WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

May 15, 2014

AGENDA

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
Time: 2:00 p.m. to 5:00 p.m.

1. **Call to Order/Preliminary Matters** (Steve Crossland) (2:00 p.m.)
   - Approval of April 17, 2014 meeting minutes
2. **RPC Subcommittee Recommendations Consent Agenda** (2:15 p.m.)
   a. Proposed conflicts rules RPC 1.7-1.12, RPC 1.18, and RPC 6.5 are approved in their entirety.
   b. Proposed Title 3 is approved in its entirety.
   c. Proposed Title 6 is approved in its entirety.
   d. Proposed Title 8 is approved in its entirety.
3. **Report of RPC Subcommittee Meeting** (2:30 p.m.)
4. **Report of Examination Subcommittee Meeting** (2:45 p.m.)
5. **Admissions & Licensing Subcommittee Recommendations Consent Agenda** (3:00 p.m.)
   a. Spokane does not have an LLLT equivalent Contracts course at this time
   b. Spokane's LA 130 Legal Ethics course will meet one credit of the Board's Ethics course requirement.
   c. Spokane does not have an LLLT equivalent Law Office Procedures & Technology course at this time.
   d. Spokane does not have an LLLT equivalent Interviewing and Investigation Techniques course at this time.
6. **Retreat Planning and Info** (Thea Jennings) (3:15 p.m.)
7. **LLLT Rules for Enforcement of Conduct** (Thea Jennings) (3:30 p.m.
8. **Criteria for Approving Practice Areas** (Steve Crossland) (3:45 p.m.)
9. **Open Discussion**

10. **Adjourn** (5:00 p.m.)

MEETING MATERIALS

1. 2014-04-17 Draft Meeting Minutes [pp. 881-885]
2. 2014-04-17 Appendix of Decisions [pp. 886-893]
3. 2014-04-17 RPC Subcommittee Minutes [pp. 894-897]
4. 2014-04-17 Examinations Subcommittee Minutes [pp. 898-899]
5. 2014-03-25 Admissions & Licensing Subcommittee Minutes [pp. 900-902]
6. 2014-05-15 Proposed Conflicts Rules [pp. 903-910]
7. 2014-05-15 Proposed Title 3 [pp. 911-913]
8. 2014-05-15 Proposed Title 6 [pp. 914]
9. 2014-05-15 Proposed Title 8 [pp. 915-916]
10. 2014-05-09 LLLT RPC Working Draft [pp. 917-940]
11. 2014-05-09 Memo re Disciplinary Rules for LLLT Program [pp. 941-942]
12. 2014-05-09 LLLT Rules for Enforcement of Conduct Working Draft [pp. 943-1,029]

WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

April 17, 2014

Washington State Bar Association
Seattle, Washington

Members present were Steve Crossland (Chair), Paul Bastine (BOG Liaison), Greg Dallaire, Caitlin Davis Carlson, Jeanne Dawes, Ellen Dial, Janet Olejar, Ellen Reed, Elisabeth Tutsch, and Ruth Walsh McIntyre.

Also in attendance was Thea Jennings (Staff Liaison) and Bobby Henry, RSD Associate Director. Also present was Christy Carpenter, a member of the public.

The meeting was called to order at 2:10 p.m.

I. Preliminary Matters and Meeting Minutes

Chair Crossland reviewed his recent and upcoming travels and outreach conducted to promote the LLLT Program. Board members also shared their recent outreach related to the Program. Ms. Dial and Ms. Tutsch met with the Executive Board of the Elder Law Section to discuss elder law as a potential practice area. Ms. Dial will prepare a chart of types of actions within the elder law practice area for the Board's review. She will also reach out to the Probate and Trust Section for further input. Mr. Dallaire also met with a criminal law professor regarding the feasibility of certain actions in criminal law.

The Board approved its March 13, 2014 meeting minutes.

II. Report of Admissions and Licensing Subcommittee Meeting

Ms. Jennings presented the report of the March 25, 2014 Admissions and Licensing Subcommittee meeting in Chair Covington's stead.

Alternatives to ABA Approved Model for Offering the LLLT Education
Board Chair Steve Crossland reiterated that of great importance to the Board and the Supreme Court is ensuring the LLLT education is accessible across the state, given that the great unmet civil legal need in our state is not unique to the Puget Sound area.

Several institutions are eager to participate in the delivery of the LLLT education, though not ABA approved including the University of Washington.

The Subcommittee agreed non-ABA approved models should be considered provided certain safeguards are in place, including not compromising academic rigor. The Subcommittee discussed three alternatives proposed by the community colleges. After considering these options, the Subcommittee recommended to the Board that the Subcommittee invite representatives from interested institutions to meet with it and develop a recommendation that would allow all community college programs to meet an LLLT standard. The Subcommittee will ask the representatives from these institutions to do the following:

1. examine the ABA standards,
2. determine which of the ABA standards are or are not necessary, and
3. outline standards for non-ABA approved programs to offer the LLLT education.

The proposal would include a recommendation for certification and ongoing oversight.

Crosswalk of Spokane's Curriculum

In January 2014, Edmonds, Highline, and Tacoma community colleges (three ABA approved schools) and Clark College (which is seeking ABA approval) aligned their curriculum with the Board's core curriculum. The core curriculum will launch at these institutions in Spring Quarter 2014.

In January 2014, WSBA staff reviewed Spokane's curriculum, consulted with Bob Loomis, Program Director at Spokane Community College, and identified specific courses of concern that may not meet the core course requirements. The Board asked the Subcommittee to reconvene and make recommendations to the Board about which courses would satisfy the core course requirements. The courses that were identified for review by the Subcommittee include: (1) Contracts, (2) Ethics, (3) Law Office Procedures & Technology, and (4) Interviewing and Investigation Techniques.

After reviewing the materials, the Subcommittee then made the following recommendations to the Board regarding Spokane's curriculum:

1. Contracts: Spokane does not have an LLLT equivalent course at this time
2. Ethics: Spokane's LA 130 Legal Ethics course will meet one credit of the Board's course requirements.
3. Law Office Procedures & Technology: Spokane does not have an LLLT equivalent course at this time.
4. Interviewing and Investigation Techniques: Spokane does not have an LLLT equivalent course at this time.

Ms. Olejar emphasized that Mr. Loomis is willing to work with the Board to align Spokane's curriculum with the core curriculum but currently Spokane is seeking ABA re-

approval and will not complete this process until after March. She will work with Mr. Loomis once he is through the re-approval process.

III. RPC Subcommittee Consent Agenda Items

The Board then approved the April 17, 2014 consent agenda recommendation of the RPC Subcommittee:

a. Proposed RPC 1.14 of the LLLT Rules of Professional Conduct is approved in its entirety.

IV. Report of RPC Subcommittee

Subcommittee Chair Dial presented the report of the March 13, 2014 RPC subcommittee meeting.

RPC Subcommittee Timeline
Ms. Dial reported that the Subcommittee is almost done with the rules and has taken action on almost all titles. In addition to finalizing the rules, three additional pieces of work remain to complete the RPC Subcommittee's work:

1. Drafting mirror rules for lawyers that correspond with the LLLT rules, e.g. RPC 5.X. Subcommittee Member Doug Ende will work to submit nominees for a Workgroup that will draft and submit proposed amendments to the lawyer RPC in August 2014;
2. Drafting the Terminology section, making language modifications where necessary for consistency, and drafting comments to the rules; and
3. Coordinating with Nan Sullins regarding what the Court expects in its GR 9 coversheet.

Title 6
At its meeting, the Subcommittee considered a revised draft of Title 6. The revised draft left the recommended pro bono hours at 30 hours consistent with the lawyer RPC. However, the Subcommittee unanimously moved to recommend to the full Board that it express to the Court that 50 hours is a better aspirational goal than 30, as the number is consistent with the ABA Model Rules and the national standard.

Title 7
The subcommittee also considered draft Title 7. RPC 7.4 was drafted to include an absolute prohibition against an LLLT stating he or she is "certified" to describe his or her qualifications as an LLLT. This created some discussion concerning whether an LLLT may communicate information pertaining to whether he or she is a NALA Certified Paralegal (CP), NFPA Registered Paralegal (RP) or Core Registered Paralegal (CRP), or NALS Professional Paralegal (PP). CPs can further obtain advanced certifications in specialty areas. If a CP lists his or her advanced certifications, it may mislead the public to think that the LLLT can advise beyond his or her scope of practice. The

Subcommittee will redraft RPC 7.4(d) to provide some accommodation for paralegals who are certified.

Draft and Proposed Rules
The Subcommittee will have on the consent agenda for the May Board meeting the following sets of rules: the conflicts rules, Title 3, Title 6, and Title 8. Revised drafts of Titles 4 and 7 will be considered by the Subcommittee at its next meeting.

V. Report of Examination Subcommittee

Member Reed presented the report of the April 17, 2014 Examination Subcommittee meeting in Chair Artiga's stead.

Testing Guide & Objectives
With the help of the Workgroup members, the Subcommittee continued to flesh out its family law testing objectives list and assigned weight to certain topics on a scale of 1-3, with one indicating major issues on which to test and 3 indicating topics that should be tested less frequently. The subcommittee will try to finalize the list of topics or Testing Guide soon. The Subcommittee will develop a separate abbreviated Study Guide for applicants.

Assigning Topics from the Testing Guide and Question Drafting
The family law practitioners of the Board and the Workgroup will create the essay and performance section questions. The remaining Board members will write the multiple choice questions. The Subcommittee will make assignments to Board members to write questions from certain sections of the Testing Guide. Depending on the comfort level of each Board member, assignments will be made to write simple or analytical multiple choice questions. The Testing Guide will be shared with the Board and will include relevant case law and statutes to help with the question writing process. The Subcommittee will share with the Board materials regarding how to write multiple choice questions. The Subcommittee would like draft questions ready by the Board's May 15, 2014 meeting. At the Board retreat, the family law practitioners will break up into groups with various Board members to assist in the exam writing process.

Professional Responsibility Testing Guide
Ms. Reed will continue to develop the grid for the professional responsibility exam. She would like the assistance of members of the RPC Subcommittee to finalize the list and perhaps begin drafting questions.

VI. Mental Health Questions on LLLT Application

RSD Associate Director Henry explained the recent efforts by Disability Rights Washington (DRW) to move for change on bar exam application questions that reference mental health issues. DRW's position is based in part on a recent Department of Justice ruling in Louisiana, which found that certain bar exam application questions were in violation of the Americans with Disability Act. The WSBA is currently evaluating whether changes are necessary, which may require changes to the LLLT application.

VII. Supreme Court Meeting Agenda

The Board discussed its draft agenda for its meeting with the Supreme Court on June 4, 2014. The Supreme Court has requested the agenda be submitted by April 21.

ADJOURNMENT

The meeting adjourned at 5:00 p.m.

NEXT MEETING

The next meeting will be 2:00 p.m. Thursday, May 15, 2014, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.

No.	Board Meeting Date	Requirement/Topic	Decision
1	1/30/2013	Practice Area	Family law
2	3/14/2013	Scope	Scope limited to Dissolution, Legal Separation, Parenting & Support, Parentage, Intimate Domestic Relationships, and Domestic Violence actions.
3	3/14/2013	Scope	Prohibited from practicing in Defacto Parentage and Nonparental Custody actions.
4	3/14/2013	Forms	Within the approved types of domestic relations actions, LLLTs may select and prepare all pattern forms used to initiate actions.
5	3/14/2013	Education	Must complete 45 credit hours in core curriculum in paralegal studies (each credit hour equals 450 minutes of instruction)
6	3/14/2013	Education	Must complete 12 credit hours in the major or approved practice area (each credit hour equals 450 minutes of instruction)
7	3/14/2013	Education	Core and major course instruction must occur at ABA approved law school or ABA approved paralegal education program
8	3/14/2013	Education	Major curriculum will be developed by or in conjunction with Washington's ABA approved law schools
9	3/14/2013	Experience	Must complete 18 months (3,000 hours) of substantive law-related work experience supervised by a licensed lawyer before admission
10	3/14/2013	Experience	Experience not required before exam
11	3/14/2013	Experience	Must complete experience requirement no later than three years after passing the examination and no more than three years prior to admission
12	3/14/2013	Dual Representation	LLLTs are prohibited from engaging in dual representation of parties in family law matters
13	4/18/2013	Domestic Violence Actions	In domestic violence actions, LLLTs may advise and assist clients regarding protection and restraining orders, responses to petitions for protection orders, and modifications and renewals of protection orders
14	4/18/2013	Domestic Violence Actions	In domestic violence actions, LLLTs will be prohibited from advising and assisting clients with anti-harassment orders, criminal no contact orders, and sexual assault protection orders.
15	4/18/2013	Relocation Actions	In relocation actions, LLLTs may advise and assist clients regarding relocation petitions, ex parte final orders, motions/declarations to waive notice requirements, and child support paperwork.

