Lawyer's obligations under RPC 5.5(d)(1) and recommend appropriate action. General Counsel also owes duties to the entity under RPC 1.13(b) that are triggered if an employee for the organization is

engaged in action that is a violation of law that reasonably might be imputed to the organization and might result in substantial injury to the organization.

2. RPC 5.1: Supervisory Duties

RPC 1.0(c) includes "the legal department of a corporation or other organization" within the definition of "law firm." RPC 5. 1 provides that:

> (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
>
> (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
> (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
> (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

Comments [1] through [3] to RPC 5.1 elaborate on these duties:

> [1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.
>
> [2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.
>
> [3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a

> small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

Since Other Lawyer is, by hypothesis, not a part of the Legal Department and General Counsel has no direct or indirect control over Other Lawyer, RPC 5.1(a) and 5.1(b) impose no duty on General Counsel to supervise Other Counsel.[1] Even if they did, however, General Counsel's unsuccessful attempts to have Corporation place Other Counsel in the Legal Department or otherwise to subject Other Counsel to General Counsel's control would constitute "reasonable efforts" under these particular circumstances.[2] The fact that RPC 1.0(c) refers to "*the* legal department of a corporation or other organization" (emphasis supplied) does not, in our opinion, permit or require us to ignore the fact that Corporation has effectively chosen to have more than one legal department.

Since General Counsel cannot order Other Lawyer to do or refrain from doing anything, there would be no violation of RPC 5.1(c)(1) unless General Counsel knowingly ratifies an RPC violation by Other Lawyer. Similarly, and given that General Counsel's attempts to control or limit Other Lawyer's activities have all been rebuffed, there would be no violation of RPC 5.1(c)(2).

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessor, the Rules of Professional Conduct Committee. Advisory Opinions issued by the CPE are distinguished from earlier RPC Committee opinions by a numbering format which includes the year followed by a sequential number. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.

---

[1] It also appears that Other Lawyer cannot fairly be described as a non-lawyer for whom General Counsel would have some degree of responsibility under RPC 5.3.

[2] In addition to these unsuccessful efforts, however, General Counsel should inform others in the Legal Department that they cannot assist Other Lawyer in UPL. *See* the discussion earlier in this opinion about RPC 5.5(a). *See also* RPC 8.4(a), making it professional misconduct for a lawyer to "violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another."

WSBA

To: WSBA Board of Governors

From: Kevin Bank, Assistant General Counsel

Re: Civil Litigation Rules Drafting Task Force Roster

Date: March 2, 2017

INFORMATION: Civil Litigation Rules Drafting Task Force Roster

At the November 18, 2016, Board of Governors meeting, the Board approved the formation of a Civil Litigation Rules Drafting Task Force and a Charter for that Task Force. Under Section IX(B)(2)(e) of the WSBA Bylaws, the President selects persons to be appointed to Bar entities such as task forces, with the BOG having the authority to accept or reject those appointments.

Pursuant to the Charter, the Task Force was designated to have the following membership:

- A WSBA member to serve as Chair;
- Not fewer than ten WSBA members, including at least one civil trial lawyer with substantial experience representing plaintiffs, at least one civil trial lawyer with substantial experience representing defendants, and at least one lawyer or judge who is a current or former member of the ATJ Board;
- A superior court judge and a district court judge;
- A representative from the Association of County Clerks;
- A representative from the Washington Court of Appeals if available to serve;
- A representative of the federal judiciary if available to serve.

At its January 2017 meeting, the BOG approved a proposed roster for the Task Force. At that time, the Association of County Clerks position was unfilled, and the judicial positions were still awaiting confirmation from the applicable judges' associations or chief judges. In approving the proposed roster, the Board delegated to President Haynes and Task Force Chair Ken Masters the authority to confirm those positions and report back to the Board in March 2017 with a full roster. The current roster, which is attached for the Board's information, includes members designated by the President of

the Association of County Clerks and by the applicable judges associations or chief judges. The only remaining unfilled position is for the Court of Appeals Judge, which will be designated by the Presiding Judge of the Court of Appeals. An updated Roster will be provided to the Board once this final position is filled.

WSBA

WASHINGTON STATE BAR ASSOCIATION

Proposed Civil Litigation Rules Drafting Task Force Roster

NAME/ADDRESS	PHONE	E-MAIL
Chair		
Kenneth W. Masters, Chair Masters Law Group 241 Madison Ave N Bainbridge Island, WA 981110	206.780.5033	ken@appeal-law.com
WSBA Members		
Stephanie Bloomfield Gordon Thomas Honeywell PO Box 1157 Tacoma WA 98401-1157	253.620.6514	sbloomfield@gth-law.com
Jeffrey A. Damasiewicz [*WSAJ*] Attorney at Law 110 W Market St – Ste 106 Aberdeen WA 98520-6206	360.612.3991	jeff.damasiewicz@mail.com
Nicholas Gellert [*ATJ*] Perkins Coie LLP 1201 3rd Ave – Ste 4900 Seattle WA 98101-3099	206.359.8680	ngellert@perkinscoie.com
Rebecca R. Glasgow Attorney General's Office PO Box 40100 Olympia, WA 98504-0100	360.664.3027	rebeccag@atg.wa.gov
Kim Gunning [*MBA*] Columbia Legal Services 101 Yesler Way, Suite 300 Seattle, Washington 98104	206.332.7144	Kim.Gunning@columbialegal.org
Hillary Evans Graber Madison Park Law Offices 4020 E Madison St Ste 210 Seattle, WA 98112-3150	206.527.8008	hillary@maritimeinjury.com
Caryn Joregenson Mills Meyers Swartling 1000 2nd Ave – Fl 30 Seattle WA 98104-1094	206.382.1000	cjorgensen@millsmeyers.com

Shannon Kilpatrick Dawson Brown, PS 1000 2nd Ave – Ste 1420 Seattle WA 98104-1033	206.262.1444	shannon@dawson-brown.com
Jane Morrow [*WSAJ*] Otorowski Johnston Morrow & Golden 298 Winslow Way W Bainbridge Island, WA 98110-2510	206.842.1000	jm@medilaw.com
Averil B. Rothrock Schwabe Williamson & Wyatt PC 1420 5th Ave Ste 3400 Seattle, WA 98101-4010	206.689.8121	arothrock@schwabe.com
Brad E. Smith [*WDTL*] Ewing Anderson, P.S. 522 W Riverside Ave Ste 800 Spokane, WA 99201-0519	509.838.4261	bsmith@ewinganderson.com
Michael C. Subit Frank Freed Subit & Thomas LLP 705 2nd Ave Ste 1200 Seattle, WA 98104-1798	206.682.6711	msubit@frankfreed.com
Adam N. Tabor [*MBA*] Orrick, Herrington & Sutcliffe LLP 701 5th Ave Ste 5600 Seattle, WA 98104-7045	202.763.1758	atabor@orrick.com
Roger D. Wynne Seattle City Attorney's Office 701 Fifth Ave Ste 2050 Seattle, WA 98104-7097	206.233.2177	roger.wynne@seattle.gov
Judicial		
The Honorable John R. Ruhl King County Superior Court KCC-SC-0203 516 Third Avenue – Rm C203 Seattle, WA 98104-2381	206.477.1373	john.ruhl@kingcounty.gov
The Honorable Rebecca C. Robertson Federal Way Municipal Court 33325 8th Ave S Federal Way WA 98003-6325	253.835.3000	rebecca.robertson@cityoffederalway.com
(Pending) The Court of Appeals		
The Honorable Paula L. McCandlis U.S. Dist. Court, W.D. Wash. 1310 10th St – Suite 104 Bellingham, WA 98227	360.714.0900	paula_mccandlis@wawd.uscourts.gov

Clerks' Association		
Ruth Gordon Jefferson County Clerk P.O. Box 1220 Port Townsend, WA 98368	360.385.9128	rgordon@co.jefferson.wa.us
BOG Liaison		
Sean-Michael V. Davis WSBA Governor At Large - WYLD Pierce County Prosecutor's Office 955 Tacoma Ave S - Ste 301 Tacoma, WA 98402-2160	253.798.8872	SMVD.Esq@gmail.com

Supreme Court Liaison		
Shannon Hinchliffe Administrative Office of the Courts PO Box 41174 Olympia WA 98504-1170	360.357.2124	Shannon.Hinchcliffe@courts.wa.gov
WSBA Staff Liaison		
Kevin Bank Assistant General Counsel Washington State Bar Association 1325 Fourth Avenue, Suite 600 Seattle, WA 98101-2539	206.733.5909	kevinb@wsba.org

WSBA

TO: Board of Governors

FROM: Joy Williams, WSBA Diversity and Public Service Programs Manager
Robin Nussbaum, WSBA Inclusion & Equity Specialist

RE: Diversity and Inclusion Events

DATE: February 21, 2017

WSBA Diversity and Inclusion Events

Education, Collaboration, and Partnership

Working closely with staff, volunteers and community partners throughout the legal community is foundational to the successful implementation of the diversity plan. WSBA participates in and provides a variety of opportunities to increase cross-cultural competency, awareness and engagement. Your participation communicates WSBA's commitment to representation and involvement in advancing inclusion.

Diversity & Inclusion Events for WSBA Staff and Volunteers			
When	**What**	**How You Can Help**	**Who To Contact for More Info**
Thursday, March 2	**Continuing the Conversation for Staff** Fatness and Fatphobia	FYI only	Robin N.
Friday, March 17	**Inside-Out Diversity Presentation** Tax Section	FYI only	Robin N.
Wednesday, May 10	**Inside-Out Diversity Presentation** Editorial Advisory Committee	FYI only	Robin N.

Washington State Minority Bar Association and other Diversity Events			
When	**What**	**How You Can Help**	**Who To Contact for More Info**
Thursday March 23rd	**WSBA Community Networking Event - Olympia**	Attend if in the area	Joy
Thursday April 13	**WSBA Community Networking Event - Bellingham**	Attend if in the area	Joy
Thursday April 27	**QLAW Annual Banquet**	Attend	Joy or Margaret

Thursday May 11	**Diversity Stakeholders Meeting – WSBA Office**	Attend	Joy
Friday May 19	**Loren Miller Bar Association Annual Banquet**	Attend	Joy or Margaret
Tuesday May 30th	**Diversity Legal Lunchbox: Allyship for Legal Professionals**	View via Webcast	Joy

Contact Information

Joy: joyw@wsba.org or 206.733.5952
Dana: danab@wsba.org or 206.733.5945
Robin: robinn@wsba.org or 206.727.8322
Margaret: margarets@wsba.org or 206.727.8244
Frances: francesd@wsba.org or 206.727.8222
Terra: terran@wsba.org or 206.727.8282

WSBA Financial Reports

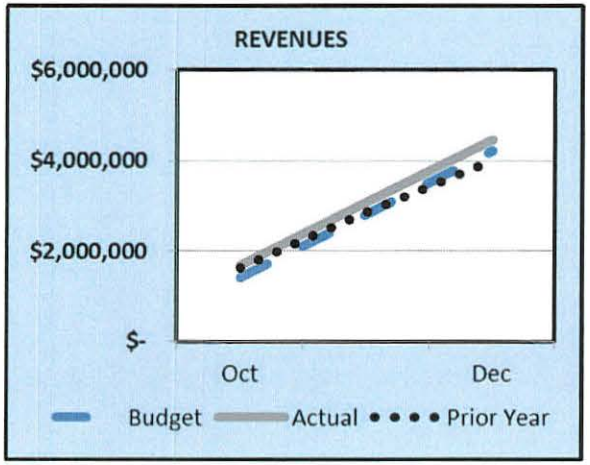
(Unaudited)

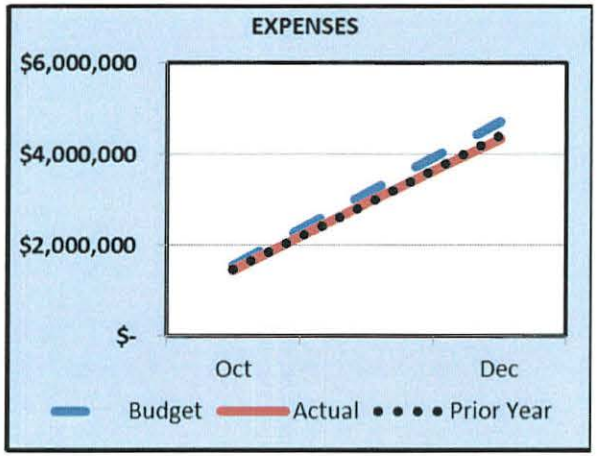
Year to Date December 31, 2016

Prepared by Mark Hayes, Controller
Submitted by
Ann Holmes, Chief Operations Officer
January 17, 2017

WSBA KEY FINANCIAL BENCHMARKS THROUGH DECEMBER 31, 2016 (25.0% of the year)

GENERAL FUND *(Supports regulatory functions and most services to members and the public)*





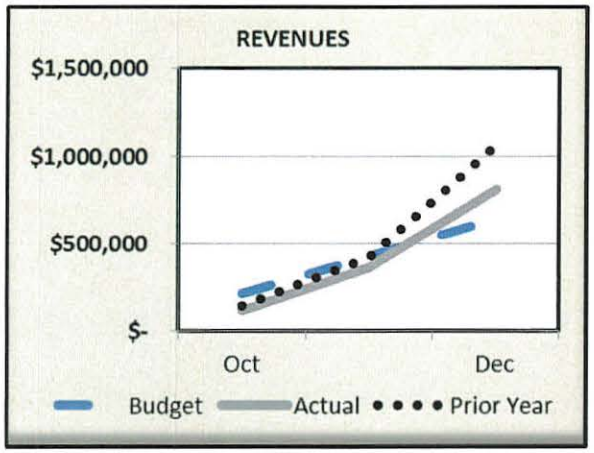
REVENUES: The majority of revenues collected through December are from license fees, which are tracking to budget. Overall revenue is slightly ahead of budget due to timing related to donations from the Foundation and Winter Bar exam fees. We expect revenue to approximate budget for the year.

