



# WSBA

WASHINGTON STATE BAR ASSOCIATION

## LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

**January 30, 2013**

### AGENDA

Washington State Bar Association  
1325 Fourth Avenue – Suite 600  
Seattle, Washington 98101  
Time: 1:00 p.m. to 5:00 p.m.

1. **Call to Order/Preliminary Matters** (1:00 p.m.)
  - Introductions (Steve Crossland)
2. **Discussion**
  - Future of the Profession (Paula Littlewood)
  - History of the LLLT Rule (Steve Crossland)
  - Strategic Planning (Steve Crossland)
  - Determining the LLLT Practice Area (Steve Crossland)
  - Annual Timeline for the Regulatory Services Department (RSD) and Proposed Timeline for LLLT Program (Thea Jennings/Bobby Henry)
  - Subcommittees for the LLLT Board (Steve Crossland)
  - Open Discussion
3. **Future Meeting Planning**
4. **Adjourn** (5:00 p.m.)

### MEETING MATERIALS

1. LLLT Board Roster [pp. 3]
2. Summary of History of LLLT Rule [pp. 4-5]
3. General Rule (GR) 24 [pp. 6-7]
4. GR 25 [pp. 8-11]
5. June 15, 2012 Supreme Court Order [pp. 12-36]

LLLT Board Meeting Agenda  
January 30, 2013

6. Admission to Practice Rule (APR) 28 [pp. 37-41]
7. Strategic Planning Chart [pp. 42-43]
8. 2007-09 Practice Area Subcommittee Reports [pp. 44-70]
9. RSD Annual Workflow Chart with Proposed LLLT Schedule [pp. 71]
10. Proposed LLLT Timeline for 2014-2016 [pp. 72]
11. APR 12 (LPO Rule) and Regulations [pp. 73-104]
12. GR 27 Family Law Courthouse Facilitators [105-106]



# WSBA

WASHINGTON STATE BAR ASSOCIATION

## Limited License Legal Technician (LLLT) Board Roster

<b>NAME</b>	<b>Term (years)</b>	<b>Term Period</b>
<b>Stephen R. Crossland, Chair</b>	3	1/1/2013 - 9/30/2015
<b>Guadalupe Artiga</b>	2	1/1/2013 - 9/30/2014
<b>Brenda Cothary (nonlawyer)</b>	1	1/1/2013 - 9/30/2013
<b>William E. Covington</b>	2	1/1/2013 - 9/30/2014
<b>Gregory R. Dallaire</b>	3	1/1/2013 - 9/30/2015
<b>Caitlin Davis Carlson (nonlawyer)</b>	2	1/1/2013 - 9/30/2014
<b>Jeanne J. Dawes</b>	1	1/1/2013 - 9/30/2013
<b>Ellen Dial</b>	1	1/1/2013 - 9/30/2013
<b>Lynn K. Fleischbein</b>	3	1/1/2013 - 9/30/2015
<b>Janet D. Olejar (educator)</b>	1	1/1/2013 - 9/30/2013
<b>Ellen Reed (nonlawyer)</b>	3	1/1/2013 - 9/30/2015
<b>Elisabeth M. Tutsch</b>	2	1/1/2013 - 9/30/2014
<b>Vickie J. Williams</b>	1	1/1/2013 - 9/30/2013
<b>BOG LIAISON</b>		
<b>Paul Bastine</b>		
<b>WSBA STAFF</b>		
<b>Thea Jennings</b> LLLT Program Lead		<b>Staff Liaison</b>

## Historical Summary of the Limited License Legal Technician Rule

The Limited License Legal Technician (LLLT) Rule has a long history, which begins with the Washington State Supreme Court's adoption of General Rules (GR) 24 and 25 in 2001. [GR 24](#) clearly defines the practice of law, including its exceptions and exclusions. The impetus behind defining the practice of law was to provide ethical, competent legal services to the public and protect the public from the unauthorized practice of law, while not unreasonably restraining trade.<sup>1</sup> The adoption of [GR 25](#) established the Practice of Law Board (POLB) and its powers. GR 25 directs the POLB to make recommendations to the Supreme Court regarding authorizing non-lawyers to "engage in certain defined activities that would otherwise constitute the practice of law as defined in GR 24." GR 25(c)(4).

In September 2003, the publication of the [Civil Legal Needs Study](#), commissioned by the Supreme Court, revealed a glaring unmet need for legal services among those of moderate means in Washington, especially in the practice areas of consumer, housing, and family law. The creators of the LLLT Rule envisioned the LLLT as an option for those without access to legal services due to various barriers including economic hardship.

Following the Supreme Court's directive and the findings of the Civil Legal Needs Study, the POLB drafted a proposed "legal technician" rule, which would authorize qualified and trained non-lawyers to engage in the limited practice of law under careful regulation. In 2005, the POLB solicited input on the proposed rule from others by holding four public hearings and making numerous presentations to local bar associations, specialty groups, at Access to Justice Conferences, and to the Board of Governors (BOG). The proposed rule was vigorously debated, and in March 2006, the BOG voted overwhelmingly against the POLB's proposed legal technician rule. Also opposed were the Washington State Trial Lawyers Association and the Washington Young Lawyer's Division.

Given its Supreme Court mandate under GR 25(c)(4), the POLB continued formalizing the proposed rule despite opposition. Though the POLB intended the rule to act as a framework that could be applied to several practice areas, the POLB determined it would be appropriate for its recommendation to the Supreme Court to suggest a first practice area in which to license the practitioners. In late 2006, the POLB commissioned four practice area subcommittees to determine which area of the law to recommend: family law, immigration law, landlord-tenant law, and elder law. The subcommittees presented their reports to the POLB in September 2007.<sup>2</sup> The POLB decided to recommend the practice area of family law, after determining it was the area of most need.

In January 2008, the POLB reported directly to the Supreme Court on its proposed rule and recommended family law should the court want to adopt a first substantive area. The proposed rule

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<sup>1</sup> The Department of Justice (DOJ) has issued letters to Bar Associations critical of efforts to define the practice of law too broadly. See e.g., [February 4, 2005, DOJ Letter to Kansas Bar Association](#).

<sup>2</sup> Only immigration law was determined to be inappropriate for the legal technician rule. Family law, landlord-tenant law, and elder law were found to be areas appropriate for a legal technician's practice.

provided for oversight of the program through a commission, which would be under the purview of the POLB and the ultimate authority of the Supreme Court.

In January 2009, the Supreme Court published the proposed rule for public comment through April 30, 2009. The Court received many comments both in support and in opposition. Over the next two years, the proposed rule was not acted upon by the Supreme Court. Then, in February 2012, the POLB submitted amendments to the LLLT Rule after meeting with WSBA staff and the Supreme Court. The suggested revisions provided for the efficient and effective administration of the program should it be implemented. This new version of the rule also established the name of the practitioner, “the limited license legal technician.”

On June 15, 2012, the Supreme Court issued an [Order](#) adopting the LLLT Rule ([Admission to Practice Rule \(APR\) 28](#)) and detailing its reasoning for doing so. The LLLT Rule was adopted effective September 1, 2012. The LLLT Rule as adopted establishes the framework for the licensing and regulation of LLLTs to engage in limited activities that fall within the definition of the practice of law as defined by GR 24. Under the Rule, among other requirements, LLLTs are required to attend an approved course of study, pass an examination in the practice area he or she will practice, have a period of supervised practice, and show proof of financial responsibility.

The LLLT Rule also establishes the LLLT Board to administer the program (rather than a commission of the POLB as originally proposed). APR 28(C)(1). The LLLT Board is a Supreme Court mandated board and, as such, any decisions of the Board are under the final authority of the Supreme Court, unless otherwise specified in the Rule.

The Supreme Court did not ultimately decide on the first practice area in which to license LLLTs. Authority to decide practice areas for the LLLT program was given to the newly created LLLT Board, which must recommend a practice area for approval by the Supreme Court. APR 28(C)(2)(a).

## GENERAL RULE 24

### DEFINITION OF THE PRACTICE OF LAW

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

[Adopted effective September 1, 2001;  
amended effective April 30, 2002.]

GENERAL RULE 25  
PRACTICE OF LAW BOARD

(a) Purpose. The purpose of this rule is to create a Practice of Law Board in order to promote expanded access to affordable and reliable legal and law-related services, expand public confidence in the administration of justice, make recommendations regarding the circumstances under which non-lawyers may be involved in the delivery of certain types of legal and law-related services, enforce rules prohibiting individuals and organizations from engaging in unauthorized legal and law-related services that pose a threat to the general public, and to ensure that those engaged in the delivery of legal services in the state of Washington have the requisite skills and competencies necessary to serve the public.

(b) Appointment. The Practice of Law Board shall consist of 13 members, at least four of whom shall be non-lawyers. The appointments shall be made by the Supreme Court after considering nominations from the Board of Governors of the Washington State Bar Association and other interested people and organizations. The members shall be appointed to staggered 3-year terms of 3 years and no member may serve more than 2 consecutive full 3-year terms. Any vacancy shall be filled for the unexpired term. The Supreme Court shall annually designate a chair and vice-chair, who shall be members of the Board.

(c) Powers of the Practice of Law Board.

(1) Advisory Opinions. On request of any person, or in connection with the consideration of any complaint or any investigation made on its own initiative, the Board may render advisory opinions relating to the authority of non-lawyers to perform legal and law-related services and arrange for their publication. No opinion shall be rendered if, to the Board's knowledge, the subject matter either involves or might affect a case or controversy pending in any court. An advisory opinion shall be issued by the Board in writing and shall be transmitted to the person making the inquiry. At the direction of the Board, an opinion may be published in the Washington State Bar News. Published opinions shall not, insofar as practicable, identify the party or parties making an inquiry, or the complainant or respondent.

(2) Complaints. The Board shall have jurisdiction over and shall inquire into and consider complaints alleging the unauthorized practice of law by any person or entity in accordance with the procedures outlined in this rule.

(3) Investigation. The Board may, on its own initiative, and without any complaint being made to it, investigate any condition or situation of which it becomes aware that may involve the unauthorized practice of law.

(4) Recommendations to the Supreme Court Regarding the Provision of Legal and Law-Related Services by Non-Lawyers. On request of the Supreme Court or any person or organization, or on its own initiative, the Board may recommend that non-lawyers be authorized to engage in certain defined activities that otherwise constitute the practice of law as defined in GR 24. In forwarding a recommendation that non-lawyers be authorized to engage in certain legal or law-related activities that constitute the practice of law as defined in GR 24, the Board shall determine whether regulation under authority of the Supreme Court (including the establishment of minimum and uniform standards of competency, conduct, and continuing education) is



necessary to protect the public interest. Any recommendation that non-lawyers be authorized to engage in the limited provision of legal or law-related services shall be accompanied by a determination:

(A) that access to affordable and reliable legal and law-related services consistent with protection of the public will be enhanced by permitting non-lawyers to engage in the defined activities set forth in the recommendation;

(B) that the defined activities outlined in the recommendation can be reasonably and competently provided by skilled and trained non-lawyers;

(C) if the public interest requires regulation under authority of the Supreme Court, such regulation is tailored to promote access to affordable legal and law-related services while ensuring that those whose important rights are at stake can reasonably rely on the quality, skill and ability of those non-lawyers who will provide such services;

(D) that, to the extent that the activities authorized will involve the handling of client trust funds, provision has been made to ensure that such funds are handled in a manner consistent with RPC 1.15A and APR 12.1, including the requirement that such funds be placed in interest bearing accounts, with interest paid to the Legal Foundation of Washington; and

(E) that the costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime. Recommendations to authorize non-lawyers to engage in the limited practice of law pursuant to this section shall be forwarded to the Washington State Board of Governors for consideration and comment before transmission to the Supreme Court. Upon approval of such recommendations by the Supreme Court pursuant to the procedures set out in GR 9, those who meet the requirements and comply with applicable regulatory and licensing provisions shall be deemed to be engaged in the authorized practice of law.

(d) Expenses of the Practice of Law Board. The Practice of Law Board shall be supported through annual commitments from the Washington State Bar Association and through a portion of other licensing fees established by the Supreme Court for non-lawyers authorized to engage in the regulated practice of law. The Board shall be administered and staffed by the Washington State Bar which shall pay all expenses reasonably and necessarily incurred by the Board, pursuant to a budget approved by the Board of Governors. Members of the Board shall not be compensated for their services, but shall be reimbursed for their necessary expenses incurred in connection with the Board in a manner consistent with the Association's reimbursement policies.

(e) Records. All records of the Board shall be filed and maintained at the principal office of the Association.

(f) Procedure.

(1) Committees. The Board may establish such committees as the membership may deem necessary and appropriate to the performance of its assigned tasks.

(2) Quorum. A majority of the Board shall constitute a quorum. The chairperson of the Board may appoint temporary members of the Board or a committee when a member is disqualified or unable to function on a specific matter for good cause.

(3) Action by Board. The full jurisdiction and authority of the

Board, as provided in this rule, may be exercised by a committee, except that (1) no advisory opinion may be given without the approval of a majority of the Board; (2) no determination of the unauthorized practice of law by a respondent and referral of a matter to a law enforcement or other agency may be made without the approval of a majority of the Board; and (3) the action of a committee on any matter shall be subject to review and the approval or disapproval of the Board.

(4) Formal Complaint Procedure.

(A) Preliminary Investigation. The investigation or review of a complaint shall be promptly instituted by the Board or by a member thereof designated by the chair of the Board. If a complaint has been filed, the investigating member shall interview the complainant and respondent and shall conduct such further investigation as is deemed appropriate.

(B) Report and Written Agreement. Upon the conclusion of an investigation of a complaint, a report shall be made to the Board. If, after consideration of the report, the Board concludes that there has been no unauthorized practice of law, the complaint shall be dismissed and the Board shall so notify the complainant and the respondent in writing and shall close the file in the matter. If the Board concludes that there has been unauthorized practice of law, the Board shall attempt to persuade the respondent to enter into a written agreement to refrain from such conduct in the future. The written agreement may include a stipulation to penalties in the event of continued violation.

(C) Pending Controversy. The Board may defer investigation if, to the Board's knowledge, the conduct complained of is the subject matter of or might affect a case or controversy pending in any court.

(D) Informal Disposition. The Board may attempt to arrive at an amicable disposition of any matter within its jurisdiction with the respondent. At any time during the pendency of a matter before it, the Board may conduct an informal conference with the respondent. At the Board's discretion, an electronic recording or written transcription of the proceeding may be made. A respondent subject to an informal conference may be represented by counsel. After a finding by the Board of the unauthorized practice of law, the Board shall endeavor to have the respondent enter into a written agreement to refrain in the future from such conduct. If the respondent declines to enter into a written agreement pursuant to this rule, the Board shall refer the matter to an appropriate law enforcement or other agency in accordance with this rule.

(g) Petitions for Review.

(1) Notice. Within 20 days after an opinion is published, or within 30 days after any final action of the Board other than the publication of any opinion, any aggrieved member of the bar, bar association, person or entity may seek review thereof by serving on the Board a notice of petition for review by the Supreme Court and by filing the original notice with the Clerk of the Supreme Court. The notice shall set forth the petitioner's name and address and, if represented, the name and address of counsel. The notice shall designate the action of the Board sought to be reviewed and shall concisely state the manner in which the petitioner is aggrieved.

(2) Procedure. Petitions for review to the Supreme Court shall comply with the Rules for Appellate Procedure.

(3) Final Determination. The final determination of a petition for review may be either by written opinion or by order of the Supreme

Court and shall state whether the opinion or the action of the Board is affirmed, reversed or modified or shall provide for such other final disposition as is appropriate.

(h) Referral to Enforcement Agency.

(1) Referral. When the Board concludes from its preliminary investigation, or from the failure of an informal conference as provided in these rules, that an amicable disposition of any matter within its jurisdiction cannot be effected with the respondent, it shall, based upon the nature of the complaint, the relief sought, and the facts as then known, refer the matter to the law enforcement or other agency the Board determines is best suited to conduct an investigation and any prosecution of such matter.

(2) Contents of File. Upon making a determination that an amicable disposition of a matter cannot be effected, and that the matter should be referred to a particular law enforcement or other agency, the Board shall send such agency the original complaint, response, evidence or other proof, investigative report and, if an informal conference has been conducted, a transcript of such proceedings. The Board shall retain copies of all such documents for its file.

(3) Notice to Complainant. Upon referring a matter to a law enforcement or other agency, the Board shall notify the complainant of such action in writing.

(i) Immunity from Suit.

(1) The members and staff of the Board shall be absolutely immune from suit, whether legal or equitable in nature, for any conduct in the performance of their official duties.

(2) Persons who bring allegations concerning any individual or entity to the Board shall be immune from suit, whether legal or equitable in nature, for all communications to the Board or to its staff.

(j) Regulations. The Board may adopt regulations pertinent to these powers subject to the approval of the Supreme Court.

[Adopted effective September 1, 2001; September 1, 2006.]



# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW )  
APR 28—LIMITED PRACTICE RULE FOR )  
LIMITED LICENSE LEGAL TECHNICIANS )  
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## ORDER

NO. 25700-A-1005

The Practice of Law Board having recommended the adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, and the Court having considered the revised rule and comments submitted thereto, and having determined by majority that the rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

That we adopt APR 28, the Limited Practice Rule for Limited License Legal Technicians. It is time. Since this rule was submitted to the Court by the Practice of Law Board in 2008, and revised in 2012, we have reviewed many comments both in support and in opposition to the proposal to establish a limited form of legal practitioner. During this time, we have also witnessed the wide and ever-growing gap in necessary legal and law related services for low and moderate income persons.

We commend the Practice of Law Board for reaching out to a wide spectrum of affected organizations and interests and for revising the rule to address meritorious concerns and suggestions. We also thank the many individuals and organizations whose suggestions to the language of the rule have improved it. The Limited License Legal Technician Rule that we adopt today is narrowly tailored to accomplish its stated objectives, includes appropriate training,

CLERK

FILED  
SUPREME COURT  
STATE OF WASH.  
12 JUN 15 AM 8:00  
BY RONALD R. CARPENER

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financial responsibility, regulatory oversight and accountability systems, and incorporates ethical and other requirements designed to ensure competency within the narrow spectrum of the services that Limited License Legal Technicians will be allowed to provide. In adopting this rule we are acutely aware of the unregulated activities of many untrained, unsupervised legal practitioners who daily do harm to “clients” and to the public’s interest in having high quality civil legal services provided by qualified practitioners.

The practice of law is a professional calling that requires competence, experience, accountability and oversight. Legal License Legal Technicians are not lawyers. They are prohibited from engaging in most activities that lawyers have been trained to provide. They 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. But there are people who need only limited levels of assistance that can be provided by non-lawyers trained and overseen within the framework of the regulatory system developed by the Practice of Law Board. This assistance should be available and affordable. Our system of justice requires it.

### **I. The Rule**

Consistent with GR 25 (the Supreme Court rule establishing the Practice of Law Board),<sup>1</sup> the rule<sup>2</sup> establishes a framework for the licensing and regulation of non-attorneys to engage in discrete activities that currently fall within the definition of the “practice of law” (as defined by GR 24)<sup>3</sup> and which are currently subject to exclusive regulation and oversight by this Court. The rule itself authorizes no one to practice. It simply establishes the regulatory framework for the

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<sup>1</sup> [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=GR&ruleid=gagr25](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr25)

<sup>2</sup> <http://www.wsba.org/Lawyers/groups/practiceoflaw/2006currentruledraftfinal3.doc>

<sup>3</sup> [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=GR&ruleid=gagr24](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr24)

consideration of proposals to allow non-attorneys to practice. As required by GR 25, the rule establishes certification requirements (age, education, experience, pro bono service, examination, etc.),<sup>4</sup> defines the specific types of activities that a limited license legal technician would be authorized to engage in,<sup>5</sup> the circumstances under which the limited license legal technician would be allowed to engage in authorized activities (office location, personal services required, contract for services with appropriate disclosures, prohibitions on serving individuals who require services beyond the scope of authority of the limited license legal technician to perform),<sup>6</sup> a detailed list of prohibitions,<sup>7</sup> and continuing certification and financial responsibility requirements.<sup>8</sup>

In addition to the rule, we are today acting on the Practice of Law Board's proposal to establish a Limited License Legal Technician Board.<sup>9</sup> This Board will have responsibility for considering and making recommendations to the Supreme Court with respect to specific proposals for the authorization of limited license legal technicians to engage in some or all of the activities authorized under the Limited License Legal Technician Rule, and authority to oversee the activities of and discipline certified limited license legal technicians in the same way the Washington State Bar Association does with respect to attorneys. The Board is authorized to recommend that limited license legal technicians be authorized to engage in specific activities within the framework of – and limited to – those set forth in the rule itself. We reserve the responsibility to review and approve any proposal to authorize limited license legal technicians

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<sup>4</sup> Exhibit A to January 7, 2008 submission from the Practice of Law Board to the Supreme Court, Proposed APR 28(C) (*hereafter* Proposed APR 28).