No.	Board Meeting Date	Requirement/Topic	Decision
16	4/18/2013	Relocation Actions	In relocation actions, LLLTs will be prohibited from advising and assisting clients regarding objections to relocation petitions, responses to objections, and temporary orders.
17	4/18/2013	Relocation Actions	In relocation actions, LLLTs must terminate the legal services and advise the client to seek the advice of a lawyer if an objection is filed or there is a need for temporary orders.
18	4/18/2013	Education	Applicants must have a minimum of an associate level degree subject to any waiver provided for in the regulations
19	4/18/2013	Pro Bono	The pro bono requirement should be stricken from APR 28(D)(3)
20	4/18/2013	Examination	The qualifying examination will include a core exam and a major area of study exam which will be comprised of three parts: a multiple choice section, an essay section, and a practicum section
21	4/18/2013	Examination	The ethics section of the examination shall be built into both the core and major exams
22	5/16/2013	Limited time waiver	The limited time waiver period shall begin when the Board begins accepting applications and shall end on December 31, 2016.
23	5/16/2013	Limited time waiver	During the limited time waiver, educational institutions may waive or give credit for core course requirements if the institution determines the previous courses taken by students are substantially equivalent to the Board-mandated core curriculum requirements.
24	5/16/2013	Fingerprint cards	Fingerprint cards for criminal history checks shall be required of all applicants prior to licensing similar to the LPO model with administrative details to be determined by WSBA staff.
25	5/16/2013	Financial responsibility	Proof of financial responsibility shall be required of all applicants prior to licensing similar to the LPO model with administrative details to be determined by WSBA staff.
26	5/16/2013	Character & Fitness	Good moral character requirements for all applicants shall parallel the procedures used for lawyer applicants with a process that provides for a character and fitness board/panel of three people, with a right of appeal to the full Board if an applicant is rejected on character and fitness grounds.
27	5/16/2013	APR 28 Amendments	The parenthetical should be stricken from APR 28(F)(8)

No.	Board Meeting Date	Requirement/Topic	Decision
28	5/16/2013	APR 28 Amendments	Under APR 28(F)(6), amend the language to "Select, ~~and~~ complete, file, and effect service of forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts . . ."
29	5/16/2013	APR 28 Amendments	Approved APR 28 amendments for submission to the Supreme Court relating to APR 28(D)(3), APR 28(E), and APR 28(F) establishing new education and experience requirements for applicants and amending certain scope provisions in the rule.
30	6/20/2013	Scope	Unless an issue prohibited by regulation arises, for dissolution and legal separation, paternity, parenting and support, and child support modification actions, LLLTs may initiate actions and advise and assist clients regarding trial preparation; final orders, i.e. findings of fact and conclusions of law, final decrees, parenting plans, and orders of child support; and modifications of final orders of support.
31	6/20/2013	Scope	Unless an issue prohibited by regulation arises, LLLTs may select and prepare all forms authorized by APR 28(F)(6) for dissolution and legal separation, paternity, parenting and support, and child support modification actions.
32	6/20/2013	Division of Property	LLLTs will be prohibited from advising and assisting clients regarding division of owned real estate, formal business entities, and retirement assets that require a supplemental order to divide or award, which includes division of all defined benefit plans and defined contribution plans.

No.	Board Meeting Date	Requirement/Topic	Decision
33	6/20/2013	Bankruptcy	LLLTs will be prohibited from advising and assisting clients regarding bankruptcy, including obtaining a stay from bankruptcy. If one party is in bankruptcy or files a bankruptcy during the pendency of the proceeding, the LLLT may not advise and assist regarding disposition of debts and assets unless: the LLLT's client has retained an lawyer to represent him/her in the bankruptcy; or has consulted with an lawyer and the lawyer has provided written instructions for the LLLT as to whether and how to proceed regarding the division of debts and assets in the domestic relations proceeding; or the bankruptcy has been discharged.
34	6/20/2013	Intimate Domestic Relationship Actions	In intimate domestic relationship actions, LLLTs will be limited to advising and assisting clients regarding parenting and support issues.
35	6/20/2013	Intimate Domestic Relationship Actions	In intimate domestic relationship actions, LLLTs will be prohibited from advising and assisting clients regarding community property issues.
36	6/20/2013	Collaboration with Lawyers	If in the course of the representation, an issue arises with respect to which the LLLT is prohibited from giving advice or assistance under these rules, then the LLLT shall inform the client in writing that the issue may exist, the LLLT is not authorized to assist on this issue, the failure to obtain a lawyer's advice could be adverse to the client's interests, and the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's rights.
37	6/20/2013	Parenting Plan Modifications	In parenting plan modification actions, LLLTs may advise and assist in preparation of all forms authorized by APR 28(F)(6) for minor and agreed major parenting plan modification actions, unless an issue prohibited by regulation arises.
38	6/20/2013	Parenting Plan Modifications	In parenting plan modification actions, LLLTs will be prohibited from advising and assisting clients regarding major parenting plan modification actions, unless there is agreement by the parties at the onset of the representation by the LLLT.
39	6/20/2013	Limited time waiver	Under a limited time waiver, eligible applicants may waive certain admission requirements provided the applicants meet other specified education and/or experience requirements.

No.	Board Meeting Date	Requirement/Topic	Decision
40	6/20/2013	Limited time waiver	During the limited time waiver, the Board will grant a waiver of all the core education and the minimum associate level degree to applicants who: (i) have passed the PACE or NALA certification exam; (ii) have maintained the PACE or NALA continuing certification requirements; and (iii) have 10 years of substantive law-related experience supervised by a licensed lawyer within the past 15 years.
41	6/20/2013	Education	The core curriculum requirements chart developed by the Admissions and Licensing Subcommittee is adopted in its entirety, including the minimum credit requirements for each course.
42	6/20/2013	Education	The required core education courses taught at the ABA approved paralegal programs or law schools do not need to have the exact name as listed in the regulations so long as the core curriculum is taught in the courses;
43	6/20/2013	Education	If the required core courses do not total 45 credits, applicants may take any other courses in paralegal studies from an ABA approved paralegal program or law courses at an ABA approved law school to satisfy the 45 credit requirement.
44	6/20/2013	Applications	Applications should instruct the applicant to provide a social security number if the applicant has one; otherwise, it shall not be required.
45	6/20/2013	Examination	If an applicant for initial licensure fails one of the required exams, the applicant will have the opportunity to pass the other exam at the next two administrations of the exam. The passing score is good for a year. If the applicant does not pass after a year, the applicant will be required to retake the previously passed exam.
46	6/20/2013	Examination	For purposes of the experience requirements, the three year clock starts after passing both exams.
47	6/20/2013	Examination	There shall be no limit on the number of times an applicant can sit for the exams.
48	6/20/2013	Examination	Each component of the examinations (multi-choice, essay, performance) will be graded independently from the other. An applicant must score 75% on each component to pass the exam. The Board shall not grade other components after failing one component.

No.	Board Meeting Date	Requirement/Topic	Decision
49	6/20/2013	Examination	There shall be no appeal of examination scores and applicants shall not be entitled to receive a copy of their failed exams
50	6/20/2013	Limited time waiver	The Board adopted Regulation 4 Limited Time Waiver for submission to the Supreme Court.
51	7/18/2013	Education	Applicants must complete five credit hours in basic domestic relations subjects and ten credit hours in advanced and Washington specific domestic relations subjects.
52	7/18/2013	Education	For informational purposes, the tuition for the domestic relations courses is estimated to be $250
53	7/18/2013	Education	Prior to enrolling in the domestic relations practice area courses, applicants not seeking a waiver must complete the following core courses: Civil Procedure; Interviewing and Investigation Techniques; Introduction to Law and Legal Process; Legal Research, Writing, and Analysis; and Professional Responsibility
54	7/18/2013	APR 28 Appendix	Appendix APR 28 Regulations 1, 3, and 5-12 approved for adoption and submission to the Supreme Court.
55	7/18/2013	UCCJEA/UIFSA	LLLTs shall not advise and assist clients regarding the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues or Uniform Interstate Family Support Act issues unless and until jurisdiction has been resolved
56	7/18/2013	Motions	In domestic relations actions, LLLTs may select, prepare, file, and serve motions consistent with the rule except where other defined prohibitions apply
57	7/18/2013	Discovery	In domestic relations actions, LLLTs may assist and advise clients regarding discovery in domestic relations actions except where other defined prohibitions apply
58	7/18/2013	Discovery	In domestic relations matters, LLLTs shall not appear or participate in the taking of a deposition
59	7/18/2013	Appeals	In domestic relations matters, LLLTs shall not initiate or respond to an appeal to an appellate court.
60	7/18/2013	Domestic Violence Actions	LLLTs shall not advise and assist clients with anti-stalking orders in domestic violence actions

No.	Board Meeting Date	Requirement/Topic	Decision
61	7/18/2013	Collaboration with Lawyers	After an issue beyond the LLLT's scope of practice has been identified, an LLLT may prepare a document related to the issue only if a lawyer acting on behalf of the client has provided appropriate documents and written instructions for the LLLT as to whether and how to proceed with respect to the issue. The LLLT shall then be required to follow the instructions and incorporate the terms of the necessary documents into the final court orders. The LLLT may proceed in this manner only if no other defined prohibitions apply
62	7/18/2013	Indian Child Welfare Act	LLLTs shall not provide legal services if the Indian Child Welfare Act applies to the matter.
63	7/18/2013	APR 28 Appendix	Appendix APR 28 Regulation 2 approved for adoption and submission to the Supreme Court
64	8/15/2013	Education	The family law course requirements chart developed by the Family Law Curriculum Workgroup was adopted in its entirety.
65	8/15/2013	RPC	The existing lawyer RPC will serve as the basis for the LLLT RPC.
66	8/15/2013	RPC	The following approach to drafting the RPC will be used: Determine which lawyer RPC (1) do not apply, (2) do apply, (3) apply but need modification, and (4) are missing and need to be added
67	8/15/2013	Service Member's Civil Relief Act	LLLTs may provide legal services if a party to the action is covered by the Service Member's Civil Relief Act or the Servicemembers Civil Relief Act.
68	9/16/2013	Communication	An LLLT may not communicate with an unrepresented opposing party or a lawyer and LLLT representing the opposing party
69	9/16/2013	Business Arrangements	Nonlawyer ownership of LLLT practices and/or fee sharing with nonlawyers is prohibited.
70	10/17/2013	RPC Preamble	The Fundamental Principles, Preamble, and Scope Sections of the LLLT Rules of Professional Conduct are adopted in their entirety.
71	10/17/2013	Limited time waiver	The NALS Professional Paralegal exam and the PP certification shall qualify for the limited time waiver.
72	10/17/2013	Education	Students may enroll in the family law courses if they have (1) a paralegal degree or certificate from an ABA approved program and (2) at least half of the required 45 credit hours of core curriculum.

No.	Board Meeting Date	Requirement/Topic	Decision
73	10/17/2013	Business Arrangements	Partnerships between lawyers shall be permitted under a new provision to RPC Title 5.
74	10/17/2013	Family Law Exam	A Family Law Curriculum Workgroup should be convened to assist with exam creation and to advise the LLLT Board on changes in the law that may require changes to scope or exam questions.
75	11/21/2013	RPC Title 5	Proposed Title 5 of the LLLT Rules of Professional Conduct is adopted in its entirety.
76	11/21/2013	Fee sharing	Fee sharing under RPC 1.5(e) should be prohibited.
77	11/21/2013	Retainers	An LLLT shall not accept, collect, or share in retainer funds.
78	12/19/2013	IOLTA rules	Proposed RPC 1.15A and RPC 1.15B of the LLLT RPC are adopted in their entirety.
79	1/16/2014	Core Exam	The National Federation of Paralegal Association's Paralegal Core Competency (PCC) Exam shall be used for testing the LLLT core education
80	2/20/2014	RPC 1.1-1.6	Proposed RPC 1.1 to RPC 1.6 of the LLLT Rules of Professional Conduct are approved in their entirety
81	2/20/2014	RPC 1.13, RPC 1.16, RPC 1.17	Proposed RPC 1.13, RPC 1.16, and RPC 1.17 of the LLLT Rules of Professional Conduct are approved in their entirety
82	2/20/2014	RPC Title 2	Proposed RPC Title 2 of the LLLT Rules of Professional Conduct is approved in its entirety
83	2/20/2014	Core Exam	Waiver applicants who apply prior to waiver expiration do not need to take the PCC Exam
84	2/20/2014	Exam & Application Requirements	Proposed Amendments to Appendix APR 28 Regulations 5 and 8 are approved in their entirety
85	4/17/2014	RPC 1.14	Proposed RPC 1.14 for th LLLT RPC is approved in its entirety

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
LLLT RPC SUBCOMMITTEE
MEETING MINUTES

April 17, 2014

Washington State Bar Association
Seattle, Washington

Members present were Ellen Dial (Chair), Paul Bastine (BOG Liaison), Vicky Chen, Greg Dallaire, Caitlin Davis Carlson, Brooks Holland (by WebEx), Janet Olejar, Deborah Perluss, Nan Sullins, and Elisabeth Tutsch.

Also in attendance was Thea Jennings (Staff Liaison). Also present was Christy Carpenter, a member of the public.

PRELIMINARY MATTERS

The meeting was called to order at 9:05 a.m.

I. Minutes of Prior Meeting

The Subcommittee approved the March 13, 2014 meeting minutes. Member Deborah Perluss requested that in the future, her nay votes be reflected in the minutes.

II. Finalizing the LLLT RPC and Proposing Amendments to Lawyer RPC

Chair Ellen Dial reviewed the timeline of the Subcommittee and the work that needs to be accomplished by July 2014. Member Doug Ende will submit nominees for a Workgroup that will draft and submit proposed amendments to the lawyer RPC in August 2014. This Workgroup will be tasked with determining which rules should be amended to account for LLLTs. Chair Dial noted that she and Vicky Chen will start drafting the Terminology section and making language modifications where necessary for consistency. They will further begin drafting comments to the rules.

III. Consent Agenda Items

The Subcommittee unanimously approved its April 17, 2014 consent agenda item:

a) Proposed RPC 1.14 of the LLLT Rules of Professional Conduct is approved in its entirety.

IV. Report of Conflicts Workgroup

The Subcommittee considered a revised draft of the conflicts rules based on recommendations from its last meeting. The draft included changes to the rules apply in the same way to firms in which both LLLTs and lawyers are associated in the same way that the lawyer RPC apply to firms in which only lawyers are associated. For the rules to be effective, mirror lawyer rules will be necessary. The Subcommittee then voted 6 to 1 in favor of the conflicts rules as presented: RPC 1.7-RPC 1.12, RPC 1.18, and RPC 6.5. Ms. Perluss voted against the conflicts rules. The rules will be on the Board's May consent agenda.

V. Draft Title 3

The Subcommittee considered a consolidated version of Title 3. The title was consolidated to address the special duties and obligations of LLLTs when assisting clients acting in an advocacy role on their own behalves. The Subcommittee voted unanimously to approve proposed Title 3. Title 3 will be on the Board's May consent agenda.

VI. Draft Title 4

The Subcommittee considered a draft of Title 4, which was consolidated into one rule RPC 4.1 Communications with Third Persons, in light of the prohibition against any communications by the LLLT with an opposing party or opposing counsel. Upon review, the Subcommittee recommended creating two subparts to draft RPC 4.1(a) to make a distinction between communications with counsel and opposing parties as opposed to communications with third parties. LLLTs are allowed to contact third persons for fact finding issues. It recommended the following subparts:

- 4.1(a)(1), which shall state that in communicating with third persons about the subject matter of the representation, an LLLT shall not negotiate the client's legal rights or responsibilities and shall not communicate the client's position, unless permitted by GR 24(b).
- 4.1(a)(2), which shall include an absolute prohibition against communicating with an opposing party represented by counsel and incorporate the language in RPC 4.2.