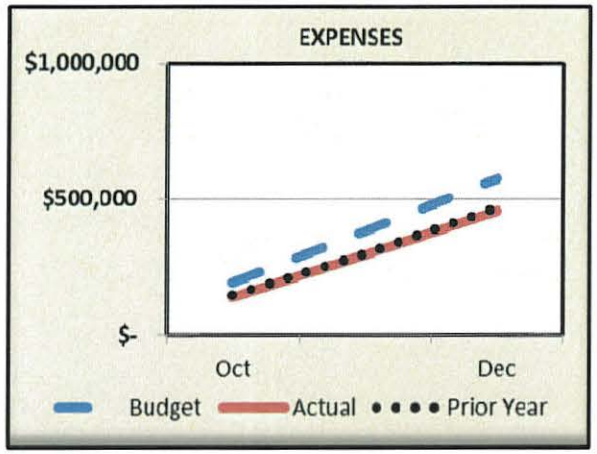
EXPENSES: Indirect expenses (salaries, benefits, overhead) are slightly under budget due to the timing of overhead spending that will occur as the year progresses. Direct expenses are currently under budget due to timing of activities required for spending.

PROJECTED NET RESULT: It is still very early in the year to project net results at year-end, however we expect normal trends to hold true, which would result in a slightly lower net loss at year-end.

	FY17 Budget	FY17 Actuals	Variance
Revenues	$4,222,556	$4,465,243	$242,687
Expenses	$4,721,892	$4,359,836	$362,056
Profit/(Loss)	($499,336)	$105,407	$604,743

CLE FUND





REVENUES: Actual revenue is greater than budget due to robust 1st quarter product sales, primarily MP3 and videos. This was offset by less than anticipated seminar revenue. We have seen seminar registrations drop 45% from prior year, which is greater than predicted.

EXPENSES: Indirect expenses are slightly below budget due to the timing of overhead spending that will occur as the year progresses. It is early in the year, so direct expenses are lower than budget, because splits with sections, which represent 21% of the direct expense budget, have yet to occur.

PROJECTED NET RESULT: The CLE fund currently shows a net profit compared to budget; however, we do not believe that over the year the pickup in product revenue will offset the reduction in seminar revenue versus budget and are anticipating we will come in with a slight net loss.

	FY17 Budget	FY17 Actuals	Variance
Revenues	$643,700	$812,244	$168,544
Expenses	$575,647	$455,758	$119,889
Profit/(Loss)	$68,053	$356,486	$288,433

LAWYERS FUND FOR CLIENT PROTECTION

REVENUES: Actual revenues are slightly higher than budget. We expect to see the majority of revenue for member assessments come in during January and February.

EXPENSES: Actual expenses are very close to budget. We expect to see additional spending for gifts to injured clients in the remaining months of the fiscal year.

PROJECTED NET RESULT: Although it is early in the year to project year end results, we expect the LFCP fund to come in on budget at this time.

SECTIONS OPERATIONS

REVENUES: The majority of revenue collected by Sections is from member dues, which are at 40% collected so far this year. We expect the remainder to be collected in January and February.

EXPENSES: Actual direct expenses are lower than budget. Variances depend on timing of Section spending throughout the year. Expenses related to the WSBA Per-Member Charge are consistent with revenues collected.

PROJECTED NET RESULT: Through December, Sections Operations shows a net profit due to timing of the collection of membership dues. We expect this to fall in line with budget as the year progresses.

WSBA

To: Board of Governors
Budget and Audit Committee

From: Mark Hayes, Controller

Re: Key Financial Benchmarks for the Fiscal Year to Date (YTD) through December 31, 2016

Date: January 17, 2017

	% of Year	Current Year % YTD	Current Year $ Difference[1]	Prior Year YTD	Comments
Salaries	25.00%	25.34%	$36,640 (Over budget)	24.25%	Expected to be on or slightly under budget
Benefits	25.00%	25.24%	$8,997 (Over budget)	24.31%	Expected to be on budget
Other Indirect Expenses	25.00%	20.18%	$162,071 (Under budget)	24.18%	Expected to be slightly under budget
Total Indirect Expenses	25.00%	24.35%	$116,434 (Under budget)	24.25%	Expected to be on or slightly under budget
General Fund Revenues	25.00%	26.44%	$242,687 (Over budget)	24.35%	Expected to be on budget
General Fund Direct Expenses	25.00%	14.64%	$264,422 (Under budget)	18.46%	Expected to be on or slightly under budget
CLE Revenue	25.00%	31.55%	$168,544 (Over budget)	43.71%	Expected to be under budget
CLE Direct Expenses	25.00%	13.19%	$102,259 (Under budget)	14.84%	Expected to be on or slightly under budget
CLE Indirect Expenses	25.00%	23.77%	$17,630 (Under budget)	21.89%	Expected to be on or slightly under budget

[1] Dollar difference is calculated based on pro-rated budget figures (total annual budget figures divided by 12 months) minus actual revenue and expense amounts as of December 31, 2016 (3 months into the fiscal year).

Washington State Bar Association Financial Summary
Year to Date as of December 31, 2016 25.00% of Year
Compared to Fiscal Year 2017 Budget

Category	Actual Revenues	Budgeted Revenues	Actual Indirect Expenses	Budgeted Indirect Expenses	Actual Direct Expenses	Budgeted Direct Expenses	Actual Total Expenses	Budgeted Total Expenses	Actual Net Result	Budgeted Net Result
Access to Justice	-	8,000.00	54,698	197,913	16,868	61,850	71,566	259,763	(71,566)	(251,763)
Administration	(29,456)	55,000	257,786	1,026,621	(4,219)	3,135	253,568	1,029,756	(283,024)	(974,756)
Admissions/Bar Exam	428,440	1,070,000	190,775	784,390	26,953	376,900	217,728	1,161,290	210,712	(91,290)
Board of Governors	-	-	135,538	487,946	37,547	294,650	173,084	782,596	(173,084)	(782,596)
Communications	1,354	44,250	359,917	1,570,598	18,050	130,060	377,968	1,700,658	(376,614)	(1,656,408)
Discipline	20,734	140,000	1,303,325	5,335,003	51,109	267,668	1,354,433	5,602,671	(1,333,699)	(5,462,671)
Diversity	90,000	100,374	87,110	365,119	2,515	29,150	89,625	394,269	375	(293,895)
Foundation	-	-	36,517	148,649	287	19,300	36,804	167,949	(36,804)	(167,949)
Human Resources	-	-	94,264	257,819	-	-	94,264	257,819	(94,264)	(257,819)
Law Clerk Program	21,350	97,000	26,507	101,085	524	5,350	27,031	106,435	(5,681)	(9,435)
Law Office Management Asst.Prog	1,080	2,500	36,164	198,202	288	4,700	36,452	202,902	(35,372)	(200,402)
Lawyers Assistance Program	1,675	15,750	28,287	127,432	-	46,770	28,287	174,202	(26,612)	(158,452)
Legislative	-	-	52,345	220,465	5,898	42,800	58,243	263,265	(58,243)	(263,265)
Licensing Fees	3,234,706	13,204,000	-	-	-	-	-	-	3,234,706	13,204,000
License and Membership Records	87,111	247,800	134,982	559,967	8,432	27,500	143,414	587,467	(56,303)	(339,667)
Limited License Legal Technician	1,800	13,400	42,783	175,010	3,033	60,054	45,815	235,064	(44,015)	(221,664)
Limited Practice Officers	27,968	132,700	50,450	189,203	2,722	13,284	53,172	202,487	(25,204)	(69,787)
Mandatory CLE	176,525	711,000	113,474	468,890	53,994	266,500	167,468	735,390	9,057	(24,390)
Member Benefits	5,065	3,000	-	-	6,048	75,000	6,048	75,000	(983)	(72,000)
Mentorship Program	-	-	38,777	177,973	424	23,500	39,202	201,473	(39,202)	(201,473)
New Lawyer Program	17,583	80,000	61,547	275,191	7,961	32,700	69,508	307,891	(51,925)	(227,891)
NW Lawyer	162,908	573,450	57,743	221,408	101,757	402,800	159,500	624,208	3,408	(50,758)
Office of General Counsel	53	-	188,389	777,270	1,919	15,700	190,308	792,970	(190,256)	(792,970)
OGC-Disciplinary Board	-	-	37,295	154,747	19,793	103,000	57,088	257,747	(57,088)	(257,747)
Practice of Law Board	-	-	24,514	101,271	3,275	14,100	27,789	115,371	(27,789)	(115,371)
Professional Responsibility Program	-	-	58,989	272,851	1,763	8,000	60,751	280,851	(60,751)	(280,851)
Public Service Programs	89,936	85,000	48,396	216,540	243	215,460	48,639	432,000	41,297	(347,000)
Sections Administration	126,413	307,000	107,560	448,056	6,404	12,100	113,964	460,156	12,449	(153,156)
Technology	-	-	358,119	1,475,919	-	-	358,119	1,475,919	(358,119)	(1,475,919)
Subtotal General Fund	**4,465,243**	16,890,224	**3,986,251**	16,335,538	**373,586**	2,552,031	**4,359,836**	18,887,569	**105,407**	**(1,997,345)**
Expenses using reserve funds							**4,359,836**		-	-
Total General Fund - Net Result from Operations									**105,407**	**(1,997,345)**
Percentage of Budget	**26.44%**		**24.40%**		**14.64%**		**23.08%**			
CLE-Products	498,493	879,800	126,188	512,809	31,184	144,865	157,372	657,674	341,121	222,126
CLE-Seminars	313,751	1,695,000	215,271	923,544	83,115	721,369	298,386	1,644,913	15,364	50,087
Total CLE	812,244	2,574,800	341,459	1,436,353	114,299	866,234	455,758	2,302,587	356,486	272,213
Percentage of Budget	**31.55%**		**23.77%**		**13.19%**		**19.79%**			
Total All Sections	205,228	688,611	-	-	199,777	904,833	199,777	904,833	5,451	(216,222)
Lawyers Fund for Client Protection-Restricted	310,009	986,000	27,260	113,721	127,816	502,500	155,076	616,221	154,934	369,779
Management Western States Bar Conference	8,420	50,000	-	-	37,590	50,000	37,590	50,000.00	(29,170)	-
Totals	5,801,144	21,189,635	4,354,969	17,885,612	853,067	4,875,597.75	5,208,036	22,761,210	593,107	(1,571,575)
Percentage of Budget	27.38%		24.35%		17.50%		22.88%			

Summary of Fund Balances:	Fund Balances Sept. 30, 2016	Fund Balances Year to date	2017 Budgeted Fund Balances
Restricted Funds:			
Lawyers Fund for Client Protection	2,646,222	2,801,155	3,016,001
Western States Bar Conference	10,958	(18,212)	10,958
Board-Designated Funds (Non-General Fund):			
CLE Fund Balance	456,568	813,054	728,781
Section Funds	1,212,637	1,218,088	996,416
Board-Designated Funds (General Fund):			
Operating Reserve Fund	1,500,000	1,500,000	1,500,000
Facilities Reserve Fund	200,000	200,000	200,000
Unrestricted Funds (General Fund):			
Unrestricted General Fund	2,218,536	2,323,943	221,191
Total Fund Balance	**8,244,921**	**8,838,029**	**6,673,347**
Net Change In Fund Balance		**593,107**	**(1,571,575)**

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
LICENSE FEES					
REVENUE:					
LICENSE FEES	13,204,000.00	1,082,060.61	3,234,706.17	9,969,293.83	24.50%
TOTAL REVENUE:	**13,204,000.00**	**1,082,060.61**	**3,234,706.17**	**9,969,293.83**	**24.50%**