<sup>5</sup> APR 28(D)

<sup>6</sup> APR 28(E)

<sup>7</sup> APR 28(F)

<sup>8</sup> APR 28(G) and (H)

<sup>9</sup> Exhibit B to January 7, 2008 submission from the Practice of Law Board to the Supreme Court (*hereafter* Regulations)

to engage in specific activities within specific substantive areas of legal and law related practice, and our review is guided by the criteria outlined in GR 25.

Today we adopt that portion of the Practice of Law Board's proposal which authorizes limited license legal technicians who meet the education, application and other requirements of the rule be authorized to provide limited legal and law related services to members of the public as authorized by this rule.<sup>10</sup>

## **II. The Need for a Limited License Legal Technician Rule**

Our adversarial civil legal system is complex. It is unaffordable not only to low income people but, as the 2003 Civil Legal Needs Study documented, moderate income people as well (defined as families with incomes between 200% and 400% of the Federal Poverty Level).<sup>11</sup> One example of the need for this rule is in the area of family relations which are governed by a myriad of statutes. Decisions relating to changes in family status (divorce, child residential placement, child support, etc.) fall within the exclusive province of our court system. Legal practice is required to conform to specific statewide and local procedures, and practitioners are required to use standard forms developed at both the statewide and local levels. Every day across this state, thousands of unrepresented (pro se) individuals seek to resolve important legal matters in our courts. Many of these are low income people who seek but cannot obtain help from an overtaxed, underfunded civil legal aid system. Many others are moderate income people for whom existing market rates for legal services are cost-prohibitive and who, unfortunately, must search for alternatives in the unregulated marketplace.

Recognizing the difficulties that a ballooning population of unrepresented litigants has created, court managers, legal aid programs and others have embraced a range of strategies to

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<sup>10</sup> Exhibit E to January 7, 2008 submission from the Practice of Law Board to the Supreme Court (Family Law Subcommittee Recommendation as adopted by the Full Practice of Law Board)

provide greater levels of assistance to these unrepresented litigants. Innovations include the establishment of courthouse facilitators in most counties, establishment of courthouse-based self-help resource centers in some counties, establishment of neighborhood legal clinics and other volunteer-based advice and consultation programs, and the creation of a statewide legal aid self-help website. As reflected most recently in a study conducted by the Washington Center for Court Research,<sup>12</sup> some of these innovations – most particularly the creation of courthouse facilitators – have provided some level of increased meaningful support for pro se litigants.

But there are significant limitations in these services and large gaps in the type of services for pro se litigants. Courthouse facilitators serve the courts, not individual litigants. They may not provide individualized legal advice to family law litigants. They are not subject to confidentiality requirements essential to the practitioner/client relationship. They are strictly limited to engaging in “basic services” defined by GR 27.<sup>13</sup> They have no specific educational/certification requirements, and often find themselves providing assistance to two sides in contested cases. Web-based self-help materials are useful to a point, but many litigants require additional one-on-one help to understand their specific legal rights and prerogatives and make decisions that are best for them under the circumstances.

From the perspective of pro se litigants, the gap places many of these litigants at a substantial legal disadvantage and, for increasing numbers, forces them to seek help from unregulated, untrained, unsupervised “practitioners.” We have a duty to ensure that the public

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<sup>11</sup> Washington Supreme Court Task Force on Civil Equal Justice Funding, *Civil Legal Needs Study* at 23 (fig. 1), <http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf>

<sup>12</sup>George, Thomas, Wang, Wei, Washington’s Courthouse Facilitator Programs for Self-Represented Litigants in Family Law Cases (Washington State Center for Court Research, March 2008) <http://www.courts.wa.gov/wscrr/docs/Courthouse%20Facilitator%20Program.pdf#xml=http://206.194.185.202/texis/search/pdfhi.txt?query=center+for+court+research&pr=www&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&cq=&id=480afa0a11>

<sup>13</sup> [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=GR&ruleid=gagr27](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr27)



can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.

### **III. Specific Concerns and Responses**

A number of specific issues that have been raised both in support of and in opposition to this rule deserve additional discussion and response.

Proponents have suggested that the establishment and licensing of limited license legal technicians should be a primary strategy to close the Justice Gap for low and moderate income people with family related legal problems. While there will be some benefit to pro se litigants in need of limited levels of legal help, we must be careful not to create expectations that adoption of this rule is not intended to achieve.

By design, limited license legal technicians authorized to engage in discrete legal and law related activities will not be able to meet that portion of the public's need for help in family law matters that requires the provision of individualized legal representation in complex, contested family law matters. Such representation requires the informed professional assistance of attorneys who have met the educational and related requirements necessary to practice law in Washington. Limited purpose practitioners, no matter how well trained within a discrete subject matter, will not have the breadth of substantive legal knowledge or requisite practice skills to apply professional judgment in a manner that can be consistently counted upon to meet the public's need for competent and skilled legal representation in complex legal cases.

On the other hand, and depending upon how it is implemented, the authorization for limited license legal technicians to engage in certain limited legal and law related activities holds promise to help reduce the level of unmet need for low and moderate income people who have relatively uncomplicated family related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome.

Some opposing the rule believe that limited licensing legal technicians to engage in certain family related legal and law related activities poses a threat to the practicing family law bar.

First, the basis of any regulatory scheme, including our exercise of the exclusive authority to determine who can practice law in this state and under what circumstances, must start and end with the public interest; and any regulatory scheme must be designed to ensure that those who provide legal and law related services have the education, knowledge, skills and abilities to do so. Protecting the monopoly status of attorneys in any practice area is not a legitimate objective.

It is important to observe that members of the family law bar provide high levels of public and pro bono service. In fact, it is fair to say that the demands of pro bono have fallen disproportionately on members of the family law bar. As pointed out in the comments to the Practice of Law Board's proposal, young lawyers and others have been working for years to develop strategies to provide reduced fee services to moderate income clients who cannot afford market-rate legal help. Over the past year, these efforts have been transformed into the Washington State Bar Association's newly established Moderate Means program,<sup>14</sup> an initiative which holds substantial promise to deliver greater access to legal representation for greater numbers of individuals between 200% and 400% of the federal poverty guideline being provided services at affordable rates.

In considering the impact that the limited licensing of legal technicians might have on the practicing family law bar it is important to push past the rhetoric and focus on what limited license legal technicians will be allowed to do, and what they cannot do under the rule. With

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<sup>14</sup> <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program>

limited exception,<sup>15</sup> few private attorneys make a living exclusively providing technical legal help to persons in simple family law matters. Most family law attorneys represent clients on matters that require extended levels of personalized legal counsel, advice and representation – including, where necessary, appearing in court – in cases that involve children and/or property.

Stand-alone limited license legal technicians are just what they are described to be – persons who have been trained and authorized to provide technical help (selecting and completing forms, informing clients of applicable procedures and timelines, reviewing and explaining pleadings, identifying additional documents that may be needed, etc.) to clients with fairly simple legal law matters. Under the rule we adopt today, limited license legal technicians would not be able to represent clients in court or contact and negotiate with opposing parties on a client's behalf. For these reasons, the limited licensing of legal technicians is unlikely to have any appreciable impact on attorney practice.

The Practice of Law Board and other proponents argue that the limited licensing of legal technicians will provide a substantially more affordable product than that which is available from attorneys, and that this will make legal help more accessible to the public. Opponents argue that it will be economically impossible for limited license legal technicians to deliver services at less cost than attorneys and thus, there is no market advantage to be achieved by creating this form of limited practitioner.

No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a

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<sup>15</sup> See, e.g., the All Washington Legal Clinic (<http://www.divorcelowcostwa.com>)

market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it.

That said, if market economies can be achieved, the public will have a source of relatively affordable technical legal help with uncomplicated legal matters. This may reduce some of the demand on our state's civil legal aid and pro bono systems and should lead to an increase in the quality and consistency of paperwork presented by pro se litigants.

Further, it may be that non-profit organizations that provide social services with a family law component (e.g., domestic violence shelters; pro bono programs; specialized legal aid programs) will elect to add limited license legal technicians onto their staffs. The cost would be much less than adding an attorney and could enable these programs to add a dimension to their services that will allow for the limited provision of individualized legal help on many cases — especially those involving domestic violence. Relationships might be extended with traditional legal aid programs or private pro bono attorneys so that there might be sufficient attorney supervision of the activities of the limited license legal technicians to enable them to engage in those activities for which “direct and active” attorney supervision is required under the rule.

Some have suggested that there is no need for this rule at all, and that the WSBA's Moderate Means Program will solve the problem that the limited licensing of legal technicians is intended to address. This is highly unlikely. First, there are large rural areas throughout the state where there are few attorneys. In these areas, many attorneys are barely able to scrape by. Doing reduced fee work through the Moderate Means program (like doing pro bono work) will not be a high priority.

Second, limited licensing of legal technicians *complements*, rather than competes with, the efforts WSBA is undertaking through the Moderate Means program. We know that there is a huge need for representation in contested cases where court appearances are required. We know

further that pro se litigants are at a decided disadvantage in such cases, especially when the adverse party is represented.<sup>16</sup> Limited license legal technicians are not permitted to provide this level of assistance; they are limited to performing mostly ministerial technical/legal functions. Given the spectrum of unmet legal needs out there, Moderate Means attorneys will be asked to focus their energy on providing the help that is needed most – representing low and moderate income people who cannot secure necessary representation in contested, often complex legal proceedings.

Opponents of the rule argue that the limited licensing of legal technicians presents a threat to clients and the public. To the contrary, the authorization to establish, regulate and oversee the limited practice of legal technicians within the framework of the rule adopted today will serve the public interest and protect the public. The threat of consumer abuse already exists and is, unfortunately, widespread. There are far too many unlicensed, unregulated and unscrupulous “practitioners” preying on those who need legal help but cannot afford an attorney. Establishing a rule for the application, regulation, oversight and discipline of non-attorney practitioners establishes a regulatory framework that reduces the risk that members of the public will fall victim to those who are currently filling the gap in affordable legal services.

Unlike those operating in the unregulated marketplace, limited license legal technicians will practice within a carefully crafted regulatory framework that incorporates a range of safeguards necessary to protect the public. The educational requirements are rigorous. Unlike attorneys, legal technicians are required to demonstrate financial responsibility in ways established by the Board. There is a testing requirement to demonstrate professional competency

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<sup>16</sup> See, e.g., *In re the Marriage of King*, 162 Wn.2d 378, 404-411 (2007) (Madsen, J., dissenting).

to practice, contracting and disclosure requirements are significant, and there will be a robust oversight and disciplinary process. This rule protects the public.

Another concern that has been raised is that attorneys will be called upon to underwrite the costs of regulating non-attorney limited license legal technicians against whom they are now in competition for market share. This will not happen. GR 25 requires that any recommendation to authorize the limited practice of law by non-attorneys demonstrate that “[t]he costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime.” The Practice of Law Board’s rule expressly provides that the ongoing cost of regulation will be borne by the limited license legal technicians themselves, and will be collected through licensing and examination fees. Experience with the Limited Practice Board demonstrates that a self-sustaining system of regulation can be created and sustained. The Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership.

#### **IV. Conclusion**

Today’s adoption of APR 28 is a good start. The licensing of limited license legal technicians will not close the Justice Gap identified in the 2003 Civil Legal Needs Study. Nor will it solve the access to justice crisis for moderate income individuals with legal needs. But it is a limited, narrowly tailored strategy designed to expand the provision of legal and law related services to members of the public in need of individualized legal assistance with non-complex legal problems.

The Limited License Legal Technician Rule is thoughtful and measured. It offers ample protection for members of the public who will purchase or receive services from limited license legal technicians. It offers a sound opportunity to determine whether and, if so, to what degree

the involvement of effectively trained, licensed and regulated non-attorneys may help expand access to necessary legal help in ways that serve the justice system and protect the public.

IT IS FURTHER ORDERED:

- (1) That a new rule, APR 28, as attached hereto is adopted.
- (2) That the new rule will be published in the Washington Reports and will become effective September 1, 2012.

DATED at Olympia, Washington this 15<sup>th</sup> day of June, 2012.

Madsen, C. J.

Chambers, J.

J.M. Johnson

Wegman, J.

Styer, J.

Gonzalez, J.

New Admission to Practice Rule 28: Limited Practice Rule for  
Limited License Legal Technicians

- A) **Purpose.** The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribe the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.
- B) **Definitions.** For purposes of this rule, the following definitions will apply:
- 1) "APR" means the Supreme Court's Admission to Practice Rules.
  - 2) "Board" when used alone means the Limited License Legal Technician Board.
  - 3) "Lawyer" means a person licensed and eligible to practice law in any U.S. jurisdiction.
  - 4) "Limited License Legal Technician" 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.
  - 5) "Paralegal/legal assistant" means a person qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive law-related work for which a lawyer is responsible.
  - 6) "Reviewed and approved by a Washington lawyer" means that a Washington lawyer has personally supervised the legal work and documented that supervision by the Washington lawyer's signature and bar number.
  - 7) "Substantive law-related work" means work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.
  - 8) "Supervised" means a lawyer personally directs, approves and has responsibility



for work performed by the Limited License Legal Technician.

9) "Washington lawyer" means a person licensed and eligible to practice law in Washington and who is an active or emeritus member of the Washington State Bar Association.

10) Words of authority:

- a) "May" means "has discretion to," "has a right to," or "is permitted to".
- b) "Must" or "shall" mean "is required to."
- c) "Should" means recommended but not required.

**C) Limited License Legal Technician Board.**

- 1) *Establishment.* There is hereby established a Limited License Legal Technician Board. The Board shall consist of 13 members appointed by the Supreme Court of the State of Washington, nine of whom shall be active Washington lawyers, and four of whom shall be non-lawyer Washington residents. At least one member shall be a legal educator. The members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three year terms. No member may serve more than two consecutive full three year terms.
- 2) *Board Responsibilities.* The Board shall be responsible for the following:
  - (a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;
  - (b) Processing applications and fees, and screening applicants;
  - (c) Administering the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to Limited License Legal Technicians, rules relating to the attorney-client privilege, procedural rules and substantive law issues related to one or more approved practice areas;
  - (d) Determining LLLT Continuing Legal Education (LLLT CLE) requirements and approval of LLLT CLE programs;
  - (e) Approving education and experience requirements for licensure in approved practice areas;
  - (f) Establishing and over-seeing committees and tenure of members;
  - (g) Establishing and collecting examination fees, LLLT CLE fees, annual license fees, and other fees in such amounts approved by the Supreme

Court as are necessary to carry out the duties and responsibilities of the Board; and

- (h) Such other activities and functions as are expressly provided for in this rule.
- 3) *Rules and Regulations.* The Board shall propose rules and regulations for adoption by the Supreme Court that:
  - (a) Establish procedures for grievances and disciplinary proceedings;
  - (b) Establish trust account requirements and procedures;
  - (c) Establish rules of professional and ethical conduct; and
  - (d) Implement the other provisions of this rule.

D) **Requirements for Applicants.** An applicant for licensure as a Limited License Legal Technician shall:

- 1) *Age.* Be at least 18 years of age.
- 2) *Moral Character and Fitness to Practice.* Be of good moral character and demonstrate fitness to practice as a Limited License Legal Technician.
- 3) *Education and Experience.* Have the following education and experience:
  - a) (i) An associate degree or equivalent program, or a bachelor degree, in paralegal/legal assistant studies approved by the American Bar Association or the Board, together with a minimum of two years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; or
    - (ii) A post-baccalaureate certificate program in paralegal/legal assistant studies approved by the Board, together with a minimum of three years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; and
  - b) Complete at least 20 hours of pro bono legal service in Washington as approved by the Board, within two years prior to taking the Limited License Legal Technician examination.

In all cases, the paralegal/legal assistant experience must be acquired after completing the education requirement, unless waived by the Board for good cause shown.

- 4) *Application*. Execute under oath and file with the Board two copies of his/her application, in such form as the Board requires. An applicant's failure to furnish information requested by the Board or pertinent to the pending application may be grounds for denial of the application.
- 5) *Examination Fee*. Pay, upon the filing of the application, the examination fee and any other required application fees as established by the Board and approved by the Supreme Court.

**E) Licensing Requirements.** In order to be licensed as a Limited License Legal Technician, all applicants must:

- 1) *Examination*. Take and pass the examinations required under these rules;
- 2) *Annual License Fee*. Pay the annual license fee;
- 3) *Financial Responsibility*. Show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rules. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe; and
- 4) Meet all other licensing requirements set forth in the rules and regulations proposed by the Board and adopted by the Supreme Court.

**F) Scope of Practice Authorized by Limited Practice Rule.** The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

- 1) Obtain relevant facts, and explain the relevancy of such information to the client;
- 2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- 3) Inform the client of applicable procedures for proper service of process and filing of legal documents;
- 4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;
- 5) Review documents or exhibits that the client has received from the opposing

side, and explain them to the client;

- 6) Select and complete forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;
- 7) Perform legal research and draft legal letters and pleadings documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;
- 8) Advise a client as to other documents that may be necessary to the client's case (such as exhibits, witness declarations, or party declarations), and explain how such additional documents or pleadings may affect the client's case;
- 9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

**G) Conditions Under Which A Limited License Legal Technician May Provide Services.**

- 1) A Limited License Legal Technician must have a principal place of business having a physical street address for the acceptance of service of process in the State of Washington;
- 2) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a non-licensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation 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);
  - (b) Identification of all fees and costs to be charged to the client for the services to be performed;

- (c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;
  - (d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the face-first page of the contract in minimum twelve-point bold type print;
  - (e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;
  - (f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and
  - (g) Any other conditions required by the rules and regulations of the Board.
- 4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client requires should seek the services of a lawyer.
  - 5) A document prepared by an LLLT shall include the LLLT's name, signature and license number beneath the signature of the client.
- H) **Prohibited Acts.** In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:
- 1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;
  - 2) Retain any fees or costs for services not performed;
  - 3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client; or
  - 4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized

by the license held by the Limited License Legal Technician;

- 5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;
- 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).
- 7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client.
- 8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;
- 9) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

**I) Continuing Licensing Requirements.**

- 1) *Continuing Education Requirements.* Each Limited License Legal Technician annually must complete the Board-approved number of credit hours in courses or activities approved by the Board; provided that the Limited License Legal Technician shall not be required to comply with this subsection during the calendar year in which he or she is initially licensed.
- 2) *Financial Responsibility.* Each Limited License Legal Technician shall annually provide proof of financial responsibility in such form and in such amount as the Board may by regulation prescribe.
- 3) *Annual Fee.* Each Limited License Legal Technician shall pay the annual license fee established by the Board and approved by the Supreme Court.

**J) Existing Law Unchanged.** This rule shall in no way modify existing law prohibiting non-lawyers from practicing law or giving legal advice other than as authorized under this rule or associated rules and regulations.

**K) Professional Responsibility and Limited License Legal Technician-Client Relationship.**

- 1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.
- 2) Limited License Legal Technicians shall be held to the ethical standards of the

Limited License Legal Technicians' Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.

# THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW )  
APR 28—LIMITED PRACTICE RULE FOR LEGAL )  
TECHNICIANS AND NEW APR 28—NON- )  
LAWYER PRACTICE COMMISSION )  
REGULATIONS 1-7 )  
\_\_\_\_\_ )

No. 25700-A-

DISSENT TO ORDER

OWENS, J. (dissenting)—During my years on the Washington Supreme Court, I have not once authored a dissent to an administrative order of this court. I depart from that custom today because I have very strong feelings that our court’s decision to adopt the new Admission to Practice Rule, APR 28, is ill-considered, incorrect, and most of all extremely unfair to the members of the Washington State Bar Association (WSBA).

Let me quickly add that by expressing disagreement with the court’s approval of this new rule, I am not suggesting that the legal needs of all persons in this state are currently being met. Like my judicial colleagues, I know that there is a great unmet need for legal services and we in the judiciary and the legal profession have an obligation to look for appropriate ways to expand the availability of legal assistance to the public.

My opposition to the board’s work product should, therefore, not be considered disagreement with the goal the Practice of Law Board was seeking to achieve—expanding the availability of legal services to individuals who are confronted with legal problems. Rather, my opposition to the rule is based on the fact this rule and its attendant regulations impose an obligation on the members of the WSBA to underwrite the considerable cost of establishing and maintaining what can only be characterized as a mini bar association within the present WSBA. Assuming our court has the inherent



authority to create this new profession of legal technicians, I do not believe that we possess the authority to tax the lawyers of this state to pay "all of the expenses reasonably and necessarily incurred" by the Non-Lawyer Practice Commission, a body which comes into being pursuant to the rule and regulations. See Regulation 3(G). Pertinent to this point, I note that it is generally acknowledged that it will likely cost several hundred thousand dollars to set up the commission that will oversee this new profession of legal technicians. We have not been informed that the WSBA presently has sufficient money within its treasury to underwrite this considerable expense and I have significant doubts that it has an abundance of cash on hand. In fact, in light of the dues rollback, the opposite is true. Although I recognize that this court's order delays implementation of the new rule until January 1, 2013, I think it is unrealistic to assume that the WSBA will realize any large windfall of funds in 2013. Consequently, the only way the WSBA will be able to fulfill the considerable financial obligation this court has imposed upon it is to either reduce the amount it budgets for the programs and services it presently supports or increase the yearly dues of its members. Either way you look at it, this court is imposing a tax on lawyers.