The Subcommittee further recommended removing the language "with the limited scope of authority" from RPC 4.1(c).

Lawyer RPC 4.3 will need a comment to inform lawyers that the client of an LLLT will be unrepresented for the purposes of RPC 4.3.

The Subcommittee will consider a revised draft of the Title 4 at its May meeting.

VII. Draft Title 6

The Subcommittee considered a revised draft of Title 6. The revised draft reinstated the recommended pro bono hours to 30 hours consistent with the lawyer RPC. However, the Subcommittee unanimously moved to recommend to the full Board that it express to the

Court that 50 hours is a better aspirational goal than 30, as the number is consistent with the ABA Model Rules and the national standard, but that the Board left the standard at 30 to keep it consistent with the lawyer rules.

Draft RPC 6.1 struck the language "aspire to" from the rule. The Subcommittee then moved to leave the draft rule as is without reinserting "aspire to." The motion failed three to four. Ms. Perluss, Elisabeth Tutsch, and Caitlin Davis Carlson voted yay. The Subcommittee then unanimously voted to reinsert the language back in.

The rules will be on the Board's consent agenda in May.

VIII. Draft Title 8

The Subcommittee then reviewed and revised draft Title 8 and recommended consideration of the following:

- RPC 8.1: Retitle "Limited Licensure and Disciplinary Matters
- RPC 8.1: Revise to state: "An applicant for limited licensure, or an LLLT in connection with a limited licensure or reinstatement application, or in connection with a disciplinary matter shall not…"
- RPC 8.2: Remove lawyer from rule
- RPC 8.3: Approved as written
- RPC 8.4(f): Subcommittee considered whether to insert lawyers into RPC 8.4(f) or whether to break up RPC 8.4(f) into two subparts one to cover responsibilities re judicial officers and the other to cover responsibilities re lawyers. The Subcommittee wants member Doug Ende's opinion before making a determination.
- RPC 8.4(h): reinsert "jurors, or" into text. In the last sentence, restate as follows: "The Rule does not restrict an LLLT from ~~representing~~ assisting a client ~~by advancing~~ to advance material, factual, or legal issues or arguments."
- RPC 8.4(*l*): remove reference to ELC
- RPC 8.5: Remove the section "Choice of Law" from rule and title
- RPC 8.5(a): Keep the first sentence only of RPC 8.5(a)
- RPC 8.5(b): Reserve
- RPC 8.5(c): Remove

The revised rules incorporating these changes will be on the Board's May consent agenda.

IX. Title 7

The Subcommittee then considered draft Title 7. Draft RPC 7.1-RPC 7.3 and RPC 7.5-RPC 7.6 are similar to the lawyer rules, though RPC 7.2, RPC 7.3, and RPC 7.5 did require the insertion of lawyer into several subsections to provide for circumstances where LLLTs and lawyers work in the same firm.

RPC 7.4 was drafted to include an absolute prohibition against an LLLT stating he or she is "certified" to describe his or her qualifications as an LLLT. This created some discussion concerning whether an LLLT may communicate information pertaining to whether he or she is a NALA Certified Paralegal (CP), NFPA Registered Paralegal (RP) or Core Registered Paralegals (CRP), or NALS Professional Paralegal (PP). CPs can further obtain advanced certifications in specialty areas. If a CP lists his or her advanced certifications, it may mislead the public to think that the LLLT can advise beyond his or her scope of practice. The Subcommittee will redraft RPC 7.4(d) to provide some accommodation for paralegals who are certified.

The Subcommittee will review a revised draft at its May meeting.

X. Next Meeting

At its next meeting, the Subcommittee will consider revised drafts of Title 4 and Title 7. The conflicts rules, Title 3, Title 6, and Title 8 will be on the Board's consent agenda. Ms. Chen and Ms. Dial will work on the Terminology section and the comments for the next meeting.

ADJOURNMENT

The meeting adjourned at 1:00 p.m.

NEXT MEETING

The next meeting will be 9:00 a.m. Thursday, May 15, 2014, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.

WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD EXAMINATION SUBCOMMITTEE MINUTES

April 17, 2014

Washington State Bar Association
Seattle, Washington

Members present were Lupe Artiga (Chair), Bill Covington, Jeanne Dawes, Lynn Fleischbein (by telephone), Ellen Reed, Melissa Shaw, and Ruth Walsh McIntyre. Also in attendance were Family Law Advisory Workgroup members Chuck Szurszewski and Jennifer Summerville.

Also in attendance was Bobby Henry (Associate Director for Regulatory Services).

PRELIMINARY MATTERS

The meeting was called to order at 9:00 a.m. The minutes of the March 13, 2014 meeting were approved.

BUSINESS

I. Testing Guide & Objectives

With the help of the Workgroup members, the Subcommittee continued to flesh out its family law testing objectives list and assigned weight to certain topics on a scale of 1-3, with one indicating major issues on which to test and 3 indicating topics that should be tested less frequently. The subcommittee will try to finalize the list of topics or Testing Guide soon. The Subcommittee will develop a separate abbreviated Study Guide for applicants.

II. Assigning Topics from the Testing Guide and Question Drafting

The family law practitioners of the Board and the Workgroup will create the essay and performance section questions. The remaining Board members will write the multiple choice questions. The Subcommittee will make assignments to Board members to write questions from certain sections of the Testing Guide. Depending on the comfort level of each Board member, assignments will be made to write simple or analytical multiple choice questions. The Testing Guide will be shared with the Board and will include relevant case law and statutes to help with the question writing process. The Subcommittee will share with the Board materials regarding how to write multiple choice questions. The Subcommittee would like draft questions ready by

the Board's May 15, 2014 meeting. At the Board retreat, the family law practitioners will break up into groups with various Board members to assist in the exam writing process.

III. Professional Responsibility Testing Guide

Member Reed will continue to develop the grid for the professional responsibility exam. She would like the assistance of members of the RPC Subcommittee to finalize the list and perhaps begin drafting questions.

IV. Next Meeting

By the next meeting, the Subcommittee will have the Testing Guide finalized and will begin drafting and reviewing questions at that meeting.

ADJOURNMENT

The meeting adjourned at 1:00 p.m.

NEXT MEETING

The next meeting will be 9:00 a.m. Thursday, May 15, 2014, at the offices of the Washington State Bar Association, 1325 4th Avenue, Seattle, Washington.

WSBA

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
ADMISSIONS & LICENSING SUBCOMMITTEE
MINUTES

March 25, 2014

Washington State Bar Association
Seattle, Washington

Members present were Bill Covington (Chair), Brenda Cothary, Steve Crossland, Scott Haddock (via telephone), Janet Olejar, and Elisabeth Tutsch.

Also in attendance was Thea Jennings (Staff Liaison) and Jean McElroy (Chief Regulatory Counsel). Also in attendance was Marie Bruin, Policy Associate for Workforce Education at the Washington State Board for Community and Technical Colleges (SBCTC).

The meeting was called to order at 12:35 p.m.

I. Introduction

The Admissions and Licensing Subcommittee was reconvened for a special meeting. Staff Liaison Thea Jennings updated the Subcommittee on the work the Board has done with representatives of the community college system to implement the core education. Two workgroups were convened to do this work: (1) one to consider options for increasing the accessibility of the education by endorsing/approving colleges that are not ABA approved to offer the LLLT education and (2) one to conduct a curriculum "crosswalk," a comparison of curricula at several colleges to see what matches up with the LLLT curriculum. The Board asked the Subcommittee to consider the work of these two workgroups and make recommendations to the Board related to these issues.

II. Considering Alternatives to the ABA Approved Model

Board Chair Steve Crossland reiterated that of great importance to the Board and the Supreme Court is ensuring the LLLT education is accessible across the state, given that the great unmet civil legal need in our state is not unique to the Puget Sound area. Several community colleges are eager to participate in the delivery of the LLLT education, though not ABA approved:

At the Board's request, the Subcommittee considered the following questions:

1. Should the Board consider non-ABA approved institutions to offer the LLLT education?
2. Which options identified by the community colleges should be considered?
3. Are there any additional options that should be considered?

The Subcommittee agreed non-ABA approved models should be considered provided certain safeguards are in place, including not compromising academic rigor. The Subcommittee discussed three alternatives proposed by the community colleges and outlined in a Memo on page three of the Subcommittee's materials:

1. College-level coursework approval followed by SBCTC approval of programs
2. Consortium of colleges offering LLLT education and agreeing to maintain certain academic standards
3. Common courses, titles, and outcomes

After considering these options, the Subcommittee recommended to the Board that the Subcommittee invite representatives from interested institutions to meet with it and develop a recommendation that would allow all community college programs to meet an LLLT standard. The Subcommittee will ask the representatives from these institutions to do the following:

1. Examine the ABA standards
2. Determine which of the ABA standards are or are not necessary
3. Outline standards for non-ABA approved programs to offer the LLLT education

The proposal would include a recommendation for certification and ongoing oversight. Marie Bruin, Policy Associate with SBCTC, indicated she will provide the Board with a list of community colleges that initially expressed interest in the program. A representative from UW's paralegal certificate program also expressed interest in offering the education. The Subcommittee recommends the meeting be held in mid-May.

III. Crosswalk of Spokane's Curriculum

In January 2014, the other Workgroup aligned the coursework at Edmonds, Highline, and Tacoma community colleges (three ABA approved schools) and Clark College (which is seeking ABA approval) to the Board's core curriculum. The core curriculum will launch at these institutions in Spring Quarter 2014.

In January 2014, WSBA staff reviewed Spokane's curriculum, consulted with Bob Loomis, Program Director at Spokane Community College, and identified specific courses of concern that may not meet the core course requirements. The Board asked the Subcommittee to reconvene and make recommendations to the Board about which courses would satisfy the core course requirements. The courses that were identified for review by the Subcommittee include: (1) Contracts, (2) Ethics, (3) Law Office Procedures & Technology, and (4) Interviewing and Investigation Techniques.

After reviewing the materials, the Subcommittee then made the following recommendations to the Board regarding Spokane's curriculum:

1. Contracts: Spokane does not have an LLLT equivalent course at this time
2. Ethics: Spokane's LA 130 Legal Ethics course will meet one credit of the Board's course requirements.
3. Law Office Procedures & Technology: Spokane does not have an LLLT equivalent course at this time.

4. Interviewing and Investigation Techniques: Spokane does not have an LLLT equivalent course at this time.

Janet Olejar emphasized that Mr. Loomis is willing to work with the Board to align Spokane's curriculum with the core curriculum but currently Spokane is seeking ABA re-approval and will not complete this process until after March. She will work with Mr. Loomis once he is through the re-approval process.

IV. Gap Course

The subcommittee then discussed the "gap" in the curriculum of core education courses that have been taught at the community colleges. The Subcommittee indicated that there is not much of a gap to fill; as such, a course may be unnecessary. Jennings further noted students will learn about scope of practice and the RPC for LLLTs in their practice area coursework. The Subcommittee then recommended against a gap course.

ADJOURNMENT

The meeting adjourned at 2:12 p.m.

RPC 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), an LLLT shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the LLLT's responsibilities to another client, a former client or a third person or by a personal interest of the LLLT.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), an LLLT may represent a client if:

(1) the LLLT reasonably believes that the LLLT will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the LLLT with respect to the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

Notes to RPC 1.7:

1. The conflict of interest rules applicable to lawyers apply in almost all respects in the same way to LLLTs.

2. Under no circumstances may an LLLT represent more than one party in any domestic relations matter. See APR 28.

RPC 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) An LLLT shall not enter into a business transaction with a current client.

(b) An LLLT shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) An LLLT shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of the client an instrument giving the LLLT or a person related to the LLLT any substantial gift unless the LLLT or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include spouse, child, grandchild, parent, grandparent or other relative or individual with whom the LLLT or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, an LLLT shall not make or negotiate an agreement giving the LLLT literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) An LLLT shall not, while representing a client in connection with contemplated or pending litigation, advance or guarantee financial assistance to a client, except that:

(1) an LLLT may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

(2) Reserved.

(f) An LLLT shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;
(2) there is no interference with the LLLT's independence of professional judgment or with the client-LLLT relationship; and
(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) Reserved.

(h) An LLLT shall not:
(1) make an agreement prospectively limiting the LLLT's liability to a client for malpractice; or
(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of an independent lawyer in connection therewith.

(i) An LLLT shall not acquire a proprietary interest in the cause of action or subject matter of litigation in which the LLLT is assisting a client.

(j) An LLLT shall not:
(1) have sexual relations with a current client of the LLLT unless a consensual sexual relationship existed between them at the time the client-LLLT relationship commenced; or
(2) have sexual relations with a representative of a current client if the sexual relations would, or would likely, damage or prejudice the client in the representation.
(3) For purposes of Rule 1.8(j), "LLLT" means any LLLT who assists in the representation of the client, but does not include other LLLT members of a firm with which the LLLT is associated if those other LLLTs provide no such assistance.

(k) Except as otherwise provided in these Rules,
(1) while LLLTs are associated in a firm with other LLLTs, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them; and
(2) while LLLTs and lawyers are associated in a firm, the prohibitions in Lawyer RPC 1.8(a) through (i) that apply to any lawyer shall apply to any LLLT, and the prohibitions in the foregoing paragraphs (a), (e), (h) and (i) shall not apply to any lawyers unless the conduct is otherwise prohibited by the Lawyer RPCs.

(l) An LLLT who is related to another LLLT or a lawyer as parent, child, sibling, or spouse, or who has any other close familial or intimate relationship with another LLLT or lawyer, shall not represent a client in a matter directly adverse to a person who the LLLT knows is represented by the related LLLT or lawyer unless:
(1) the client gives informed consent to the representation; and
(2) the representation is not otherwise prohibited by Rule 1.7.

(m) Reserved.

Notes to RPC 1.8:

1. Given the limited scope of an LLLT's authorization to practice law, the LLLT may not be capable of providing full disclosure of the meaning and consequences of a conflict of interest arising from a proposed business transaction with a client. RPC 1.8(a) prohibits an LLLT from entering into any business transaction with a current client other than the initial fee agreement, and is different from the lawyer rule.

2. LLLTs may not advocate for, or appear in court on behalf of, a client. RPC 1.8(e) does not authorize activities that are beyond the scope of the LLLT's limited license.