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

ACCESS TO JUSTICE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
CONFERENCES & INSTITUTES	8,000.00	-	-	8,000.00	0%
TOTAL REVENUE:	**8,000.00**	**-**	**-**	**8,000.00**	**0%**
DIRECT EXPENSES:					
ATJ BOARD RETREAT	2,000.00	-	-	2,000.00	0.00%
LEADERSHIP TRAINING	2,000.00	-	-	2,000.00	0.00%
ATJ BOARD EXPENSE	15,100.00	720.07	2,392.86	12,707.14	15.85%
ATJ BOARD COMMITTEES EXPENSE	5,000.00	230.90	450.78	4,549.22	9.02%
STAFF TRAVEL/PARKING	1,200.00	10.00	61.60	1,138.40	5.13%
STAFF MEMBERSHIP DUES	150.00	-	-	150.00	0.00%
PUBLIC DEFENSE	8,400.00	385.74	862.38	7,537.62	10.27%
CONFERENCE/INSTITUTE EXPENSE	23,000.00	-	13,100.00	9,900.00	57%
RECEPTION/FORUM EXPENSE	5,000.00	-	-	5,000.00	0%
TOTAL DIRECT EXPENSES:	**61,850.00**	**1,346.71**	**16,867.62**	**44,982.38**	**27.27%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.10 FTE)	105,884.00	10,551.86	36,259.14	69,624.86	34.24%
BENEFITS EXPENSE	42,244.00	3,418.90	8,413.79	33,830.21	19.92%
OTHER INDIRECT EXPENSE	49,785.00	2,934.43	10,024.96	39,760.04	20.14%
TOTAL INDIRECT EXPENSES:	**197,913.00**	**16,905.19**	**54,697.89**	**143,215.11**	**27.64%**
TOTAL ALL EXPENSES:	**259,763.00**	**18,251.90**	**71,565.51**	**188,197.49**	**27.55%**
NET INCOME (LOSS):	**(251,763.00)**	**(18,251.90)**	**(71,565.51)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
ADMINISTRATION					
REVENUE:					
INTEREST INCOME	25,000.00	1,462.71	4,548.32	20,451.68	18.19%
GAIN/LOSS ON INVESTMENTS	30,000.00	17,819.10	(34,267.62)	64,267.62	-114.23%
MISCELLANEOUS	-	257.50	263.50	(263.50)	
TOTAL REVENUE:	**55,000.00**	**19,539.31**	**(29,455.80)**	**84,455.80**	**-53.56%**
DIRECT EXPENSES:					
CREDIT CARD MERCHANT FEES	-	(1,686.00)	(4,449.50)	4,449.50	
STAFF TRAVEL/PARKING	2,500.00	-	231.00	2,269.00	9.24%
STAFF MEMBERSHIP DUES	635.00	-	-	635.00	0.00%
TOTAL DIRECT EXPENSES:	**3,135.00**	**(1,686.00)**	**(4,218.50)**	**7,353.50**	**-134.56%**
INDIRECT EXPENSES:					
SALARY EXPENSE (7.92 FTE)	632,169.00	52,773.43	165,596.58	466,572.42	26.19%
BENEFITS EXPENSE	206,690.00	21,206.37	54,388.82	152,301.18	26.31%
OTHER INDIRECT EXPENSE	187,762.00	11,062.94	37,800.99	149,961.01	20.13%
TOTAL INDIRECT EXPENSES:	**1,026,621.00**	**85,042.74**	**257,786.39**	**768,834.61**	**25.11%**
TOTAL ALL EXPENSES:	**1,029,756.00**	**83,356.74**	**253,567.89**	**776,188.11**	**24.62%**
NET INCOME (LOSS):	**(974,756.00)**	**(63,817.43)**	**(283,023.69)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
ADMISSIONS/BAR EXAMS					
REVENUE:					
EXAM SOFT REVENUE	40,000.00	-	-	40,000.00	0.00%
BAR EXAM FEES	1,000,000.00	32,510.00	406,775.00	593,225.00	40.68%
SPECIAL ADMISSIONS	30,000.00	6,165.00	21,665.00	8,335.00	72.22%
TOTAL REVENUE:	**1,070,000.00**	**38,675.00**	**428,440.00**	**641,560.00**	**40.04%**
DIRECT EXPENSES:					
FACILITY, PARKING, FOOD	65,000.00	-	20,500.00	44,500.00	31.54%
EXAMINER FEES	32,500.00	-	-	32,500.00	0.00%
UBE EXMINATIONS	136,000.00	-	-	136,000.00	0.00%
BOARD OF BAR EXAMINERS	30,000.00	(637.20)	143.22	29,856.78	0.48%
BAR EXAM PROCTORS	33,000.00	-	-	33,000.00	0.00%
CHARACTER & FITNESS BOARD	20,000.00	406.21	3,012.53	16,987.47	15.06%
DISABILITY ACCOMMODATIONS	25,000.00	-	-	25,000.00	0.00%
CHARACTER & FITNESS INVESTIGATIONS	1,000.00	-	150.58	849.42	15.06%
LAW SCHOOL VISITS	1,000.00	-	41.00	959.00	4.10%
COURT REPORTERS	15,000.00	-	1,966.03	13,033.97	13.11%
POSTAGE	4,000.00	198.40	1,137.28	2,862.72	28.43%
STAFF TRAVEL/PARKING	13,000.00	-	2.24	12,997.76	0.02%
STAFF MEMBERSHIP DUES	200.00	-	-	200.00	0.00%
SUPPLIES	1,200.00	-	-	1,200.00	0.00%
TOTAL DIRECT EXPENSES:	**376,900.00**	**(32.59)**	**26,952.88**	**349,947.12**	**7.15%**
INDIRECT EXPENSES:					
SALARY EXPENSE (6.48 FTE)	465,903.00	38,402.60	117,641.51	348,261.49	25.25%
BENEFITS EXPENSE	164,864.00	16,744.69	42,174.21	122,689.79	25.58%
OTHER INDIRECT EXPENSE	153,623.00	9,061.43	30,959.42	122,663.58	20.15%
TOTAL INDIRECT EXPENSES:	**784,390.00**	**64,208.72**	**190,775.14**	**593,614.86**	**24.32%**
TOTAL ALL EXPENSES:	**1,161,290.00**	**64,176.13**	**217,728.02**	**943,561.98**	**18.75%**
NET INCOME (LOSS):	**(91,290.00)**	**(25,501.13)**	**210,711.98**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
BOG/OED					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
BOG MEETINGS	125,000.00	3,768.93	16,980.95	108,019.05	13.58%
BOG COMMITTEES' EXPENSES	30,000.00	1,497.02	4,360.97	25,639.03	14.54%
WASHINGTON LEADERSHIP INSTITUTE	60,000.00	-	-	60,000.00	0.00%
BOG CONFERENCE ATTENDANCE	17,500.00	4,162.80	5,683.64	11,816.36	32.48%
BOG TRAVEL & OUTREACH	45,000.00	938.89	8,469.88	36,530.12	18.82%
ED TRAVEL & OUTREACH	5,000.00	(1,396.27)	374.54	4,625.46	7.49%
BOG ELECTIONS	5,000.00	-	-	5,000.00	0.00%
STAFF TRAVEL/PARKING	4,000.00	328.00	984.00	3,016.00	24.60%
STAFF MEMBERSHIP DUES	1,850.00	-	550.00	1,300.00	29.73%
TELEPHONE	1,300.00	-	142.65	1,157.35	10.97%
TOTAL DIRECT EXPENSES:	**294,650.00**	**9,299.37**	**37,546.63**	**257,103.37**	**12.74%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.45 FTE)	336,231.00	26,234.92	99,894.37	236,336.63	29.71%
BENEFITS EXPENSE	93,632.00	9,908.50	23,916.30	69,715.70	25.54%
OTHER INDIRECT EXPENSE	58,083.00	3,431.89	11,726.88	46,356.12	20.19%
TOTAL INDIRECT EXPENSES:	**487,946.00**	**39,575.31**	**135,537.55**	**352,408.45**	**27.78%**
TOTAL ALL EXPENSES:	**782,596.00**	**48,874.68**	**173,084.18**	**609,511.82**	**22.12%**
NET INCOME (LOSS):	**(782,596.00)**	**(48,874.68)**	**(173,084.18)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
COMMUNICATIONS					
REVENUE:					
AWARDS LUNCH/DINNER	44,000.00	-	(95.84)	44,095.84	-0.22%
50 YEAR MEMBER TRIBUTE LUNCH	250.00	-	1,170.00	(920.00)	468.00%
WSBA LOGO MERCHANDISE SALES	-	-	280.00	(280.00)	
TOTAL REVENUE:	**44,250.00**	**-**	**1,354.16**	**42,895.84**	**3.06%**
DIRECT EXPENSES:					
IMAGE LIBRARY	4,100.00	-	3,999.00	101.00	97.54%
BAR OUTREACH	2,500.00	-	-	2,500.00	0.00%
ABA DELEGATES	5,600.00	-	-	5,600.00	0.00%
ANNUAL CHAIR MTGS	600.00	-	877.32	(277.32)	146.22%
AWARDS DINNER	63,000.00	-	-	63,000.00	0.00%
50 YEAR MEMBER TRIBUTE LUNCH	8,000.00	61.91	8,576.25	(576.25)	107.20%
JUD RECOMMEND COMMITTEE	4,500.00	-	-	4,500.00	0.00%
PROFESSIONALISM	750.00	-	821.72	(71.72)	109.56%
COMMUNICATIONS OUTREACH	15,000.00	-	144.56	14,855.44	0.96%
TRANSLATION SERVICES	3,500.00	237.00	1,078.35	2,421.65	30.81%
DEPRECIATION	2,300.00	227.00	679.00	1,621.00	29.52%
EQUIPMENT, HARDWARE & SOFTWARE	-	172.07	251.54	(251.54)	
STAFF TRAVEL/PARKING	4,000.00	(41.00)	478.00	3,522.00	11.95%
STAFF MEMBERSHIP DUES	1,960.00	-	50.00	1,910.00	2.55%
SUBSCRIPTIONS	10,050.00	39.95	39.95	10,010.05	0.40%
DIGITAL/ONLINE DEVELOPMENT	4,000.00	441.57	1,049.71	2,950.29	26.24%
CONFERENCE CALLS	200.00	4.61	5.08	194.92	2.54%
TOTAL DIRECT EXPENSES:	**130,060.00**	**1,143.11**	**18,050.48**	**112,009.52**	**13.88%**
INDIRECT EXPENSES:					
SALARY EXPENSE (14.64 FTE)	896,797.00	65,091.33	206,585.91	690,211.09	23.04%
BENEFITS EXPENSE	326,726.00	32,138.14	83,426.37	243,299.63	25.53%
OTHER INDIRECT EXPENSE	347,075.00	20,460.57	69,905.01	277,169.99	20.14%
TOTAL INDIRECT EXPENSES:	**1,570,598.00**	**117,690.04**	**359,917.29**	**1,210,680.71**	**22.92%**
TOTAL ALL EXPENSES:	**1,700,658.00**	**118,833.15**	**377,967.77**	**1,322,690.23**	**22.22%**
NET INCOME (LOSS):	**(1,656,408.00)**	**(118,833.15)**	**(376,613.61)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
DISCIPLINE					
REVENUE:					
AUDIT REVENUE	2,000.00	127.50	907.50	1,092.50	45.38%
RECOVERY OF DISCIPLINE COSTS	125,000.00	3,350.00	17,408.92	107,591.08	13.93%
DISCIPLINE HISTORY SUMMARY	13,000.00	595.58	2,417.42	10,582.58	18.60%
TOTAL REVENUE:	**140,000.00**	**4,073.08**	**20,733.84**	**119,266.16**	**14.81%**
DIRECT EXPENSES:					
COURT REPORTERS	65,000.00	3,628.39	9,578.68	55,421.32	14.74%
OUTSIDE COUNSEL/AIC	3,500.00	55.00	233.25	3,266.75	6.66%
LITIGATION EXPENSES	30,000.00	2,315.19	5,254.41	24,745.59	17.51%
DISABILITY EXPENSES	15,000.00	-	1,635.95	13,364.05	10.91%
ONLINE LEGAL RESEARCH	65,900.00	5,435.07	10,870.12	55,029.88	16.49%
LAW LIBRARY	13,075.00	3,506.67	3,857.35	9,217.65	29.50%
TRANSLATION SERVICES	3,000.00	-	-	3,000.00	0.00%
DEPRECIATION-SOFTWARE	25,200.00	2,204.00	6,613.00	18,587.00	26.24%
PUBLICATIONS PRODUCTION	250.00	-	-	250.00	0.00%
STAFF TRAVEL/PARKING	38,500.00	2,287.30	8,482.85	30,017.15	22.03%
STAFF MEMBERSHIP DUES	3,243.00	(170.62)	1,179.38	2,063.62	36.37%
TELEPHONE	5,000.00	2,963.74	3,403.70	1,596.30	68.07%
TOTAL DIRECT EXPENSES:	**267,668.00**	**22,224.74**	**51,108.69**	**216,559.31**	**19.09%**
INDIRECT EXPENSES:					
SALARY EXPENSE (37.77 FTE)	3,370,608.00	276,529.49	847,272.72	2,523,335.28	25.14%
BENEFITS EXPENSE	1,068,970.00	111,352.21	275,699.17	793,270.83	25.79%
OTHER INDIRECT EXPENSE	895,425.00	52,781.83	180,352.63	715,072.37	20.14%
TOTAL INDIRECT EXPENSES:	**5,335,003.00**	**440,663.53**	**1,303,324.52**	**4,031,678.48**	**24.43%**
TOTAL ALL EXPENSES:	**5,602,671.00**	**462,888.27**	**1,354,433.21**	**4,248,237.79**	**24.17%**
NET INCOME (LOSS):	**(5,462,671.00)**	**(458,815.19)**	**(1,333,699.37)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

DIVERSITY

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
DONATIONS & GRANTS	90,000.00	-	90,000.00	-	100.00%
WORK STUDY GRANTS	10,374.00	-	-	10,374.00	0.00%
TOTAL REVENUE:	**100,374.00**	**-**	**90,000.00**	**10,374.00**	**89.66%**
DIRECT EXPENSES:					
STAFF MEMBERSHIP DUES	350.00	-	-	350.00	0.00%
STAFF TRAVEL/PARKING	8,600.00	210.71	718.99	7,881.01	8.36%
SUPPLIES	2,000.00	-	-	2,000.00	0.00%
COMMITTEE FOR DIVERSITY	6,200.00	239.83	1,132.22	5,067.78	18.26%
DIVERSITY EVENTS & PROJECTS	5,500.00	22.78	640.91	4,859.09	11.65%
SPECIAL EVENTS	5,000.00	-	-	5,000.00	0.00%
SPEAKERS & PROGRAM DEVELOPMENT	1,000.00	-	-	1,000.00	0.00%
INTERNAL DIVERSITY OUTREACH	500.00	-	22.96	477.04	4.59%
TOTAL DIRECT EXPENSE:	**29,150.00**	**473.32**	**2,515.08**	**26,634.92**	**8.63%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.97 FTE)	222,565.00	18,512.23	54,598.70	167,966.30	24.53%
BENEFITS EXPENSE	72,143.00	7,318.05	18,353.09	53,789.91	25.44%
OTHER INDIRECT EXPENSE	70,411.00	4,143.73	14,157.91	56,253.09	20.11%
TOTAL INDIRECT EXPENSES:	**365,119.00**	**29,974.01**	**87,109.70**	**278,009.30**	**23.86%**
TOTAL ALL EXPENSES:	**394,269.00**	**30,447.33**	**89,624.78**	**304,644.22**	**22.73%**
NET INCOME (LOSS):	**(293,895.00)**	**(30,447.33)**	**375.22**		