The APR 28 regulations suggest that the APR 28 program will eventually support itself through certification fees. In that regard, we have been advised that something in the order of \$200,000 may eventually be generated by these fees. In this day and age, \$200,000 does not go very far and it is hard for me to see how this APR 28 program with its testing, certification, continuing education, and discipline provisions can be accommodated with a yearly budget of that amount. The hoped for self-sufficiency of the program will, in my view, depend to a large extent on the numbers of persons

achieving legal technician status under the rule. Although this court was earlier led to believe that initially there would be certification of legal technicians only in family law matters, the rule and regulations this court has approved provide the Practice of Law Board with unbridled discretion to recommend to the Supreme Court the areas, within the full range of practice areas encompassed by the GR 24 definition of the practice of law, in which legal technicians can practice.<sup>1</sup> I sense that the Practice of Law Board realized that there is uncertainty about whether the certification fees will produce sufficient funds to underwrite the annual cost of the legal technician program and, thus, provided that funding for the commission will be generated by certification fees “as well as commitments from the WSBA.” Regulation 3(G).<sup>2</sup>

The unfairness of imposing what seems beyond doubt a significant obligation on the lawyers of this state is made all the more manifest by the fact that in recent years, the WSBA has undertaken, with the encouragement of this court, a number of efforts designed to address the very problems the new APR 28 purports to mitigate. I am speaking of (1) increased encouragement for Washington lawyers to provide pro-bono service and the provision of free and low cost training for lawyers who wish to provide such service; (2) the highly successful home foreclosure legal aid project, which helps low and moderate income persons deal with the threat of home foreclosure; (3) a major

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<sup>1</sup>The court’s order contains a statement that “we adopt the portion of the Practice of Law Board’s proposal which authorizes legal technicians . . . to provide limited legal and law related services to members of the public in certain defined family law related areas. It is noteworthy that the proposed rule, APR 28, and regulations do not contain the words “family law.”

<sup>2</sup>The court’s order expresses confidence that the fee based system will be “cost neutral.” Perhaps it will be self-sufficient someday, but this conclusion does not address the significant start up costs which the court order requires the WSBA to pay.


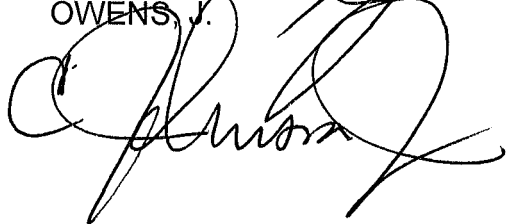
one-time contribution by the WSBA of cash to the Legal Foundation of Washington in order to offset the impact of reduced Interest on Lawyers Trust Accounts revenues coming to the foundation, a contribution which leveraged a \$3 million donation from the Gates Foundation to the Legal Foundation of Washington; (4) the statewide moderate means program, which is designed to assist individuals who need the assistance of a lawyer to obtain those services at a reduced cost; and (5) a check off on the annual license fee for lawyers, suggesting an annual contribution of at least \$50 by lawyers to the Campaign for Equal Justice to help ensure equal access to justice for all Washingtonians regardless of financial standing.

The WSBA is not required to undertake any of the aforementioned initiatives but it has done so voluntarily with great zeal and enthusiasm endeavoring to address the public's legal needs. Furthermore, all of this was done at great expense to the WSBA. Indeed the WSBA's contribution of \$1.5 million to the Legal Foundation of Washington in 2009 was a truly heroic gesture but one which made a major dent in the cash reserves the WSBA had built up over the years. Whether the obligation this court is now imposing on the WSBA will result in eliminating or curtailing any of these programs and initiatives, no one knows for certain. If, however, that is the result of our action, it would be a sad day for the WSBA and the many persons positively affected by the bar's considerable efforts.

Finally, I wish to observe that an impartial observer might wonder why the Supreme Court does not assume responsibility for funding implementation of APR 28. After all, the fact that the legal needs of the public are not being met is a problem that affects the entire community, not just a segment of our state's population like its

attorneys at law. Such a question would not be farfetched because in a number of states the expense associated with the admission and disciplining of lawyers is subsumed within the budget of the highest court in those states. I suspect, though, that if this court had been asked to assume financial responsibility for establishing and administering this major program for certification of legal technicians, with the vague promise that the program may someday be self-supporting, we would have concluded that we presently do not have sufficient funds within our budget with which to undertake this responsibility. Is it fair or equitable for this court to eschew assuming financial responsibility for the program in this time of economic distress, and instead impose the obligation on all of the state's lawyers, many of whom are feeling adverse affects of the current downturn of the economy? I say no. Because the majority by its order says yes, I dissent from the order.

DATED at Olympia, Washington this <sup>14<sup>th</sup></sup> day of June 2012.

  
OWENS, J.  


I concur in result only.  
Fairhurst. J.

## Limited Practice Rule for Limited License Legal Technicians

A) Purpose. The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribe the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.

B) Definitions. For purposes of this rule, the following definitions will apply:

- 1) "APR" means the Supreme Court's Admission to Practice Rules.
- 2) "Board" when used alone means the Limited License Legal Technician Board.
- 3) "Lawyer" means a person licensed and eligible to practice law in any U.S. jurisdiction.
- 4) "Limited License Legal Technician" 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.
- 5) "Paralegal/legal assistant" means a person qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive law-related work for which a lawyer is responsible.
- 6) "Reviewed and approved by a Washington lawyer" means that a Washington lawyer has personally supervised the legal work and documented that supervision by the Washington lawyer's signature and bar number.
- 7) "Substantive law-related work" means work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.
- 8) "Supervised" means a lawyer personally directs, approves and has responsibility for work performed by the Limited License Legal Technician.
- 9) "Washington lawyer" means a person licensed and eligible to practice law in Washington and who is an active or emeritus member of the Washington State Bar Association.

10) Words of authority:

- a) "May" means "has discretion to," "has a right to," or "is permitted to".
- b) "Must" or "shall" mean "is required to."
- c) "Should" means recommended but not required.

C) Limited License Legal Technician Board.

1) Establishment. There is hereby established a Limited License Legal Technician Board. The Board shall consist of 13 members appointed by the Supreme Court of the State of Washington, nine of whom shall be active Washington lawyers, and four of whom shall be non-lawyer Washington residents. At least one member shall be a legal educator. The members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three year terms. No member may serve more than two consecutive full three year terms.

2) Board Responsibilities. The Board shall be responsible for the following:

- (a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;
- (b) Processing applications and fees, and screening applicants;

(c) Administering the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to Limited License Legal Technicians, rules relating to the attorney-client privilege, procedural rules and substantive law issues related to one or more approved practice areas;

(d) Determining LLLT Continuing Legal Education (LLLT CLE) requirements and approval of LLLT CLE programs;

(e) Approving education and experience requirements for licensure in approved practice areas;

(f) Establishing and over-seeing committees and tenure of members;

(g) Establishing and collecting examination fees, LLLT CLE fees, annual license fees, and other fees in such amounts approved by the Supreme Court as are necessary to carry out the duties and responsibilities of the Board; and

(h) Such other activities and functions as are expressly provided for in this rule.

3) Rules and Regulations. The Board shall propose rules and regulations for adoption by the Supreme Court that:

(a) Establish procedures for grievances and disciplinary proceedings;

(b) Establish trust account requirements and procedures;

(c) Establish rules of professional and ethical conduct; and

(d) Implement the other provisions of this rule.

D) Requirements for Applicants. An applicant for licensure as a Limited License Legal Technician shall:

1) Age. Be at least 18 years of age.

2) Moral Character and Fitness to Practice. Be of good moral character and demonstrate fitness to practice as a Limited License Legal Technician.

3) Education and Experience. Have the following education and experience:

a) (i) An associate degree or equivalent program, or a bachelor degree, in paralegal/legal assistant studies approved by the American Bar Association or the Board, together with a minimum of two years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; or

(ii) A post-baccalaureate certificate program in paralegal/legal assistant studies approved by the Board, together with a minimum of three years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; and

b) Complete at least 20 hours of pro bono legal service in Washington as approved by the Board, within two years prior to taking the Limited License Legal Technician examination.

In all cases, the paralegal/legal assistant experience must be acquired after completing the education requirement, unless waived by the Board for good cause shown.

4) Application. Execute under oath and file with the Board two copies of his/her application, in such form as the Board requires. An applicant's failure to furnish information requested by the Board or pertinent to the pending application may be grounds for denial of the application.

5) Examination Fee. Pay, upon the filing of the application, the examination fee and any other required application fees as established by the Board and approved by the Supreme Court.

E) Licensing Requirements. In order to be licensed as a Limited License Legal Technician, all applicants must:

1) Examination. Take and pass the examinations required under these rules;

2) Annual License Fee. Pay the annual license fee;

3) Financial Responsibility. Show proof of ability to respond in damages

resulting from his or her acts or omissions in the performance of services permitted by this rules. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe; and

4) Meet all other licensing requirements set forth in the rules and regulations proposed by the Board and adopted by the Supreme Court.

F) Scope of Practice Authorized by Limited Practice Rule. The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

1) Obtain relevant facts, and explain the relevancy of such information to the client;

2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;

3) Inform the client of applicable procedures for proper service of process and filing of legal documents;

4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;

5) Review documents or exhibits that the client has received from the opposing side, and explain them to the client;

6) Select and complete forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;

7) Perform legal research and draft legal letters and pleadings documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;

8) Advise a client as to other documents that may be necessary to the client's case (such as exhibits, witness declarations, or party declarations), and explain how such additional documents or pleadings may affect the client's case;

9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

G) Conditions Under Which A Limited License Legal Technician May Provide Services.

1) A Limited License Legal Technician must have a principal place of business having a physical street address for the acceptance of service of process in the State of Washington;

2) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a non-licensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation 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);

(b) Identification of all fees and costs to be charged to the client for the services to be performed;

(c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This

statement shall be on the face first page of the contract in minimum twelve-point bold type print;

(e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the Board.

4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client requires should seek the services of a lawyer.

5) A document prepared by an LLLT shall include the LLLT's name, signature and license number beneath the signature of the client.

H) Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

2) Retain any fees or costs for services not performed;

3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client; or

4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized by the license held by the Limited License Legal Technician;

5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

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).

7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client.

8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;

9) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

I) Continuing Licensing Requirements.

1) Continuing Education Requirements. Each Limited License Legal Technician annually must complete the Board-approved number of credit hours in courses or activities approved by the Board; provided that the Limited License Legal Technician shall not be required to comply with this subsection during the calendar year in which he or she is initially licensed.

2) Financial Responsibility. Each Limited License Legal Technician shall annually provide proof of financial responsibility in such form and in such amount as the Board may by regulation prescribe.

3) Annual Fee. Each Limited License Legal Technician shall pay the annual license fee established by the Board and approved by the Supreme Court.

J) Existing Law Unchanged. This rule shall in no way modify existing law prohibiting non-lawyers from practicing law or giving legal advice other than as authorized under this rule or associated rules and regulations.

K) Professional Responsibility and Limited License Legal Technician-Client Relationship.

1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.



2) Limited License Legal Technicians shall be held to the ethical standards of the Limited License Legal Technicians' Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.

Adopted effective September 1, 2012

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STRATEGIC PLANNING AND ACTION ITEMS

Strategic Planning Categories	Action Items	Citation	Priority	Aspirational Deadline
Admissions & Licensing	<b>Phase 1: Applications</b>			3/27/2013
	Define application requirements	APR 28(D)(4)		
	Define schools/programs to be approved	APR 28(D)(3)(a)(i); APR 28(D)(3)(a)(ii)		
	Define pro bono legal services to be approved	APR 28(D)(3)(b)		
	Define when Board will waive experience after education requirement	APR 28(D)(3)		
	Define what happens upon approval/denial of application	APR 28(C)(3)(d)		
	<b>Phase 2: Admissions</b>			7/1/2013
	Decide fee for admissions/licensing	APR 28(C)(2)(g); APR 28(E)(2)		
	Create oath of admission	APR 28(C)(3)(d)		
	Establish form of proof of financial responsibility (as defined by Financial Responsibility Subcommittee)	APR 28(E)(3)		
	Create application form	APR 28(D)(4)		
	<b>Phase 3: Licensing</b>			TBD 2014
	Define annual financial responsibility reporting requirement	APR 28(I)(2)		
Define IOLTA account reporting requirements	APR 28(C)(3)(b); APR 28(K)(2)			
Establish annual licensing, CLE, and other fees	APR 28(C)(2)(g)			
Examination	<b>Phase 1: Examination Requirements</b>			3/27/2013
	Define standards for passing exam	APR 28(C)(3)(d)		
	Establish examination fee	APR 28(D)(5)		
	Define form of exam	APR 28(C)(2)(c)		
	Define procedures for notification of results, sending to Supreme Court	APR 28(C)(3)(d)		
	Establish "study topics" for exam (may overlap with Phase 2)			
	<b>Phase 2 &amp; 3: Create Examination</b>			TBD 2014
Write exam	APR 28(C)(2)(c)			
Scope of Practice & Forms	<b>Phase 1: Define Scope</b>			3/27/2013
	Define practice area and scope of practice for recommendation to Supreme Court	APR 28(C)(2)(a)		

STRATEGIC PLANNING AND ACTION ITEMS

Strategic Planning Categories	Action Items	Citation	Priority	Aspirational Deadline
	<b>Phase 2: Approve Practice Materials &amp; Forms</b>			7/1/2013
	Approve self-help materials	APR 28(F)(4)		
	Approve forms	APR 28(F)(6)		
<b>Financial Responsibility Requirement</b>	<b>Phase 1</b>			3/27/2013
	Define financial responsibility requirement	APR 28(E)(3)		
	Establish form of proof of financial responsibility	APR 28(E)(3)		
	Do outreach to insurance companies re whether they would insure LLLTs			
<b>RPC &amp; Discipline</b>	<b>Phase 2: Rules of Professional Conduct &amp; Trust Account Rules</b>			7/1/2013
	Draft rules of professional conduct	APR 28(C)(3)(c)		
	Draft trust account rules	APR 28(C)(3)(b)		
	<b>Phase 3: Rules for Enforcement of LLLT Conduct</b>			TBD 2014
	Draft rules for grievance and disciplinary proceedings	APR 28(C)(3)(a)		
<b>Education and Outreach</b>	<b>Phase 3</b>			TBD 2014
	Define continuing legal education (CLE) requirements	APR 28(C)(2)(d); APR 28(I)(1)		
	Do outreach to schools re preparing paralegals/legal assistants to be licensed			

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**Final Report of the Immigration Subcommittee  
September 5, 2007**

The members of the immigration subcommittee have, after lengthy discussion, decided that the area of immigration law is not appropriate for the pilot project of non-lawyer practice.

The subcommittee has 5 members: Daniel Perez and Stephanie Delaney (co- chairs), attorneys Manuel Rios, Hilary Hahn and non-attorneys Raymundo Olivares and Candelaria Murillo.

The subcommittee met 3 times to discuss this area of non-lawyer practice. It's foundation was the awareness that there is a great need for additional legal services for people with immigration problems, as noted by the 2003 Civil Legal Needs study and the experience of the sub-committee members. Yet, this complex area of law is very difficult for the pro se litigant. The subcommittee noted that many people in Washington State are unable to afford a private immigration lawyer. The subcommittee further noted that the available free and low cost immigration services meet only a small amount of the demand for these services.

With this in mind, the sub-committee explored how non-lawyers could effectively assist people with immigration problems. The sub-committee was concerned with the complex ramifications of even the most basic immigration forms. The sub-committee was also concerned that non-lawyers would have a challenging time keeping up with this fast moving area of law, even with sound training and ongoing CLE's. There was also a concern that it would be difficult to establish the initial training programs that would be needed.

The sub-committee considered several options for non-lawyer practice, including having non-lawyers partner with lawyers who would do the initial issue screening and selection of forms. The sub-committee also discussed areas where it is known that non-lawyers currently practice, both legally and illegally. None of the considered options convinced the sub-committee members that the huge practice risks could be acceptably minimized.

Thus, at it's final meeting in July 2007, the immigration subcommittee unanimously decided that this area of law is not appropriate for the current pilot project.



## FINAL REPORT OF THE ELDER LAW SUBCOMMITTEE OF THE PRACTICE OF LAW BOARD

1. Specific legal tasks that a non-lawyer Legal Technician will perform within the practice area and why these tasks are appropriate for non-lawyer Legal Technicians.

The Elder Law Sub Committee of the Practice of Law Board recommends that legal technicians be authorized to perform certain basic legal tasks in the following areas, when a matter is uncontested: guardianship law, basic estate planning, probate law, and vulnerable adult proceedings. These areas were identified by the Sub Committee because the legal community has already developed model forms to perform many of the basic legal tasks in these areas. More complex or contested elder law issues do not lend themselves well to a form based practice and, therefore, should be handled by licensed attorneys.

Those model forms are used currently by pro se litigants with little or no instruction from attorneys; sometimes with success and sometimes with unexpected results. The frequency of unexpected outcomes can be reduced with improved access to legal professionals with elder law training.

The specific tasks to be performed by a legal technician in each area are as follows:

### A. Guardianship:

- 1) Assisting with the establishment of an uncontested guardianship. If at any time the proceeding becomes contested, then the legal technician would be required refer the client to an attorney.
- 2) Assisting guardians with the completion and presentation of their initial inventory and personal care plans and annual, biennial, or triennial reports to the Court. If at any time the proceeding becomes contested, then the legal technician would be required to refer the client to an attorney.
- 3) Assisting guardians with providing required notices to the Court regarding changed circumstances.

### B. Basic Estate Planning:

- 4) Preparing living wills or advance health care directives for clients.
- 5) Preparing powers of attorney for health care decision making for clients.
- 6) Preparing powers of attorney for financial decision making for clients.
- 7) Preparing revocations of powers of attorneys for clients
- 8) Preparing basic wills for clients.
- 9) Preparing basic community property agreements for clients.

### C. Probate Law:

- 1) Advising a client as to whether a probate of a decedent's estate is necessary.
- 2) Assisting a client with the establishment and administration of an uncontested, nonintervention probate. If at any time the proceeding becomes contested or if non-intervention powers are removed, then the legal technician would be required to refer the client to an attorney.
- 3) Assisting a client with the closure of a non-contested non-intervention estate by way of a Declaration of Completion of Probate.
- 4) Assisting a client in probate and nonprobate matters such as:
  - e) Handling settlement of Creditor's Claims for Estates passing without Probate – RCW 11.42
  - f) Preparation of Affidavits of Successor of the necessary related documents under RCW 11.62 Small Estates – Disposition of Property.
  - g) Preparing and filing a creditor's claim and release of same
  - h) Preparing and filing request for special notice of proceedings in Probate, and withdrawal of such request.
  - i) Petition and Order to open safe deposit boxes.
  - j) Petition and Order adjudicating testacy or intestacy and heirship, and related notices.
  - k) Preparation of Court-approved forms related to probate and nonprobate proceedings.

D. Vulnerable Adult Proceedings:

- 1) Assisting a client with the preparation of the model forms to seek an order of protection for a vulnerable adult. If at any time the proceeding becomes contested, then the legal technician would be required to refer the client to an attorney.

E. Legal Technician / Client Forms:

- 1) Preparing forms regarding the legal technician / client relationship, including engagement letters.

F. Other Pre-Printed Information Material:

- 1) Prepare and distribute elder law information material that has been reviewed by an attorney.
- 2) Assist clients with forms that may be distributed by health care providers, the government, financial institutions, and insurance companies related to estate planning, guardianship, and probate matters (e.g. beneficiary designations forms, account ownership designation forms, transfer of ownership in personal property forms, and applications for benefits).

2. **Limitations on the pilot project for these practice areas including, but not limited to: (a) time period limitations, and (b) geographic limitations, including**

**an explanation of why this limitation is necessary and what effect it will have on the pilot project.**

A. Geographic Location

The committee does not recommend limiting the pilot project to a geographic location. It is possible that particular geographic locations may be better served by Legal Technicians. It is also possible that providing Legal Technician services may only be economically viable in certain geographic locations. But the committee believes there is insufficient evidence to make those conclusions and feels, if the project participants are allowed to practice statewide, empirical evidence could be gathered to make these determinations. For that reason, the committee recommends allowing practitioners to establish in a variety of geographic locations, based on their individual preference as well as market conditions.