3. Rule 1.8(g) is Reserved as to LLLTs, who are not permitted to engage in the making of settlements, or aggregated agreements as to guilty or nolo contendere pleas in criminal cases. Nothing in Rule 1.8(g) is intended to prohibit lawyer members of a firm with which an LLLT is associated from participating in such settlements if permitted by the Lawyer RPCs.

4. Rule 1.8(m) is Reserved as to LLLTs, who are not permitted to engage in the scope of practice anticipated by that Rule. Nothing in Rule 1.8(m) is intended to prohibit lawyer members of a firm with which an LLLT is associated from engaging in the scope of practice described in Rule 1.8(m) of the Lawyer RPCs in accordance with that Rule.

5. A comment on imputation and how it works is desirable. Mirror-image amendments to the Lawyer RPCs are needed.

RPC 1.9 Duties to Former Clients

(a) An LLLT who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) An LLLT shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the LLLT formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom that LLLT had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) An LLLT who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Notes to RPC 1.9:

1. The rules concerning duties to former clients apply to LLLTs in the same way that Lawyer RPC 1.9 applies to lawyers.

RPC 1.10 Imputation of Conflicts of Interest: General Rule

(a) Except as provided in paragraph (e), while LLLTs are associated in a firm with other LLLTs or lawyers, or both, none of them shall knowingly represent a client when any one of those LLLTs or lawyers practicing alone would be prohibited from doing so by Rules 1.7 or 1.9 or Lawyer RPC 1.7 or 1.9, unless the prohibition is based on a personal interest of the disqualified LLLT or lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining LLLTs or lawyers in the firm.

(b) When an LLLT or lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated LLLT or lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated LLLT or lawyer represented the client; and

(2) any LLLT or lawyer remaining in the firm has information that is material to the matter and that is protected by Rules 1.6 and 1.9(c) or Lawyer RPC 1.6 or 1.9(c).

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7 or, with respect to lawyers, Lawyer RPC 1.7.

(d) The disqualification of LLLTs associated in a firm with former or current government lawyers or LLLTs is governed by Rule 1.11 and Lawyer RPC 1.11.

(e) When the prohibition on representation under paragraph (a) is based on Rule 1.9(a) or (b), or Lawyer RPC 1.9(a) or (b), and arises out of the disqualified LLLT's or lawyer's association with a prior firm, no other LLLT or lawyer in the firm shall knowingly represent a person in a matter in which that LLLT or lawyer is disqualified unless:

(1) the personally disqualified LLLT or lawyer is screened by effective means from participation in the matter and is apportioned no part of the fee therefrom;

(2) the former client of the personally disqualified LLLT or lawyer receives notice of the conflict and the screening mechanism used to prohibit dissemination of information relating to the former representation;

(3) the firm is able to demonstrate by convincing evidence that no material information relating to the former representation was transmitted by the personally disqualified LLLT or lawyer before implementation of the screening mechanism and notice to the former client.

Any presumption that information protected by Rules 1.6 and 1.9(c) or Lawyer RPC 1.6 and 1.9(c) has been or will be transmitted may be rebutted if the personally disqualified LLLT or lawyer serves on his or her former firm and former client an affidavit attesting that the personally disqualified LLLT or lawyer will not participate in the matter and will not discuss the matter or the representation with any other LLLT, lawyer or employee of his or her current firm, and attesting that during the period of the LLLT's or lawyer's personal disqualification those LLLTs, lawyers or employees who do participate in the matter will be apprised that the personally disqualified LLLT or lawyer is screened from participating in or discussing the matter. Such affidavit shall describe the procedures being used effectively to screen the personally disqualified LLLT or lawyer. Upon request of the former client, such affidavit shall be updated periodically to show actual compliance with the screening procedures. The firm, the personally disqualified LLLT or lawyer, or the former client may seek judicial review in a court of general jurisdiction of the screening mechanism used, or may seek court supervision to ensure that implementation of the screening procedures has occurred and that effective actual compliance has been achieved.

Notes to RPC 1.10

1. The general rules concerning imputation of conflicts of interest apply to LLLTs in the same

way that Lawyer RPC 1.10 applies to lawyers, and to firms in which both LLLTs and lawyers are associated in the same way that Lawyer RPC 1.10 applies to firms in which only lawyers are associated. Mirror-image amendments to the Lawyer RPCs are needed.

RPC 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, an LLLT who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the LLLT participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When an LLLT is disqualified from representation under paragraph (a), no LLLT or lawyer in a firm with which that LLLT is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified LLLT is timely screened from any participation in the matter and is apportioned no part of the fee there-from; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, an LLLT having information that the LLLT knows is confidential government information about a person acquired when the LLLT was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that LLLT is associated may undertake or continue representation in the matter only if the disqualified LLLT is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, an LLLT currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the LLLT participated personally and substantially while in private practice or non-governmental employment, unless the appropriate government agency gives its informed consent, confirmed writing; or

(ii) negotiate for private employment with any person who is involved as a party or as LLLT for a party in a matter in which the LLLT is participating personally and substantially, except that an LLLT who may otherwise be serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Notes to RPC 1.11

1. These rules apply to LLLTs in the same way that Lawyer RPC 1.11 applies to lawyers, and to firms in which both LLLTs and lawyers are associated in the same way that Lawyer RPC 1.11 applies to firms in which only lawyers are associated.

RPC 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

(a) Except as stated in paragraph (d), an LLLT shall not represent anyone in connection with a matter in which the LLLT participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent confirmed in writing.

(b) An LLLT shall not negotiate for employment with any person who is involved as a party or as LLLT for a party in a matter in which the LLLT is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. An LLLT serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or LLLT involved in a matter in which the clerk is participating personally and substantially, but only after the LLLT has notified the judge or other adjudicative officer.

(c) If an LLLT is disqualified by paragraph (a), no LLLT or lawyer in a firm with which that LLLT is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified LLLT is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Notes to RPC 1.12

1. These rules apply to LLLTs in the same way that Lawyer RPC 1.12 applies to lawyers, and to firm in which both LLLTs and lawyers are associated in the same way that Lawyer RPC 1.12 applies to firms in which only lawyers are associated.

RPC 1.18 Duties to Prospective Client

(a) A person who discusses with an LLLT the possibility of forming a client-LLLT relationship with respect to a matter is a prospective client.

(b) Even when no client-LLLT relationship ensues, an LLLT who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client or except as provided in paragraph (e).

(c) An LLLT subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the LLLT received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraphs (d) or (e). If an LLLT is disqualified from representation under this paragraph, no LLLT or lawyer in a firm with which that LLLT is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d) or, with respect to lawyers, Lawyer RPC 1.18(d).

(d) When the LLLT has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the LLLT who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified LLLT is timely screened from any participation in the matter and is apportioned no part of the fee there-from; and

(ii) written notice is promptly given to the prospective client.

(e) An LLLT may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the LLLT from representing a different client in the matter. The prospective client may also expressly consent to the LLLT's subsequent use of information received from the prospective client.

Notes to RPC 1.18

1. These rules apply to LLLTs in the same way that Lawyer RPC 1.18 applies to lawyers, and to firms in which both LLLTs and lawyers are associated in the same way that Lawyer RPC 1.18 applies to firms in which only lawyers are associated.

2. Comment 2 of the Lawyer RPCs should be reviewed regarding unilateral communications to a lawyer.

Title 6. Public Service

RPC 6.5 Nonprofit and Court-Annexed Limited Legal Service Programs

(a) An LLLT who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the LLLT or the client that the LLLT will provide continuing representation in the matter and without expectation that the LLLT will receive a fee from the client for the services provided:

(1) is subject to Rules 1.7, 1.9(a), and 1.18(c) only if the LLLT knows that the representation of the client involves a conflict of interest, except that those Rules shall not prohibit an LLLT from providing limited legal services sufficient only to determine eligibility of the client for assistance by the program and to make an appropriate referral of the client to another program;

(2) is subject to Rule 1.10 only if the LLLT knows that another LLLT or lawyer associated with the LLLT in a firm is disqualified by Rule 1.7 or 1.9(a), or, with respect to lawyers, Lawyer RPC 1.7 or 1.9(a), with respect to the matter; and

(3) notwithstanding paragraphs (1) and (2), is not subject to Rules 1.7, 1.9(a), 1.10, or 1.18(c) in providing limited legal services within the scope of their license to a client if:

(i) the program LLLTs representing the opposing clients are screened by effective means from information relating to the representation of the opposing client;

(ii) each client is notified of the conflict and the screening mechanism used to prohibit dissemination of information relating to the representation; and

(iii) the program is able to demonstrate by convincing evidence that no material information relating to the representation of the opposing client was transmitted by the personally disqualified LLLTs to the LLLT representing the conflicting client before implementation of the screening mechanism and notice to the opposing client.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Notes to RPC 6.5

1. This rule applies to LLLTs in the same way that Lawyer RPC 6.5 applies to lawyers.

Rule 3.1: Advising and Assisting Clients in Proceedings Before a Tribunal

(a) In a matter reasonably related to a pending or potential proceeding before a tribunal, an LLLT shall not counsel a client to engage, or assist a client, in conduct involving

(1) an abuse of legal procedure, including asserting or controverting a position that is frivolous or lacks a good faith basis in law and fact;

(2) delay of a proceeding without reasonable and substantial purpose;

(3) submission of a false statement of fact or law to a tribunal or offering evidence known to be false;

(4) obstruction of another party's access to evidence or the unlawful alteration, destruction or concealment of a document or other material having potential evidentiary value;

(5) falsification of evidence or assisting or inducing false testimony of a witness;

(6) knowingly disobeying an obligation under the rules of a tribunal; or

(7) making frivolous discovery requests or failing to reasonably comply with legally proper discovery requests of an opposing party.

(b) An LLLT shall not seek to influence a judge, juror, prospective juror, or other official by means prohibited by law, communicate ex parte with such an individual unless authorized to do so by law or court order, or engage in conduct intended to disrupt a tribunal. An LLLT shall not counsel or assist a client or another person to do such an act.

Comment/Explanatory Note

[1] Title 3 of the Lawyer Rules of Professional Conduct address a lawyer's duties as an advocate when representing a client in the proceedings of a tribunal. Because APR 28H(5) expressly prohibits an LLLT from representing a client in a court or administrative-adjudicative proceeding (unless permitted by GR 24), the Title 3 rules do not apply directly to the conduct of LLLTs. Nevertheless, a number of the ethical principles located in Title 3 address conduct in connection with a proceeding that would be improper and repugnant whether engaged in by a lawyer or a party. In many instances, an LLLT will be providing assistance to a client who is a party to a court proceeding. For this reason, as a member of the legal profession, an LLLT is ethically bound to avoid advising or assisting a client in conduct that undermines the integrity of the adjudicative process or threatens the fair and orderly administration of justice. As applied to the indirect conduct of LLLTs, the ethical

proscriptions Lawyer Rules 3.1, 3.2, 3.3, and 3.4 are less nuanced. Accordingly, they have been consolidated within Rule 3.1(a) as a prohibition on counseling or assisting the client in such activities. Conduct relating to the impartiality and decorum of a tribunal, Lawyer RPC 3.5, should be prohibited whether engaged in by a LLLT directly or indirectly, and is separately addressed in paragraph (b) of this Rule. Although less comprehensive than Title 3 of the Lawyer RPC, the core Title 3 principles incorporated into Rule 3.1 address the issues likely to be encountered by an LLLT, with supplemental guidance available in the corresponding Lawyer RPC and commentary thereto.

[2] An LLLT acting as a "lay representative authorized by administrative agencies or tribunals" under GR 24(b)(3) would not be acting pursuant to the authority of his or her LLLT license in that context, since such representation would be beyond the scope of LLLT practice authorized by APR 28F. Should a LLLT engage in conduct as a lay advocate that would otherwise directly violate a Title 3 obligation—for example, by knowingly making a false statement of fact to an administrative tribunal—such conduct may violate the requirements of other rules. See, e.g., Rule 8.4(c) (prohibiting conduct involving dishonesty, fraud, deceit, and misrepresentation) and Rule 8.4(d) (prohibiting conduct prejudicial to the administration of justice).

[3] Certain Title 3 provisions, such as Lawyer as Witness in Rule 3.7 and the Special Responsibilities of a Prosecutor in Rule 3.8, do not apply to LLLTs at all. In these instances, the corresponding LLLT RPC has been reserved. Rules 3.6 and 3.9 represent ethical issues that would rarely if ever arise in the context of a LLLT's limited-scope representation. Accordingly, these provisions have been reserved as well, though guidance is available in the corresponding Lawyer RPC in the event that such an ethical dilemma does arise in a LLLT representation.

RULE 3.2 [Reserved]

Comment/Explanatory Note

[1] See Comments [1] & [2] to Rule 3.1.

RULE 3.3 [Reserved]

Comment/Explanatory Note

[1] See Comments [1] & [2] to Rule 3.1.

RULE 3.4 [Reserved]

Comment/Explanatory Note

[1] See Comments [1] & [2] to Rule 3.1.

RULE 3.5 [Reserved]

Comment/Explanatory Note

[1] See Comment [1] to Rule 3.1.

RULE 3.6 [Reserved]

Comment/Explanatory Note

[1] See Comment [3] to Rule 3.1.

RULE 3.7 [Reserved]

Comment/Explanatory Note

[1] See Comment [3] to Rule 3.1.

RULE 3.8 [Reserved]

Comment/Explanatory Note

[1] See Comment [3] to Rule 3.1.

RULE 3.9 [Reserved]

Comment/Explanatory Note

[1] See Comment [3] to Rule 3.1.

Title 6. Public Service

RPC 6.1 Pro Bono Publico Service

Every LLLT has a professional responsibility to assist in the provision of legal services to those unable to pay. An LLLT should aspire to render at least thirty (30) hours of pro bono publico service per year. In fulfilling this responsibility, the LLLTs should:

(a) provide legal services without fee or expectation of fee to:
(1) persons of limited means or
(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide pro bono publico service through
(1) Reserved.
(2) delivery of legal services at a substantially reduced fee to persons of limited means; or
(3) participation in activities for improving the law, the legal system or the legal profession.

Pro bono publico service may be reported annually on a form provided by the WSBA. An LLLT rendering a minimum of fifty (50) hours of pro bono publico service shall receive commendation for such service from the Limited License Legal Technician Board.

RPC 6.2 Accepting Appointments

Reserved.