Washington State Bar Association

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25.00% OF YEAR COMPLETE

FOUNDATION

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
BOARD OF TRUSTEES	5,000.00	54.28	259.10	4,740.90	5.18%
GRAPHIC DESIGN	1,500.00	-	-	1,500.00	0.00%
CONSULTING SERVICES	3,000.00	-	-	3,000.00	0.00%
POSTAGE	500.00	-	-	500.00	0.00%
PRINTING & COPYING	1,500.00	-	-	1,500.00	0.00%
STAFF TRAVEL/PARKING	1,700.00	27.55	27.55	1,672.45	1.62%
STAFF MEMBERSHIP DUES	600.00	-	-	600.00	0.00%
SUPPLIES	500.00	-	-	500.00	0.00%
SPECIAL EVENTS	5,000.00	-	-	5,000.00	0.00%
TOTAL DIRECT EXPENSES:	**19,300.00**	**81.83**	**286.65**	**19,013.35**	**1.49%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.25 FTE)	88,294.00	7,206.04	22,755.50	65,538.50	25.77%
BENEFITS EXPENSE	30,721.00	3,111.21	7,802.03	22,918.97	25.40%
OTHER INDIRECT EXPENSE	29,634.00	1,743.89	5,959.68	23,674.32	20.11%
TOTAL INDIRECT EXPENSES:	**148,649.00**	**12,061.14**	**36,517.21**	**112,131.79**	**24.57%**
TOTAL ALL EXPENSES:	**167,949.00**	**12,142.97**	**36,803.86**	**131,145.14**	**21.91%**
NET INCOME (LOSS):	**(167,949.00)**	**(12,142.97)**	**(36,803.86)**		

Washington State Bar Association

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For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
HUMAN RESOURCES					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
STAFF TRAINING- GENERAL	35,000.00	1,109.20	2,983.23	32,016.77	8.52%
RECRUITING AND ADVERTISING	7,000.00	291.52	1,538.38	5,461.62	21.98%
PAYROLL PROCESSING	55,000.00	2,715.26	8,732.49	46,267.51	15.88%
SALARY SURVEYS	2,700.00	-	-	2,700.00	0.00%
DEPRECIATION	835.00	-	835.21	(0.21)	100.03%
CONSULTING SERVICES	9,000.00	-	5,880.00	3,120.00	65.33%
STAFF TRAVEL/PARKING	250.00	-	-	250.00	0.00%
STAFF MEMBERSHIP DUES	1,378.00	150.00	369.00	1,009.00	26.78%
SUBSCRIPTIONS	1,993.00	-	106.43	1,886.57	5.34%
THIRD PARTY SERVICES	13,500.00	-	13,426.00	74.00	99.45%
TRANSFER TO INDIRECT EXPENSE	(126,656.00)	(4,265.98)	(33,870.74)	(92,785.26)	26.74%
TOTAL DIRECT EXPENSES:	-	-	-	-	
INDIRECT EXPENSES:					
SALARY EXPENSE (2.48 FTE)	244,580.00	23,604.94	64,566.06	180,013.94	26.40%
ALLOWANCE FOR OPEN POSITIONS	(120,000.00)	-	-	(120,000.00)	0.00%
BENEFITS EXPENSE	74,445.00	7,745.82	17,841.43	56,603.57	23.97%
OTHER INDIRECT EXPENSE	58,794.00	3,469.71	11,856.58	46,937.42	20.17%
TOTAL INDIRECT EXPENSES:	**257,819.00**	**34,820.47**	**94,264.07**	**163,554.93**	**36.56%**
TOTAL ALL EXPENSES:	**257,819.00**	**34,820.47**	**94,264.07**	**163,554.93**	**36.56%**
NET INCOME (LOSS):	**(257,819.00)**	**(34,820.47)**	**(94,264.07)**		

Washington State Bar Association

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For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

LAW CLERK PROGRAM

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
LAW CLERK FEES	95,000.00	18,000.00	21,250.00	73,750.00	22.37%
LAW CLERK APPLICATION FEES	2,000.00	100.00	100.00	1,900.00	5.00%
TOTAL REVENUE:	**97,000.00**	**18,100.00**	**21,350.00**	**75,650.00**	**22.01%**
DIRECT EXPENSES:					
SUBSCRIPTIONS	250.00	-	-	250.00	0.00%
CHARACTER & FITNESS INVESTIGATIONS	100.00	-	-	100.00	0.00%
LAW CLERK BOARD EXPENSE	5,000.00	52.50	523.82	4,476.18	10.48%
TOTAL DIRECT EXPENSES:	**5,350.00**	**52.50**	**523.82**	**4,826.18**	**9.79%**
INDIRECT EXPENSES:					
SALARY EXPENSE (0.89 FTE)	59,025.00	6,838.50	16,862.10	42,162.90	28.57%
BENEFITS EXPENSE	20,961.00	2,138.57	5,377.45	15,583.55	25.65%
OTHER INDIRECT EXPENSE	21,099.00	1,248.93	4,267.38	16,831.62	20.23%
TOTAL INDIRECT EXPENSES:	**101,085.00**	**10,226.00**	**26,506.93**	**74,578.07**	**26.22%**
TOTAL ALL EXPENSES:	**106,435.00**	**10,278.50**	**27,030.75**	**79,404.25**	**25.40%**
NET INCOME (LOSS):	**(9,435.00)**	**7,821.50**	**(5,680.75)**		

Washington State Bar Association

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25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
LAW OFFICE MNGT ASSISTANCE PROGRAM					
REVENUE:					
LAW OFFICE IN A BOX SALES	2,500.00	270.00	1,080.00	1,420.00	43.20%
TOTAL REVENUE:	**2,500.00**	**270.00**	**1,080.00**	**1,420.00**	**43.20%**
DIRECT EXPENSES:					
LIBRARY MATERIALS/RESOURCES	1,500.00	-	36.90	1,463.10	2.46%
LAW OFFICE IN A BOX	500.00	102.12	251.08	248.92	50.22%
STAFF TRAVEL/PARKING	2,000.00	-	-	2,000.00	0.00%
STAFF MEMBERSHIP DUES	600.00	-	-	600.00	0.00%
CONFERENCE CALLS	100.00	-	-	100.00	0.00%
TOTAL DIRECT EXPENSES:	**4,700.00**	**102.12**	**287.98**	**4,412.02**	**6.13%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.50 FTE)	122,445.00	11,078.99	20,319.51	102,125.49	16.59%
BENEFITS EXPENSE	40,196.00	4,130.84	8,661.66	31,534.34	21.55%
OTHER INDIRECT EXPENSE	35,561.00	2,102.65	7,182.93	28,378.07	20.20%
TOTAL INDIRECT EXPENSES:	**198,202.00**	**17,312.48**	**36,164.10**	**162,037.90**	**18.25%**
TOTAL ALL EXPENSES:	**202,902.00**	**17,414.60**	**36,452.08**	**166,449.92**	**17.97%**
NET INCOME (LOSS):	**(200,402.00)**	**(17,144.60)**	**(35,372.08)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
LAWYER ASSISTANCE PROGRAM					
REVENUE:					
DIVERSIONS	15,750.00	-	1,625.00	14,125.00	10.32%
MEMB HEALTH CARE INSUR REBATE	-	49.50	49.50	(49.50)	
TOTAL REVENUE:	**15,750.00**	**49.50**	**1,674.50**	**14,075.50**	**10.63%**
DIRECT EXPENSES:					
PROF LIAB INSURANCE	850.00	-	-	850.00	0.00%
MEMBER ASSISTANCE PROGRAM	45,120.00	-	-	45,120.00	0.00%
PUBLICATIONS PRODUCTION	200.00	-	-	200.00	0.00%
STAFF MEMBERSHIP DUES	350.00	-	-	350.00	0.00%
CONFERENCE CALLS	100.00	-	-	100.00	0.00%
MISCELLANEOUS	150.00	-	-	150.00	0.00%
TOTAL DIRECT EXPENSES:	**46,770.00**	**-**	**-**	**46,770.00**	**0.00%**
INDIRECT EXPENSES:					
SALARY EXPENSE (0.87 FTE)	77,476.00	6,380.17	17,318.51	60,157.49	22.35%
BENEFITS EXPENSE	29,331.00	2,569.86	6,836.03	22,494.97	23.31%
OTHER INDIRECT EXPENSE	20,625.00	1,209.18	4,132.24	16,492.76	20.04%
TOTAL INDIRECT EXPENSES:	**127,432.00**	**10,159.21**	**28,286.78**	**99,145.22**	**22.20%**
TOTAL ALL EXPENSES:	**174,202.00**	**10,159.21**	**28,286.78**	**145,915.22**	**16.24%**
NET INCOME (LOSS):	**(158,452.00)**	**(10,109.71)**	**(26,612.28)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
LEGISLATIVE					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
RENT - OLYMPIA OFFICE	5,000.00	207.03	207.03	4,792.97	4.14%
CONTRACT LOBBYIST	20,000.00	-	-	20,000.00	0.00%
LOBBYIST CONTACT COSTS	1,600.00	-	-	1,600.00	0.00%
LEGISLATIVE COMMITTEE	2,500.00	406.88	2,092.49	407.51	83.70%
BOG LEGISLATIVE COMMITTEE	250.00	218.92	218.92	31.08	87.57%
STAFF TRAVEL/PARKING	8,000.00	929.26	1,204.58	6,795.42	15.06%
STAFF MEMBERSHIP DUES	450.00	142.17	142.17	307.83	31.59%
SUBSCRIPTIONS	2,000.00	-	1,972.80	27.20	98.64%
TELEPHONE	3,000.00	20.00	60.00	2,940.00	2.00%
TOTAL DIRECT EXPENSES:	**42,800.00**	**1,924.26**	**5,897.99**	**36,902.01**	**13.78%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.85 FTE)	131,303.00	10,509.04	31,967.24	99,335.76	24.35%
BENEFITS EXPENSE	45,303.00	4,613.23	11,571.54	33,731.46	25.54%
OTHER INDIRECT EXPENSE	43,859.00	2,577.56	8,806.63	35,052.37	20.08%
TOTAL INDIRECT EXPENSES:	**220,465.00**	**17,699.83**	**52,345.41**	**168,119.59**	**23.74%**
TOTAL ALL EXPENSES:	**263,265.00**	**19,624.09**	**58,243.40**	**205,021.60**	**22.12%**
NET INCOME (LOSS):	**(263,265.00)**	**(19,624.09)**	**(58,243.40)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
LICENSING & MEMBERSHIP RECORDS					
REVENUE:					
STATUS CERTIFICATE FEES	22,000.00	1,963.25	6,159.67	15,840.33	28.00%
RULE 9/LEGAL INTERN FEES	11,000.00	550.00	1,200.00	9,800.00	10.91%
INVESTIGATION FEES	20,000.00	2,000.00	5,800.00	14,200.00	29.00%
PRO HAC VICE	170,000.00	27,335.00	67,375.00	102,625.00	39.63%
MEMBER CONTACT INFORMATION	24,000.00	1,461.13	6,420.29	17,579.71	26.75%
PHOTO BAR CARD SALES	800.00	24.00	156.00	644.00	19.50%
TOTAL REVENUE:	**247,800.00**	**33,333.38**	**87,110.96**	**160,689.04**	**35.15%**
DIRECT EXPENSES:					
LICENSING FORMS	2,500.00	-	2,659.92	(159.92)	106.40%
POSTAGE	25,000.00	200.88	5,772.31	19,227.69	23.09%
TOTAL DIRECT EXPENSES:	**27,500.00**	**200.88**	**8,432.23**	**19,067.77**	**30.66%**
INDIRECT EXPENSES:					
SALARY EXPENSE (4.29 FTE)	346,073.00	29,193.57	85,815.26	260,257.74	24.80%
BENEFITS EXPENSE	112,190.00	11,527.62	28,708.32	83,481.68	25.59%
OTHER INDIRECT EXPENSE	101,704.00	5,987.41	20,458.50	81,245.50	20.12%
TOTAL INDIRECT EXPENSES:	**559,967.00**	**46,708.60**	**134,982.08**	**424,984.92**	**24.11%**
TOTAL ALL EXPENSES:	**587,467.00**	**46,909.48**	**143,414.31**	**444,052.69**	**24.41%**
NET INCOME (LOSS):	**(339,667.00)**	**(13,576.10)**	**(56,303.35)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

LIMITED LICENSE LEGAL TECHNICIAN PROGRAM

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
LLLT LICENSE FEES	5,950.00	291.60	1,050.00	4,900.00	17.65%
LLLT EXAM FEES	7,150.00	-	-	7,150.00	0.00%
LLLT WAIVER FEES	300.00	150.00	750.00	(450.00)	250.00%
TOTAL REVENUE:	**13,400.00**	**441.60**	**1,800.00**	**11,600.00**	**13.43%**
DIRECT EXPENSES:					
CHRACTER & FITNESS INVESTIGATIONS	700.00	38.00	38.00	662.00	5.43%
LLLT BOARD	18,000.00	753.38	2,189.26	15,810.74	12.16%
LLLT OUTREACH	8,000.00	226.10	805.52	7,194.48	10.07%
DEPRECIATION	3,354.00	-	-	3,354.00	0.00%
LLLT EXAM WRITING	29,600.00	-	-	29,600.00	0.00%
STAFF TRAVEL/PARKING	400.00	-	-	400.00	0.00%
TOTAL DIRECT EXPENSES:	**60,054.00**	**1,017.48**	**3,032.78**	**57,021.22**	**5.05%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.39 FTE)	106,271.00	8,702.59	26,987.05	79,283.95	25.39%
BENEFITS EXPENSE	35,786.00	3,671.77	9,156.37	26,629.63	25.59%
OTHER INDIRECT EXPENSE	32,953.00	1,943.16	6,639.25	26,313.75	20.15%
TOTAL INDIRECT EXPENSES:	**175,010.00**	**14,317.52**	**42,782.67**	**132,227.33**	**24.45%**
TOTAL ALL EXPENSES:	**235,064.00**	**15,335.00**	**45,815.45**	**189,248.55**	**19.49%**
NET INCOME (LOSS):	**(221,664.00)**	**(14,893.40)**	**(44,015.45)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