B. Operating Location

It is possible that this practice would lend itself to a variety of operating locations: in-house for a non-profit or other social service provider, at a hospital or senior center, or as a stand-alone practice from an office, shop-front or even as an at-home business. Therefore, the committee recommends allowing the participants to freely select their operating locations. This will also allow an analysis of the economic viability of a variety of business models.

C. Restrictions Regarding Supervision

Because the committee contemplates these Legal Technicians providing services to the elderly as well as those under duress, it is recommended that the pilot project include safeguards to ensure practitioners comply with ethical duties and also provide quality services. It is suggested that the pilot project require additional supervision and/or reporting than contemplated by the Legal Technician rule. One idea is to identify reputable attorneys or leaders in the communities where the practitioners establish themselves and have them provide feedback to the committee and oversight of the practitioner.

**3. The anticipated target populations for the service provided by the pilot project and how it will fulfill unmet legal needs.**

A. The target population

The population will be individuals and families who are facing significant life changes involving diminished capacity, living arrangements, health, family composition and other situations wherein the type of services the technicians will provide are needed. The Subcommittee anticipates that those who will be served will have a variety of reasons for using the services of a legal technician instead of an attorney; cost, accessibility, and the routine nature of services sought being among them .

B. How unmet needs will be met

Providing greater access to qualified practitioners. Based on its community outreach research, many of these services are already being provided by non-lawyers throughout the state in locations including hospitals, senior centers and homes. Therefore, the committee anticipates that Legal Technicians could provide qualified services in those locations. Services could also be provided to people who are unable to leave their homes.

Providing the service at an affordable cost. The Subcommittee anticipates costs will be significantly lower than if the service was provided by an attorney. One reason is because the practice will use preprinted forms, thus saving the time of drafting and producing the necessary document(s). Another reason we are confident that the costs would be lower is the experience of other states, where legal technician fees are much lower than the fees lawyers charge for the same service.

4. **What are the anticipated costs involved for Legal Technicians to offer the services during the pilot project and whether Legal Technicians should be able to provide cost effective service that will increase access to legal and law-related services, with an explanation of the basis for this determination.**

A. Cost of Administering Program.

It is anticipated that the Legal Technician Rule, when fully implemented, will be self-supporting through license and exam fees. However, due to many unknown factors, it is not anticipated that the initial pilot program(s) will be self-sustaining, but will need to be subsidized by grants and other forms of financing. The primary reason for this is it will be difficult to charge license and exam fees, when it is unknown as to how long the Legal Technician will be able to operate. If the pilot program is successful, and becomes a permanent admission to practice rule, licensing and exam fees are expected to cover the cost of administering the program.

We can extrapolate some information from similar programs implemented in Washington and Arizona. In Washington APR12, the Limited Practice Officer Rule, has been administered through the Bar Association since 2005. Prior to that it the program was housed in the OAC, and it is the Committee's understanding that no financial records were kept concerning the cost of administering this program while at the OAC. The Bar Association has provided budget information for fiscal year 2006 (Oct 1 - Sept. 30). See Attachment 1. During this time period there were approximately 1310 Active and Inactive LPOs. (Active and Inactive pay the same license fee) and 398 took the exam during that time (10/2005 and 4/2006).

In 2003 the Arizona Supreme Court adopted rules and regulations governing Legal Document Preparers (LDP's), which became effective on July 1, 2003. During the 1<sup>st</sup> year

of implementation 588 LDP's were licensed. (Linda Grau, LDP Program Coordinator for the Court, Email dated 6/29/2004). As of July 1, 2004, after processing the renewal applications, the number dropped to 502 LDP's holding active certification, with 31 pending applications for new certification. The reason for the drop was partly due to noncompliance and disciplinary matters. There had been one suspension, a number of disciplinary hearings pending, and late filed applications, but this number was small, approximately 22 individuals.

Attached is a Fee schedule effective for the 1<sup>st</sup> year of this program. (Linda Grau, Email of 7/6/2004). Attachment 2.

As of March of 2004, the Legal Document Preparer Board had processed 675 applications, approximately 8% of which required significant research and review on the part of program staff. (Linda Grau, Email of 3/29/2004).

As of July 1, 2005 there were 457 LDP certifications. The approved budget for fiscal year 2005 (July 1, 2004 – June 30, 2005) was \$285,715, and this included a grant from the AZ State Bar in the amount of \$108,523. Total expenses were \$162,928. Attached is a report regarding the status of the LDP program as of September, 2005, sent by Nancy Swetnam from the Certification and Licensing Division of the Arizona Supreme Court on September 6, 2005. See Attachment 3.

The LDP Board worked on developing an exam which was completed in March of 2005, and available to take April 1, 2005. All LDP's were required to take the initial exam by September 1, 2005. The total cost of developing the exam was not specified, but it included hiring a professional test validation company to assist in the development of the exam at a cost of \$23,675. The Board also hired a vendor to administer the exam throughout the state.

They charged \$50 per candidate, which cost was covered by the certification fees paid by existing LDP's. The exam fee for new applicants is \$50.

B. Cost of Legal Technician services.

Because there is no readily available information regarding potential amounts Legal Technicians may charge for their services, the Subcommittee gathered information online regarding fees charged by legal document services throughout the country. It is the Committee's perception that that Legal Document Preparer services are significantly lower than what Washington attorneys charge for similar services. Here is a sampling, *please note that not all of the services identified below are proposed by this subcommittee as potential services for the Elder Law Legal Technician:*

1. Online service: Legal Zoom (multi-state services)

Standard Living Will Package	Regularly \$59.00	Special Price \$39.00
Gold Living will Package	Regularly \$79.00	Special Price \$59.00
Premium Living Will Package	Regularly \$99.00	Special Price \$79.00

A lawyer would charge approximately \$320.00 for the standard living will.\*

Standard Power of Attorney Package Regularly \$55.00 Special Price \$35.00  
 Gold Power of Attorney Package Regularly \$75.00 Special Price \$55.00  
 Premium Power of Attorney Package Regularly \$95.00 Special Price \$75.00

A lawyer would charge approximately \$340.00 for the standard power of attorney.\*

Divorce with no minor children Regularly \$299.00 Special Price \$249.00  
 Divorce with minor children Regularly \$349.00 Special Price \$299.00  
 Marital Settlement Agreement (Included \$200.00 value)

A lawyer would charge approximately \$1,880.00 to obtain a divorce if you have property but no minor children.\*

\*Based on an average hourly rate of \$240/hr. (2004 Survey of Law Firm Economics, Altman Well Pensa Publication), Lawyer fee includes U.S. Government application fee.

2. California – We the People - Top Selling Products (62 offices in California).

Living Trust	\$399.00 - \$599.00	
Will	\$ 99.00 - \$199.00	
Guardianship	\$349.00 - \$499.00	
Power of Attorney	\$ 79.00	
Affidavit of Death	\$ 89.00	(Similar to Small Est. Affidavit)
Divorce	\$399.00 - \$599.00	

3. Idaho – We the People - Top Selling Products (2 offices )

	Boise	Idaho Falls
Living Trust	\$499.00	\$399.00
Power of Attorney	\$ 79.00	\$ 79.00
Will	\$ 99.00	\$ 99.00
Probate – Small	\$389.00	
Conservatorship	\$499.00	
Divorce	\$399.00	Unknown
Step-Parent Adoption	\$499.00	\$499.00

4. Arizona:

Legal Resource Center, Certified Legal Document Preparers

Living Trust – Individual	\$595.00
Living Trust – Married Couple	\$795.00
Will - Individual	\$150.00

Will – Married Couple	\$250.00
Standard Probate Fee	\$700.00
Guardianship – Adult	\$495.00
Guardianship – Minor	\$295.00
Standard Divorce without Children	\$325.00
Standard Divorce with Children	\$395.00
Quick Divorce without Children	\$395.00
Quick Divorce with Children	\$450.00
QDRO's	\$395.00
Temporary Orders – Emergency	\$295.00
Temporary Orders – Standard	\$195.00

The Divorce Store:

Healthcare Power of Attorney	\$ 70.00
Durable/Financial Power of Attorney	\$ 70.00
Living Trusts – Individual	\$495.00
Living Trusts – Married Couple	\$695.00
Wills – Individual	\$149.00
Wills – Married Couple	\$249.00
Guardianship – Minor	\$299.00
Guardianship – Adult	\$499.00
Default Divorce – No Children	\$299.00
Default Divorce with Children	\$399.00 (Incl. 1 court appearance)

5. The National Association of Legal Document Preparers (NALDP) provided the subcommittee with the following information which was gathered during the period August 20, 2007 through August 24, 2007:

Below are the findings of our unscientific survey of NALDP membership regarding the fees they charge for their services. I broke down the services based on the four areas Washington state is considering and added other general services that I know Legal Document Preparers handle across the nation. The prices vary quite a bit and there was no regional correlation between the fees charged. Also, the services I listed were general and many responded with ranges of fees, depending on what the service included (ex: dissolution with or without children). Rather than give the ranges, we found the median of the range and then calculated the average price of the services listed. We received some responses from members who serve all 50 states, but primarily our responses came from California, Arizona, Florida, New York, Kansas and Oklahoma.

**Elder Law**

Power of Attorneys: \$66

Advance Directives/Health Care Directives: \$63

Wills: \$134

**Family Law**

Non-Parental Custody: \$290  
Dissolution: \$360  
Step-Parent Adoptions: \$449  
Guardianship: \$499  
Name Change: \$224  
Modification of Child Support/Custody: \$225

**Housing Law**

Residential Unlawful Detainer Actions: \$265  
Eviction Notices & Service: \$125  
Contracts (Deed, Lease): \$60  
Buy-Sell Agreements: \$249

**Immigration Law**

Adjustment of status: \$100  
Citizenship: \$150

**Other**

Living Trust: \$430  
Incorporation: \$320  
LLC: \$375  
Contracts (Agreements, Notes): \$50  
Copyright/Trademark: \$149  
Prom. Note w/ Deed of Trust: \$189

I hope this will be useful in your proposal. Please let me know if we can provide further information.

Lizanne Sadlier

National Association of Legal Document Preparers, Inc.

P.O. Box 65091

Washington, DC 20035

202-955-5575

[www.naldp.org](http://www.naldp.org)

6. HALT published a white paper entitled "Helping Unrepresented Litigants with Legal Documents: Consumer Satisfaction with Legal Document Assistants in California's Bay area and an Overview of Relevant Laws in Arizona, 8/17/2005. "Halt . . . hired 3 students from UC Hastings College of Law to develop and conduct an exploratory and comparative survey of the emerging legal document preparation profession in the United States (HALT Report, pg. 2). The study was conducted between May 2004 and May 2005. The students reviewed 3,000 divorce cases from three different counties in California. Ultimately the students interviewed 24 consumers in San Francisco County and 23 consumers in Alameda and Santa Clara Counties. All interviewed had been provided services by a Legal Document Assistant



(LDA). Here are some of the survey results:

San Francisco County:

Out of the 24 interviewed 21 cited the lower cost of an LDA as being the primary reason for choosing not to hire an attorney. (2 people indicated they were concerned about the risk of polarizing the situation by an attorney.) 19 out of the 24 interviewed found out about LDA's through word of mouth. (Halt Report Pg. 15)

The type of help offered by the LDA's was similar. Fees paid by clients ranged from \$100 to \$600 with the median being \$400, not including court filing fees. 21 out of the 24 interviewed said they thought the fees were "just right," "very reasonable," "fair" or "okay." 1 person did not pay for the services, and one was dissatisfied with the service. All but one thought an attorney would be more expensive (Halt Report Pg. 16)

Alameda & Santa Clara Counties:

74% cited cost as a reason for choosing an LDA, 50% of these responses cited no other reason. 26% cited they did not need a lawyer because it was a simple matter. 13% cited not wanting a lawyer. 13% said they used an LDA because they tried, but could not complete the paperwork on their own. (Halt Report Pg. 16)

Similar type of services rendered, with some reporting more complex services. The average cost was \$475. The lowest was between \$100-350 and the highest was \$800. 83% indicated the cost was "just right," "fair," or "reasonable." 2 consumers (9%) felt the cost was low. Two consumers thought it was high, but one did not have very much money, and felt this was the cheapest available. 96% were satisfied with the quality of service. 57% said they were very satisfied. 1 consumer made negative comments such as "a little chaotic", but she said the fee was fair given the quality of services, as did 17 others. (Halt Report Pg. 17)

There is much more information contained in the Halt Report relating to interviews of LDA's and consumer satisfaction. Unfortunately the survey sampling is very small.

C. Conclusion.

Based on the information gathered, the subcommittee concludes that an Elder Law Legal Technician program has the potential to be self-supporting from licensing and exam fees, although any pilot project would more likely need to be subsidized by outside funding. The subcommittee also concludes, based on comparisons with prices charged by document preparers nationwide, that an Elder Law Legal Technician could provide a lower cost options for pro se litigants. The subcommittee anticipates that this would create greater access to

qualified legal services for lower-income individuals.

**5. Specific resources already existing to provide likely candidates to act as Legal Technicians for the pilot project and identify existing resources for providing training for these candidates.**

There are, presently, a number of public and private educational institutions in the state offering paralegal training programs. These institutions are located throughout the different geographic locations of the state and include five which are approved by the American Bar Association. These programs offer a variety of degree and certificate options and prepare students for employment as professional paralegals in the diverse legal settings in which paralegals are employed.

The curriculum for these programs is carefully proscribed by the various accrediting bodies that accredit these institutions. Typically, the curriculum consists of a core curriculum of required classes which would apply to general legal concepts as well as a body of course electives from which students elect courses. "Elder Law" is such an elective course that is, or could be, offered by these institutions. Most institutions do not limit enrollment in these types of courses to current students, but they typically will allow others with an interest in the field to enroll. This would allow an option for those who might be interested in becoming a legal technician and who meet the requirements but who would like to enroll in such a specialty course.

The existing educational institutions would be fertile areas for the identification of those interested in participating in the pilot project. Most of these institutions maintain contact with their graduates who would be qualified candidates for the technician pilot project.

An additional source of existing candidates for the pilot project would be those professionally employed paralegals or other legal professionals who qualify under the rule. Utilizing the various professional organizations in the state that draw membership from these individuals, recruitment of candidates interested could be facilitated. Both the Washington State Paralegal Association ("WSPA") and the National Association of Legal Secretaries (now a professional organization for all legal professionals) ("NALS") would be organizations from whom candidates could be drawn.

Training for candidates for the pilot program can be accomplished by the educational institutions as well as by workshops, seminars and continuing legal education opportunities offered by the professional organizations. The educational institutions and the professional organizations could additionally partner in the sponsorship of training opportunities for interested candidates.

**ATTACHMENT 1 TO ELDER LAW SUBCOMMITTEE REPORT**

under separate cover

ATTACHMENT 2 TO ELDER LAW SUBCOMMITTEE REPORT

Arizona  
Section 7-208: Legal Document Preparers  
Appendix B  
Fee Schedule

**Initial Certification**

Individual Certification	\$300.00
Renewal of Initial Individual Certification	\$300.00
Business Entity Certification	\$300.00
Renewal of Initial Business Certification	\$300.00

**Standard Certification**

Individual Certification	\$250.00
Renewal of Standard Individual Certification	\$500.00
Business Entity Certification	\$250.00
Renewal of Standard Business Certification	\$500.00

Late Renewal Fee \$ 50.00

**Examination Fee for Standard Individual Certifications**

Certified Legal Document Preparers \$  
(No fee is required for legal document preparers who hold a valid certificate at the 00.00  
time of application for examination.)

Noncertified Legal Document Preparers \$  
(For applicants who do not hold a valid Arizona legal document preparer certificate 50.00  
at the time of application for the examination.)

Reexaminations \$  
(For any applicant who does not pass the examination on the first attempt. The 50.00  
\$50.00 fee applies to each reexamination.)

Reregistration

(For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.) 50.00 \$

**ATTACHMENT 3 TO ELDER LAW SUBCOMMITTEE REPORT**

**INFORMATION ON THE ARIZONA  
LEGAL DOCUMENT PREPARER PROGRAM  
SEPTEMBER 2005**

**PROVIDED ON REQUEST OF THE WASHINGTON STATE  
PRACTICE OF LAW BOARD**

Number of Certified Legal Document Preparers ("LDPs"): as of July 1, 2005 there were 457 LDP certifications; 343 of these were individual certifications and 114 were for businesses.

"Report Card:" no outside entity has done a review or report on the Program to date.

**Revenues and Costs:** the program is expected to be self supporting, as are other regulatory programs operated by our office. However, it is recognized that in the initial stages of implementation, there are a considerable number of unknowns – for example, how many people will apply for certification; how many will be denied and request a hearing, how many complaints will be received; how many will go to formal hearing, etc. There are also start up costs – for example, the costs of developing and administering the initial examination that all currently certified LDPs must take and pass.

**Revenues:** For fiscal year '05 (July 1, 2004 – June 30, 2005), the approved budget was \$ 285,715, based on revenues from certification fees from LDPs and a grant of \$ 108,523 from the State Bar of Arizona. Total expenses were \$ 162,928.

**Costs:** Besides staff costs, one of our largest initial costs was connected to the hearings requested by individuals denied certification. In comparison to other programs we operate, the LDP Program had a disproportionately high number of individuals who were denied certification, and of those, a number requested hearings. From July 2003 through June 30, 2005 we issued 93 denials of certification; 53 of these requested hearings, and as of June 30, 2005 we had conducted 50 of these hearings with 3 pending. These hearings are presided over by a volunteer hearing officer, we incur costs for the staff time and the court reporter. The Program is

represented by an Assistant Attorney General; we do not pay the Attorney General's Office separate fees for this representation.

Now that the initial "wave" of certifications has been completed, the number of initial applications has declined significantly and our work has shifted to processing the complaints. From July 1, 2003 through June 30, 2005, we received 612 complaints; 235 against certificate holders and 377 against non-certificate holders (alleging the individual was practicing as an LDP without certification). Again, in addition to staff time, the primary expenditure here is for the court reporter costs for the hearing; these can be significant. We can and do charge the disciplined LDP for the costs associated with the investigation and hearing process, and can also impose fines; however, collection of these monies is not guaranteed.

**Complaints:** Because the program is still relatively new, it is premature to identify "common" disciplinary actions due to the small number of complaints that have completed the entire process. Common allegations include failure to properly file a required document, the unauthorized practice of law (e.g. gave legal advice), conflict of interest, and practicing without certification. To date, we have filed formal charges in 21 complaints regarding certificate holders and held 19 formal hearings. We have dismissed a number of the complaints against certificate holders as there was no finding of violation, issued Letters of Concern (the lowest level of discipline available) and revoked 4 certificates. The non certificate holder complaints typically result in: (1) a dismissal, as it is determined the individual is not practicing as an LDP, (2) the individual seeks certification, or, (3) in some cases, the Board issues a cease and desist order to prohibit the individual from continuing to practice.

**Examination:** All currently certified LDPs were required to take the initial examination by September 1, 2005. To date, we have had 332 LDPs take the exam, 39 have failed, which provides a pass rate of 88.3%. Scores have ranged from a low of 34% to a high of 97%. The average passing score is 80.4%, the average failing score is 56.6%. Overall, the mean score is 77.6% and the median score is 79%.

The implementation of the exam has gone very smoothly, although development of the exam is staff intensive. We hired a professional test validation company to assist in the development of the exam, that cost was \$ 23,675. We also hired another vendor to actually administer the exam throughout the state, they charge \$50 per candidate; this cost is covered by the certification fees paid by existing LDPs. Individuals who take the exam who are not currently certified pay a \$50 exam fee to cover the costs of the administration.

## **HOUSING LEGAL TECHNICIAN PILOT PROJECT**

The housing subcommittee -- pilot project taskforce, considered two potential types of pilot projects -- a courthouse based "housing law facilitator," which would function much like the family law facilitators currently in place; and a "housing legal technician" who would provide limited advice in discrete areas of housing law where there is an unmet legal need.

The Civil Legal Needs Study (2003), commissioned by the Supreme Court, established that the legal needs of the consuming public are not currently being met. The Legal Technicians would be well trained and provide only limited legal assistance under carefully regulated circumstances in ways that will provide access to justice and protect the public interest from the unauthorized practice of law.

### **Housing Legal Technician Facilitator Model**

Courthouse facilitators assist pro se family law litigants with the mandatory forms and with procedural issues. Almost every Superior Court has family law facilitators, with the exact nature of their assistance to pro se litigants varying by county. In many counties, the facilitators assist with preparation of pleadings and screen all pro se family law pleadings before the pleadings can be filed and hearings scheduled. The facilitators are not permitted to offer any legal opinions about what their clients should do. The legal effect of the content of the forms is not discussed with the clients. They assist the clients by making sure that the required paperwork is adequately completed.