RPC 6.3 Membership in Legal Services Organization

An LLLT may serve as a director, officer or member of a legal services organization, apart from the firm in which the LLLT practices, notwithstanding that the organization serves persons having interests adverse to a client of the LLLT. The LLLT shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the LLLT's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the LLLT.

RPC 6.4 Law Reform Activities Affecting Client Interests

An LLLT may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the LLLT . When the LLLT knows that the interests of a client may be materially benefited by a decision in which the LLLT participates, the LLLT shall disclose that fact but need not identify the client.

Title 8. Maintaining the Integrity of the Profession

RPC 8.1 Limited Licensure and Disciplinary Matters

An applicant for limited licensure, or an LLLT in connection with a limited licensure or reinstatement application, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from a licensing or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

RPC 8.2 Judicial and Legal Officials

(a) An LLLT shall not make a statement that the LLLT knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications, integrity, or record of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) [Reserved.]

RPC 8.3 Reporting Professional Misconduct

(a) An LLLT who knows that another LLLT or a lawyer has committed a violation of the applicable Rules of Professional Conduct that raises a substantial question as to that LLLT's or that lawyer's honesty, trustworthiness or fitness as an LLLT or lawyer in other respects, should inform the appropriate professional authority.

(b) An LLLT who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office should inform the appropriate authority.

(c) This Rule does not permit an LLLT to report the professional misconduct of another LLLT, a lawyer, or a judge to the appropriate authority if doing so would require the LLLT to disclose information otherwise protected by Rule 1.6.

RPC 8.4 Misconduct

It is professional misconduct for an LLLT to:

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

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

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the LLLT Rules of Professional Conduct or other law;

(f) knowingly assist

(1) a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law or

(2) a lawyer in conduct that is a violation of the lawyer Rules of Professional Conduct or other law;

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

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

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as an LLLT, 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;

(j) willfully disobey or violate a 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;

(k) violate his or her oath as an LLLT;

(l) violate a duty or sanction imposed by or under the LLLT Rules for Enforcement of Conduct (REC) in connection with a disciplinary matter; including, but not limited to, the duties catalogued at REC 1.5;

(m) [Reserved];

(n) engage in conduct demonstrating unfitness to practice law; or

(o) violate or attempt to violate Admission and Practice Rule (APR) 28, Appendix APR 28, or any related regulations.

RPC 8.5 Disciplinary Authority

(a) Disciplinary Authority. An LLLT admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the LLLT's conduct occurs.

(b) [Reserved].

WASHINGTON STATE BAR ASSOCIATION

5/9/2014

Rules of Professional Conduct for Limited License Legal Technicians (LLLT RPC)

Fundamental Principles of Professional Conduct for an LLLT [Board Approved]

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. LLLTs, within the scope of their limited licenses to deliver legal services, also play a significant role. The fulfillment of the LLLTs' role requires an understanding of their relationship with and function in our legal system. A consequent obligation of LLLTs is to maintain the highest standards of ethical conduct.

In fulfilling professional responsibilities, an LLLT may provide services consistent with the authorized scope of his or her practice that require the performance of many difficult tasks. Not every situation that an LLLT may encounter can be foreseen, but fundamental ethical principles are always present as guidelines.

The Rules of Professional Conduct for LLLTs (LLLT RPC) point the way for the LLLT who aspires to the highest level of ethical conduct, and provide standards by which to judge the transgressor. Each LLLT must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession, including LLLTs and the society that LLLTs serve, that should provide to an LLLT the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction.

Comment

Preamble and Scope

Preamble: An LLLT's Responsibilities [Board Approved]

[1] An LLLT is authorized to provide limited legal services that lie within the scope of the practice that the LLLT is licensed to undertake. Within that scope, an LLLT is a member of the legal profession, is a representative of clients and has a special responsibility for the quality of justice.

[2] As a representative of clients within a limited scope, an LLLT performs various functions. As advisor, an LLLT provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As an evaluator, an LLLT acts by examining a client's legal affairs and reporting about them to the client or to others. While an LLLT is not authorized to act as advocate or negotiator, an LLLT conscientiously acts in the best interest of the client, and seeks a

result that is advantageous to the client but consistent with the requirements of honest dealings with others.

[3] In addition to these limited representational functions, an LLLT may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to LLLTs who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to LLLTs who are not active in the practice of law or to practicing LLLTs even when they are acting in a nonprofessional capacity. For example, an LLLT who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions an LLLT should be competent, prompt and diligent. An LLLT should maintain communication with a client concerning the representation. An LLLT should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct for LLLTs.

[5] An LLLT's conduct should conform to the requirements of the law, both in professional service to clients and in the LLLT's business and personal affairs. An LLLT should use the law's procedures only for legitimate purposes and not to harass or intimidate others. An LLLT should demonstrate respect for the legal system and for those who serve it, including judges, lawyers, other LLLTs and public officials.

[6] As a member of the legal profession, an LLLT should seek to improve access to the legal system, the administration of justice and the quality of service rendered by the legal profession, and should also seek to strengthen legal education. An LLLT should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all LLLTs should devote professional time and resources to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. An LLLT should aid the legal profession in pursuing these objectives and should help the legal profession regulate itself in the public interest.

[7] Many of an LLLT's professional responsibilities are prescribed in the Rules of Professional Conduct for LLLTs, as well as substantive and procedural law to the extent applicable to LLLTs. However, an LLLT is also guided by personal conscience and the approbation of lawyers, clients and professional peers. Within the authorized scope of an LLLT's practice, the LLLT should strive to attain the highest level of skill and to exemplify the legal profession's ideals of public service.

[8] An LLLT's responsibilities as a representative of clients within a limited scope and as a public citizen are usually harmonious. Thus, an LLLT can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] Notwithstanding the limited scope of authority of an LLLT, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between an LLLT's responsibilities to clients, to the legal system and to the LLLT's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct for LLLTs often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues

of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that LLLTs meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every LLLT is responsible for observance of the Rules of Professional Conduct for LLLTs. An LLLT should also aid in securing their observance by other LLLTs. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] LLLTs are obliged to understand their relationship to our legal system. The Rules of Professional Conduct for LLLTs, when properly applied, serve to define that relationship.

Comment

Note to [3] – Reserved pending decisions regarding this role.
Note to [4] – A comment may be needed to Rule 1.6 to explain its scope.
Note to [12] – Query whether the Preamble and Scope for the Lawyer RPC should be amended to apply the notion of securing observance of the rules to both lawyers and LLLTs.

Scope [Board Approved]

[14] The Rules of Professional Conduct for LLLTs are rules of reason. They should be interpreted with reference to the purposes of legal representation (within the LLLT's authorized scope of practice) and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may" are permissive and define areas under the Rules in which the LLLT has discretion to exercise professional judgment. No disciplinary action should be taken when the LLLT chooses not to act or acts within the bounds of such discretion. Other rules define the nature of relationships between the LLLT and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define an LLLT's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a context in which the LLLT's role has been or will be shaped. That context includes court rules relating to matters of licensure, laws defining specific authorization and obligations of LLLTs and substantive and procedural law in general. The Comments are sometimes used to alert LLLTs to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by lawyer, client, peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform an LLLT, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law within the authorized scope of an LLLT's practice.

[17] For purposes of determining the LLLT's authority and responsibility, principles of substantive law external to these Rules determine whether a client-LLLT relationship exists. Most of the duties flowing from the client-LLLT relationship attach only after the client-LLLT relationship is formed. But there are some duties, such as that of confidentiality under Rule 1.6, that may attach when the LLLT agrees to consider whether a client-LLLT relationship shall be established. See Lawyer RPC 1.18 and Washington Comment [11] thereto. Whether a client-LLLT relationship exists for any specific purpose can depend on the circumstances and is a question of fact.

[18] [RESERVED.]

[19] 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 LLLT'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 LLLT often has to act upon uncertain or incomplete evidence 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.

[20] Violation of a Rule should not itself give rise to a cause of action against an LLLT nor should it create any presumption in such a case that a legal duty has been breached. The Rules are designed to provide guidance to LLLTs and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. The fact that a Rule is a just basis for an LLLT's self-assessment, or for sanctioning an LLLT under the administration of a disciplinary authority, does not imply that a party who is adverse to an LLLT's client in any proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by LLLTs, an LLLT's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] 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.

Additional Washington Comments (22 - 23)

[22] Nothing in these Rules is intended to change existing Washington law on the use of the Rules of Professional Conduct in a civil action, or to suggest how that law applies to the obligations of LLLTs. See *Hizey v. Carpenter*, 119 Wn.2d 251, 830 P.2d 646 (1992).

[23] The Rules of Professional Conduct for LLLTs are modeled on Washington's Rules of Professional Conduct for lawyers (Lawyer RPC). The structure of these Rules, like the Lawyer RPC, generally

parallels the structure of the American Bar Association's Model Rules of Professional Conduct. When a provision that appears in the Lawyer RPC is deleted for purposes of these Rules, the deletion is signaled by the phrase "Reserved." The omission of a rule that appears in the Lawyer RPC does not necessarily mean that an LLLT is permitted to do the act; the conduct may be regulated under APR 28 or another rule. Should a situation arise where the parallel rule in the Lawyer RPC is reserved (which is signaled by the phrase "Reserved; also reserved in Lawyer RPC" in these Rules), the LLLT should look to the relevant Lawyer RPC and comments to that rule for guidance. As used herein, the term "Model Rule(s)" refers to the 2004 Edition of the American Bar Association's Model Rules of Professional Conduct.

Comment

Note to [14] – This should be revisited once decisions are made concerning comments.
Note to [17] – The Subcommittee believes that comments to Rule 1.18 should be included to aid in understanding the formation of a client-LLLT relationship. (If such comments are included in the LLLT RPC, then the reference to Lawyer RPC 1.18 in [17] should be revised.)
Note to [21] – Reserved pending decisions regarding comments.
Note to [23] – Once a decision is made regarding comments, add a discussion of the role of comments to these the LLLT RPC and of the role of comments to the Lawyer RPC.

LLLT RPC 1.0 Terminology

Comment

Title 1. Client-LLLT Relationship

LLLT RPC 1.1 Competence [Board Approved]

An LLLT shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT **RPC 1.2 Scope of Representation and Allocation of Authority between Client and LLLT [Board Approved]**

- **(a)** Subject to paragraphs (c), (d) and (g), an LLLT shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. An LLLT may take such action on behalf of the client as is impliedly authorized to carry out the representation.
- **(b)** An LLLT's representation of a client, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- **(c)** An LLLT must limit the scope of the representation and provide disclosures informing a potential client as required by these rules.
- **(d)** An LLLT shall not counsel a client to engage, or assist a client, in conduct that the LLLT knows is criminal or fraudulent.
- **(e)** [Reserved; also reserved in Lawyer RPC.]

(f) An LLLT shall not purport to act as an LLLT for any person or organization if the LLLT knows or reasonably should know that the LLLT is acting without the authority of that person or organization and beyond his or her authorized scope of practice, unless the LLLT is authorized or required to so act by law or a court order.

(g) Nothing in this rule expands an LLLT's authorized scope of practice provided in APR 28.

Comment

[1] Negotiation on behalf of a client and representation in court are beyond the authorized scope of an LLLT's practice. Accordingly, paragraph (a) was modified from the Lawyer RPC to exclude references to settlements and criminal cases, and paragraph (d) was modified from the Lawyer RPC to exclude (and therefore prohibit) an LLLT from discussing with a client the legal consequences of any proposed criminal or fraudulent conduct and assisting a client in determining the validity, scope, meaning or application of the law with respect to any such conduct. In circumstances where a client has engaged or may engage in conduct that the LLLT knows is criminal or fraudulent, the LLLT shall not provide services related to such conduct and shall inform the client that the client should seek the services of a lawyer.

LLLT RPC 1.3 Diligence [Board Approved]

An LLLT shall act with reasonable diligence and promptness in representing a client.

Comment

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT RPC 1.4 Communication [Board Approved]

(a) An LLLT shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the LLLT's conduct when the LLLT knows that the client expects assistance not permitted by the LLLT RPC or other law.

(b) An LLLT shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT RPC 1.5 Fees [Board Approved]

(a) An LLLT shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the LLLT;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the LLLT or LLLTs performing the services;

(8) whether the fee is fixed or hourly; and

(9) the terms of the fee agreement between the LLLT and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the LLLT's billing practices.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, except when the LLLT will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. Upon the request of the client in any matter, the LLLT shall communicate to the client in writing the basis or rate of the fee.

(c) [Reserved.]

(d) An LLLT shall not enter into an arrangement for, charge, or collect any fee, the payment or amount of which is contingent upon the outcome of the case.

(e) An LLLT may not enter into an arrangement for the division of a fee with another LLLT or lawyer who is not in the same firm as the LLLT.

(f) Fees and expenses paid in advance of performance of services shall comply with Rule 1.15A, subject to the following exceptions:

(1) [Reserved.]

(2) An LLLT may charge a flat fee for specified legal services, which constitutes complete payment for those services and is paid in whole or in part in advance of the LLLT providing the services. If agreed to in advance in a writing signed by the client, a flat fee is the LLLT's property on receipt, in which case the fee shall not be deposited into a trust account under Rule 1.15A. The written fee agreement shall, in a manner that can easily be understood by the client, include the following: (i) the scope of the services to be provided; (ii) the total amount of the fee and the terms of payment; (iii) that the fee is the LLLT's property immediately on receipt and will not be placed into a trust account; (iv) that the fee agreement does not alter the client's right to terminate the client-LLLT relationship; and (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed. A statement in substantially the following form satisfies this requirement:

[LLLT/law firm] agrees to provide, for a flat fee of $_____, the following services: _____. The flat fee shall be paid as follows: _____. Upon [LLLT's/law firm's] receipt of all or any portion of the flat fee, the funds are the property of [LLLT/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-LLLT relationship. In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee.

(3) In the event of a dispute relating to a fee under paragraph (f)(1) or (f)(2) of this Rule, the LLLT shall take reasonable and prompt action to resolve the dispute.

Comment

[1] An LLLT, unlike a lawyer, is prohibited from entering into a contingent fee or retainer agreement with a client. Lawyer RPC 1.5 (c) and 1.5(f)(1) discuss contingent fees and retainers respectively. Accordingly paragraphs (c) and (f)(1) are reserved under this Rule. Reservation of such paragraphs, however, is not intended to prohibit an LLLT from entering into an arrangement for the sharing of a fee, including a contingent fee and/or retainer, with a lawyer, with whom an LLLT has entered into a for-profit business relationship under Rule 5.X.

