

The Supreme Court
State of Washington

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June 5, 2020

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Re: Washington Supreme Court Votes to Sunset the Limited License Legal Technicians Program

Dear Mr. Crossland, Mr. Majumdar, and Ms. Nevitt:

I am writing to you on behalf of the Supreme Court to advise you that the court voted by majority Thursday, June 4, 2020, to sunset the Limited License Legal Technicians (LLLT) Program. The majority also rejected the LLLT Board's requested expansion of practice areas and proposed rule revisions.

The LLLT program was created in 2012 as an effort to respond to unmet legal needs of Washington residents who could not afford to hire a lawyer. Through this program, licensed legal technicians were able to provide narrow legal services to clients in certain family law matters. The program was an innovative attempt to increase access to legal services. However, after careful consideration of the overall costs of sustaining the program and the small number of interested individuals, a majority of the court determined that the LLLT program is not an effective way to meet these needs, and voted to sunset the program.

Current legal technicians in good standing may continue to be licensed and may continue to provide services. Individuals already in the pipeline as of June 4, 2020, who can complete all the requirements to be licensed as a LLLT by July 31, 2021, may do so. No new LLLTs will be admitted after that date.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra L. Stephens", with a long, sweeping horizontal stroke at the end.

Debra L. Stephens, Chief Justice
Washington State Supreme Court

The Supreme Court

State of Washington

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Re: Washington Supreme Court Votes to Sunset the Limited License Legal Technicians Program

Dear Mr. Crossland, Mr. Majumdar, and Ms. Nevitt:

Today, the court issued a letter announcing its vote to “sunset” the Limited License Legal Technician (LLLT) “program.” Despite these benign words, let there be no mistake about the nature of the court’s action: the elimination of an independent legal *license*. What’s more, the court did so at a single meeting, without question or comment from LLLT license holders, legal practitioners, or the public at large. What took over a decade of toil to create, this court erased in an afternoon. I passionately disagree with the court’s vote as well as the way in which it was carried out.

Unlike the opaque process governing the court’s June 4, 2020 vote, I believe it is useful to review the history of the LLLT “program”—to use the court’s preferred terminology—before opining on its future. First, as a matter of definitions, limited legal technicians are those qualified by education, training, and work experience who are authorized to engage in the limited practice of law in specific subject areas. APR 28(B)(4). Turning to history, the LLLT license did not spring fully formed from the head of Zeus. Rather, it is the work of thousands upon thousands of hours dedicated to rectifying a simple truth: that access to

justice in this country is not equal. The Civil Legal Needs Survey of 2003 confirmed that almost 80 percent of low income and nearly 50 percent of moderate income Americans cannot access or afford legal services.^[1] Critically important to addressing this disparity was protecting the public from the unauthorized practice of law. The solution to both was expanding the options for providing legal services. Thus, APR 28 was approved and the limited legal technician license was born.

The creation of the LLLT was by no means the end of our labors. In many ways it was only the beginning. Since 2012, stakeholders have crafted and this court has approved the contours of the LLLT license: educational requirements, scope of practice, and governing ethical rules. *E.g.*, APR 28; Order (July 12, 2013) (setting out educational requirements and scope of practice for LLLT, among other things); Order (Aug. 8, 2013) (establishing the admission and licensing requirements for LLLT applicants); Order (March 23, 2015) (adopting changes to Rules of Professional Conduct for Lawyers to coordinate those rules with the LLLT Rules of Professional Conduct); WASHINGTON LLLT EDUCATIONAL PROGRAM APPROVAL STANDARDS, WASHINGTON STATE BAR ASS'N (June 10, 2019). Throughout this rule-making process, we have heard from interested parties, students, legal professionals, and members of the public. The questions and comments from all sides have formed and shaped the LLLT from an ambitious plan into a concrete professional license. Make no mistake, LLLT is a new professional license.

2014 marked the first class of LLLT candidates and more have added to these ranks. THOMAS M. CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM 5 (March 2017), http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf. The Public Welfare Foundation studied this new legal practice after its creation and found it was significant in helping create access to justice and was replicable. *See id.* at 14. As a testament to this, other states are considering adopting similar licenses: efforts are underway in states such as Utah, California, Oregon, Colorado, New Mexico, Minnesota, Massachusetts, and Connecticut; and in Canada, British Columbia. Simply put, countless individuals have contributed

^[1] The dire need for affordable legal services has not decreased. In 2017, 86 percent of litigants in civil cases received inadequate or no legal help. *2017 Justice Gap Report: Measuring the Civil Legal Needs of Low-income Americans*, Legal Services Corporation, June 2017, <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

thousands of hours of their time and energy to devise, bring about, grow, and support the LLLT practice. Not to mention the men and women who have taken on the challenge of trailblazing this innovative, new profession in our state.

I recall this history in order to illustrate the depth of the court's misunderstanding in eliminating the LLLT license. Not only is the LLLT not simply a "program" that was easily created, and just as easily paused and canceled as budgets—or attitudes—permit, the LLLT is an independent legal license. As such, it warrants the respect of time and consideration before alteration, let alone total elimination. With yesterday's vote, the court *sua sponte* ended a completely viable licensing category that the public can draw on. There was no process. No questions. No comments. The public was not consulted. This is not how an institution should go about changing or dismantling such a bold initiative. In no other professional area would a regulated license be so summarily erased with so little thought given to those who will be most affected.

Not only was yesterday's vote a disservice to the stakeholders, current and aspiring LLLT license holders, and to the people of Washington, it stands in stark contrast to the way in which the LLLT license was crafted and directed for over a decade. The primary reason offered by the Washington State Bar Association Board of Governors for eliminating the LLLT "program" is cost: it is too expensive to maintain and lawyers should not have to underwrite the cost. This ignores the fact that the cost of growing and maintaining this group of licensed professionals is less than 1 percent of the Association's budget. It also ignores the many thousands of dollars the Bar expends every year investigating *lawyer* misconduct and does not acknowledge the lack of grievances against LLLT practitioners. I find the Board of Governors' cost rationale a hollow one. While current LLLT license holders are "grandfathered in" and allowed to continue practicing, there has been no evaluation offered about the cost of this decision and whether there would be any appreciable change in the cost of administering the LLLT license. As a fiscal matter, the silence on this point speaks loudly, as does the lack of deliberation on other options to address concerns expressed by the Bar while maintaining this professional license and the valuable services it provides in the pursuit of access to justice.

Today's decision also resonates on another level, both abstract and imminently tangible. Just this week, my colleagues and I authored a letter examining the systemic racism that has plagued our country since its inception. We accepted the role judges and the legal community at large have played in maintaining this reality, and recommitted our efforts to ending racial disparity in our governmental, community, and social institutions. The elimination of the

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LLLT license, which was created to address access to justice across income and race, is a step backward in this critical work. It is not the time for closing the doors to justice but, instead, for opening them wider.

With these considerations in mind, I respectfully dissent.

Sincerely,

A handwritten signature in black ink that reads "Barbara Madsen". The signature is written in a cursive style with a large, prominent 'B' and 'M'.

Barbara A. Madsen
Justice