The Housing Legal Technician Facilitator pilot project could perform in a similar way for pro se housing litigants involved in unlawful detainers (evictions). The role would expand from that of the Courthouse Facilitator by having the Legal Technician offer advice not only about the legal process, but within a proscribed framework/limited practice area, assist clients with procedural defenses. The Legal Technician would act as more than facilitators, but less than attorneys. The pilot project will serve both pro se tenants and landlords. Certain requirements would apply to potential clients in order to access services (e.g. tenants would be required to file a certification that they do not owe rent or have paid rent into Court Registry). This type of program would increase access to justice and provide information to tenants and landlords in those courts that do not have a Housing Justice Project.

Just as there are local rules mandating that pro se family law litigants must see a Court Facilitator to ensure their paperwork is in order before the hearing, the pilot project could include that a local rule be enacted to mandate that pro se landlords must meet with the Legal Technician prior to filing a UD. The Legal Technician would be available for consultations with tenants who believe they may have a substantive or procedural defense. The Legal Technician would be available for tenants appearing for the 'show cause' motion calendar.

The exact details of the project will be determined by the Practice of Law Board in conjunction with the Superior Court that is the site for the project. The program will provide access to justice in areas where there is an unmet legal need and offer administrative and judicial economies to the Court.

### **Forms & Local Rules**

Family Law Facilitators have pattern forms for clients to use. A part of the Housing Legal Technician pilot project would include the development of pattern forms to help with housing issues and legal processes. Some local jurisdictions already have some forms in this practice area, and these could be adapted for use in the pilot project. The instruction package/process guide for pro se housing litigants currently posted on [washingtonlawhelp.org](http://washingtonlawhelp.org) would be a starting point and already existing information will be used wherever possible.

### Administration / Supervision of Housing Legal Technicians

The Housing Legal Technicians would be located with the county court system, under the Court Administrator, just as Family Law Facilitators are. Another possible location for the Housing Legal Technicians would be in the county Law Libraries.

### Proposed Assistance to be Offered by Housing Legal Technicians

1. Unlawful Detainer - review sufficiency of Notices, suggest procedural defenses (nominal if any fees);
2. Eviction - help prepare Notices (could charge fees for preparation, like with Family Law Facilitators), give advice regarding proper service of Notices;
3. Small Claims Court - help prepare pre-trial paperwork (for a fee), give advice on who should testify, give advice on what types of evidence are needed for the case and how to present it.

Like Family Law Facilitators, the Housing Legal Technicians could charge fees for consultation, and possibly for the preparation of forms (but not the unlawful detainer action itself). All substantive legal issues would be referred to legal services, a private or pro bono attorney.

Having Housing Legal Technicians would:

- Identify cases having incomplete or incorrect paperwork (increases access to justice);
- Identify substantive legal issues, as distinguished from procedural issues, which would be directed to an attorney;
- Reduce the number of simple pro bono cases for attorneys, so they can concentrate on more complex cases;
- Provide information that will combat the self-help and private services that are providing misinformation and engaging in the unauthorized practice of law.

The committee drafting the final project must develop relationships with the courts, the legal community, other providers of legal services (pro bono or otherwise), to inform them of the goals of the pilot project, and the services to be provided, as well as what the benefits are to the community.

### Data Collection

The Pilot Project will develop a data collection system, in order to analyze important information about the project's clients. This will help the POLB make informed judgments about the success of the project, as well as the viability of the proposed LT program. Data analysis may also help in the development of other Pilot Projects, either in other geographic areas, or other limited practice areas.

### To Do

- Draft a guide describing legal process for a variety of scenarios for pro se housing litigants.
- Develop a training program for the pilot project, so they will be able to deliver services efficiently and effectively.
- Develop Local Rule for requiring pro se landlords to meet with a Housing Legal Technician prior to filing pleadings or scheduling show cause hearings.
- Develop pattern forms after a review of existing forms.
- Research the various counties for service models, fees, administration, etc. used by the Family Law Facilitators that could be adapted for Housing.
- Make contact with Small Claims Courts to determine if assistance to the litigants would assist with the Small Claims Court process.
- Develop a 'marketing' approach to make the legal community and potential clients aware of the services to be provided by the pilot project.
- Devise a program for recognition of pilot project Legal Technician participants.



- Investigate whether some kind of malpractice coverage must be put into place for pilot project.
- Funding of the pilot project must be addressed, as well as potential future funding.

#### Housing Legal Technician for Non-profit Organizations

A Housing Legal Technician pilot project could be sited at a non-profit organization that provides services to low-income clients. Community Action Programs or other non-profit agencies providing housing assistance often encounter clients involved in unlawful detainer actions, needing advice about how to enforce housing code compliance (repairs) and needing assistance with how to get a refund of the damage deposit.

The primary difference between this model and the Courthouse Legal Technician is the community based location and the addition of assistance with sub-standard housing and repair issues.

Similar to the Facilitator model, the Agency based Housing Legal Technician would:

1. In evictions (unlawful detainers) review sufficiency of notices; suggest procedural defenses; assist clients with drafting Answers and preparing argument at a Show Cause Hearing; and where there are significant substantive legal defenses, refer the case to the local volunteer lawyer or legal services program;
2. To recover a wrongfully withheld security (damage) deposit, help draft a demand letter; assist with filing the small claims case; offer advice regarding service of process; and prepare the client for the small claims trial including advice on presenting the case to the court, exhibits and witnesses.
3. When the client is in sub-standard housing, assist client with contacting the local building and health departments for enforcement of housing quality standards; and if the landlord fails to repair the property, assist the client with the process to escrow rent in accordance with RCW 59.18

Any Non-Profit Housing Legal Technician must meet certification requirements proposed by the Practice of Law Board and at a minimum shall:

1. Be at least 18 years of age and be of good moral character.
2. Education. Have graduated from a paralegal/legal assistant program that is approved by the American Bar Association or the Practice of Law Board which includes: a) An associate degree or other paralegal/legal assistant program that consists of a minimum of 90 quarter hours (900 clock hours or 60 semester hours) of which at least 45 quarter hours (450 clock hours or 30 semester hours) are substantive legal courses; or b) A bachelor's degree program in paralegal/legal assistant studies; or c) A post-baccalaureate certificate program in paralegal/legal assistant studies.
3. Experience. Possess substantive legal experience as a paralegal/legal assistant under the supervision of a lawyer for a minimum of two years.
4. Examination. Satisfactorily complete an examination which shall, at a minimum, cover the rules of professional conduct, rules of ethics, rules relating to the attorney-client privilege, procedural rules and substantive law issues related to housing and landlord-tenant law.

#### Administration / Supervision of Housing Legal Technicians

The Housing Legal Technicians would be located with a non-profit agency serving low-income clients. Supervision (indirect) and assistance would be provided by the local pro bono program or other volunteer lawyer(s).

## Proposed Legal Tasks

The Legal Technicians in the Pilot Project will:

- Determine whether the problem presented is within the scope of the defined housing law limited practice area, and if so, obtain the relevant facts and explain their relevancy to clients.
- Inform clients of the procedures that apply in their case, including deadlines, documents to be filed, and the anticipated course of the legal proceedings.
- Inform clients of the procedures for proper service of process for motions, and proper filing procedures.
- Provide clients with self-help materials that have been developed by a legal services program, an attorney or approved by the Practice of Law Board or designee.
- Review pleadings, documents, exhibits received by clients from the opposing side and explain their relevance to clients; make referrals to a volunteer lawyer or private attorney when the issues are beyond the scope of the legal technician.
- Select and complete appropriate forms, and advise clients of their significance in their case. The template forms shall be prepared by a legal services program, an attorney or approved Practice of Law Board or designee. Forms that have been approved by the State of Washington, either through a government agency or by the Administrative Office of the Courts, or those which are specified by statute, as well as federal forms may also be used.
- Legal Technicians will indicate on any pleading to be filed with the court that the pro se litigant has had assistance from a Legal Technician.
- Advise clients of other documents which may helpful for the successful resolution of their case. Explain how such additional documents may affect their case, and assist clients in obtaining them. Such documents might include: health department inspections; building permits; witness or party declarations; pleadings and exhibits.

## REPORT OF THE FAMILY LAW SUBCOMMITTEE OF THE PRACTICE OF LAW BOARD

Sub committee members: Rita L. Bender, Attorney, and Howard H. Marshack, Attorney, co-chairs; Commissioner Scott Collier; Casey Trupin, Attorney; Betty Gould, Thurston County Court Clerk; Gail Hammer, Gonzaga University Law School; Cheri Cospers, Paralegal; Michele Storms, Executive Director, William H. Gates Public Service Law Scholarship Program

The Family Law Subcommittee task was to examine whether a legal technician pilot project could effectively be undertaken in the area of family law. We examined the substantive areas of practice, recommended restrictions on such practice, the siting of a pilot project, and whether the project we would recommend would address unmet legal needs.

Accordingly, we looked first at the question of unmet need. The starting point was the Civil Legal Needs Study, which points to family law as one of the areas of severe unmet need. Furthermore, members of the subcommittee have first hand knowledge of the need, as the subcommittee includes a court commissioner, a Superior Court clerk, a legal services attorney and a legal services paralegal, two law school educators, and two family law attorneys in private practice. Each of the committee members is of the strong belief that trained persons, tested for their knowledge in the area of practice, and properly limited in the scope of such practice, will be able to provide significant relief to pro se litigants attempting to thread their way through the complex of laws, court rules and procedures which confront them.

We determined that a pilot project could be structured to permit practice in areas under RCW Title 26, including Non-Parental Custody, Dissolution, and Parentage. We are of the opinion that certain restrictions upon practice should be imposed. Where the following issues are present in a case, the legal technician would be required to refer the client to an attorney:

- Indian Child Welfare Act
- Disestablishment or rescission of parenting acknowledgement
- Interstate custody—UCCJEA unless neither of the parents continue to reside in the state issuing the prior order
- Transfer of real estate
- Retirement benefits and Qualified Domestic Relations Orders
- Division of business property
- Active service military respondents

We heard numerous comments from public forums and emails in which some practitioners felt that domestic violence was an area in which the client required the services of a specially trained paralegal or attorney, and therefore legal technicians should not serve such clients. On the other hand, we heard from others who felt that the need is very great, and that sensitivity to domestic violence issues could be part of the training for the legal technician. We opted not to restrict legal technician practice in this area, but we would expect that training and examination of the technicians would address domestic violence and abuse.

We have concern that a pilot program will be hard to establish and measure. For one thing, it may be difficult to find qualified people who are willing to direct their energies into starting a service which may not be authorized to continue beyond the pilot phase. For another, the costs of the training and testing, as well as establishing an office, may prove prohibitive.

To meet some of these concerns, we recommend that the individuals recruited to commence the program might be people who have graduated from a paralegal training program, and presently working in a legal services program or other entity serving low income clients. They would have the legal training as well as knowledge of the particular sensitivities necessary to work with clients who may lack educational background as well as financial means. We suggest that the pilot program be established in an existing non-profit agency which does not presently provide legal advice or assistance. Such an agency might benefit from having the ability to provide services to its clients, and the legal technicians would benefit from having existing clientele, rather than having to do their own community outreach. Such sites may also have the advantage of more directly targeting lower income people, most in need of legal technician assistance.

Arrangements might be made for reduced cost of office space, telephone reception, and other office amenities. Of course, the offices would need to provide for privacy, both for the clients and for any files or records. Since most non-profits are required to undertake detailed bookkeeping for their funding sources, the attribution of costs of office rent, phone, equipment usage to the pilot project should not be an insurmountable problem.

These costs could be compared to retail market costs for purposes of studying the cost effectiveness of the program.

At the end of the pilot project, it could be that the non-profit partnership model would continue, at least in some areas of practice, while others might be most amenable to “stand alone” offices as additional practice areas are considered for inclusion in the legal technician rule.

Regulatory Services Department (RSD) Annual Workflow

RSD Annual Workflow	January	February	March	April	May	June	July	August	September	October	November	December
LAWYER LICENSING RENEWAL	Licensing Period (12/1 - 3/1)								Licensing Prep (9/1 - 9/30)			Licensing Period (12/1 - 3/1)
BAR EXAM		Winter Exam (last week in Feb)	Summer Exam Application Period (3/1 - 5/1)				Summer Exam (last week in July)			Winter Exam Application Period (10/1 - 11/29)		
LPO LICENSING RENEWAL	CLE Compliance Period (12/1 - 3/1)				Licensing Renewal Period (5/1 - 7/1)							CLE Compliance Period (12/1 - 3/1)
LPO EXAM	Spring Exam Application Period (1/2 - 3/1)			Spring Exam (1st Monday in Apr)				Fall Exam Application Period (8/1 - 8/30)		Fall Exam (1st Monday in Oct)		
LLLT LICENSING RENEWAL (PROPOSED)					Licensing Renewal Period, Continuing ed reporting (5/1 - 7/1)							
LLLT EXAM (PROPOSED)		Spring Exam Application Period (2/1 - 3/31)			Spring Exam (1st week in May)			Fall Exam Application Period (8/1 - 9/30)			Fall Exam (1st week in Nov)	

Proposed LLLT Timeline for 2014 - 2016

LLLT Processing	1st Qtr 2014	2nd Qtr 2014	3rd Qtr 2014	4th Qtr 2014	1st Qtr 2015	2nd Qtr 2015	3rd Qtr 2015	4th Qtr 2015	1st Qtr 2016	2nd Qtr 2016	3rd Qtr 2016	4th Qtr 2016
LLLT LICENSING RENEWAL						Licensing Renewal Period (5/1 - 7/1)				Licensing Renewal Period; 1st continuing education reporting (5/1 - 7/1)		
LLLT EXAM	Spring Exam Application Period (2/1 - 3/31)	Spring Exam (1st week in May)	Fall Exam Application Period (8/1 - 9/30)	Fall Exam (1st week in November)	Spring Exam Application Period (2/1 - 3/31)	Spring Exam (1st week in May)	Fall Exam Application Period (8/1 - 9/30)	Fall Exam (1st week in November)	Spring Exam Application Period (2/1 - 3/31)	Spring Exam (1st week in May)	Fall Exam Application Period (8/1 - 9/30)	Fall Exam (1st week in November)



## ADMISSION TO PRACTICE RULES

### RULE 12. LIMITED PRACTICE RULE FOR LIMITED PRACTICE OFFICERS

**(a) Purpose.** The purpose of this rule is to authorize certain lay persons to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions and to prescribe the conditions of and limitations upon such activities.

**(b) Limited Practice Board.**

(1) *Establishment.* There is hereby established a Limited Practice Board (referred to herein as the "Board") consisting of nine members to be appointed by the Supreme Court of the State of Washington. Not less than four of the members of the Board must be admitted to the practice of law in the State of Washington. Four of the members of the Board shall be business representatives, one each of the following four industries: escrow, lending, title insurance, and real estate. Appointments shall be for 4-year terms. No member may serve more than two consecutive terms. Terms shall end on December 31 of the applicable year. The Supreme Court shall designate one of the members of the Board as chairperson.

(2) *Duties and Powers.*

(i) *Applications.* The Board shall accept and process applications for certification under this rule.

(ii) *Examination.* The Board shall conduct the examination for certification required by this rule. The examination shall consist of such questions as the Board may select on such subjects as may be listed by the Board and approved by the Supreme Court. The Board shall establish the number of examinations to be given each year and the dates of the examinations.

(iii) *Investigation and recommendation for admission.* The Board shall notify each applicant of the results of the examination and shall recommend to the Supreme Court the admission or rejection of each applicant who passes the examination. The Supreme Court shall enter an order admitting to limited practice those applicants it deems qualified, conditioned upon each applicant taking an oath that he or she will comply with this rule and paying to the Board the annual fee for the current year. Upon the entry of such order, the taking and filing of the oath, and payment of the annual fee, an applicant shall be enrolled as a limited practice officer and shall be entitled to perform those services permitted by this rule. The oath must be taken before a court of record in the State of Washington.

(iv) *Education.* The Board shall approve individual courses and may accredit all or portions of the entire educational program of a given organization which, in the Board's judgment, will satisfy the educational requirement of these rules. It shall determine the number of credit hours to be allowed for each such course. It shall encourage the offering of such courses and programs by established organizations, whether offered within or outside this state.

(v) *Grievances and discipline.* The Board shall adopt hearing and appeal procedures and shall hear complaints of persons aggrieved by the failure of limited practice officers to comply with the requirements of this rule and of the Limited Practice Officer Rules of Professional Conduct. Upon a finding by the Board that a limited practice officer has failed to comply in any material manner with the requirements of this rule, the Board shall take such action as may be appropriate to the degree of the violation, considering also the number of violations and the previous disciplinary record of the limited practice officer. Disciplinary action may include admonitions, reprimands, and recommendations to the Supreme Court for the suspension or

revocation of the limited practice officer's certification.

(vi) *Investigation.* Upon the receipt of a complaint that a limited practice officer has violated the provisions of this rule and in other appropriate circumstances, the Board may investigate the conduct of the limited practice officer to determine whether the limited practice officer has violated the requirements, conditions or limitations imposed by this rule.

(vii) *Approval of forms.* The Board shall approve standard forms for use by limited practice officers in the performance of services authorized by this rule.

(viii) *Fees.* The Board shall establish and collect examination and annual fees in such amounts as are necessary to carry out the duties and responsibilities of the Board.

(ix) *Regulations.* The Board shall propose regulations to implement the provisions of this rule for adoption by the Supreme Court.

(3) *Expenses of the Board.* Members of the Board shall not be compensated for their services. For their actual and necessary expenses incurred in the performance of their duties, they shall be reimbursed by the Board in a manner consistent with its rules. All such expenses shall be paid pursuant to a budget submitted to and approved by the Washington State Bar Association on an annual basis. Funds accumulated from examination fees, annual fees, and other revenues shall be used to defray all expenses of the Board. The administrative support to the Board shall be provided by the Washington State Bar Association.

**(c) Certification Requirements.** An applicant for certification as a limited practice officer shall:

(1) *Age.* Be at least 18 years of age.

(2) *Moral Character.* Be of good moral character.

(3) *Examination.* Satisfy the examination requirements established by the Board.

(4) *Oath.* Execute under oath and file with the Board two copies of his or her application, in such form as may be required by the Board. Additional proof of any fact stated in the application may be required by the Board. In the event of the failure or refusal of an applicant to furnish any information or proof, or to answer any interrogatories of the Board pertinent to the pending application, the Board may deny the application.

(5) *Examination Fee.* Pay, upon the filing of an application, the examination fee.

**(d) Scope of Practice Authorized by Limited Practice Rule.** Notwithstanding any provision of any other rule to the contrary, a person certified as a limited practice officer under this rule may select, prepare and complete documents in a form previously approved by the Board for use by others in, or in anticipation of, closing a loan, extension of credit, sale or other transfer of interest in real or personal property. Such documents shall be limited to deeds, promissory notes, guaranties, deeds of trust, reconveyances, mortgages, satisfactions, security agreements, releases, Uniform Commercial Code documents, assignments, contracts, real estate excise tax affidavits, bills of sale, and powers of attorney. Other documents may be from time to time approved by the Board.

**(e) Conditions Under Which Limited Practice Officers May Prepare and Complete Documents** Limited practice officers may render services authorized by this rule only under the following conditions and with the following limitations:

(1) *Agreement of the Clients.* Prior to the performance of the services, all clients to the transaction shall have agreed in writing to the basic terms and conditions of the transaction. In

the case of a power of attorney prepared in anticipation of a transaction, the principal(s) and attorney(s)-in-fact shall have provided the limited practice officer consistent written instructions for the preparation of the power of attorney.

(2) *Disclosures to the Clients.* The limited practice officer shall advise the clients of the limitations of the services rendered pursuant to this rule and shall further advise them in writing:

- (i) that the limited practice officer is not acting as the advocate or representative of either of the clients;
- (ii) that the documents prepared by the limited practice officer will affect the legal rights of the clients;
- (iii) that the clients' interests in the documents may differ;
- (iv) that the clients have a right to be represented by lawyers of their own selection; and
- (v) that the limited practice officer cannot give legal advice as to the manner in which the documents affect the clients.

The written disclosure must particularly identify the documents selected, prepared, and/or completed by the limited practice officer and must include the name, signature and number of the limited practice officer.

**(f) Continuing Certification Requirements.**

(1) *Continuing Education.* Each limited practice officer must complete a minimum number of credit hours of approved or accredited education, as prescribed by regulation of the Board, during each calendar year in courses certified by the Board to be appropriate for study by limited practice officers providing services pursuant to this rule; provided, that the limited practice officer shall not be required to comply with this subsection during the calendar year in which he or she is initially certified.

(2) *Financial Responsibility.* Each limited practice officer or employer thereof shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rule. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe.

(3) *Annual Fee.* Each limited practice officer must pay the annual fee established by the Board.