LLLT RPC 1.6 Confidentiality of Information [Board Approved]

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

(b) An LLLT to the extent the LLLT reasonably believes necessary:

(1) shall reveal information relating to the representation of a client to prevent reasonably certain death or substantial bodily harm;

(2) may reveal information relating to the representation of a client to prevent the client from committing a crime;

(3) may reveal information relating to the representation of a client to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the LLLT's services;

(4) may reveal information relating to the representation of a client to secure legal advice about the LLLT's compliance with these Rules;

(5) may reveal information relating to the representation of a client to establish a claim or defense on behalf of the LLLT in a controversy between the LLLT and the client, to establish a defense to a criminal charge or civil claim against the LLLT based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the LLLT's representation of the client;

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

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

Comment

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT RPC 1.7 Conflict of Interest: Current Clients

Comment

LLLT RPC 1.8 Conflict of Interest: Current Clients: Specific Rules

Comment

LLLT RPC 1.9 Duties to Former Clients

Comment

LLLT RPC 1.10 Imputation of Conflicts of Interest: General Rule

Comment

LLLT RPC 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

Comment

LLLT RPC 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

Comment

LLLT RPC 1.13 Organization as Client [Board Approved]

[Reserved.]

Comment

[1] At present, the authorized scope of LLLT practice does not allow for representation of an organization. If the authorized scope is expanded to contemplate that kind of representation, this rule will be addressed.

LLLT RPC 1.14 Client With Diminished Capacity [Board Approved]

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the LLLT shall, as far as reasonably possible, maintain a normal client-LLLT relationship with the client.

(b) When the LLLT reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the LLLT may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client. In taking any protective action under this rule, the LLLT shall not exceed the LLLT's authorized scope of practice.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the LLLT is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Comment

[1] The rules concerning clients with diminished capacity apply to LLLTs. Protective action taken by an LLLT under subsection (b) of this rule may include obtaining the services of a lawyer. An LLLT should proceed cautiously when independently undertaking protective action on behalf of a person with diminished capacity, and the LLLT should carefully evaluate and weigh all the circumstances and options. For a discussion of potential protective actions and relevant considerations, *see* Lawyer RPC 1.14, Comments [5] - [7].

LLLT RPC 1.15A Safeguarding Property [Board Approved]

(a) This Rule applies to property of clients or third persons in an LLLT's possession in connection with a representation.

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

(c) An LLLT must hold property of clients and third persons separate from the LLLT's own property.

(1) An LLLT must deposit and hold in a trust account funds subject to this Rule pursuant to paragraph (h) of this Rule.

(2) Except as provided in Rule 1.5(f), and subject to the requirements of paragraph (h) of this Rule, an LLLT shall deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the LLLT only as fees are earned or expenses incurred.

(3) An LLLT must identify, label and appropriately safeguard any property of clients or third persons other than funds. The LLLT 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 LLLT must preserve the records for seven years after return of the property.

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

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

(f) Except as stated in this Rule, an LLLT 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 LLLT possesses property in which two or more persons (one of which may be the lawyer) claim interests, the LLLT must maintain the property in trust until the dispute is resolved. The LLLT must promptly distribute all undisputed portions of the property. The LLLT must take reasonable action to resolve the dispute.

(h) An LLLT must comply with the following for all trust accounts:

(1) No funds belonging to the LLLT 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 LLLT must be deposited and retained in a trust account, but any portion belonging to the LLLT must be withdrawn at the earliest reasonable time; or

(iii) funds necessary to restore appropriate balances.

(2) An LLLT must keep complete records as required by Rule 1.15B.

(3) An LLLT may withdraw funds when necessary to pay client costs. The LLLT 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 electronic transfer.

(6) Trust account records must be reconciled as often as bank statements are generated or at least quarterly. The LLLT 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 1.15B(a)(2).

(7) An LLLT must not disburse funds from a trust account until deposits have cleared the banking process and been collected, unless the LLLT and the bank have a written agreement by which the LLLT 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.

(9) Only an LLLT admitted to practice or a lawyer admitted to practice law who is associated in a practice with the LLLT may be an authorized signatory on the account.

(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 and meet the requirements of ELLLTC 15.7(d) and ELLLTC 15.7(e). In the exercise of ordinary prudence, an LLLT may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under

ELLLTC 15.7(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, an LLLT shall apply the following criteria:

(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 Limited License Legal Technicians Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ELLLTC 15.4 and ELLLTC 15.7(e).

(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 two types of non-IOLTA trust accounts, 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 LLLT 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 LLLT's 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) The provisions of paragraph (i) do not relieve an LLLT or law firm from any obligation imposed by these Rules or the ELLLTC.

Comment

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the Rule consistent with the Lawyer RPC. The Board will need to decide whether to add the comments from the Lawyer RPC before finalizing the IOLTA rules. Specifically, the Board will need to consider the applicability of the Lawyer RPC comments regarding comparability and no earnings credit. This Rule presupposes that LLLTs will have the same rules for enforcement of conduct

as currently exist for lawyers in the Rules for Enforcement of Lawyer Conduct (ELC). References to ELLLTC should be altered to reflect any decisions made regarding the structure of rules for enforcement of LLLT conduct.

LLLT RPC 1.15B Required Trust Account Records [Board Approved]

(d) An LLLT must maintain current trust account records. They may be in electronic or manual form and must be retained for at least seven 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 bank and 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.

(e) Upon any change in the LLLT's practice affecting the trust account, including dissolution or sale of a law firm or other entity, or suspension or other change in membership status, the LLLT must make appropriate arrangements for the maintenance of the records specified in this Rule.

Comment

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC. The Board will need to decide whether to add the comments from the Lawyer RPC before finalizing the IOLTA rules. Specifically, the Board

will need to consider the applicability of the Lawyer RPC comments regarding comparability and no earnings credit.

LLLT RPC 1.16 Declining or Terminating Representation [Board Approved]

(a) An LLLT shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of these Rules or other law;

(2) the LLLT's physical or mental condition materially impairs the LLLT's ability to represent the client; or

(3) the LLLT is discharged.

(b) An LLLT may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the LLLT's services that the LLLT reasonably believes is criminal or fraudulent;

(3) the client has used the LLLT's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the LLLT considers repugnant or with which the LLLT has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the LLLT regarding the LLLT's services and has been given reasonable warning that the LLLT will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the LLLT or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) [Reserved.]

(d) Upon termination of representation, an LLLT shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The LLLT may retain papers relating to the client to the extent permitted by other law.

Comment

[1] This Rule was adapted from the Lawyer RPC with minor modifications reflecting that LLLTs are not authorized to represent clients in court or to advocate for clients and that, accordingly, references to litigation or proceedings before a tribunal do not apply.

LLLT RPC 1.17 Sale of Law Practice [Board Approved]

An LLLT, firm of LLLTs, or a law firm with which one or more LLLTs are associated may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) [Reserved; also reserved in Lawyer RPC.]

(b) The entire practice, or the entire area of practice, is sold to one or more LLLTs, LLLT firms or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and
(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The legal fees and LLLT fees charged clients shall not be increased by reason of the sale.

Comment

[1] This Rule was adapted from the Lawyer RPC with minor modifications reflecting that an LLLT may practice in the same firm with one or more lawyers.

LLLT RPC 1.18 Duties to Prospective Client

Comment

Title 2. Counselor

LLLT RPC 2.1 Advisor [Board Approved]

In representing a client, an LLLT shall exercise independent professional judgment and render candid advice. In rendering advice, an LLLT may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Comment

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT RPC 2.2 [DELETED. (Also deleted in Lawyer RPC.)] [Board Approved]

Comment

LLLT RPC 2.3 [RESERVED.] [Board Approved]

Comment

LLLT RPC 2.4 LLLT Serving as Third-Party Neutral [Board Approved]

(a) An LLLT serves as a third-party neutral when the LLLT assists two or more persons who are not clients of the LLLT to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the LLLT to assist the parties to resolve the matter.

(b) An LLLT serving as a third-party neutral shall inform unrepresented parties that the LLLT is not representing them. When the LLLT knows or reasonably should know that a party does not understand the LLLT's role in the matter, the LLLT shall explain the difference between the LLLT's role as a third-party neutral and an LLLT's role as one who represents a client.

Comment

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC. Some mention of Comments pertaining to lawyers, and whether they apply to LLLTs, may be needed.

Title 3. Advocate

LLLT RPC 3.1

Comment

Title 4. Transactions with Persons Other than Clients

LLLT RPC 4.1

Comment

Title 5. Law Firms and Associations

LLLT RPC 5.1 Responsibilities of Partners, Managers, and Supervisory LLLTs [Board Approved]

(a) An LLLT partner, and an LLLT who individually or together with other LLLTs possesses comparable managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all LLLTs in the firm conform to the LLLT RPC.

(b) An LLLT having direct supervisory authority over another LLLT shall make reasonable efforts to ensure that the other LLLT conforms to the LLLT RPC.

(c) An LLLT shall be responsible for another LLLT's violation of the LLLT RPC if:

(1) the LLLT orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the LLLT is a partner or has comparable managerial authority in the firm in which the other LLLT practices, or has direct supervisory authority over the other LLLT, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comments

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT RPC 5.2 Responsibilities of a Subordinate LLLT [Board Approved]

(a) An LLLT is bound by the LLLT RPC notwithstanding that the LLLT acted at the direction of another person.

(b) A subordinate LLLT does not violate the LLLT RPC if that LLLT acts in accordance with a supervisory LLLT or a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Comments

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT RPC 5.3 Responsibilities Regarding Non-LLLT Assistants [Board Approved]

With respect to a non-LLLT employed or retained by or associated with an LLLT:

(a) an LLLT partner, and an LLLT who individually or together with other LLLTs possesses comparable managerial authority shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the LLLT;

(b) an LLLT having direct supervisory authority over the non-LLLT shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the LLLT; and

(c) an LLLT shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by an LLLT if:

(1) the LLLT orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the LLLT is a partner or has comparable managerial authority in the firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comments

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT RPC 5.4 Professional Independence of an LLLT [Board Approved]

(a) An LLLT or LLLT firm shall not share legal fees with anyone who is a non-LLLT, except that:

(1) an agreement by an LLLT with the LLLT's firm, partner, or LLLT associate may provide for the payment of money, over a reasonable period of time after the LLLT's death, to the LLLT's estate or to one or more specified persons;

(2) an LLLT who purchases the practice of a deceased, disabled, or disappeared LLLT may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that LLLT the agreed-upon purchase price;

(3) an LLLT or LLLT firm may include non-LLLT employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
(4) [Reserved; also reserved in Lawyer RPC.]
(5) an LLLT authorized to complete unfinished legal business of a deceased LLLT may pay to the estate or other representative of the deceased LLLT that proportion of the total compensation that fairly represents the services rendered by the deceased LLLT.

(b) An LLLT shall not form a partnership with a non-LLLT if any of the activities of the partnership consist of the practice of law.

(c) An LLLT shall not permit a person who recommends, employs, or pays the LLLT to render legal services for another to direct or regulate the LLLT's professional judgment in rendering such legal services.

(d) An LLLT shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
(1) a non-LLLT owns any interest therein, except that a fiduciary representative of the estate of an LLLT may hold the stock or interest of the LLLT for a reasonable time during administration;
(2) a non-LLLT is a corporate director or officer (other than as secretary or treasurer) thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
(3) a non-LLLT has the right to direct or control the professional judgment of an LLLT.

Comments

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC. Verify whether to revise 5.4(c) by adding "except when a lawyer or other LLLT would be authorized or required by law to direct or regulate the LLLT's services" at the end thereof.

LLLT RPC 5.5 Unauthorized Practice of Law [Board Approved]

(a) An LLLT shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) [Reserved.]

(c) [Reserved.]

(d) [Reserved.]

Comment

[1] Lawyer RPC 5.5(a) expresses the basic prohibition on a legal practitioner practicing law in a jurisdiction where that individual is not specifically licensed or otherwise authorized to practice law. It reflects the general notion (enforced through criminal-legal prohibitions) that legal services may only be provided by those licensed to do so. This limitation on the ability to practice law is designed to protect the public against the rendition of legal services by unqualified persons. See Comment [2] to Lawyer RPC 5.5.

As applied to LLLTs, this principle should be the same. An actively licensed LLLT should practice law as an LLLT only in a jurisdiction where he or she is licensed to do so, i.e., Washington State. An LLLT

must not practice law in a jurisdiction where he or she is not authorized to do so. Unless and until other jurisdictions authorize Washington-licensed LLLTs to practice law, it will be unethical under this Rule for the LLLT to provide or attempt to provide legal services extraterritorially. Relatedly, it is unethical to assist anyone in activities that constitute the unauthorized practice of law in any jurisdiction.

[2] Lawyer RPC 5.5(b) through (d) define the circumstances in which lawyers can practice in Washington despite being unlicensed here. For example, lawyers actively licensed elsewhere may provide services on a temporary basis in Washington in association with a lawyer admitted to practice here or when the lawyer's activities "arise out of or are reasonably related to the lawyer's practice in his or her home jurisdiction." These provisions also recognize that certain non-Washington-licensed lawyers may practice here on more than a temporary basis (e.g., lawyers providing services authorized by federal law), and otherwise prohibit non-Washington-licensed lawyers from establishing a systematic and continuous presence in Washington for the practice of law.

These provisions are, at this time, unnecessary in the LLLT RPC because there are no limited license programs in other jurisdictions tantamount to Washington's LLLT rules and no need to authorize non-lawyers in other jurisdictions to practice law in Washington, either temporarily or on an ongoing basis. For this reason, it is suggested that paragraphs (b) through (d) be reserved. Should other jurisdictions develop systems for admitting and regulating limited license practitioners that ensure those individuals are qualified and that consumers of legal services are adequately protected, multijurisdictional practice provisions analogous to paragraphs (b) through (d) of the Lawyer RPC could then be considered.

LLLT RPC 5.6 Restrictions on Right to Practice [Board Approved]
An LLLT shall not participate in offering or making:

- **(a)** a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of an LLLT or lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- **(b)** an agreement in which a restriction on the LLLT or lawyer's right to practice is part of the settlement of a client controversy.