LIMITED PRACTICE OFFICERS

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
LPO EXAMINATION FEES	17,000.00	-	-	17,000.00	0.00%
LPO LICENSE FEES	108,000.00	9,169.80	27,417.50	80,582.50	25.39%
LPO LATE LICENSE FEES	1,000.00	-	-	1,000.00	0.00%
LPO CEU & TA LATE FEES	4,000.00	50.00	100.00	3,900.00	2.50%
LPO CONTINUING ED ACCRED FEE	2,700.00	25.00	450.00	2,250.00	16.67%
TOTAL REVENUE:	**132,700.00**	**9,244.80**	**27,967.50**	**104,732.50**	**21.08%**
DIRECT EXPENSES:					
LPO EXAM FACILITIES	800.00	-	394.58	405.42	49.32%
LPO BOARD	3,000.00	392.96	503.19	2,496.81	16.77%
LPO DISCIPLINE EXPENSES	500.00	-	-	500.00	0.00%
FINGERPRINT CARD PROCESSING	3,230.00	-	1,824.00	1,406.00	56.47%
DEPRECIATION	3,354.00	-	-	3,354.00	0.00%
CHARACTER & FITNESS INVESTIGATIONS	100.00	-	-	100.00	0.00%
POSTAGE	2,300.00	-	-	2,300.00	0.00%
TOTAL DIRECT EXPENSES:	**13,284.00**	**392.96**	**2,721.77**	**10,562.23**	**20.49%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.47 FTE)	115,843.00	13,911.40	33,566.81	82,276.19	28.98%
BENEFITS EXPENSE	38,510.00	3,949.49	9,836.41	28,673.59	25.54%
OTHER INDIRECT EXPENSE	34,850.00	2,062.72	7,046.90	27,803.10	20.22%
TOTAL INDIRECT EXPENSES:	**189,203.00**	**19,923.61**	**50,450.12**	**138,752.88**	**26.66%**
TOTAL ALL EXPENSES:	**202,487.00**	**20,316.57**	**53,171.89**	**149,315.11**	**26.26%**
NET INCOME (LOSS):	**(69,787.00)**	**(11,071.77)**	**(25,204.39)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

MANDATORY CLE ADMINISTRATION

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
ACCREDITED PROGRAM FEES	300,000.00	18,250.00	62,950.00	237,050.00	20.98%
FORM 1 LATE FEES	75,000.00	10,885.00	35,210.00	39,790.00	46.95%
MEMBER LATE FEES	150,000.00	150.00	(75.00)	150,075.00	-0.05%
ANNUAL ACCREDITED SPONSOR FEES	27,000.00	1,000.00	28,500.00	(1,500.00)	105.56%
ATTENDANCE FEES	70,000.00	7,556.00	18,891.00	51,109.00	26.99%
COMITY CERTIFICATES	29,000.00	7,824.54	13,548.88	15,451.12	46.72%
ATTENDANCE LATE FEES	60,000.00	7,385.00	17,500.00	42,500.00	29.17%
TOTAL REVENUE:	**711,000.00**	**53,050.54**	**176,524.88**	**534,475.12**	**24.83%**
DIRECT EXPENSES:					
MCLE BOARD	3,000.00	-	168.56	2,831.44	5.62%
POSTAGE	2,000.00	-	-	2,000.00	0.00%
STAFF MEMBERSHIP DUES	500.00	-	500.00	-	100.00%
DEPRECIATION	261,000.00	18,995.00	53,325.00	207,675.00	20.43%
TOTAL DIRECT EXPENSES:	**266,500.00**	**18,995.00**	**53,993.56**	**212,506.44**	**20.26%**
INDIRECT EXPENSES:					
SALARY EXPENSE (4.72 FTE)	257,805.00	21,380.36	65,510.19	192,294.81	25.41%
BENEFITS EXPENSE	99,187.00	9,943.69	25,406.21	73,780.79	25.61%
OTHER INDIRECT EXPENSE	111,898.00	6,603.04	22,557.58	89,340.42	20.16%
TOTAL INDIRECT EXPENSES:	**468,890.00**	**37,927.09**	**113,473.98**	**355,416.02**	**24.20%**
TOTAL ALL EXPENSES:	**735,390.00**	**56,922.09**	**167,467.54**	**567,922.46**	**22.77%**
NET INCOME (LOSS):	**(24,390.00)**	**(3,871.55)**	**9,057.34**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MEMBER BENEFITS					
REVENUE:					
ROYALTIES	3,000.00	4,074.17	5,064.86	(2,064.86)	168.83%
TOTAL REVENUE:	**3,000.00**	**4,074.17**	**5,064.86**	**(2,064.86)**	**168.83%**
DIRECT EXPENSES:					
CASEMAKER	75,000.00	-	6,047.71	68,952.29	8.06%
TOTAL DIRECT EXPENSES:	**75,000.00**	**-**	**6,047.71**	**68,952.29**	**8.06%**
INDIRECT EXPENSES:					
TOTAL INDIRECT EXPENSES:	**-**	**-**	**-**	**-**	
TOTAL ALL EXPENSES:	**75,000.00**	**-**	**6,047.71**	**68,952.29**	**8.06%**
NET INCOME (LOSS):	**(72,000.00)**	**4,074.17**	**(982.85)**		

Washington State Bar Association

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25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MENTORSHIP PROGRAM					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
MENTORSHIP PROGRAM EXPENSES	15,000.00	-	424.30	14,575.70	2.83%
RECEPTION/FORUM EXPENSE	4,800.00	-	-	4,800.00	0.00%
CONSULTING SERVICES	1,000.00	-	-	1,000.00	0.00%
STAFF TRAVEL/PARKING	2,000.00	-	-	2,000.00	0.00%
SUBSCRIPTIONS	500.00	-	-	500.00	0.00%
CONFERENCE CALLS	200.00	-	-	200.00	0.00%
TOTAL DIRECT EXPENSES:	**23,500.00**	**-**	**424.30**	**23,075.70**	**1.81%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.40 FTE)	108,515.00	7,639.86	23,679.68	84,835.32	21.82%
BENEFITS EXPENSE	36,268.00	3,439.29	8,390.49	27,877.51	23.13%
OTHER INDIRECT EXPENSE	33,190.00	1,963.14	6,707.29	26,482.71	20.21%
TOTAL INDIRECT EXPENSES:	**177,973.00**	**13,042.29**	**38,777.46**	**139,195.54**	**21.79%**
TOTAL ALL EXPENSES:	**201,473.00**	**13,042.29**	**39,201.76**	**162,271.24**	**19.46%**
NET INCOME (LOSS):	**(201,473.00)**	**(13,042.29)**	**(39,201.76)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

NEW LAWYER PROGRAM

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
SEMINAR REGISTRATIONS	55,000.00	-	-	55,000.00	0.00%
TRIAL ADVOCACY PROGRAM	25,000.00	(374.00)	17,583.00	7,417.00	70.33%
TOTAL REVENUE:	**80,000.00**	**(374.00)**	**17,583.00**	**62,417.00**	**21.98%**
DIRECT EXPENSES:					
STAFF TRAVEL/PARKING	1,000.00	-	277.00	723.00	27.70%
STAFF MEMBERSHIP DUES	200.00	-	-	200.00	0.00%
ONLINE EXPENSES	2,500.00	349.11	349.11	2,150.89	13.96%
NEW LAWYER OUTREACH EVENTS	1,000.00	-	743.33	256.67	74.33%
NEW LAWYERS COMMITTEE	15,000.00	2,416.66	4,726.89	10,273.11	31.51%
OPEN SECTIONS NIGHT	3,500.00	-	107.87	3,392.13	3.08%
TRIAL ADVOCACY PROGRAM	3,500.00	227.21	1,341.61	2,158.39	38.33%
SEMINAR BROCHURES	2,000.00	-	-	2,000.00	0.00%
SPEAKERS & PROGRAM DEVELOPMENT	2,000.00	308.77	415.41	1,584.59	20.77%
SCHOLARSHIPS/DONATIONS/GRANT	2,000.00	-	-	2,000.00	0.00%
TOTAL DIRECT EXPENSES:	**32,700.00**	**3,301.75**	**7,961.22**	**24,738.78**	**24.35%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.25 FTE)	165,467.00	11,987.89	37,042.50	128,424.50	22.39%
BENEFITS EXPENSE	56,383.00	5,541.02	13,730.29	42,652.71	24.35%
OTHER INDIRECT EXPENSE	53,341.00	3,153.85	10,773.74	42,567.26	20.20%
TOTAL INDIRECT EXPENSES:	**275,191.00**	**20,682.76**	**61,546.53**	**213,644.47**	**22.37%**
TOTAL ALL EXPENSES:	**307,891.00**	**23,984.51**	**69,507.75**	**238,383.25**	**22.58%**
NET INCOME (LOSS):	**(227,891.00)**	**(24,358.51)**	**(51,924.75)**		

Washington State Bar Association

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25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
NORTHWEST LAWYER					
REVENUE:					
ROYALTIES	-	-	1,133.91	(1,133.91)	
DISPLAY ADVERTISING	440,000.00	43,686.25	125,758.75	314,241.25	28.58%
SUBSCRIPT/SINGLE ISSUES	450.00	36.00	108.00	342.00	24.00%
CLASSIFIED ADVERTISING	89,000.00	9,297.07	27,364.75	61,635.25	30.75%
GEN ANNOUNCEMENTS	17,000.00	300.00	2,250.00	14,750.00	13.24%
PROF ANNOUNCEMENTS	27,000.00	345.00	6,292.50	20,707.50	23.31%
TOTAL REVENUE:	**573,450.00**	**53,664.32**	**162,907.91**	**410,542.09**	**28.41%**
DIRECT EXPENSES:					
GRAPHICS/ARTWORK	3,500.00	165.09	1,813.30	1,686.70	51.81%
OUTSIDE SALES EXPENSE	80,000.00	7,262.38	16,786.51	63,213.49	20.98%
EDITORIAL ADVISORY COMMITTEE	800.00	24.19	58.94	741.06	7.37%
DIGITAL/ONLINE DEVELOPMENT	8,400.00	800.00	1,500.00	6,900.00	17.86%
BAD DEBT EXPENSE	1,000.00	-	1,000.00	-	100.00%
POSTAGE	89,100.00	10,269.16	30,957.81	58,142.19	34.75%
PRINTING, COPYING & MAILING	220,000.00	-	49,640.65	170,359.35	22.56%
TOTAL DIRECT EXPENSES:	**402,800.00**	**18,520.82**	**101,757.21**	**301,042.79**	**25.26%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.72 FTE)	131,759.00	8,427.25	38,242.34	93,516.66	29.02%
BENEFITS EXPENSE	48,872.00	4,424.46	11,305.04	37,566.96	23.13%
OTHER INDIRECT EXPENSE	40,777.00	2,398.28	8,195.64	32,581.36	20.10%
TOTAL INDIRECT EXPENSES:	**221,408.00**	**15,249.99**	**57,743.02**	**163,664.98**	**26.08%**
TOTAL ALL EXPENSES:	**624,208.00**	**33,770.81**	**159,500.23**	**464,707.77**	**25.55%**
NET INCOME (LOSS):	**(50,758.00)**	**19,893.51**	**3,407.68**		

Washington State Bar Association

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25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
OFFICE OF GENERAL COUNSEL					
REVENUE:					
COPY FEES	-	-	52.60	(52.60)	
TOTAL REVENUE:	**-**	**-**	**52.60**	**(52.60)**	
DIRECT EXPENSES:					
AMICUS BRIEF COMMITTEE	100.00	56.49	83.63	16.37	83.63%
COURT RULES COMMITTEE	5,000.00	35.73	115.45	4,884.55	2.31%
DISCIPLINE ADVISORY ROUNDTABLE	1,500.00	-	-	1,500.00	0.00%
LITIGATION EXPENSES	-	-	62.25	(62.25)	
CUSTODIANSHIPS	5,000.00	346.47	1,007.96	3,992.04	20.16%
STAFF TRAVEL/PARKING	2,600.00	198.00	649.57	1,950.43	24.98%
STAFF MEMBERSHIP DUES	1,500.00	-	-	1,500.00	0.00%
TOTAL DIRECT EXPENSES:	**15,700.00**	**636.69**	**1,918.86**	**13,781.14**	**12.22%**
INDIRECT EXPENSES:					
SALARY EXPENSE (5.7 FTE)	484,565.00	37,206.93	122,011.75	362,553.25	25.18%
BENEFITS EXPENSE	157,573.00	15,836.33	39,142.96	118,430.04	24.84%
OTHER INDIRECT EXPENSE	135,132.00	7,970.54	27,234.68	107,897.32	20.15%
TOTAL INDIRECT EXPENSES:	**777,270.00**	**61,013.80**	**188,389.39**	**588,880.61**	**24.24%**
TOTAL ALL EXPENSES:	**792,970.00**	**61,650.49**	**190,308.25**	**602,661.75**	**24.00%**
NET INCOME (LOSS):	**(792,970.00)**	**(61,650.49)**	**(190,255.65)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

OGC-DISCIPLINARY BOARD

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSE:					
DISCIPLINARY BOARD EXPENSES	7,500.00	152.99	2,511.29	4,988.71	33.48%
CHIEF HEARING OFFICER	33,000.00	2,500.00	7,500.00	25,500.00	22.73%
HEARING OFFICER EXPENSES	5,000.00	-	31.50	4,968.50	0.63%
HEARING OFFICER TRAINING	2,000.00	-	-	2,000.00	0.00%
OUTSIDE COUNSEL	55,000.00	3,250.00	9,750.00	45,250.00	17.73%
STAFF MEMBERSHIP DUES	500.00	-	-	500.00	0.00%
TOTAL DIRECT EXPENSES:	**103,000.00**	**5,902.99**	**19,792.79**	**83,207.21**	**19.22%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.30 FTE)	92,118.00	7,532.17	22,907.17	69,210.83	24.87%
BENEFITS EXPENSE	31,810.00	3,250.09	8,153.38	23,656.62	25.63%
OTHER INDIRECT EXPENSE	30,819.00	1,825.20	6,234.39	24,584.61	20.23%
TOTAL INDIRECT EXPENSES:	**154,747.00**	**12,607.46**	**37,294.94**	**117,452.06**	**24.10%**
TOTAL ALL EXPENSES:	**257,747.00**	**18,510.45**	**57,087.73**	**200,659.27**	**22.15%**
NET INCOME (LOSS):	**(257,747.00)**	**(18,510.45)**	**(57,087.73)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