**(g) Existing Law Unchanged.** This rule shall in no way expand, narrow or affect existing law in the following areas:

- (1) The fiduciary relationship between a limited practice officer and his or her customers or clients;
- (2) Conflicts of interest that may arise between the limited practice officer and a client or customer;
- (3) The right to act as one's own attorney under the pro se exception to the unauthorized practice of law including but not limited to the right of a lender to prepare documents conveying or granting title to property in which it is taking a security interest;
- (4) The lack of authority of a limited practice officer to give legal advice without being licensed to practice law;
- (5) The standard of care which a limited practice officer must practice when carrying out the functions permitted by this rule.

**(h) Treatment of Funds Received Incident to the Closing of Real or Personal Property Transactions.** Persons admitted to practice under this rule shall comply with LPORPC 1.12A

and B regarding the manner in which they identify, maintain and disburse funds received incidental to the closing of real and personal property transactions, unless they are acting pursuant to APR 12(g)(3).

## **Comment**

### **[1] Comment Re: APR 12(d)**

Powers of attorney authorizing a person to negotiate and sign documents in anticipation of, or in the closing of, a transaction are included in the documents limited practice officers are authorized to prepare. Such documents may include, but are not limited to, purchase and sale agreements for real or personal property, loan agreements, and letters of intent.

### **[2] Comment Re: LPO Professional Standard Of Care**

The purpose of this comment is to discuss the legal standard of care to which a limited practice officer is subject, while also clarifying the limited duties of a limited practice officer compared to an attorney when selecting and preparing legal documents and to show the greater breadth of a lawyer's duties and services which a party may not expect when engaging a limited practice officer.

Generally, when a non-lawyer selects and prepares a legal document for another, the non-lawyer engages in the unauthorized practice of law. Despite this, the non-lawyer (including a licensed limited practice officer) will be held to the standard of a lawyer: "to comply with the duty of care, an attorney must exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in this jurisdiction... ." *Hizey v. Carpenter*, 119 Wn.2d 251, 261, 830 P.2d 246 (1992). However, when selecting and preparing approved forms a limited practice officer, though having a limited license to practice law as defined and limited in APR 12, will not be authorized nor charged with many of the duties of a lawyer. Except as provided otherwise in APR 12 rules and regulations, these include the duty to investigate legal matters, to form legal opinions (including but not limited to the capacity of an individual to sign for an entity or whether a legal document is effective), to give legal advice (including advice on how a legal document affects the rights or duties of a party), or to consult with a party on the advisability of a transaction. See also LPORPC 1.1, Competence, and LPORPC 1.3, Communication.

## **APPENDIX APR 12. REGULATIONS OF THE APR 12 LIMITED PRACTICE BOARD**

### **REGULATION 1: IN GENERAL**

Every person desiring to be admitted to limited practice as a Limited Practice Officer (LPO) pursuant to Admission to Practice Rule (APR) 12 must submit an application in the form and manner and within the time limits established by these Regulations, pay the requisite fee, and satisfy all of the requirements of APR 12.

### **REGULATION 2: APPLICATIONS**

**A. Application.** An applicant must complete and file in duplicate with the Washington State Bar Association (WSBA):

1. two copies of a completed application for admission to limited practice under APR 12 (one of which may be a photocopy);
2. a fingerprint card which has been processed by the applicant at a local police department;
3. a signed Authorization and Release; and
4. a signed Affidavit of Applicant.

The application shall not be considered complete and will not be approved pursuant to Regulation 3 unless the applicant has provided a current residential address.

**B. Fees.** An applicant will pay an examination fee in an amount set by the Limited Practice Board with the approval of the Supreme Court, which must be paid with the application and each applicant will be sent a receipt for the application and fee.

**C. Verification Of Application Information.** Each applicant must submit a fingerprint card which shall be forwarded to the Washington State Patrol for a criminal history check, and for each applicant who has not resided in the state of Washington for two years, a Federal Bureau of Investigation check shall also be conducted. A status review on all professional licenses will be conducted for each applicant. The applicant will furnish whatever additional information or proof may be required in the course of investigating the applicant.

#### **D. Refunds and Transfers.**

1. For all applicants there is a nonrefundable administration fee totaling one half the amount of the examination fee.
2. An applicant may withdraw from the current examination by written request received at least 14 days prior to the date set for the examination and may also request a refund of the fee less the administration fee.
3. An applicant may withdraw from the current examination and apply the examination fee to the next examination only, and only upon the following conditions: the written request to transfer

must be received at least 14 days prior to the date set for the examination, and the applicant must repay the administration fee.

4. An applicant withdrawing an application or requesting to transfer to the next examination less than 14 days prior to the date set for the examination will receive no refund of any kind.

5. If the application is denied before the examination, the examination fee less the nonrefundable administration fee will be refunded. If the applicant reapplies to sit for the examination, the applicant will pay the full examination fee then required of all applicants.

6. If an applicant fails the examination and applies to repeat the next scheduled examination, the examination fee shall be the amount set by the Limited Practice Board with the approval of the Supreme Court.

7. Any applicant transferring to the next examination or repeating the examination may execute and file a Supplemental Declaration in the form prescribed by the Limited Practice Board in lieu of a new application provided not more than one year passes from the date the applicant submitted an application; otherwise, the applicant must submit a new application.

**E. Filing Deadline.** An applicant must file the application to take the LPO examination not less than 30 days prior to the examination date. No applications will be accepted less than 30 days prior to the examination date.

### **REGULATION 3: APPROVAL OR DENIAL OF APPLICATION**

**A. Approval of Application.** The Limited Practice Board will determine if the application meets the criteria established in APR 12.

**B. Denial of Application.** If the application is denied, the applicant will be granted the right to an appeal of the determination pursuant to Regulation 4 .

**C. Notification of Action on Application.** The applicant will be notified whether the application has been approved or denied. If the application has been approved, the applicant will be informed of the date, time and location of the next examination. If the application has been denied, the applicant will be notified of the basis for the denial and of the appeal process of Regulation 4.

### **REGULATION 4: DENIAL OF APPLICATION--RIGHT OF APPEAL**

**A. Appeals Panel.** The Appeals Panel shall be made up of three members of the Limited Practice Board appointed by the Chair.

**B. Right of Appeal.** Every applicant who has been denied admission under APR 12 shall have a right of appeal before the Appeals Panel.

**C. Time Period for Appeal.** An applicant whose application has been denied shall have the right to appeal denial of admission pursuant to APR 12 by submitting a written request within fourteen (14) calendar days of the date the denial of application was issued.

## **D. Procedure for Appeal.**

1. *To begin the appeal procedure.* The applicant's written request for appeal must be filed within the time period for appeal and state the applicant's reason for believing that the application should be approved.

2. *Written submissions.* The complete application will be provided to the Appeals Panel for consideration. The applicant may submit other written materials to the Appeals Panel which may include statements, correspondence, affidavits, memoranda of law or other written items that the applicant believes will assist the Appeals Panel in reviewing the denial. If the Appeals Panel determines the written submissions are merely cumulative or not relevant to the appeal, the Appeals Panel may exclude any submitted materials from consideration.

Written materials must be received no later than ten (10) calendar days prior to the scheduled hearing date.

3. *Stipulations.* Upon agreement of the parties, written stipulations may be utilized by the Appeals Panel.

4. *Review by the Appeals Panel.* The Appeals Panel will consider all relevant written material submitted in accordance with these Regulations. The Appeals Panel may also request oral presentations by the parties if it deems them helpful to a final determination. The Appeals Panel may set time constraints on the oral presentations.

5. *Findings of the Appeals Panel.* The Appeals Panel will make written findings and may affirm or reverse the denial of the application or direct further investigation for the reasons stated in the written findings.

6. *Time lines and scheduling of the appeal.*

a. Upon timely receipt of the request for appeal, the Appeals Panel will schedule the matter for consideration on a date not more than fourteen (14) calendar days from the date the request is received and will notify the applicant of the scheduled date for the consideration of the appeal.

b. The Appeals Panel will not consider any request for appeal which does not strictly comply with these Regulations.

c. Upon a showing of good cause, the Appeals Panel may waive any of the procedural requirements of these Regulations or reschedule the appeal for an earlier or later date.

d. Telephone conferences may be held in lieu of a hearing, and oral presentations may be made by telephone if requested by the Appeals Panel.

7. *Notification of findings.* The Appeals Panel will notify the applicant of the findings of the Appeals Panel. If the application has been approved, the applicant will be supplied any forms or information necessary to sit for the examination. If the application has been denied, the applicant will be informed and supplied a copy of the Appeals Panel's written findings.

## **REGULATION 5: ADMINISTRATION OF EXAMINATION**

The examination will be administered twice a year at appropriate locations within the state at dates and locations established by the Limited Practice Board.

## **REGULATION 6: EXAMINATION STANDARDS AND NOTIFICATION OF RESULTS**

The passing standard for the examination is 75 percent for each section. A failing grade in one section shall result in failure of the exam in which case grading of any remaining sections shall not be required. All applicants will be notified of the applicant's examination results. Those applicants who fail the examination will be informed of their score on each graded section of the examination. Examination scores shall not be disclosed to those applicants who pass the examination. Copies of the examination shall not be available to any applicant.

## **REGULATION 7: FINANCIAL RESPONSIBILITY REQUIREMENT**

Each limited practice officer shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 12 in one of the following described manners.

- (1) Submitted an individual policy for Errors and Omissions insurance in the amount of at least \$100,000;
- (2) Submitted an Errors and Omissions policy of the employer or the parent company of the employer who has agreed to provide coverage for the applicant's ability to respond in damages in the amount of at least \$100,000;
- (3) Submitted the applicant's audited financial statement showing the applicant's net worth to be at least \$200,000; or
- (4) Submitted an audited financial statement of the employer or other surety who agrees to respond in damages for the applicant, indicating net worth of \$200,000 per each limited practice officer employee to and including five and an additional \$100,000 per each limited practice officer employee over five, who may be subject to the jurisdiction of the Limited Practice Board.

## **REGULATION 8: CERTIFICATION OF RESULTS TO SUPREME COURT; OATH**

### **A. Admission Order.**

The Limited Practice Board will submit to the Washington State Supreme Court the names of those persons who have passed the examination for admission pursuant to APR 12, taken the oath as prescribed by these rules, and furnished proof of the applicant's financial responsibility requirement pursuant to regulation 7.

The names of successful applicants will be submitted only after compliance with APR 12 and these Regulations, and the applicants will be admitted under APR 12 only after the admission order has been entered by the Supreme Court.



Each successful applicant shall complete all the requirements for certification within nine (9) months of the date the applicant is notified of the examination results. If an applicant fails to satisfy all the requirements for certification within this period, the applicant shall not be eligible for admission under APR 12 without submitting a new application for admission.

**B. Contents of Oath.** The oath which all applicants shall take is as follows:

**OATH FOR LIMITED PRACTICE OFFICERS**

STATE OF WASHINGTON  
COUNTY OF

I, \_\_\_\_\_, do solemnly declare:

1. I am fully subject to the laws of the State of Washington and Rule 12 of the Admission to Practice Rules and APR 12 Regulations adopted by the Washington State Supreme Court and will abide by the same.
2. I will support the constitutions of the State of Washington and of the United States of America.
3. I will abide by the Limited Practice Officer Rules of Professional Conduct and Rules for Enforcement of LPO Conduct approved by the Supreme Court of the State of Washington.
4. I will confine my activities as a Limited Practice Officer to those activities allowed by law, rule and regulation and will only utilize documents approved pursuant to APR 12.
5. I will faithfully disclose the limitations of my services, that I am not able to act as the advocate or representative of any party, that documents prepared will affect legal rights of the parties, that the parties' interests in the documents may differ, that the parties have a right to be represented by a lawyer of their own selection, and that I cannot give legal advice regarding the manner in which the documents affect the parties.
6. I understand that I may incur personal liability if I violate the applicable standard of care of a Limited Practice Officer. Also, I understand that I only have authority to act as a Limited Practice Officer during the times that my financial responsibility coverage is in effect. If I am covered under my employer's errors and omissions insurance policy or by my employer's certificate of financial responsibility, my coverage is limited to services performed in the course of my employment.

\_\_\_\_\_

Signature Limited Practice Officer

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_

JUDGE

### **REGULATION 9: ANNUAL FEE**

A. Except as set forth in section B of this Regulation, every Limited Practice Officer shall pay an annual fee in an amount set by the Limited Practice Board with the approval of the Supreme Court, which is due July 1 of each year. Annual fees paid after July 15 shall be subject to a late fee equal to one-half the annual fee. Failure to pay the annual fee shall subject the LPO to suspension from limited practice as a Limited Practice Officer. If the LPO fails to comply with conditions for reinstatement pursuant to Regulation 10 within 9 months of the date of suspension, the license of the suspended LPO will be revoked.

B. The prorated annual fee for LPOs who pass the qualifying examination given in the spring and who request active status prior to July 1 of that same calendar year shall be one half the amount of the annual fee. LPOs shall pay the annual fee set forth in Regulation 9(A) to retain their active status after June 30 of the calendar year of their admission.

C. An LPO shall provide his or her residential address to the Board at the time of payment of the annual fee.

### **REGULATION 10: REINSTATEMENT AFTER SUSPENSION FOR NONPAYMENT OF ANNUAL FEE**

An LPO who is suspended pursuant to Regulation 9(A) shall be reinstated if the LPO has within nine (9) months of the date of suspension:

1. submitted an application for reinstatement in the form prescribed by the Board;
2. continued to meet the qualifications set out in APR 12 and these Regulations; and
3. paid a sum equal to the amount of all delinquent annual fees, late fees, and any investigation fees as may be determined by the Board.

### **REGULATION 11: CONTINUING FINANCIAL RESPONSIBILITY**

Each LPO shall either be insured or covered under the financial statement of an employer or employer's parent company or other surety at all times as specified in Regulation 7 . If the LPO is covered under a financial statement, the LPO, employer, employer's parent company or other surety who has assumed such financial responsibility shall annually file with the Limited Practice Board, by July 1, the audited financial statement for the most-recent fiscal year of the financially responsible party indicating net worth.

Each LPO shall notify the Limited Practice Board of any cancellation or lapse in coverage. During any period that an LPO is not covered in accordance with these Regulations, or is not on inactive status pursuant to Regulation 13, the license of the LPO shall be suspended. Each suspended LPO must demonstrate compliance with the requirements of APR 12 within nine (9) months of the date of the suspension or the license of the suspended LPO will be revoked.

## **REGULATION 12: CONTINUING EDUCATION**

Every LPO shall attend a minimum of ten (10) hours of approved continuing education during each calendar year. Two (2) hours of the required ten (10) hours of continuing education shall be on liability issues. If an LPO completes more than ten (10) credit hours in a given calendar year, the excess credit, up to ten credits, may be carried forward and applied to such LPO's education requirements for the next calendar year.

Every LPO shall submit proof of compliance with the continuing education attendance requirements by filing an Affidavit of Attendance as prescribed by the Continuing Education Regulations of the Limited Practice Board. Failure to comply with the continuing education requirements will subject the LPO to suspension of license as a Limited Practice Officer. If the suspended LPO fails to comply with conditions for reinstatement pursuant to Continuing Education Regulations of the Limited Practice Board within nine (9) months of the date of suspension, the license of the suspended LPO will be revoked.

## **REGULATION 13: INACTIVE STATUS**

An LPO may request transfer to inactive status after being certified. An LPO who has been transferred to inactive status must continue to meet all continuing education requirements applicable during the period of inactive status. An LPO on inactive status is required to pay the annual fee required by these Regulations.

If an LPO does not meet the continuing education requirements or the annual fee requirement, the LPO may be suspended.

An LPO on inactive status is not required to meet the financial responsibility requirements prescribed by these regulations during the period of inactive status.

An LPO on inactive status may return to active status by filing a petition to return to active status with the Board. To be granted active status, the LPO must be current on the payment of the annual fees, the continuing education requirements and the financial responsibility requirements prescribed by these Regulations.

## **REGULATION 14: VOLUNTARY CERTIFICATION CANCELLATION**

Any Limited Practice Officer may request to voluntarily surrender the LPO certification by notifying the Limited Practice Board in writing of the desire to cancel and returning the LPO license with the request. The Limited Practice Board may deny requests for voluntary cancellation from any LPO who is the subject of a pending disciplinary investigation or proceeding. The Limited Practice Board will notify the LPO of the effective date of the cancellation if approved.

The former LPO shall then promptly notify by registered or certified mail, return receipt request, all clients being represented in pending matters, of the certification cancellation and the consequent inability to act as a Limited Practice Officer.

After entry of the cancellation order, the former LPO shall not accept any new clients or engage in work as an LPO in any matter.

Within ten (10) days after the effective date of the cancellation order, the former LPO shall file with the Limited Practice Board an affidavit showing:

1. The former LPO has fully complied with the provision of the order and with these Regulations;
2. The residence or other address of the former LPO for purposes of mailing or for service of process; and
3. Attaching to the affidavit a copy of the form of letter of notification sent to clients being represented in pending matters, together with a list of the names and addresses of all clients to whom the notice was sent.

The Board will cause a notice of the cancellation to be published in the same manner as notices of discipline under ELPOC 3.5(b).

### **REGULATION 15: CHANGE IN STATUS**

When an LPO is demonstrating financial responsibility by 1) an endorsement on the employer's Errors and Omissions insurance policy, or 2) submission of the employer's audited financial statement accompanied by the Certificate of Financial Responsibility, the Limited Practice Board shall notify the employer when the LPO is transferred to one of the following statuses: inactive status, voluntary certification cancellation, disability inactive status, or the license is suspended or revoked.

### **REGULATION 16. REINSTATEMENT AFTER REVOCATION**

#### **16.1 RESTRICTIONS AGAINST PETITIONING**

A. When Petition May Be Filed. No petition for reinstatement shall be filed within a period of two (2) years after revocation or within one (1) year after an adverse decision of the Supreme Court upon a former petition, or within a period of six (6) months after an adverse recommendation of the Board on a former petition when that recommendation is not submitted to the Supreme Court. If prior to revocation the LPO was suspended pursuant to the provisions of Title 7 of the Rules for Enforcement of LPO Conduct( ELPOC), or any comparable rule, the period of suspension shall be credited toward the two (2) years referred to above.

B. Payment of Obligations. No revoked LPO may file a petition for reinstatement until costs and expenses assessed pursuant to these rules, and restitution ordered as provided, have been paid by the revoked LPO, or the revoked LPO has entered into a payment plan for any such obligations as provided for under ELPOC 13.9.

#### **16.2 REVERSAL OF CONVICTION**

If an LPO has been revoked solely because of the LPO's conviction of a crime and the conviction is later reversed and the charges dismissed on their merits, the Supreme Court may in its discretion, upon direct application by the LPO, enter an order reinstating the LPO to limited practice under APR 12. At the time such direct application is filed with the court, a copy shall be filed with the Board.

#### **16.3 FORM OF PETITION**

A petition for reinstatement as an LPO after revocation shall be in writing in such form as the Board may prescribe. The petition shall set forth the age, residence and address of the petitioner,

the date of revocation, and a concise statement of facts claimed to justify reinstatement. The petition shall be accompanied by the total fees required for application under APR 12.

#### 16.4 INVESTIGATION

The Board may, in its discretion, refer the petition for reinstatement for investigation and report to counsel appointed by the Board, if any, or such other person or persons as may be determined by the Board.

#### 16.5 HEARING BEFORE BOARD

A. Notice. The Board may fix a time and place for a hearing on the petition and shall serve notice thereof ten (10) days prior to the hearing upon the petitioner and upon such other persons as may be ordered by the Board. Notice of the hearing shall also be published in such newspaper or periodical as the Board shall direct. Such published notice shall contain a statement that a petition for reinstatement has been filed and shall give the date fixed for the hearing.

B. Statement in Support or Opposition. On or prior to the date of hearing, anyone wishing to do so may file with the Board a written statement for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of Regulation 16.6A.. Except by its leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Board.

#### 16.6 ACTION BY BOARD

A. Requirements for Favorable Recommendation. Reinstatement may be recommended by the Board only upon an affirmative showing that the petitioner possesses the qualifications and meets the requirements as set forth by the Board and APR 12, and that the LPO's reinstatement will not be contrary to the public interest.

B. Action on Recommendation. The recommendation of the Board shall be served upon the petitioner. If the Board recommends reinstatement, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the Board recommends against reinstatement, the record and recommendation shall be retained by the Board unless the petitioner requests that it be submitted to the Supreme Court. If the petitioner so requests, the record and recommendation shall be transmitted to the Supreme Court for disposition. If the petitioner does not so request, the examination fee shall be refunded to the petitioner, but the petitioner shall still be responsible for payment of costs incidental to the reinstatement proceeding as directed by the Board.

#### 16.7 ACTION ON SUPREME COURT'S DETERMINATION

A. Petition Approved. If the petition for reinstatement is granted by the Supreme Court, the reinstatement shall be subject to the petitioner's taking and passing the examination for APR 12 applicants and paying the costs incidental to the reinstatement proceeding as directed by the Supreme Court.