Comments
[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT RPC 5.7 Responsibilities Regarding Law-Related Services [Board Approved]

- **(a)** An LLLT shall be subject to the LLLT RPC with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:
  - (1) by the LLLT in circumstances that are not distinct from the LLLT's provision of legal services to clients; or
  - (2) in other circumstances by an entity controlled by the LLLT individually or with others if the LLLT fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-LLLT relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by anyone except an LLLT or a lawyer.

Comments

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC.

LLLT RPC 5.8 Misconduct Involving Disbarred, Suspended, Resigned, and Inactive LLLTs and Lawyers [Board Approved]

(a) An LLLT shall not engage in the practice of law while not on active status.

An LLLT shall not engage in any of the following with an individual who is a disbarred or suspended LLLT or lawyer or who has resigned in lieu of disbarment or discipline:

(1) practice law with or in cooperation with such an individual;

(2) maintain an office for the practice of law in a room or office occupied or used in whole or in part by such an individual;

(3) permit such an individual to use the LLLT's name for the practice of law;

(4) practice law for or on behalf of such an individual; or

(5) practice law under any arrangement or understanding for division of fees or compensation of any kind with such an individual.

Comment

[1] This Rule was adapted from the Lawyer RPC with no substantive changes. Minor modifications add clarification and make the rules consistent with the Lawyer RPC. This Rule presupposes that LLLTs will have the same disciplinary measures and categories of status with the Bar Association (or another regulating body) as currently exist for lawyers. This Rule should be altered to reflect any decisions made regarding the structure of regulation for LLLTs in regards to status and discipline.

LLLT RPC 5.X Business Structures Involving LLLT and Lawyer Ownership [Board Approved]

(a) Notwithstanding the provisions of Rule 5.4, an LLLT may:

(1) subject to the requirements of Rule 1.5(e), share fees with a lawyer;

(2) form a partnership with a lawyer where the activities of the partnership consist of the practice of law, or

(3) practice with or in the form of a professional corporation, association, or other business structure authorized to practice law for a profit in which a lawyer owns an interest or serves as a corporate director or officer or occupies a position of similar responsibility.

(b) An LLLT and a lawyer may practice in a jointly owned firm or other business structure authorized by paragraph (a) of this rule only if:

(1) LLLTs do not direct or regulate any lawyer's professional judgment in rendering legal services;

(2) LLLTs have no direct supervisory authority over any lawyer;

(3) LLLTs do not possess a majority ownership interest or exercise controlling managerial authority in the firm;

(4) lawyers with managerial authority in the firm expressly undertake responsibility for the conduct of LLLT partners or owners to the same extent they are responsible for the conduct of lawyers in the firm under Lawyer RPC 5.1.

Comment

[1] This Rule codifies the proposition that LLLTs may enter into fee-sharing arrangements and for-profit business relationships with lawyers. It is designed as an exception to the general prohibition stated in Rule 5.4 that LLLTs may not share fees or enter into business relationships with individuals other than LLLTs. This approach represents an alternative to revising Rules 5.1 through 5.4 directly, leaving it clear in those rules what an LLLT's responsibilities are with respect to other LLLTs and individuals who are neither LLLTs nor lawyers.

[2] In addition to expressly authorizing fee-sharing and business structures between LLLTs and lawyers in paragraph (a), paragraph (b) of the Rule sets forth limitations on the role of LLLTs in jointly owned firms, specifying that regardless of an LLLT's ownership interest in such a firm, the business may not be structured in a way that permits LLLTs directly or indirectly to supervise lawyers or to otherwise direct or regulate a lawyer's independent professional judgment. This includes a limitation on LLLTs possessing a majority ownership interest or controlling managerial authority in a jointly owned firm, a structure that could result indirectly in non-lawyer decision-making affecting the professional independence of lawyers. Lawyer managers, by contrast, will be required to undertake responsibility for a firm's LLLT owners by expressly assuming responsibility for their conduct to the same extent as they are responsible for the conduct of firm lawyers.

For this approach to be effective, it will require counterpart amendments to Title 5 of the Lawyer RPC to authorize lawyers to share fees and enter into business relationships with LLLTs.

Title 6. Public Service

LLLT RPC 6.1 Pro Bono Publico Service

Comments

LLLT RPC 6.2 Accepting Appointments

Comments

LLLT RPC 6.3 Membership in Legal Services Organization

Comments

LLLT RPC 6.4 Law Reform Activities Affecting Client Interests

Comments

LLLT RPC 6.5 Nonprofit and Court-Annexed Limited Legal Service Programs

Comments

Title 7. Information about Legal Services

LLLT RPC 7.1 Communications Concerning a Lawyer's Services

Comments

LLLT RPC 7.2 Advertising

Comments

LLLT RPC 7.3 Direct Contact with Prospective Clients

Comments

LLLT RPC 7.4 Communication of Fields of Practice and Specialization

Comments

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Comments

LLLT RPC 7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges

Comments

Title 8. Maintaining the Integrity of the Profession

LLLT RPC 8.1 Bar Admission and Disciplinary Matters

Comments

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Comments

LLLT RPC 8.3 Reporting Professional Misconduct

Comments

LLLT RPC 8.4 Misconduct

Comments

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Comments

Appendix

Guidelines for Applying LLLT RPC 3.6

I. Criminal

Comments

II. Civil

Comments

Memorandum

To: LLLT Board

CC: Bobby Henry; Jean McElroy

From: Thea Jennings, LLLT Program Lead

Date: May 9, 2014

Re: Disciplinary Rules for the LLLT Program

As we develop the regulatory framework for the LLLT Program, we must also develop the procedural rules for LLLT discipline. APR 28E(3)(a). In the lawyer discipline system, the Rules for Enforcement of Lawyer Conduct (ELC) set forth the procedures for disciplinary matters. Amendments to the ELC went into effect January 1, 2014. The lawyer discipline system is structured as follows:

1. the Office of Disciplinary Counsel (ODC) receives, reviews and investigates grievances, recommends disciplinary action or dismissal, and presents cases at hearings;
2. hearing officers conduct public disciplinary proceedings and other proceedings;
3. the Disciplinary Board reviews disciplinary recommendations and dismissals and reviews hearing decisions and stipulations; and
4. the Supreme Court has exclusive authority over the entire system, conducts appellate review, and orders all suspensions, disbarments, interim suspensions, and reciprocal discipline.

The LPO discipline system is modeled after the lawyer discipline system with a few specific distinctions regarding at what point ODC would become involved and who would oversee disciplinary recommendations and stipulations. See Rules for Enforcement of Limited Practice Officer Conduct. For your review, we have prepared a working draft LLLT Rules for Enforcement of Conduct (REC) that are based on the LPO system and incorporate the amendments to the lawyer rules that went into effect in January 2014. See Appendix A to this Memorandum. The system would be structured as follows:

1. intake would be done by WSBA staff and a Discipline Committee of the Board;
2. matters requiring further investigation or that are ordered to hearing would be handled by ODC;
3. the Discipline Committee would order matters to hearing;
4. the Discipline Committee or the LLLT Board Chair would handle most investigatory matters before a matter is ordered to hearing;
5. the same hearing officers as for lawyer discipline would oversee formal proceedings;
6. the LLLT Board (as opposed to the Disciplinary Board) would hear appeals and approve or deny hearing officer decisions and stipulations; and
7. the Supreme Court would maintain it exclusive authority over the entire system, conduct appellate review, and order all suspensions and revocations.

We are looking for guidance from the Board regarding the best way to structure the LLLT discipline system. The benefits of the current system are that is well established and is set up to safeguard respondent rights and due process. However, the current lawyer and LPO disciplinary system is procedurally complex and may be more than is needed for the LLLT discipline system. An alternative would be to rethink the disciplinary procedural rules to simplify and restructure them. Regardless of any determinations relating the best approach to take, the Board will need to set up trust account rules as set forth in Title 15 to create the regulatory framework for the handling of trust accounts, overdraft notices, and audits and to give the Legal Foundation of Washington the authority to administer distribution of interest on LLLT trust accounts to civil legal aid programs. This does not necessarily need to be in the disciplinary procedural rules.

LIMITED LICENSE LEGAL TECHNICIAN RULES FOR ENFORCEMENT OF CONDUCT (REC)

TITLE 1 – SCOPE, JURISDICTION, AND DEFINITIONS

RULE 1.1 SCOPE OF RULES

These rules govern the procedure by which a limited license legal technician (LLLT) may be subjected to disciplinary sanctions or actions for violation of the Limited License Legal Technician Rules of Professional Conduct (LLLT RPC) adopted by the Washington Supreme Court.

RULE 1.2 DISCIPLINARY AUTHORITY

Any LLLT admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction and these Limited License Legal Technician Rules for Enforcement of Conduct (REC), regardless of where the LLLT's conduct occurs. Disciplinary authority exists regardless of the LLLT's residency or authority to engage in the limited practice of law in this state.

RULE 1.3 DEFINITIONS

Unless the context clearly indicates otherwise, terms used in these rules have the following meanings:

(a) "Association" means the Washington State Bar Association.

(b) "Association counsel" means counsel for the Association other than disciplinary counsel.

(c) "Bar file" means the pleadings, motions, rulings, decisions, and other formal papers filed in a proceeding.

(d) "Board" when used alone means the Limited License Legal Technician Board.

(e) "Board of Governors" means the Board of Governors of the Washington State Bar Association.

(f) "Chair" when used alone means the Chair of the Limited License Legal Technician Board.

(g) "Chief Hearing Officer" means the individual serving under Rule 2.5(e) of the Rules for Enforcement of Lawyer Conduct.

(h) "Clerk" when used alone means the Clerk to the Limited License Legal Technician Board.

(i) "Court" unless otherwise specified, means the Supreme Court of Washington.

(j) "Disciplinary action" means sanctions under rule 13.1 and admonitions under rule 13.5.

(k) "ELC" means the Rules for Enforcement of Lawyer Conduct.

(l) "Final" means no review has been sought in a timely fashion or all appeals have been concluded.

(m) "Grievant" means the person or entity who files a grievance, except for a confidential source under rule 5.2.

(n) "Hearing officer" means the person assigned under rule 10.2(a).

(o) "LLLT" means limited license legal technician.

(p) "Mental or physical incapacity" includes, but is not limited to, insanity, mental illness, senility, or debilitating use of alcohol or drugs.

(q) "Party" means disciplinary counsel or respondent, except in rules 2.3(c) and 2.6(b) "party" also includes a grievant.

(r) "Respondent" means an LLLT against whom a grievance is filed or an LLLT investigated by the Clerk or disciplinary counsel.

(s) "APR" means the Admission and Practice Rules.

(t) "CR" means the Superior Court Civil Rules.

(u) "RAP" means the Rules of Appellate Procedure.

(v) "RPC" means the Rules of Professional Conduct for lawyers.

(u) "LLLT RPC" means the Limited License Legal Technician Rules of Professional Conduct adopted by the Washington Supreme Court.

(v) Words of authority.

(1) "May" means "has discretion to," "has a right to," or "is permitted to".
(2) "Must" means "is required to".
(3) "Should" means recommended but not required, except:
    (A) in rules 2.3(c) and 2.6, "should" has the meaning ascribed to it in the Code of Judicial Conduct; and
    (B) in title 12, "should" has the meaning ascribed to it in the Rules of Appellate Procedure.

RULE 1.4 NO STATUTE OF LIMITIATIONS

No statute of limitation or other time limitation restricts filing a grievance or bringing a proceeding under these rules, but the passage of time since an act of misconduct occurred may be considered in determining what if any action or sanction is warranted.

RULE 1.5 VIOLATION OF DUTIES IMPOSED BY THESE RULES

An LLLT violates LLLT RPC 8.4(*l*) and may be disciplined under these rules for violating duties imposed by these rules, including but not limited to the following duties:

- respond to inquiries or requests about matters under investigation, rule 5.3(f)¬ and (g);
- file an answer to a formal complaint or to an amendment to a formal complaint, rule 10.5;
- cooperate with discovery and comply with hearing orders, rules 10.11(h) and 5.5;
- attend a hearing and bring materials requested by Association counsel, Association staff, and/or disciplinary counsel, rule 10.13(b) and (c);
- respond to subpoenas and comply with orders enforcing subpoenas, rule 10.13(e);
- notify clients and others of inability to act, rule 14.1;
- discontinue practice, rule 14.2;
- file an affidavit of compliance, rule 14.3;
- maintain confidentiality, rule 3.2(e);
- report being disciplined or transferred to disability inactive status in another jurisdiction, rule 9.2(a
- cooperate with an examination of books and records, rule 15.2;
- notify the Association of a trust account overdraft, rule 15.4(d);
- comply with conditions of probation, rule 13.8;
- comply with conditions of a stipulation, rule 9.1;
- pay restitution, rule 13.7; or
- pay costs, rule 5.3(h) or 13.9.

TITLE 2 – ORGANIZATION AND STRUCTURE

RULE 2.1 SUPREME COURT

The Washington Supreme Court has exclusive responsibility in the state to administer the LLLT discipline and disability system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of LLLT discipline and disability. Persons carrying out the functions set forth in these rules act under the Supreme Court's authority.

RULE 2.2 BOARD OF GOVERNORS

(a) Function. The Board of Governors of the Association:

(1) through the Executive Director, provides administrative and managerial support to enable the Office of Disciplinary Counsel and other Association staff and appointees to perform the functions specified by these rules;
(2) makes appointments, removes those appointed, and fills vacancies as provided in these rules; and
(3) performs other functions and takes other actions provided in these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Limitation of Authority. The Board of Governors, officers of the Association, and the Executive Director of the Association have no right or responsibility to direct the investigations, prosecutions, appeals or discretionary decisions of the Clerk or of the Office of Disciplinary Counsel under these rules, or to review hearing officer, Discipline Committee, or Limited License Legal Technician Board decisions or recommendations in specific cases.

(c) Restriction on Advising or Representing Respondents or Grievants. Current and former members of the Board of Governors, Executive Directors, and officers of the Association are subject to the restrictions set forth in rule 2.14.

RULE 2.3 LIMITED LICENSE LEGAL TECHNICIAN BOARD

(a) Function. The Board performs the functions provided under these rules, delegated by the Supreme Court, or necessary and proper to carry out its duties.

(b) Membership.