PRACTICE OF LAW BOARD

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
PRACTICE OF LAW BOARD	14,000.00	592.85	3,274.65	10,725.35	23.39%
TRANSLATION SERVICES	100.00	-	-	100.00	0.00%
TOTAL DIRECT EXPENSES:	**14,100.00**	**592.85**	**3,274.65**	**10,825.35**	**23.22%**
INDIRECT EXPENSES:					
SALARY EXPENSE (0.81 FTE)	61,398.00	5,045.34	15,343.14	46,054.86	24.99%
BENEFITS EXPENSE	20,670.00	2,127.21	5,310.68	15,359.32	25.69%
OTHER INDIRECT EXPENSE	19,203.00	1,129.40	3,860.09	15,342.91	20.10%
TOTAL INDIRECT EXPENSES:	**101,271.00**	**8,301.95**	**24,513.91**	**76,757.09**	**24.21%**
TOTAL ALL EXPENSES:	**115,371.00**	**8,894.80**	**27,788.56**	**87,582.44**	**24.09%**
NET INCOME (LOSS):	**(115,371.00)**	**(8,894.80)**	**(27,788.56)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
PROFESSIONAL RESPONSIBILITY PROGRAM					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
CPE COMMITTEE	6,000.00	319.39	976.90	5,023.10	16.28%
STAFF TRAVEL/PARKING	1,500.00	-	785.71	714.29	52.38%
STAFF MEMBERSHIP DUES	500.00	-	-	500.00	0.00%
TOTAL DIRECT EXPENSES:	**8,000.00**	**319.39**	**1,762.61**	**6,237.39**	**22.03%**
INDIRECT EXPENSES:					
SALARY EXPENSE (2.07 FTE)	165,405.00	11,483.51	35,333.99	130,071.01	21.36%
BENEFITS EXPENSE	58,372.00	5,551.80	13,763.34	44,608.66	23.58%
OTHER INDIRECT EXPENSE	49,074.00	2,894.88	9,891.17	39,182.83	20.16%
TOTAL INDIRECT EXPENSES:	**272,851.00**	**19,930.19**	**58,988.50**	**213,862.50**	**21.62%**
TOTAL ALL EXPENSES:	**280,851.00**	**20,249.58**	**60,751.11**	**220,099.89**	**21.63%**
NET INCOME (LOSS):	**(280,851.00)**	**(20,249.58)**	**(60,751.11)**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
PUBLIC SERVICE PROGRAMS					
REVENUE:					
DONATIONS & GRANTS	85,000.00	-	85,000.00	-	100.00%
PSP PRODUCT SALES	-	3,257.00	4,936.00	(4,936.00)	
TOTAL REVENUE:	**85,000.00**	**3,257.00**	**89,936.00**	**(4,936.00)**	**105.81%**
DIRECT EXPENSES:					
DONATIONS/SPONSORSHIPS/GRANTS	203,915.00	-	-	203,915.00	0.00%
SPEAKERS & PROGRAM DEVELOPMENT	1,500.00	-	-	1,500.00	0.00%
STAFF TRAVEL/PARKING	2,000.00	-	14.03	1,985.97	0.70%
STAFF MEMBERSHIP DUES	95.00	-	-	95.00	0.00%
VOLUNTEER RECRUITMENT & OUTREACH	2,100.00	-	-	2,100.00	0.00%
CONFERENCE CALLS	200.00	-	-	200.00	0.00%
PRO BONO & LEGAL AID COMMITTEE	2,000.00	83.50	228.70	1,771.30	11.44%
VOLUNTEER RECRUITMENT & APPREC	500.00	-	-	500.00	0.00%
DAY OF SERVICE	3,150.00	-	-	3,150.00	0.00%
TOTAL DIRECT EXPENSES:	**215,460.00**	**83.50**	**242.73**	**215,217.27**	**0.11%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.70 FTE)	132,099.00	9,626.10	29,712.38	102,386.62	22.49%
BENEFITS EXPENSE	44,139.00	4,284.41	10,553.10	33,585.90	23.91%
OTHER INDIRECT EXPENSE	40,302.00	2,379.96	8,130.78	32,171.22	20.17%
TOTAL INDIRECT EXPENSES:	**216,540.00**	**16,290.47**	**48,396.26**	**168,143.74**	**22.35%**
TOTAL ALL EXPENSES:	**432,000.00**	**16,373.97**	**48,638.99**	**383,361.01**	**11.26%**
NET INCOME (LOSS):	**(347,000.00)**	**(13,116.97)**	**41,297.01**		

Washington State Bar Association

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For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
SECTIONS ADMINISTRATION					
REVENUE:					
REIMBURSEMENTS FROM SECTIONS	307,000.00	80,175.00	126,412.50	180,587.50	41.18%
TOTAL REVENUE:	**307,000.00**	**80,175.00**	**126,412.50**	**180,587.50**	**41.18%**
DIRECT EXPENSES:					
DUES STATEMENTS	9,500.00	-	5,416.72	4,083.28	57.02%
STAFF TRAVEL/PARKING	1,000.00	-	394.43	605.57	39.44%
SECTION/COMMITTEE CHAIR MTGS	1,000.00	-	439.78	560.22	43.98%
CONFERENCE CALLS	300.00	11.48	19.16	280.84	6.39%
MISCELLANEOUS	300.00	134.00	134.00	166.00	44.67%
TOTAL DIRECT EXPENSES:	**12,100.00**	**145.48**	**6,404.09**	**5,695.91**	**52.93%**
INDIRECT EXPENSES:					
SALARY EXPENSE (4.03 FTE)	259,395.00	21,196.85	64,463.38	194,931.62	24.85%
BENEFITS EXPENSE	93,121.00	9,431.75	23,859.81	69,261.19	25.62%
OTHER INDIRECT EXPENSE	95,540.00	5,630.05	19,236.72	76,303.28	20.13%
TOTAL INDIRECT EXPENSES:	**448,056.00**	**36,258.65**	**107,559.91**	**340,496.09**	**24.01%**
TOTAL ALL EXPENSES:	**460,156.00**	**36,404.13**	**113,964.00**	**346,192.00**	**24.77%**
NET INCOME (LOSS):	**(153,156.00)**	**43,770.87**	**12,448.50**		

Washington State Bar Association

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For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
TECHNOLOGY					
REVENUE:					
TOTAL REVENUE:	-	-	-	-	
DIRECT EXPENSES:					
COMPUTER HARDWARE	29,000.00	306.94	3,368.65	25,631.35	11.62%
COMPUTER SOFTWARE	28,000.00	-	1,212.54	26,787.46	4.33%
SOFTWARE MAINTENANCE & LICENSING	286,500.00	-	28,525.84	257,974.16	9.96%
HARDWARE SERVICE & WARRANTIES	41,000.00	326.11	18,206.40	22,793.60	44.41%
TELEPHONE HARDWARE & MAINTENANCE	26,000.00	1,268.49	9,309.52	16,690.48	35.81%
COMPUTER SUPPLIES	34,000.00	1,002.75	2,952.78	31,047.22	8.68%
THIRD PARTY SERVICES	40,500.00	1,182.25	3,546.75	36,953.25	8.76%
CONSULTING SERVICES	212,000.00	-	926.50	211,073.50	0.44%
STAFF TRAVEL/PARKING	2,500.00	-	-	2,500.00	0.00%
STAFF MEMBERSHIP DUES	110.00	-	-	110.00	0.00%
TELEPHONE	24,000.00	320.14	730.54	23,269.46	3.04%
TRANSFER TO INDIRECT EXPENSES	(723,610.00)	(4,406.68)	(68,779.52)	(654,830.48)	9.51%
TOTAL DIRECT EXPENSES:	-	-	-	-	
INDIRECT EXPENSES:					
SALARY EXPENSE (12.10 FTE)	1,002,250.00	72,524.89	221,547.61	780,702.39	22.11%
BENEFITS EXPENSE	327,511.00	32,178.01	78,989.12	248,521.88	24.12%
CAPITAL LABOR & OVERHEAD	(140,700.00)	-	-	(140,700.00)	0.00%
OTHER INDIRECT EXPENSE	286,858.00	16,851.34	57,582.06	229,275.94	20.07%
TOTAL INDIRECT EXPENSES:	**1,475,919.00**	**121,554.24**	**358,118.79**	**1,117,800.21**	**24.26%**
TOTAL ALL EXPENSES:	**1,475,919.00**	**121,554.24**	**358,118.79**	**1,117,800.21**	**24.26%**
NET INCOME (LOSS):	**(1,475,919.00)**	**(121,554.24)**	**(358,118.79)**		

Washington State Bar Association

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25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
CONTINUING LEGAL EDUCATION (CLE)					
REVENUE:					
SEMINAR REGISTRATIONS	1,670,000.00	160,771.75	313,250.75	1,356,749.25	18.76%
SEMINAR-EXHIB/SPNSR/ETC	25,000.00	-	500.00	24,500.00	2.00%
SHIPPING & HANDLING	4,600.00	520.50	1,192.28	3,407.72	25.92%
DESKBOOK SALES	80,000.00	10,592.06	25,647.24	54,352.76	32.06%
COURSEBOOK SALES	20,000.00	740.23	3,962.23	16,037.77	19.81%
SECTION PUBLICATION SALES	15,200.00	225.00	1,777.50	13,422.50	11.69%
CASEMAKER ROYALTIES	60,000.00	2,841.99	7,086.17	52,913.83	11.81%
MP3 AND VIDEO SALES	700,000.00	274,229.88	458,827.59	241,172.41	65.55%
TOTAL REVENUE:	**2,574,800.00**	**449,921.41**	**812,243.76**	**1,762,556.24**	**31.55%**
DIRECT EXPENSES:					
COURSEBOOK PRODUCTION	4,000.00	83.30	333.32	3,666.68	8.33%
POSTAGE - FLIERS/CATALOGS	40,000.00	1,238.36	8,124.25	31,875.75	20.31%
POSTAGE - MISC./DELIVERY	2,500.00	210.00	245.00	2,255.00	9.80%
DEPRECIATION	19,000.00	1,827.00	5,481.00	13,519.00	28.85%
ONLINE EXPENSES	82,000.00	9,459.44	10,222.10	71,777.90	12.47%
ACCREDITATION FEES	6,500.00	1,497.00	1,736.00	4,764.00	26.71%
SEMINAR BROCHURES	65,000.00	1,012.87	12,188.37	52,811.63	18.75%
FACILITIES	285,988.00	19,460.52	46,310.10	239,677.90	16.19%
SPEAKERS & PROGRAM DEVELOP	55,000.00	1,909.08	9,355.19	45,644.81	17.01%
SPLITS TO SECTIONS	167,456.00	-	-	167,456.00	0.00%
SPLITS TO CO-SPONSORS	7,500.00	-	-	7,500.00	0.00%
HONORARIA	20,250.00	-	-	20,250.00	0.00%
CLE SEMINAR COMMITTEE	1,500.00	-	43.96	1,456.04	2.93%
BAD DEBT EXPENSE	600.00	-	-	600.00	0.00%
STAFF TRAVEL/PARKING	6,500.00	-	95.27	6,404.73	1.47%
STAFF MEMBERSHIP DUES	1,550.00	-	-	1,550.00	0.00%
SUPPLIES	2,000.00	-	-	2,000.00	0.00%
COST OF SALES - DESKBOOKS	56,000.00	7,994.05	17,638.39	38,361.61	31.50%
COST OF SALES - COURSEBOOKS	1,400.00	85.33	350.39	1,049.61	25.03%
COST OF SALES SECTION PUBLICATION	2,800.00	39.02	312.16	2,487.84	11.15%
A/V DEVELOP COSTS (RECORDING)	1,500.00	-	-	1,500.00	0.00%
DESKBOOK ROYALTIES	1,000.00	-	-	1,000.00	0.00%
SHIPPING SUPPLIES	250.00	-	-	250.00	0.00%
POSTAGE & DELIVERY-DESKBOOKS	4,000.00	101.42	438.03	3,561.97	10.95%
POSTAGE & DELIVERY-COURSEBOOKS	3,000.00	90.62	185.55	2,814.45	6.19%
SPLITS WITH SECTIONS	4,800.00	-	-	4,800.00	0.00%
FLIERS/CATALOGS	7,500.00	-	-	7,500.00	0.00%
POSTAGE - FLIERS/CATALOGS	5,000.00	-	-	5,000.00	0.00%
COMPLIMENTARY BOOK PROGRAM	4,000.00	-	-	4,000.00	0.00%
RECORDS STORAGE - OFF SITE	7,440.00	620.00	1,240.00	6,200.00	16.67%
MISCELLANEOUS	200.00	-	-	200.00	0.00%
TOTAL DIRECT EXPENSES:	**866,234.00**	**45,628.01**	**114,299.08**	**751,934.92**	**13.19%**
INDIRECT EXPENSES:					
SALARY EXPENSE (12.77 FTE)	837,663.00	66,089.81	202,753.12	634,909.88	24.20%
BENEFITS EXPENSE	295,948.00	30,151.56	75,880.82	220,067.18	25.64%
OTHER INDIRECT EXPENSE	302,742.00	18,835.44	62,824.77	239,917.23	20.75%
TOTAL INDIRECT EXPENSES:	**1,436,353.00**	**115,076.81**	**341,458.71**	**1,094,894.29**	**23.77%**
TOTAL ALL EXPENSES:	**2,302,587.00**	**160,704.82**	**455,757.79**	**1,846,829.21**	**19.79%**
NET INCOME (LOSS):	**272,213.00**	**289,216.59**	**356,485.97**		

Washington State Bar Association

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25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
SECTIONS OPERATIONS					
REVENUE:					
SECTION DUES	475,770.00	113,023.75	190,247.50	285,522.50	39.99%
SEMINAR PROFIT SHARE	151,310.00	10,364.94	10,364.94	140,945.06	6.85%
INTEREST INCOME	1,406.00	-	-	1,406.00	0.00%
PUBLICATIONS REVENUE	5,000.00	-	-	5,000.00	0.00%
OTHER	55,125.00	(31.83)	4,615.17	50,509.83	8.37%
TOTAL REVENUE:	**688,611.00**	**123,356.86**	**205,227.61**	**483,383.39**	**29.80%**
DIRECT EXPENSES:					
DIRECT EXPENSES OF SECTION ACTIVITIES	594,014.00	37,961.26	73,364.32	520,649.68	12.35%
REIMBURSEMENT TO WSBA FOR INDIRECT EXPENSES	310,818.75	80,175.00	126,412.50	184,406.25	40.67%
TOTAL DIRECT EXPENSES:	**904,832.75**	**118,136.26**	**199,776.82**	**705,055.93**	**22.08%**
NET INCOME (LOSS):	**(216,221.75)**	**5,220.60**	**5,450.79**		