B. Petition Denied. If the petition for reinstatement be denied, the examination fee shall be refunded to the petitioner, but the petitioner shall still be responsible for payment of the costs incidental to the reinstatement proceeding.

### **REGULATION 17: RECORDS DISCLOSURE**

A. The Board shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of this Regulation or any other Rules and Regulations applicable to Limited Practice Officers (LPOs). A "public record" is defined as written information, regardless of physical form or characteristic, that has been made or received by the Limited Practice Board in connection with the transaction of public business.

B. To the extent required to prevent an unreasonable invasion of the privacy interests set forth in these Regulations, the Board shall delete identifying details in a manner consistent with the Regulations when it makes available or publishes any public record.

C. No fee shall be charged for the inspection of public records. The fee charged for the copying of public records shall be the same fee charged by the Washington State Bar Association for making copies of public records.

D. The Board shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate a statute, court order or rule which exempts or prohibits disclosure of specific information or records.

E. The following records are exempt from public inspection and copying:

1. Test questions, scoring keys and other examination data used by the Board to administer the qualifying examination.
2. Preliminary drafts, notes, recommendations, and intra-Board memorandums in which opinions are expressed or policies formulated or recommended.
3. Records which are relevant to a controversy to which the Board is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.
4. The residential address and residential telephone number of a limited practice officer.
5. Membership information; however, status, business addresses, business telephone numbers, facsimile numbers, electronic addresses, license number and dates of admission shall not be exempt.
6. Applications for admission to limited practice and related records.

F. The disclosure of records in disciplinary files shall be governed by Title 3 of the Rules for Enforcement of LPO Conduct.

G. The exemptions to disclosure set forth in this Regulation shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or fall within an exemption, can be deleted from the specific records sought.

H. Responses to requests for public records shall be made promptly by the Board. Within five business days of receiving a public record request, the Board must respond by either (1) providing the record; or (2) acknowledging the request and providing a reasonable time estimate for responding to the request, or (3) denying the request. The Board may ask the requestor to clarify the request. If the requestor fails to clarify the request, the Board may deny the request. Denials of request must be accompanied by a written statement of the specific reasons therefore.

I. Whenever the Clerk concludes that a public record is exempt from inspection and copying, the person may appeal that decision to the Board, whose decision is final.

J. The disclosure of information under this section should not violate an individual's right to privacy by amounting to a disclosure of information about that person that would be highly offensive to a reasonable person and is not of legitimate concern to the public.

**REGULATION 18: NOTICE AND FILING; ADMINISTRATION**

All notices and filings required by these Regulations, including applications for admission as a Limited Practice Officer, shall be sent to the headquarters of the Washington State Bar Association. The Washington State Bar Association shall provide administrative support for the Limited Practice Board pursuant to APR 12(b)(3). "Clerk" as used in these regulations means WSBA staff designated to support the Board.

**REGULATION 19: AMENDMENT**

These Regulations may be altered, amended, or repealed by vote of the Board on approval of the Board of Governors and the Supreme Court.

## **LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL CONDUCT (LPORPC)**

### **PREAMBLE TO LIMITED PRACTICE OFFICER RULES OF PROFESSIONAL CONDUCT**

Limited practice officers receive a limited license to practice law, and are held to the same standard of care as a lawyer when performing the legal services authorized by the LPO license. A lawyer, as a member of the legal profession, is a representative of the client, an officer of the court, and a public citizen having a specific responsibility for the quality of justice. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct. Rules of Professional Conduct for lawyers have been adopted stating fundamental ethical principles which lawyers are professionally obligated to observe. In fulfilling professional responsibilities, an LPO necessarily performs various roles that lawyers otherwise or also perform. Certain of the lawyer Rules of Professional Conduct, as modified to reflect the unique nature of the duties and provisions of APR 12, have been adopted as appropriate rules of professional conduct applicable to LPOs. These rules update standards for LPO conduct and they set forth the minimum standard of conduct required of LPOs. Not every ethical situation that an LPO may encounter can be foreseen; the fundamental ethical principles in the rules are intended to provide minimum standards to assist the LPO in determining the appropriate conduct. So long as LPOs are guided by these principles, their conduct will assist in assuring the law continues to be a noble profession.

### **SCOPE**

The Limited Practice Officer Rules of Professional Conduct, where mandatory in character, state the minimum level of conduct below which no LPO can fall without being subject to disciplinary action. Other LPORPC may afford the LPO some discretion in exercising professional judgment and may provide guidance for compliance, rather than adding mandatory professional obligations.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of an LPO's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that an LPO often has to act upon uncertain or incomplete knowledge of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations. Violation of a Rule should not itself give rise to a cause of action against an LPO nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of an LPO in a pending transaction. The Rules are designed to provide guidance to LPOs and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Nothing in these Rules is intended to change existing Washington law on the use of rules of professional conduct in a civil action. Cf. *Hizey v. Carpenter*, 119 Wn.2d 251, 830 P.2d 646 (1992)(lawyer rules of professional conduct do not define standards of civil liability of lawyers for professional conduct, but provide only a public disciplinary remedy).

The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.



## **LPORPC 1.0 TERMINOLOGY**

The following definitions apply to all rules and regulations governing LPOs under APR 12 except only where a term is expressly differently defined for use in particular provisions of any rule or regulation.

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Client(s)" when used in a purchase and sale transaction denotes the buyer and seller and may include the purchase money lender for the same transaction only if the LPO accepts the duty to select, prepare, or complete legal documents for the purchase money loans. When used in a loan-only transaction, whether or not the LPO accepts the duty to select, prepare, or complete legal documents, "Clients" are the borrower and lender.

(c) "Closing Firm" means any bank, depository institution, escrow agent, title company, law firm, or other business, whether public or private, that employs, or contracts for the services of, an LPO for the purpose of providing real or personal property closing services for a transaction.

(d) "Fraud" or "fraudulent" denotes conduct that has a purpose to deceive and is fraudulent under the substantive or procedural law of Washington, except that it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

(e) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(f) "Limited Practice Officer" or "LPO" means a person licensed in accordance with the procedures set forth in APR 12 and who has maintained his or her certification in accordance with the rules and regulations of the Limited Practice Board.

(g) "LPO Services" means those documentation activities for use by others performed by an LPO under the authorization of APR 12(d).

(h) "Party(ies)" or "Participant(s)" in a closing transaction includes persons other than "clients" from whom the LPO accepts instructions or to whom the LPO may make deliveries or disburse funds.

(i) "Reasonable" or "reasonably" when used in relation to conduct by an LPO denotes the conduct of a reasonably prudent and competent LPO performing the same LPO services.

(j) "Reasonable belief" or "reasonably believes" when used in reference to an LPO denotes that the LPO believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) "Reasonably should know" when used in reference to an LPO denotes that an LPO of reasonable prudence and competence would ascertain the matter in question.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Transaction" means any real or personal property closing requiring the involvement of a lawyer or LPO to select, prepare or complete documents for the purpose of closing a loan, extension of credit, sale or other transfer of title to or interest in real or personal property.

(n) "Written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail.

### **Comment:**

LPO services arise from a writing in which the clients have agreed to the basic terms of a transaction (APR 12(e)(1)). In a sale transaction, LPO services arise from a purchase and sale

agreement between the buyer and seller. Lenders and others involved (brokers, lien-holders, etc.) are accommodated parties.

In loan-only transactions, LPO services arise from closing instructions between the closing firm, lender and borrower. Thus, the lender and borrower each is a client; lien-holders and non-borrowing owners, etc. are accommodated parties.

### **LPORPC 1.1 COMPETENCE**

An LPO shall provide competent LPO services. Competence requires the knowledge, thoroughness and preparation reasonably necessary to provide the LPO services. Not every LPO is competent to provide LPO services for every transaction.

#### **Comment:**

Continuing competence is an ongoing core professional obligation. To maintain the requisite knowledge and skill, an LPO should keep abreast of changes in the law and its practice relevant to LPO duties, engage in continuing study and education and comply with all continuing education requirements to which the LPO is subject. The rule also reminds the LPO that the competence required for a particular transaction is neither universal nor automatic.

### **LPORPC 1.2 DILIGENCE**

An LPO must act with reasonable diligence and promptness in the performance of his or her duties, including the timely preparation of documents required to meet the closing date specified by the clients.

#### **Comment:**

Lack of diligence is a professional defect. An LPO's work load must be controlled so that each transaction can be handled competently. However, timely action under this rule should be measured by circumstances under the LPO's control (as distinguished from unreasonable timing demands imposed by employer work load, the parties or the terms of the transaction). Unless the client relationship is terminated as provided in Rule 1.6, an LPO should carry through to conclusion all matters undertaken for a client. See also Rule 1.3, Communication with Clients, *infra*.

### **LPORPC 1.3 COMMUNICATION WITH CLIENTS**

(a) Upon reasonable request, an LPO shall promptly provide relevant information to the clients regarding the documents selected, prepared, and completed for the transaction.

(b) An LPO shall timely notify its clients of omissions or discrepancies in the documentation provided to the LPO which must be resolved before the LPO can provide LPO services in the transaction.

(c) An LPO must inform a client to seek legal advice from a lawyer if the LPO is reliably informed or, based on contact with the client reasonably believes, that the client does not understand or appreciate the meaning or effect of an instrument prepared by the LPO for signature by the client.

#### **Comment:**

The performance of LPO services occasionally may require direct communication with multiple clients in a transaction. Proper focus for LPO communication with clients is not as an advocate or advisor, but as necessary to clear up documentary discrepancies and insure that there is an adequate written agreement for the LPO to select, prepare and complete the documentation for the transaction.

See also Rules 1.2, Diligence; 1.6, Declining Services, *infra*.

#### **LPORPC 1.4 CONFIDENTIALITY**

These rules do not impose any duty of confidentiality on an LPO. Any LPO duty of confidentiality arising under common law, statute, or contract is not affected by these rules.

#### **LPORPC 1.5 CONFLICT OF INTEREST**

(a) An LPO shall not provide LPO services in a transaction where the LPO, or a member of the LPO's immediate family, is either a party or client. For purposes of this rule, "immediate family" includes a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the LPO maintains a close, familial relationship.

(b) An LPO shall not use information obtained from the provision of LPO services to a client in a transaction for personal gain to the disadvantage of the client.

(c) Where an LPO's employer is a buyer or seller in a transaction, the LPO shall not provide LPO services unless the LPO provides written notice of the conflict to all other clients and obtains a written waiver of the conflict from all other clients. The notice and waiver shall be substantially in the form below.

As required by rule 1.5 of the Limited Practice Officer Rules of Professional Conduct, you are hereby notified that the limited practice officer providing LPO services for this transaction is employed by {name of closing firm}, which has an interest in this transaction. Specifically, {set forth the closing firm's interest in the transaction}.

By signing below, you acknowledge that you (1) understand and have received the notice of conflict of interest; (2) have been advised to seek legal counsel if you do not understand the conflict or this waiver; and (3) waive the conflict of interest created by the closing firm having an interest in the transaction.

#### **LPORPC 1.6 DECLINING OR TERMINATING SERVICES**

(a) An LPO shall decline to provide LPO services or, where LPO services have commenced, shall terminate LPO services if:

1. The LPO services will clearly result in violation of the Limited Practice Officer Rules of Professional Conduct or other law, including the unauthorized practice of law by the LPO;
2. The LPO's physical or mental condition materially impairs his or her ability to provide LPO services;
3. The LPO reasonably believes that the documentation requirements of the transaction exceed the LPO's competence;
4. The LPO is discharged; or
5. A client insists on confidentiality of information disclosed to the LPO to which the LPO cannot agree.

(b) An LPO may refuse to provide LPO services for any other reason, including without limitation the following, if:

- (1) A client persists in a course of action involving the LPO's services that the LPO reasonably believes is criminal or fraudulent or illegal, or that might require the LPO to exceed his or her authority as an LPO;
- (2) A client has used the services of the LPO to perpetrate a crime or fraud;
- (3) A client insists upon pursuing an objective or practice that the LPO reasonably considers repugnant or with which an LPO has a fundamental disagreement;

(4) A client fails substantially to fulfill an obligation to the LPO regarding the LPO's services and has been given reasonable warning that the LPO will terminate services unless the obligation is fulfilled;

(5) The LPO services will result in an unreasonable financial burden on the LPO or its services in the transaction have been rendered unreasonably difficult by the clients; or

(6) Other cause for refusal of services exists. Where the clients are unwilling or unable to correct the situation, other cause for refusal of services may include, but is not limited to: insufficient or conflicting documentation that is not timely corrected by the clients; direction from a client to use forms not approved by the Limited Practice Board or to make unauthorized alterations to approved forms; direction from a client that is inconsistent with the existing documentation; apparent lack of or defect in the capacity of a client or signatory; or failure of the clients to allow sufficient time for competent and orderly performance of LPO services.

(c) Upon termination of an LPO's services, the LPO must take steps to the extent reasonably practicable to protect the clients' interests, such as giving reasonable notice to the clients (as determined by the circumstances of the transaction), advising the clients that they can seek the advice of a lawyer regarding the transaction, allowing time for employment of a lawyer or another LPO where reasonable, and surrendering papers and property to which the clients are entitled if requested and if all LPO fees and costs are paid.

**Comment:**

The rule first identifies situations where an LPO must decline followed by situations where an LPO may decline to provide LPO services. An LPO ordinarily must decline or terminate services if a client demands that the LPO engage in conduct that is illegal or violates the LPO Rules of Professional Conduct or other law, or in the other enumerated instances.

**LPORPC 1.7 TRUTHFULNESS IN STATEMENTS TO OTHERS**

In the course of performing LPO services in a transaction, an LPO shall not knowingly fail to disclose all material facts to clients or any parties to the transaction, or make false statements of material facts to clients or any such party.

**LPORPC 1.8 UNAUTHORIZED PRACTICE OF LAW**

An LPO shall not:

(a) engage in, or assist others in, the unauthorized practice of law, including the giving of legal advice;

(b) permit his or her name, signature stamp or LPO number to be used by any other person;

(c) select, prepare, or complete documents authorized by APR 12 for or together with any person whose LPO certification has been revoked or suspended, if the LPO knows, or reasonably should know, of such revocation or suspension; or

(d) work as an LPO while on inactive status, or while his or her LPO certification is suspended or revoked for any cause.

**Comment:**

“Clearly, the selection and completion of legal forms constitutes the practice of law.” *Bowers v. Transamerica Title Insurance Co.*, 100 Wn.2d 582 (1983). Adjudicated cases finding LPO unauthorized practice of law have involved LPO use of unapproved forms and unapproved

alterations of approved forms. See *Bishop v. Jefferson Title Co.*, 107 Wn.App 833 (2001). Washington General Rule (GR) 24 sets forth the definition of the practice of law.

### **LPORPC 1.9 LPO DUTIES AND AUTHORITY ARE NOT DELEGABLE**

The powers, duties and responsibilities of an LPO are personal to the LPO and may not be assigned or delegated to a person who is not an LPO. An LPO may be supported and assisted by one or more persons who are not LPOs if the LPO adequately supervises the assistants and retains sole and final responsibility for the work performed by the assistants. An LPO must take all steps reasonably necessary to insure that an assistant's activities do not violate APR 12 and regulations of the Limited Practice Board and are consistent with the LPO's duties under these rules. An LPO must review and approve the assistant's activities and document preparation. An LPO should have no more assistants and support staff than the LPO can adequately directly supervise, to insure that the assistant activities conform to assigned LPO support tasks defined in writing. Nothing in this rule authorizes an LPO assistant to exercise the authority or perform the duties of an LPO independently.

### **LPORPC 1.10 MISCONDUCT**

It is professional misconduct for an LPO to:

(a) violate or attempt to violate the Limited Practice Officer 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 LPO's honesty, trustworthiness or fitness as an LPO in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) willfully disobey or violate a valid court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(e) violate his or her oath as an LPO;

(f) violate a duty or sanction imposed by or under the Rules for Enforcement of Limited Practice Officer Conduct in connection with a disciplinary matter, including, but not limited to, the duties catalogued at ELPOC 1.5, Violation of Duties Imposed by These Rules;

(g) engage in conduct demonstrating unfitness to practice as an LPO. "Unfitness to practice" includes but is not limited to the inability, unwillingness or repeated failure to perform adequately the material functions required of an LPO or to comply with the LPORPC and/or ELPOC;

(h) misrepresent or conceal a material fact made in an application for admission under APR 12 or in support thereof;

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act that reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as an LPO, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding.

#### **Comment:**

Regarding subparagraph (d), it is common for courts to issue orders to the parties to engage in a transaction involving a closing agent. The LPO should seek legal advice as to whether such orders are valid.

## **LPORPC 1.11 REPORTING PROFESSIONAL MISCONDUCT**

An LPO who knows that another LPO has committed repeated and material violations of the LPORPC should inform the Limited Practice Board.

### **Comment:**

The intent of this rule is to encourage an LPO to report professional misconduct in order to ensure effective self-regulation of LPOs. Examples of misconduct include, but are not limited to use of unapproved forms, unauthorized delegation or performance of LPO duties, use of an LPO's name, signature stamp or identification number by unlicensed persons, or an LPO acting as an LPO while one's license is inactive or suspended. If an LPO knows of the unauthorized practice of law by someone other than an LPO, the LPO should report the person to the Practice of Law Board (GR 25).

## **LPORPC 1.12A SAFEGUARDING PROPERTY**

(a) This Rule applies to (1) property of clients or third persons in the possession of an LPO or a Closing Firm in connection with a transaction, and (2) escrow and other funds held by an LPO or a Closing Firm incident to a transaction. For all transactions in which an LPO under the authorization set forth in APR 12(d) or a lawyer has selected, prepared, or completed documents, the LPO must insure that all funds received by the closing firm incidental to the closing of the transaction, including advances for costs and expenses, are held and maintained as set forth in this rule.

(b) An LPO or a Closing Firm must not use, convert, borrow or pledge client or third person property for the LPO's or Closing Firm's own use.

(c) An LPO or Closing Firm must hold property of clients and third persons separate from the LPO's and Closing Firm's own property.

(1) An LPO or Closing Firm must deposit and hold in a trust account funds subject to this Rule pursuant to paragraph (i) of this Rule.

(2) An LPO or Closing Firm must identify, label and appropriately safeguard any property of clients or third persons other than funds. The LPO or Closing Firm must keep records of such property that identify the property, the client or third person, the date of receipt and the location of safekeeping. The LPO or Closing Firm must preserve the records for seven years after return of the property.

(d) An LPO or Closing Firm must promptly notify a client or third person of receipt of the client or third person's property.

(e) An LPO or Closing Firm must promptly provide a written accounting to a client or third person after distribution of funds or upon request. An LPO or Closing Firm must provide at least annually a written accounting to a client or third person for whom the LPO or Closing Firm is holding funds.

(f) Except as stated in this Rule, an LPO or Closing Firm must promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive.

(g) If an LPO or Closing Firm possesses property in which two or more persons (one of which may be the LPO or Closing Firm) claim interests, the LPO or Closing Firm must maintain the property in trust until the dispute is resolved. The LPO or Closing Firm must promptly distribute all undisputed portions of the property. The LPO or Closing Firm must take reasonable action to resolve the dispute, including, when appropriate, interpleading the disputed funds.

(h) An LPO or Closing Firm must comply with the following for all trust accounts:

(1) No funds belonging to the LPO or Closing Firm may be deposited or retained in a trust account except as follows:

(i) funds to pay bank charges, but only in an amount reasonably sufficient for that purpose;

(ii) funds belonging in part to a client or third person and in part presently or potentially to the LPO or Closing Firm must be deposited and retained in a trust account, but any portion belonging to the LPO or Closing Firm must be withdrawn at the earliest reasonable time; or

(iii) funds necessary to restore appropriate balances.

(2) An LPO or Closing Firm must keep complete records as required by Rule 1.12B.

(3) An LPO or Closing Firm may withdraw funds when necessary to pay client costs. The LPO or Closing Firm may withdraw earned fees only after giving reasonable notice to the client of the intent to do so, through a billing statement or other document.

(4) Receipts must be deposited intact.

(5) All withdrawals must be made only to a named payee and not to cash. Withdrawals must be made by check or by bank transfer.

(6) Trust account records must be reconciled as often as bank statements are generated or at least quarterly. The LPO or Closing Firm must reconcile the check register balance to the bank statement balance and reconcile the check register balance to the combined total of all client ledger records required by Rule 1.12B(a)(2).

(7) An LPO or Closing Firm must not disburse funds from a trust account until deposits have cleared the banking process and been collected, unless the LPO or Closing Firm and the bank have a written agreement by which the LPO or Closing Firm personally guarantees all disbursements from the account without recourse to the trust account.

(8) Disbursements on behalf of a client or third person may not exceed the funds of that person on deposit. The funds of a client or third person must not be used on behalf of anyone else.