Washington State Bar Association

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25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
LAWYERS FUND FOR CLIENT PROTECTION					
REVENUE:					
LFCP RESTITUTION	1,000.00	285.11	1,103.74	(103.74)	110.37%
LFCP MEMBER ASSESSMENTS	982,000.00	189,223.00	305,803.00	676,197.00	31.14%
INTEREST INCOME	3,000.00	1,080.94	3,102.40	(102.40)	103.41%
TOTAL REVENUE:	**986,000.00**	**190,589.05**	**310,009.14**	**675,990.86**	**31.44%**
DIRECT EXPENSES:					
GIFTS TO INJURED CLIENTS	500,000.00	118,751.23	126,751.23	373,248.77	25.35%
LFCP BOARD EXPENSES	1,500.00	32.91	780.05	719.95	52.00%
BANK FEES - WELLS FARGO	1,000.00	93.55	284.40	715.60	28.44%
TOTAL DIRECT EXPENSES:	**502,500.00**	**118,877.69**	**127,815.68**	**374,684.32**	**25.44%**
INDIRECT EXPENSES:					
SALARY EXPENSE (1.01 FTE)	66,205.00	5,405.41	16,438.13	49,766.87	24.83%
BENEFITS EXPENSE	23,572.00	2,384.59	6,014.07	17,557.93	25.51%
OTHER INDIRECT EXPENSE	23,944.00	1,406.72	4,807.73	19,136.27	20.08%
TOTAL INDIRECT EXPENSES:	**113,721.00**	**9,196.72**	**27,259.93**	**86,461.07**	**23.97%**
TOTAL ALL EXPENSES:	**616,221.00**	**128,074.41**	**155,075.61**	**461,145.39**	**25.17%**
NET INCOME (LOSS):	**369,779.00**	**62,514.64**	**154,933.53**		

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25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MANAGEMENT OF WESTERN STATES BAR CONFERENCE					
REVENUE:					
REGISTRATION REVENUE	25,600.00	(450.00)	(450.00)	26,050.00	-1.76%
OTHER ACTIVITIES REGISTRATION REVENUE	13,000.00	-	1,220.00	11,780.00	9.38%
WESTERN STATES BAR MEMBERSHIP DUES	2,400.00	300.00	1,650.00	750.00	68.75%
SPONSORSHIPS	9,000.00	4,500.00	6,000.00	3,000.00	66.67%
TOTAL REVENUE:	**50,000.00**	**4,350.00**	**8,420.00**	**41,580.00**	**16.84%**
DIRECT EXPENSES:					
SPEAKERS & PROGRAM DEVELOPMENT	1,000.00	-	-	1,000.00	0.00%
FACILITIES	44,000.00	36,823.64	36,823.64	7,176.36	83.69%
STAFF TRAVEL/PARKING	2,300.00	-	572.00	1,728.00	24.87%
BANK FEES	560.00	46.64	141.43	418.57	25.26%
WSBC PRESIDENT TRAVEL	500.00	-	-	500.00	0.00%
OPTIONAL ACTIVITIES EXPENSE	1,200.00	-	-	1,200.00	0.00%
MARKETING EXPENSE	440.00	-	52.61	387.39	11.96%
TOTAL DIRECT EXPENSES:	**50,000.00**	**36,870.28**	**37,589.68**	**12,410.32**	**75.18%**
INDIRECT EXPENSES:					
TOTAL INDIRECT EXPENSES:	**-**	**-**	**-**	**-**	
TOTAL ALL EXPENSES:	**50,000.00**	**36,870.28**	**37,589.68**	**12,410.32**	**75.18%**
NET INCOME (LOSS):	**-**	**(32,520.28)**	**(29,169.68)**		

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25.00% OF YEAR COMPLETE

	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
INDIRECT EXPENSES:					
SALARIES	10,987,791.00	885,475.47	2,732,485.15	8,255,305.85	24.87%
ALLOWANCE FOR OPEN POSITIONS	(120,000.00)	-	-	(120,000.00)	0.00%
TEMPORARY SALARIES	98,320.00	5,592.00	10,507.20	87,812.80	10.69%
CAPITAL LABOR & OVERHEAD	(140,700.00)	-	-	(140,700.00)	0.00%
EMPLOYEE ASSISTANCE PLAN	4,800.00	-	1,200.00	3,600.00	25.00%
EMPLOYEE SERVICE AWARDS	1,970.00	-	1,030.00	940.00	52.28%
FICA (EMPLOYER PORTION)	823,000.00	60,385.18	191,655.84	631,344.16	23.29%
L&I INSURANCE	48,000.00	-	-	48,000.00	0.00%
MEDICAL (EMPLOYER PORTION)	1,335,000.00	107,718.91	330,298.40	1,004,701.60	24.74%
RETIREMENT (EMPLOYER PORTION)	1,252,000.00	98,748.14	295,342.58	956,657.42	23.59%
TRANSPORTATION ALLOWANCE	118,500.00	105,149.50	105,419.50	13,080.50	88.96%
UNEMPLOYMENT INSURANCE	106,000.00	2,087.75	7,715.98	98,284.02	7.28%
STAFF DEVELOPMENT-GENERAL	6,865.00	47.46	368.83	6,496.17	5.37%
TOTAL SALARY & BENEFITS EXPENSE:	**14,521,546.00**	**1,265,204.41**	**3,676,023.48**	**10,845,522.52**	**25.31%**
WORKPLACE BENEFITS	42,000.00	9,721.43	13,992.60	28,007.40	33.32%
HUMAN RESOURCES POOLED EXP	126,656.00	4,265.98	33,870.74	92,785.26	26.74%
MEETING SUPPORT EXPENSES	15,000.00	1,331.95	3,659.29	11,340.71	24.40%
RENT	1,645,000.00	123,820.54	389,991.33	1,255,008.67	23.71%
PERSONAL PROP TAXES-WSBA	12,500.00	1,030.07	3,090.21	9,409.79	24.72%
FURNITURE, MAINT, LH IMP	38,000.00	-	3,865.95	34,134.05	10.17%
OFFICE SUPPLIES & EQUIPMENT	50,000.00	2,957.38	6,785.89	43,214.11	13.57%
FURN & OFFICE EQUIP DEPRECIATION	74,000.00	13,706.49	39,477.44	34,522.56	53.35%
COMPUTER HARDWARE DEPRECIATION	63,000.00	5,269.77	18,016.18	44,983.82	28.60%
COMPUTER SOFTWARE DEPRECIATION	94,500.00	2,030.01	6,093.01	88,406.99	6.45%
INSURANCE	130,400.00	10,881.85	32,645.55	97,754.45	25.03%
PROFESSIONAL FEES-AUDIT	31,000.00	-	5,870.18	25,129.82	18.94%
PROFESSIONAL FEES-LEGAL	60,000.00	-	2,822.00	57,178.00	4.70%
TELEPHONE & INTERNET	38,000.00	326.16	5,770.25	32,229.75	15.18%
POSTAGE - GENERAL	45,000.00	3,933.28	7,622.50	37,377.50	16.94%
RECORDS STORAGE	40,000.00	3,196.84	10,271.31	29,728.69	25.68%
STAFF TRAINING	75,000.00	6,252.58	17,454.63	57,545.37	23.27%
BANK FEES	35,400.00	3,094.87	7,570.81	27,829.19	21.39%
PRODUCTION MAINTENANCE & SUPPLIES	25,000.00	2,990.53	1,296.31	23,703.69	5.19%
COMPUTER POOLED EXPENSES	723,610.00	4,406.68	68,779.52	654,830.48	9.51%
TOTAL OTHER INDIRECT EXPENSES:	**3,364,066.00**	**199,216.41**	**678,945.70**	**2,685,120.30**	**20.18%**
TOTAL INDIRECT EXPENSES:	**17,885,612.00**	**1,464,420.82**	**4,354,969.18**		

Washington State Bar Association

Statement of Activities

For the Period from December 1, 2016 to December 31, 2016

25.00% OF YEAR COMPLETE

SUMMARY PAGE	FISCAL 2017 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE
LICENSE FEES	13,204,000.00	1,082,060.61	3,234,706.17	9,969,293.83
ACCESS TO JUSTICE	(251,763.00)	(18,251.90)	(71,565.51)	(180,197.49)
ADMINISTRATION	(974,756.00)	(63,817.43)	(283,023.69)	(691,732.31)
ADMISSIONS/BAR EXAM	(91,290.00)	(25,501.13)	210,711.98	(302,001.98)
BOARD OF GOVERNORS	(782,596.00)	(48,874.68)	(173,084.18)	(609,511.82)
COMMUNICATIONS	(1,656,408.00)	(118,833.15)	(376,613.61)	(1,279,794.39)
DISCIPLINE	(5,462,671.00)	(458,815.19)	(1,333,699.37)	(4,128,971.63)
DIVERSITY	(293,895.00)	(30,447.33)	375.22	(294,270.22)
FOUNDATION	(167,949.00)	(12,142.97)	(36,803.86)	(131,145.14)
HUMAN RESOURCES	(257,819.00)	(34,820.47)	(94,264.07)	(163,554.93)
PUBLIC SERVICE PROGRAMS	(347,000.00)	(13,116.97)	41,297.01	(388,297.01)
LOMAP	(200,402.00)	(17,144.60)	(35,372.08)	(165,029.92)
LAP	(158,452.00)	(10,109.71)	(26,612.28)	(131,839.72)
LEGISLATIVE	(263,265.00)	(19,624.09)	(58,243.40)	(205,021.60)
LICENSING AND MEMBERSHIP	(339,667.00)	(13,576.10)	(56,303.35)	(283,363.65)
LIMITED LICENSE LEGAL TECHNICIAN	(221,664.00)	(14,893.40)	(44,015.45)	(177,648.55)
LIMITED PRACTICE OFFICERS	(69,787.00)	(11,071.77)	(25,204.39)	(44,582.61)
MANDATORY CLE ADMINISTRATION	(24,390.00)	(3,871.55)	9,057.34	(33,447.34)
MEMBER BENEFITS	(72,000.00)	4,074.17	(982.85)	(71,017.15)
MENTORSHIP PROGRAM	(201,473.00)	(13,042.29)	(39,201.76)	(162,271.24)
NEW LAWYER PROGRAM	(227,891.00)	(24,358.51)	(51,924.75)	(175,966.25)
NW LAWYER	(50,758.00)	19,893.51	3,407.68	(54,165.68)
OFFICE OF GENERAL COUNSEL	(792,970.00)	(61,650.49)	(190,255.65)	(602,714.35)
OGC-DISCIPLINARY BOARD	(257,747.00)	(18,510.45)	(57,087.73)	(200,659.27)
PRACTICE OF LAW BOARD	(115,371.00)	(8,894.80)	(27,788.56)	(87,582.44)
PROFESSIONAL RESPONSIBILITY	(280,851.00)	(20,249.58)	(60,751.11)	(220,099.89)
LAW CLERK PROGRAM	(9,435.00)	7,821.50	(5,680.75)	(3,754.25)
SECTIONS ADMINISTRATION	(153,156.00)	43,770.87	12,448.50	(165,604.50)
TECHNOLOGY	(1,475,919.00)	(121,554.24)	(358,118.79)	(1,117,800.21)
CLE - PRODUCTS	222,126.00	229,040.13	341,121.48	(118,995.48)
CLE - SEMINARS	50,087.00	60,176.46	15,364.49	34,722.51
SECTIONS OPERATIONS	(216,221.75)	5,220.60	5,450.79	(221,672.54)
LFCP	369,779.00	62,514.64	154,933.53	214,845.47
WESTERN STATES BAR CONFERENCE	-	(32,520.28)	(29,169.68)	29,169.68
INDIRECT EXPENSES	(17,885,612.00)	(1,464,420.82)	(4,354,969.18)	(13,530,642.82)
TOTAL OF ALL	**19,457,186.75**	**1,165,541.41**	**3,761,861.86**	**15,695,324.89**
NET INCOME (LOSS)	**(1,571,574.75)**	**298,879.41**	**593,107.32**	

Washington State Bar Association
Analysis of Cash Investments
As of December 31, 2016

Checking & Savings Accounts

General Fund

Checking

Bank	Account			Amount
Wells Fargo	General			
		Total	$	2,744,183

Investments	Rate			Amount
Wells Fargo Money Market	0.56%		$	410,070
UBS Financial Money Market	0.65%		$	836,848
Morgan Stanley Money Market	0.46%		$	25,627
Merrill Lynch Money Market	0.73%		$	1,868,404
Long Term Investments	Varies		$	3,341,647
Short Term Investments	Varies		$	-
		General Fund Total	**$**	**9,226,780**

Lawyer's Fund for Client Protection

Checking

Bank			Amount
Wells Fargo		$	845,132

Investments	Rate			Amount
Wells Fargo Money Market	0.56%		$	2,226,217
Morgan Stanley Money Market	0.07%		$	102,558
Wells Fargo Investments	Varies		$	-
		Lawyers' Fund for Client Protection Total	**$**	**3,173,907**

	Grand Total Cash & Investments	**$**	**12,400,686**

Washington State Bar Association
Analysis of Cash Investments
As of December 31, 2016

Long Term Investments- General Fund

UBS Financial Long Term Investments	Value as of 12/31/16
Nuveen 3-7 year Municipal Bond Portfolio	$ 488,256.48

Morgan Stanley Long Term Investments	Value as of 12/31/16
Lord Abbett Short Term Duration Income Fund	$ 1,544,763.92
Guggenheim Total Return Bond Fund	$ 651,712.81
Virtus Multi-Sector Short Term Bond Fund	$ 656,914.28
	$ 2,853,391.01

Total Long Term Investments- General Fund 3,341,647.49

Short Term Investments- General Fund

Bank	Interest Rate	Yield	Term	Maturity Date	Amount

Total Short Term Investments- General Fund -

Lawyer's Fund for Client Protection

Bank	Interest Rate	Yield	Term Mths	Maturity Date	Amount

Total LFCP -

WSBA

To: Board of Governors
Budget and Audit Committee

From: Mark Hayes, Controller
Ann Holmes, Chief Operations Officer

Re: Results through December 31, 2016 (25% of fiscal year)

Date: February 17, 2017

Attached are the year-to-date financial statements through December 2016, which show that most revenue and expenses are favorably within acceptable ranges of the budgeted amounts. Below is a summary of revenue and expense highlights through December 31, 2016, 25% of the fiscal year.