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation. In the exercise of ordinary prudence, the LPO or Closing Firm may select any bank, savings bank, credit union or savings and loan association that is insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, is authorized by law to do business in Washington and has filed the agreement required by rule 15.4 of the Rules for Enforcement of Lawyer Conduct. Trust account funds must not be placed in mutual funds, stocks, bonds, or similar investments.

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest accruing on the IOLTA account, net of reasonable check and deposit processing charges which may only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, must be paid to the Legal Foundation of Washington. Any other fees and transaction costs must be paid by the LPO or Closing Firm. An LPO or Closing Firm may, but shall not be required to, notify the parties to the transaction of the intended use of such funds.

(2) Client or third-person funds that will produce a positive net return to the client or third person must be placed in one of the following unless the client or third person requests that the funds be deposited in an IOLTA account:

- (i) a separate interest-bearing trust account for the particular client or third person with earned interest paid to the client or third person; or
  - (ii) a pooled interest-bearing trust account with sub-accounting that allows for computation of interest earned by each client or third person's funds with the interest paid to the appropriate client or third person.
- (3) In determining whether to use the account specified in paragraph (i)(1) or an account specified in paragraph (i)(2), an LPO or Closing Firm must consider only whether the funds will produce a positive net return to the client or third person, as determined by the following factors:
- (i) the amount of interest the funds would earn based on the current rate of interest and the expected period of deposit;
  - (ii) the cost of establishing and administering the account, including the cost of the LPO or Closing Firm services and the cost of preparing any tax reports required for interest accruing to a client or third person's benefit; and
  - (iii) the capability of financial institutions to calculate and pay interest to individual clients or third persons if the account in paragraph (i)(2)(ii) is used.
- (4) As to IOLTA accounts created under paragraph (i)(1), the LPO or Closing Firm must direct the depository institution:
- (i) to remit interest or dividends, net of charges authorized by paragraph (i)(1), on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, monthly, to the Legal Foundation of Washington;
  - (ii) to transmit with each remittance to the Foundation a statement, on a form authorized by the Washington State Bar Association, showing details about the account, including but not limited to the name of the LPO or Closing Firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any, and the balance used to compute the interest, with a copy of such statement to be transmitted to the depositing LPO or Closing Firm; and
  - (iii) to bill fees and transaction costs not authorized by paragraph (i)(1) to the LPO or Closing Firm.
- (j) Notwithstanding any provision of any other rule, statute, or regulation, escrow and other funds held by an LPO, or the Closing Firm, incident to the closing of any real or personal property transaction are funds subject to this rule regardless of how the LPO, Closing Firm, or party(ies) view the funds.

### **LPORPC 1.12B REQUIRED TRUST ACCOUNT RECORDS**

(a) An LPO or Closing Firm must maintain current trust account records. They may be in electronic or manual form and must be retained for at least six years after the events they record. At minimum, the records must include the following:

- (1) Checkbook register or equivalent for each trust account, including entries for all receipts, disbursements, and transfers, and containing at least:
  - (i) identification of the client matter for which trust funds were received, disbursed, or transferred;
  - (ii) the date on which trust funds were received, disbursed, or transferred;
  - (iii) the check number for each disbursement;
  - (iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and



- (v) the new trust account balance after each receipt, disbursement, or transfer;
- (2) Individual client ledger records containing either a separate page for each client or an equivalent electronic record showing all individual receipts, disbursements, or transfers, and also containing:
  - (i) identification of the purpose for which trust funds were received, disbursed, or transferred;
  - (ii) the date on which trust funds were received, disbursed or transferred;
  - (iii) the check number for each disbursement;
  - (iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and
  - (v) the new client fund balance after each receipt, disbursement, or transfer;
- (3) Copies of any agreements pertaining to fees and costs;
- (4) Copies of any statements or accountings to clients or third parties showing the disbursement of funds to them or on their behalf;
- (5) Copies of bills for legal fees and expenses rendered to clients;
- (6) Copies of invoices, bills or other documents supporting all disbursements or transfers from the trust account;
- (7) Bank statements, copies of deposit slips, and cancelled checks or their equivalent;
- (8) Copies of all trust account client ledger reconciliations; and
- (9) Copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them.

(b) Upon any change in the LPO or Closing Firm practice affecting the trust account, including dissolution or sale of a Closing Firm business, or suspension or other change in the license status of an LPO, the LPO or Closing Firm must make appropriate arrangements for the maintenance of the records specified in this Rule.

**Comment:**

[1] LPOs must assure that IOLTA accounts are used in any transaction involving the practice of law for others. In addition to closings where legal documents have been selected, prepared or completed by LPOs, IOLTA accounts must hold funds for closings involving legal documents prepared by lawyers. Such transactions would include extensions of credit with loan documents prepared by a lender's lawyer, as well as sale closings with deeds and other legal documents prepared by the clients' lawyers.

[2] The Escrow Agent Registration Act under RCW 18.44 provides procedures for trust account recordkeeping substantially similar to the provisions contained within LPORPC 1.12B. Compliance with the provisions under RCW 18.44 should meet the provisions of this rule.

# CONTINUING EDUCATION REGULATIONS OF THE LIMITED PRACTICE BOARD

## REGULATION 101. DEFINITIONS

As used in these regulations, the following definitions shall apply:

A. A "Limited Practice Officer" (LPO) shall mean any person admitted to practice under Washington Supreme Court Rule APR 12.

B. An "approved" continuing education activity shall mean an individual seminar, course, or other continuing education activity approved by the Continuing Education Committee of the Limited Practice Board.

C. A "credit hour" equals one (1) clock hour of actual attendance.

D. The "Committee" shall mean the Continuing Education Committee of the Limited Practice Board.

E. The "staff" shall mean the staff of the Washington State Bar Association.

F. "APR 12" shall mean Admission to Practice Rule 12, together with any subsequent amendments thereto, as adopted by the Supreme Court of the state of Washington.

G. "Teaching" in an approved continuing education activity shall mean and encompass the preparation and/or delivery of a prepared talk, lecture, or address at such activity.

H. "Participating" in an approved continuing education activity shall mean and encompass: 1) acting as a planning and organizing chair of such activity, or 2) taking part in such activity as a member of a panel discussion, without the preparation of written materials or the delivery of a prepared talk, lecture, or address.

I. "Calendar year" shall mean January 1 to December 31.

J. To qualify for "liability credit," a course or subject must deal with the legal rights, duties, or responsibilities of LPOs.

K. "Distance Education" shall mean delivery method where instruction takes place in other than a live classroom setting, the instructor and the student are in physically separate locations, and interactive instructional methods such as video-based instruction, computer conferencing, video conferencing, interactive audio, interactive computer software, or internet-based instruction are used.

L. "Interactive" for purposes of instructional methods shall mean the course structure and technologies promote active student involvement with the course content, including the ability to: (a) submit questions or answer test items, and receive direct feedback; and (b) communicate with the instructor and/or other students on an immediate or reasonably delayed basis.

Interactive instruction specifically excludes courses that only provide passive delivery of instructional content.

### **REGULATION 102. CONTINUING EDUCATION REQUIREMENT**

A. As provided for in Regulation 12 of the Regulations of the APR 12 Limited Practice Board, each active and inactive Limited Practice Officer shall complete a minimum of ten (10) credit hours of approved education during each calendar year, except as exempted by Regulation 114. Up to five (5) credit hours may be completed through Distance Education. Two (2) hours of the required ten (10) hours of continuing education per year must be on liability issues, which may be completed through Distance Education. These classes must be approved by the Board and must be taken annually.

B. If an LPO completes more than ten (10) such credit hours in a given calendar year, the excess credit, up to ten (10) credits, may be carried forward and applied to such LPO's education requirement for the next calendar year. Liability credit hours may be carried forward as liability credits or regular credits; however, a maximum of two (2) liability credits may be carried forward as liability credits. Failure to comply with the provisions of this Regulation and Regulation 12 of the Regulations of the APR 12 Limited Practice Board each calendar year shall subject the Limited Practice Officer to suspension or revocation of license as an LPO.

### **REGULATION 103. CREDITS/COMPUTATION**

A. Continuing education credit may be obtained by attending, teaching, or participating in, continuing education activities which have 1) been previously approved by the Committee, or 2) have been afforded retroactive approval by the Committee pursuant to APR 12 and these regulations.

B. A credit shall be awarded for each hour actually spent by an LPO in attendance at an approved education activity.

C. Credit will not be given for time spent in meal breaks.

D. Excess or "carry-over" credits may be applied to the succeeding calendar year's credit hour requirement. Such credits shall be reported to the Committee on or before January 31 as required by Regulation 108 A.

E. Credit toward the continuing education requirements set forth in APR 12 and Regulation 102 may be earned through teaching or participating in an approved continuing education activity on the following basis:

1. An LPO teaching in an approved education activity shall receive credit on the basis of one (1) credit for each hour actually spent by such LPO in attendance at and teaching in a presentation of such activity. Additionally, an LPO teaching in such an activity shall also be awarded further credit on the basis of one credit for each hour actually spent in preparation time, provided that in no event shall more than ten (10) hours of credit be awarded for the preparation of one (1) hour or less of actual presentation.
2. An LPO participating in an approved educational activity shall receive credit on the

basis of one (1) credit for each hour actually spent by such LPO in attendance at a presentation of such activity. Additionally, an LPO participating in such an activity shall also be awarded further credit on the basis of one (1) credit for each hour actually spent in preparation time, provided that in no event shall more than five (5) hours of credit be awarded for such preparation time in any one such continuing education activity.

F. Service on the Limited Practice Board or Escrow Commission is considered an approved continuing education activity for both general and liability credits.

#### **REGULATION 104. STANDARDS FOR APPROVAL**

The following standards shall be met by any course or activity for which approval is sought:

A. The course shall have significant intellectual or practical content and its primary objective shall be to increase the attendee's professional competence as an LPO.

B. The course shall constitute an organized program of learning dealing with matters directly relating to the limited practice of law and/or to the professional responsibility or ethical obligations of an LPO, which may include continuing legal education seminars and courses approved by the Washington State MCLE Board.

C. Each faculty member shall be qualified by practical or academic experience to teach a specific subject.

D. Thorough, high quality, readable, and carefully prepared written materials should be distributed to all attendees at or before the time the course is presented. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written materials for distribution should, however, be the exception and not the rule.

E. Courses should be conducted in a setting physically suitable to the educational activity of the program. A suitable writing surface should be provided where feasible.

F. No course will be approved which involves solely television viewing in the home or office or correspondence work or self-study except as may be an approved Distance Education activity. Video, motion picture, or sound tape presentations may be approved, provided a teacher or moderator is in attendance at each presentation to comment thereon, answer questions, or conduct the discussion.

#### **REGULATION 105. PROCEDURE FOR APPROVAL OF CONTINUING EDUCATION ACTIVITIES**

A. An LPO or sponsoring agency desiring approval of a continuing education activity shall submit to the Committee all information called for by Form 1 at least thirty (30) days prior to the date scheduled for the class, along with an application fee. The application fee shall be set by the Board with the approval of the WSBA Board of Governors. The fee and approved application shall be valid for all occurrences of the identical activity in the same calendar year.

B. Approval shall be granted or denied in accordance with the provisions of Regulation 107 herein. Upon approval of the activity, a list of certified limited practice officers will be provided to the class sponsor if requested in the initial application, along with written acknowledgment of approval.

C. As to a course that has been approved, the sponsoring agency may announce, in informational brochures and/or registration materials: "This course has been approved by the Continuing Education Committee of the Limited Practice Board for \_\_\_ hours of credit."

D. On the date of the continuing education activity, the sponsoring agency shall provide to each participating LPO a copy of the LPB course approval form or other document certifying the LPO's attendance and completion of the continuing education activity.

### **REGULATION 106. DELEGATION**

A. To facilitate the orderly and prompt administration of APR 12 and these regulations, and to expedite the processes of, inter alia, course approval, and the interpretation of these regulations, the staff of the Washington State Bar Association may act on behalf of the Committee under APR 12 and these regulations. Any adverse determinations and all questions of interpretation of these regulations of APR 12 by the staff shall be subject to review by the Committee upon written application by person adversely affected.

B. The Committee may organize itself into committees and/or appoint subcommittees for the purpose of considering and deciding matters arising under APR 12 and these regulations.

### **REGULATION 107. STAFF DETERMINATIONS AND REVIEW**

A. Staff shall, in accordance with Regulations 104 and 106, respond in writing to all written requests for course approval and interpretation of the continuing education regulations of APR 12. The staff may seek a determination of the Committee before making such response. At each meeting of the Committee, the staff shall report on all determinations made since the last meeting of the Committee.

B. The Committee shall review any adverse determination of the staff. An LPO or the sponsoring agency affected may, at the discretion of the Committee Chair, present information to the Committee in writing, in person, or both. If the Committee finds that the staff has incorrectly interpreted the facts, the provisions of APR 12, or the provisions of these regulations, it may take such action as may be appropriate. The Committee shall advise the LPO or sponsoring agency affected of its findings and any action taken.

### **REGULATION 108. SUBMISSION OF INFORMATION--REPORTING OF ATTENDANCE**

**A. Compliance Report.** Each LPO shall, on or before January 31 of each year, submit an affidavit to the Committee, setting forth all information required by Form No. 2, concerning

such LPO's completion of approved continuing education during the preceding calendar year. Such affidavit shall also contain a report of "carryover" credits, if any, as delineated in Regulation 102. The LPO may be required by the Committee to verify completion of continuing education activities by producing the forms specified in Regulation 105 D.

**B. Supplemental Report.** If an LPO has not completed the minimum education requirement for the preceding calendar year, or complied with Regulation 108 A, compliance may still be accomplished by:

1. Submitting by April 30 the affidavit called for by Regulation 108 A (Form 2) setting forth therein the extent of the LPO's compliance with the minimum education requirement, **AND**
2. Paying at the time of filing such supplemental affidavit a special \$50 service fee.

C. An LPO who fails to comply with the provisions of this regulation shall be subject to the procedures and provisions of Regulation 111.

### **REGULATION 109. SUBMISSION OF INFORMATION--CREDIT FOR TEACHING OR PARTICIPATING**

An LPO who seeks credit for teaching or participating in an approved continuing education activity pursuant to Regulation 103 E, shall, on or before January 31 of the year following the calendar year in which such teaching or participating was accomplished, submit an affidavit to the Committee setting forth all information required by the appropriate portions of Form 3, concerning such teaching and/or participating in approved education courses or activities during the preceding calendar year.

### **REGULATION 110. EXTENSIONS, WAIVERS, MODIFICATIONS**

The Committee may grant extensions, waivers, or modifications of these regulations in cases of undue hardship, age, or infirmity. Requests for extensions, waivers, or modifications shall be made in writing.

### **REGULATION 111. NON-COMPLIANCE-BOARD PROCEDURES**

An LPO who has not complied with the educational or reporting requirements of APR 12 and these regulations by April 30 of each year may be ordered suspended until in compliance with the regulations.

To effect such suspension, the Committee shall send to the non-complying LPO by certified mail, directed to the LPO's last known address as maintained on the records of the Board, a written notice of non-compliance. The notice shall advise such LPO of the pendency of suspension proceedings, and the provisions for revocation of license, unless within ten (10) days

of receipt of such notice such LPO completes and returns to the Committee an accompanying form of petition, to which supportive affidavit(s) may be attached for extension of time for, or waiver of, compliance with the requirements of APR 12 and these regulations or for a ruling by the Committee of substantial compliance with the requirements.

A. If such petition is not filed, such lack of action shall be deemed acquiescence by the LPO in the finding of non-compliance. The Committee shall report such fact to the Board with the Committee's recommendations for appropriate action. The Board shall take such action as it deems appropriate.

B. If such petition is filed, the Committee may, at its discretion, approve the same without hearing or may enter into an agreement on terms with such LPO as to time and other requirements for achieving compliance with APR 12 and these regulations.

C. If the Committee does not approve such petition or enter into such agreement, the affected LPO may request a hearing before the Board. At the discretion of the Chair of the Board, the hearing may be held before the entire Board or panel thereof. The Board or panel thereof shall enter written findings of fact and an appropriate order, a copy of which shall be transmitted by certified mail to the LPO affected at the address of such member on file with the Board. Any such order shall be final and, in case of an adverse determination, shall be transmitted to the Supreme Court.

#### **REGULATION 112. REINSTATEMENT OF LPOS SUSPENDED FROM PRACTICE FOR FAILURE TO COMPLY WITH THE CONTINUING EDUCATION REQUIREMENT**

A. An LPO who is suspended from practice for failure to comply with the Continuing Education Requirement must make up the deficiency and fully comply with the provisions APR 12 and these Regulations before he or she can be reinstated to active or inactive status.

B. Once a suspended LPO has complied with the immediately preceding provisions of this Regulation, the Board shall notify the Supreme Court that the suspended LPO has satisfied the requirements of APR 12 and these Regulations.

#### **REGULATION 113. APPEALS TO THE SUPREME COURT**

An adverse decision of the Board may be appealed by the LPO affected to the Supreme Court in accordance with the applicable provisions of APR 12. As to such appeals, the Board shall be represented by counsel .

#### **REGULATION 114. EXEMPTIONS**

New Admission. An LPO shall not be required to comply with the minimum continuing education requirements of APR 12, as implemented by these regulations, during the calendar year in which the LPO is admitted to practice.

## **REGULATION 115. RULEMAKING AUTHORITY**

The Committee, subject to the approval of the Board, has continuing authority to make or amend regulations consistent with APR 12 in furtherance of the development of continuing education for LPO's and the regulation thereof.

## **REGULATION 116. CONFIDENTIALITY**

The files and records of the Committee shall be deemed confidential and shall not be disclosed except in furtherance of the Committee's duties, or upon the request of an affected LPO member, or pursuant to a proper subpoena duces tecum, or as directed by the Supreme Court.



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FAMILY LAW COURTHOUSE FACILITATORS

(a) Generally. RCW 26.12.240 provides a county may create a courthouse facilitator program to provide basic services to pro se litigants in family law cases. This Rule applies only to courthouse facilitator programs created pursuant to RCW 26.12.240.

(b) The Washington State Supreme Court shall create a Family Courthouse Facilitator Advisory Committee supported by the Administrative Office of the Courts to establish minimum qualifications and administer a curriculum of initial and ongoing training requirements for family law courthouse facilitators. The Administrative Office of the Courts shall assist counties in administering family law courthouse facilitator programs.

(c) Definitions. For the purpose of this rule the following definitions apply:

(1) A Family Law Courthouse Facilitator is an individual or individuals who has or have met or exceeded the minimum qualifications and completed the curriculum developed by the Administrative Office of the Courts and who is or are providing basic services in family law cases in a Superior Court.

(2) Family Law Cases include, but not limited to, dissolution of marriage, modification of dissolution matters such as child support, parenting plans, non-parental custody or visitation, and parentage by unmarried persons to establish paternity, child support, child custody and visitation.

(3) "Basic Service" includes but is not limited to:

- a) referral to legal and social service resources, including lawyer referral and alternate dispute referral programs and resources on obtaining family law forms and instructions;
- b) assistance in calculating child support using standardized computer based program based on financial information provided by the pro se litigant;
- c) processing interpreter requests for facilitator assistance and court hearings ;
- d) assistance in selection as well as distribution of forms and standardized instructions that have been approved by the court, clerk's office, or the Administrative Office of the Courts;
- e) assistance in completing forms that have been approved by the court, clerk's office, or the Administrative Office of the

Courts;

- f) explanation of legal terms;
- g) information on basic court procedures and logistics including requirements for service, filing, scheduling hearings and complying with local procedures;
- h) review of completed forms to determine whether forms have been completely filled out but not as to substantive content with respect to the parties' legal rights and obligations;
- i) previewing pro se documents prior to hearings for matters such as dissolution of marriage and show cause and temporary relief motions calendars under the direction of the Clerk or Court to determine whether procedural requirements have been complied with
- j) attendance at pro se hearings to assist the Court with pro se matters.
- k) assistance with preparation of court orders under the direction of the Court.
- l) preparation of pro se instruction packets under the direction of the Administrative Office of the Courts.

(d) Family Law Courthouse Facilitators shall, whenever reasonably practical, obtain a written and signed disclaimer of attorney-client relationship, attorney-client confidentiality and representation from each person utilizing the services of the Family Law Courthouse Facilitator. The prescribed disclaimer shall be in the format developed by the Administrative Office of the Courts.

(e) No attorney-client relationship or privilege is created, by implication or by inference, between a Family Law Courthouse Facilitator providing basic services under this rule and the users of Family Law Courthouse Facilitator Program services.

(f) Family law courthouse facilitators providing basic services under this rule are not engaged in the unauthorized practice of law. Upon a courthouse facilitator's voluntary or involuntary termination from a courthouse facilitator program, that person is no longer a courthouse facilitator providing services pursuant to RCW 26.12.240 or this Rule.

[Adopted effective September 1, 2002.]