REVENUE AND EXPENSE ANALYSIS

General Fund Revenues

- *Licensing revenue* is slightly under budget at 24.50%. The majority of 2017 licensing fees will be collected between January and February, after which time we will have a much better idea of where license fee revenue will come in at year-end.

- *Gain/Loss on Investments* is currently under budget at (114.23%). The majority of our investment portfolio is in bonds. The treasury market underwent a significant correction in November, which resulted in an overall loss for the quarter. Market fluctuation is part of the investment landscape and difficult to predict. Our overall portfolio is showing a 3.52% gain since the portfolio was first created.

- *Bar Exam Fees* are higher than budget at 40.04%. Compared to last year, the $406,775 collected as of December 31st is consistent with the prior two years. We have 400 people scheduled to sit for the February exam, which is consistent with historical attendance.

- *Discipline revenue* is under budget at 15.64%. The major revenue source for Discipline revenue is recovery of discipline costs that varies and is difficult to predict.

- *License and Membership Records revenue* is coming in over budget at 35.15%. *Pro hac vice* license fees of $67,375 are $25,125 or 59.5% higher than same time last year.

- *NW Lawyer Revenue* is slightly over budget at 28.41%. This includes revenue from display and classified advertising as well as general and professional announcements. We anticipate that the revenue for this cost center will remain on budget through the rest of the year with slight fluctuations due to timing and number of issues remaining to be published.

- *Reimbursement from Sections* revenue is currently at 41.18%, which is in line with prior year. We expect the majority of this revenue will be received in January and February.

Indirect Expenses

Salaries for regular employees are slightly under budget at 24.87%, reflecting savings from open positions unfilled in the first quarter. *Temporary salaries* are under budget at 10.69%, which we anticipate will increase in the second quarter as temporary staff is retained to support licensing season work. *Employee benefits* are slightly over budget at 26.31% spent, which is due to the fact that the bulk of the transportation allowance budget of $118,500 is consumed in Q1. Adjusting for this, benefits are in line with our salary expense.

Other Indirect Expenses such as *rent, insurance, depreciation, property taxes* etc. are below budget at 20.18%. A few outliers include: *Workplace Benefits Expense* is at 33.32%, but the costs for the Holiday party are incurred in Q1 and will not repeat; *Furniture and Office Depreciation Expense* is over budget at 53.35% due to timing in that a large amount of these assets will be fully-depreciated within the year after which no further expense will be incurred; *Professional Fees- Audit* which is at 18.94% of budget. We have recently completed the WSBA's annual audit and will make further payments in January and February; *Professional Fees - Legal* is 4.70% of budget. This expense is incurred on a case by case basis and is difficult to predict; *Technology* direct expenses (computer hardware, software, etc.) are below budget at 9.51% but are consistent with the expected timing of expenses; and *Office Supplies & Equipment* is at 13.57% of budget. Spending in this category varies and is subject to the timing of purchases.

General Fund Direct Expenses

Direct expenses are under budget in a variety of areas. However, it is too soon to predict whether this overall trend will carry through the remainder of the year. Some key areas follow:

- *Admission/Bar Exam* expenses are under budget at 7.15%, which is driven by the timing of the bar exams. These direct expenses will pick up over the course of the year and we expect them to approach budget.

- *BOG Travel & Outreach* expenses in the Board of Governors cost center is under budget at 18.82% spent 25% of the way through the year. Expenses in this line are related to Board travel and attendance at various events such as committee meetings, local bar events, etc. Spending patterns depend on timing of events throughout the year but we expect to come in on budget.

- *Communication* expense is under budget at 13.88%. This is a timing issue, because $63,000 of the $130,060 direct expense budget is for the annual awards dinner which will be spent toward the end of the fiscal year.

- *Court Report* expense in the Discipline department is at 14.74%. These expenses vary and they are difficult to predict.

- *Public Service* expenses are lower than budget at .11% ($53,622 under budget). Budgeted funds will be disbursed once we finalize grant agreements with our partner law schools.

Continuing Legal Education (CLE)

Overall CLE revenue of $812,244 came in above budget at 31.55%. CLE has recently started experiencing market impacts that we believe are tied to the MCLE rules changes effective January 1, 2016, which eliminated the requirement of live attendance at CLEs. The drop in live registrations began in August 2016 and increased dramatically between October to December of 2016, which is typically our best performing period for CLEs. Year to date (through December 31, 2016), registration for live attendance is down 45%. As a result, CLE seminar revenue was below budget at 18.51%. However, while the rule changes may be contributing to this negative impact to live seminar registrations, they may have had a positive impact on recorded product sales. Year to date (through December 31, 2016), product sales are up 37% as compared to product sales during this same time last year. For the first quarter, CLE Product revenue was above budget at 56.66%.

CLE Indirect expenses are slightly under budget at 23.77%. This is due to the timing of overhead spending that will increase as the year progresses and then be allocated. CLE Direct expenses are below budget at 13.19%. Because we are early in the year, we have yet to have any expense related to section splits, which account for 21% of the total Direct expense budget.

If the market impacts relative to revenue hold we will end up with a net loss of $76,716 under our current model. Thanks to our success last year, the CLE Reserve Fund is currently at $456,000 so we would be able to absorb the projected loss and still maintain a healthy reserve fund. The CLE team is taking proactive steps to optimize efficiency within the operation to save costs. Additionally, we are looking at the marketing of WSBA CLEs to ensure we have the optimal product mix and most efficient delivery models given the shifts in market demand. We are confident that with operational efficiency gains we will be effectively responding to these market changes.

Lawyers' Fund for Client Protection (LFCP)

LFCP revenues are slightly higher than budget (currently at 31.44% collected). We expect to see the majority of revenues in between January and February, with licensing payments. Based on the known fees collected so far, it is likely that the LFCP assessment revenue will come in on budget at the end of the year. Currently, total LFCP direct expenses are right on budget. Indirect expenses are slightly below budget, but are expected to trend closer to budget as the year progresses.

WSBA

To: Board of Governors

From: Mark Hayes, Controller

Re: Investment Update as of January 31, 2017

Date: February 3, 2017

The last update on the investment portfolio showed a total value of $3,341,647 as of December 31st. There was no change in the makeup of the portfolio for the month of January. We remain invested in several bond funds and a short-term income fund. The portfolio value of $3,358,313 as of January 31ts represents a $16,666 or .5% increase from the prior month. Bond funds were hit particularly hard in November as a result of the election and proposed policies that could lead to increased interest rates, which adversely impacts bond funds. We have recouped 96.5% of that loss in the months of December and January.

The WSBA's investments are managed by our advisors at Morgan Stanley and UBS Financial. As of January 31st we have an aggregate gain across all funds of $130,298 since first creating an investment portfolio with an actual percentage gain of 4.04%. The breakdown by fund is as follows:

INVESTMENT FUND	12/31/16 Value	1/31/17 Value	$ Gain/(Loss) Over 1 Year	$ Gain/(Loss) Over 5 Years	$ Gain/(Loss) Since Inception	% Gain/(Loss) Since Inception
Nuveen 3-7 year Municipal Bond Portfolio	$488,256	$490,858	($9,142)[1]	N/A	($9,142)	(1.82%)[1]
Lord Abbett & Company Short Term Duration Income Fund	$1,544,764	$1,549,644	$66,637	$206,660[2]	$121,629[3]	8.52%
Guggenheim Total Return Bond Fund	$651,713[4]	$656,453	$6,453	N/A	$6,453	.99%
Virtus Multi-Sector Short Term Bond Fund	$656,914[4]	$661,358	$11,358	N/A	$11,358	1.74%
Total	**$3,341,647**	**$3,358,313**	**$75,306**	**$206,660**	**$130,298**	**4.04%**

[1] Original purchase price was $499,194 in November 2009. $170,000 was withdrawn from this fund in June 2016. Gain/(loss) comparisons are based on value of fund after June 2016 withdrawal. $500,000 will be considered the "Inception Value".

[2] Comparison price for 5 years is based on the combination of the original investment of $281,680 (in June 2013), the Legg Mason fund (transferred to Lord Abbett in May 2014), Hays Advisory Fund (liquidated and transferred to Lord Abbett in March 2015), and Tradewinds NWQ Fund (liquidated and transferred to Lord Abbett in July 2013).

[3] Purchase price is $1,428,015 which includes $500,020 original purchase plus $599,995 purchase of Legg Mason transferred over to Lord Abbett as of May 9, 2014 and $328,000 from liquidation of Hays Advisory Fund on March 3, 2015.

[4] Purchase price is $650,000

Board of Governors Meeting
WSBA Conference Center
Seattle, WA
May 18-19, 2017

WSBA Mission: Serve the public and the members of the Bar, ensure the integrity of the legal profession, and to champion justice.

PLEASE NOTE: ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE

Thursday, May 18, 2017

GENERAL INFORMATION xx

1. AGENDA xx

10:00 A.M. – Executive Session

2. EXECUTIVE SESSION

a. Approval of March 9, 2017, Executive Session Minutes **(action)** ..... E-xx
b. President's and Executive Director's Reports
c. WSBA Awards Committee Recommendations **(action)** ..... E-xx
d. BOG Election Interview Time Limits **(action)** ..... E-xx
e. Discipline Report – Doug Ende ..... E-xx
f. Litigation Report – Jean McElroy ..... E-xx
g. Meeting Evaluation Summary ..... E-xx

12:00 P.M. – LUNCH WITH LOCAL ATTORNEYS AND JUDGES

1:15 P.M. – PUBLIC SESSION

- **Introductions and Welcome**
- **Report on Executive Session**
- **Consideration of Consent Calendar***

OPERATIONAL

3. INTERVIEW AND SELECTION OF 2017-2018 WSBA PRESIDENT-ELECT (action) xx

4. INTERVIEW AND SELECTION OF 2017-2018 WSBA AT-LARGE (B) GOVERNOR (action) xx

*See Consent Calendar. Any items pulled from the Consent Calendar will be scheduled at the President's discretion.

The WSBA is committed to full access and participation by persons with disabilities to Board of Governors meetings. If you require accommodation for these meetings, please contact Kara Ralph at karar@wsba.org or 206.239.2125.

Friday, May 19, 2017

8:30 A.M. – EXECUTIVE SESSION (tentative)

9:30 A.M. – PUBLIC SESSION

GENERATIVE DISCUSSION

TBD

5. **CONSENT CALENDAR** xx
   a. March 9, 2017, Public Session Minutes xx

6. **INFORMATION**
   a. Activity Reports xx
   b. Executive Director's Report xx
   c. FY2017 Second Quarter Management Report xx
   d. Legislative Report/Wrap-up xx
   e. Diversity and Inclusion Events xx
   f. Financials

7. **PREVIEW OF JULY 28-29, 2017, MEETING** xx

2016-2017 Board of Governors Meeting Issues

NOVEMBER (Seattle)
Standing Agenda Items:

- Financials
- FY2016 Fourth Quarter Management Report
- BOG 2016-2017 Legislative Committee Agenda
- WSBA Legislative Committee Recommendations
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- Outside Appointments (if any)
- Washington Leadership Institute (WLI) Fellows Report
- WSBA Sections Annual Reports (information)
- WSBF Annual Report

JANUARY (Spokane)
Standing Agenda Items:

- ABA Midyear Meeting Sneak Preview
- Financials
- FY2016 Audited Financial Statements
- FY2017 First Quarter Management Report
- Legislative Report
- LFCP Board Annual Report
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- Outside Appointments (if any)
- Third-Year Governors Candidate Recruitment Report

MARCH (Olympia)
Standing Agenda Items:

- ABA Mid-Year Meeting Report
- Financials
- Legislative Report
- Outside Appointments (if any)
- Supreme Court Meeting

May (Seattle)
Standing Agenda Items:

- BOG Election Interview Time Limits (Executive Session)
- Financials
- FY2017 Second Quarter Management Report
- Interview/Selection of WSBA At-Large Governor
- Interview/Selection of the WSBA President-elect
- Legislative Report/Wrap-up
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- Outside Appointments (if any)
- WSBA Awards Committee Recommendations (Executive Session)

JULY (Alderbrook)
Standing Agenda Items:

- ATJ Board Report
- BOG Retreat
- Court Rules and Procedures Committee Report and Recommendations
- Discipline Selection Panel Recommendations
- Financials
- Draft WSBA FY2017 Budget
- FY2016 Third Quarter Management Report
- Office of Disciplinary Counsel Report (Executive Session – quarterly)
- WSBA Committee and Board Chair Appointments
- WSBA Mission Performance and Review (MPR) Committee Update
- WSBA Treasurer Election

SEPTEMBER (Seattle)
Standing Agenda Items:

- 2018 Keller Deduction Schedule
- ABA Annual Meeting Report
- Chief Hearing Officer Annual Report
- Professionalism Annual Report
- Executive Director's Evaluation Report
- Financials
- Final FY2018 Budget
- Legal Foundation of Washington and LAW Fund Report
- Washington Law School Deans
- WSBA Annual Awards Dinner
- WSBF Annual Meeting and Trustee Election

Board of Governors – Action Timeline

Description of Matter/Issue	First Reading	Scheduled for Board Action
Law Clerk Waiver Policies	November 13, 2015	TBD
WSBA Religious and Spiritual Practices Policy	July 22-23, 2016	TBD
Suggested Amendments to WSBA Bylaws Article XI	August 23, 2016	January 26-27, 2017
Resolution	January 26-27, 2017	March 9, 2017