(1) *Composition*. The Board is composed as set forth in APR 28C(1).
(2) *Voting*. Each member, including the Chair,, whether nonlawyer or lawyer, has one vote. Recused members may not attend or participate in the Board's deliberations on a matter. Board staff may attend Board deliberations, to serve as a resource.
(3) *Quorum*. A majority of the Board members constitutes a quorum. If there is a quorum, the concurrence of a majority of those present and voting constitutes action of the Board, so long as at least seven members vote.
(4) *Leave of Absence While Grievance Is Pending*. If a grievance is filed against a member of the Board, the member shall take a leave of absence until the matter is resolved.

(c) Disqualification.

(1) A Board member should disqualify him or herself from a particular matter in which the member's impartiality might reasonably be questioned, including, but not limited to, instances in which:
    (A) the member has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the matter;

(B) the member previously served as a lawyer or LLLT or was a material witness in the matter in controversy, or a lawyer or LLLT with whom the member practices law serves or has previously served as a lawyer or LLLT concerning the matter, or such lawyer or LLLT is or has been a material witness concerning the matter;

(C) the member knows that, individually or as a fiduciary, the member or the member's spouse or relative residing in the member's household, has an economic interest in the subject matter in controversy or in a party to the matter, or is an officer, director, or trustee of a party or has any other interest that could be substantially affected by the outcome of the matter, unless there is a remittal of disqualification under section (d);

(D) the member or the member's spouse or relative residing in the member's household, or the spouse of such a person:

(i) is a party to the matter, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer or LLLT in the matter;

(iii) is to the member's knowledge likely to be a material witness in the matter;

(E) the member served as a hearing officer for a hearing on the matter, or served on the Discipline Committee that issued an admonition to the LLLT regarding the matter.

(d) Remittal of Disqualification. A member disqualified under subsection (c)(1)(C) or (c)(1)(D) may, instead of withdrawing from consideration of the matter, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the member's participation, all agree in writing or on the record that the member's relationship is immaterial or that the member's economic interest is de minimis, the member is no longer disqualified, and may participate in the matter. If a party is not immediately available, the member may proceed on the assurance of the party's counsel that the party's consent will be subsequently given.

(j) Counsel and Clerk. The Executive Director of the Association may appoint a suitable person or persons to act as counsel and clerk to the Board, to assist the Board and the Discipline Committee in carrying out their functions under these rules.

(k) Restriction on Representing or Advising Respondents or Grievants. Current and former members of the Board are subject to the restrictions set forth in rule 2.14.

RULE 2.4 DISCIPLINE COMMITTEE

(a) Function. The Discipline Committee performs the functions provided under these rules, delegated by the Board or the Chair, or necessary and proper to carry out its duties.

(b) Membership. The Chair appoints a Discipline Committee of three members from among the Board members. The Chair may change appointment of members to the Discipline Committee as necessary for equitable distribution of work or for other reasons. The Chair does not serve on the Discipline Committee.

(c) Discipline Committee Chair. The Chair of the Board designates one member of the Discipline Committee to act as its chair.

(d) Terms of Office. A Board member may serve as a Discipline Committee member as long as the member is on the Board or for other shorter terms as determined by the Chair of the Board to be appropriate.

(e) Meetings. The Discipline Committee meets at times and places determined by the Discipline Committee chair, under the general direction of the Chair of the Board. In the Discipline Committee chair's discretion, the Committee may meet and act through electronic, telephonic, written, or other means of communication. A majority of the Discipline Committee constitutes a quorum. The Discipline Committee can only act upon at least two affirmative votes.

RULE 2.5 HEARING OFFICERS

(a) Function. A hearing officer to whom a case has been assigned for hearing conducts the hearing and performs other functions as provided under these rules.

(b) Qualifications. A hearing officer must be an active hearing officer in the lawyer discipline system as set forth in rule 2.5 of the Rules for Enforcement of Lawyer Conduct (ELC).

(c) Case Assignment. The chief hearing officer under ELC 2.5(e) assigns hearing officers to cases under the procedure of ELC 2.5(f) and has the other duties and authorities as enumerated in ELC 2.5(e)(2).

RULE 2.6 HEARING OFFICER CONDUCT

(a) Conduct of Those on Hearing Officer List. The duties and responsibilities imposed on hearing officers under ELC 2.6 apply to hearing officers for LLLT disciplinary proceedings. Additionally, a person on the hearing officer list should not:

(1) testify voluntarily as a character witness in an LLLT disciplinary proceeding;
(2) serve as an expert witness related to the professional conduct of LLLTs in any proceeding; or
(3) serve as special disciplinary counsel, adjunct investigative counsel, or respondent's counsel in LLLT disciplinary proceedings.

(b) Disqualification.

Hearing officers should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

(1) the hearing officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
(2) the hearing officer previously served as a lawyer or was a material witness in the matter in controversy, or an LLLT or lawyer with whom the hearing officer previously practiced law served during such association as an LLLT or lawyer concerning the matter, or such LLLT or lawyer has been a material witness concerning it;
(3) the hearing officer knows that, individually or as a fiduciary, the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or is an officer, director or trustee of a party or has any other interest that could be substantially affected by the outcome of the proceeding, unless there is a remittal of disqualification;
(4) the hearing officer or the hearing officer's spouse or member of the hearing officer's family residing in the hearing officer's household, or the spouse of such a person:
    (A) is a party to the proceeding, or an officer, director, or trustee of a party;
    (B) is acting as a lawyer in the proceeding;
    (C) is to the hearing officer's knowledge likely to be a material witness in the proceeding.

(c) Remittal of Disqualification. A hearing officer disqualified by the terms of subsections (b)(3) or (4) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the hearing officer's participation, all agree in writing or on the record that the hearing officer's relationship is immaterial or that the hearing officer's economic interest is de minimis, the hearing officer is no longer disqualified and may participate in the proceeding. When a party is not immediately available, the hearing officer may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

(d) Restriction on Advising or Representing Respondents or Grievants. Appointees to the hearing officer list are subject to the restrictions set forth in rule 2.14.

RULE 2.7 CONFLICTS REVIEW OFFICER

(a) Function. In addition to those persons listed in ELC 2.7(a), Conflicts Review Officers under ELC 2.7 review grievances filed against members of the Board. under the same procedure as set forth in ELC 2.7.

RULE 2.8 DISCIPLINARY COUNSEL; SPECIAL DISCIPLINARY COUNSEL

Disciplinary counsel appointed under ELC 2.8, or other designated Association staff who are WSBA members, acts as counsel on all matters under these rules, and performs other duties as required by these rules¬ or the Chief Disciplinary Counsel. Special disciplinary counsel may be appointed by the Executive Director whenever necessary to conduct an individual investigation or proceeding.

RULE 2.9 ADJUNCT DISCIPLINARY COUNSEL

(**a) Function.** An adjunct disciplinary counsel appointed under ELC 2.9 performs the functions set forth in these rules as directed by disciplinary counsel.

(b) Restriction on Representation. Adjunct disciplinary counsel are subject to the restrictions of rule 2.14.

RULE 2.10 REMOVAL OF APPOINTEES

The power granted by these rules to any person, committee, or board to make any appointment includes the power to remove the person appointed whenever that person appears unwilling or unable to perform his or her duties, or for any other cause, and to fill the resulting vacancy.

RULE 2.11 COMPENSATION AND EXPENSES

(a)Compensation and expenses of hearing officers shall be as prescribed in ELC 2.11.

(b)The Association pays expenses incurred by Board members as authorized by resolution of the Board of Governors.

RULE 2.12 COMMUNICATIONS TO THE BOARD PRIVILEGED

Communications to the Board, Discipline Committee, Association, Board of Governors, hearing officer, disciplinary counsel, adjunct investigative counsel, Association staff, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness, or other person providing information.

RULE 2.13 RESPONDENT LIMITED LICENSE LEGAL TECHNICIAN

(a) Right to Representation. A Respondent may be represented by counsel during any stage of an investigation or proceeding under these rules.

(b) Restriction on Charging Fee To Respond to Grievance. A respondent may not seek to charge a grievant a fee or recover costs from a grievant for responding to a grievance unless otherwise permitted by these rules.

(c) Medical and Psychological Records. A respondent must furnish written releases or authorizations to permit disciplinary counsel access to medical, psychiatric, or psychological records as may be relevant to the investigation or proceeding, subject to a motion to the chief hearing officer, or the hearing officer if one has been appointed, to limit the scope of the requested releases or authorizations for good cause shown.

RULE 2.14 RESTRICTIONS ON REPRESENTING OR ADVISING RESPONDENTS OR GRIEVANTS

(a) Current Officeholders. Association officers and Executive Director, Board of Governors members, Board members, and hearing officers, while serving in that capacity, cannot knowingly advise or represent individuals regarding pending or likely disciplinary grievances or proceedings, other than advising a person of the availability of grievance procedures.

(b) Former Officeholders. After leaving office, Association officers and Executive Director, Board of Governors members, Board members, and hearing officers cannot represent individuals in pending disciplinary grievances or proceedings until three years have expired after departure from office.

(c) Other Volunteers. Conflicts Review Officers, Conflicts Review Officers pro tempore, and adjunct disciplinary counsel are subject to the restrictions on advising and representing individuals set forth in this rule only while serving in that capacity.

(d) Appointed Disability Counsel. The prohibition in subsection (b) of this rule on representing individuals after leaving office does not prevent a lawyer from serving as appointed counsel under rule 8.3(d)(3).

TITLE 3 – ACCESS AND NOTICE

RULE 3.1 OPEN MEETINGS AND PUBLIC DISCIPLINARY INFORMATION

(a) Open Meetings. Disciplinary hearings and meetings of the Board are public. Except as otherwise provided in these rules, Supreme Court proceedings are public to the same extent as other Supreme Court proceedings. Deliberations of a hearing officer, the Board, Discipline Committee, or court, and matters made confidential by a protective order, or by other provisions of these rules, are not public.

(b) Public Disciplinary Information. The public has access to the following information subject to these rules:

(1) the record before the Discipline Committee and the order of the Discipline Committee in any matter that the Discipline Committee has ordered to hearing or ordered an admonition be issued;
(2) the record upon distribution to the Discipline Committee or to the Supreme Court in proceedings based on a conviction of a felony, as defined in rule 7.1(a);
(3) the record upon distribution to the Discipline Committee or to the Supreme Court in proceedings under rule 7.2;
(4) a statement of concern to the extent provided under rule 3.4(f);
(5) the record and order upon approval of a stipulation for discipline imposing a sanction or admonition, and the order approving a stipulation to dismissal of a matter previously made public under these rules;
(6) the record before a hearing officer;
(7) the record and order before the Board in any matter reviewed under rule 10.9 or title 11;
(8) the bar file and any exhibits and any Board or Discipline Committee order in any matter ordered to public hearing, or that is deemed ordered to hearing under rule 13.5(a)(2), or any matter in which disciplinary action has been taken, or any proceeding under rules 7.1-7.6;
(9) in any disciplinary matter referred to the Supreme Court, the file, record, briefs, and argument in the case;
(10) an LLLT's voluntary cancellation in lieu of discipline under rule 9.3; and
(11) any sanction or admonition imposed on a respondent
(12) a stipulation to dismissal upon institution of proceedings for failure to comply with the terms of the stipulation.

(c) Regulations. Public access to file materials and proceedings permitted by this rule may be subject to reasonable regulation as to time, place, and manner of access. Certified copies of public bar file documents will be made available at the same rate as certified copies of superior court records. Uncertified copies of public bar file documents will be made available at a rate to be set by the Executive Director of the Association.

RULE 3.2 CONFIDENTIAL DISCIPLINARY INFORMATION

(a) Scope of Confidentiality. All disciplinary information that is not public information as defined in rule 3.1(b) is confidential, and is held by the Board under the authority of the Supreme Court, including but not limited to materials submitted to the Discipline Committee under rule 8.9 or information protected by rule 3.3(b), rule 5.4(b), rule 5.1(c)(3), a protective order under rule 3.2(d), rule 3.2(b), court order, or other applicable law (e.g., medical records, police reports, etc.).

(b) Restriction on Release of Client Information. Notwithstanding any other provision of this title, no information identified or known to the Board to constitute client information that an LLLT would be required to keep confidential under LLLT RPC 1.6 may be released under rule 3.4(c) – (i) unless the client consents, including implied consent under rule 5.1(b).

(c) Investigative Confidentiality. During the course of an investigation or proceeding, the Chair may direct that otherwise public information be kept confidential if necessary to further the purposes of the investigation. At the conclusion of the proceeding, those materials become public information unless subject to a protective order.

(d) Protective Orders.

(1) *Authorization.* To protect a compelling interest of a grievant, witness, third party, respondent, the Association, the Board, or other participant in any matter under these rules, on motion and for good cause shown, a protective order may be entered prohibiting any participant in the disciplinary process from disclosing or releasing specific information, documents, or pleadings obtained in the course of any matter under these rules, and direct that the proceedings be conducted so as to implement the order.

(2) *Pending Relief.* Upon filing a motion for a protective order, any participant in the disciplinary matter may move for a temporary protective order prohibiting any participant in the disciplinary matter who has actual notice of the motion for temporary protective order from taking any action which would violate the requested protective order if granted. A motion for temporary protective order may only be granted upon notice and an opportunity to be heard to all affected participants in the matter unless the participant seeking the order demonstrates that immediate and irreparable harm will result to the applicant before the affected participants can be heard in opposition and the participant seeking the order certifies the efforts, if any, which have been made to give notice and the reasons supporting the claim that notice should not be required. Any temporary protective order granted without notice must set forth the irreparable harm warranting issuance of the order without notice. Any temporary protective order expires upon the filing of a decision regarding the requested protective order, or thirty days following issuance of the temporary protective order, whichever is sooner. Upon two day's notice to the party who obtained a temporary protective order, any participant in the matter may move for the dissolution or modification of a temporary protective order, which motion must be heard as expeditiously as the ends of justice require.

(3) *Entry.* A protective order under this rule may be entered by the following:

(A) A hearing officer when a matter is pending before that hearing officer;

(B) The Chair when a matter is pending before the Board;
(C) The chair of the Discipline Committee when the matter is pending before the committee; or
(D) The chief hearing officer when not otherwise authorized above.

(4) *Service.* The Clerk serves copies of decisions and protective orders entered under this rule on all affected participants in the disciplinary process.

(5) *Review.* The Board reviews decisions granting or denying a protective order if any party subject to the decision seeks relief from the decision by requesting a review within five days of service of the decision. The Clerk serves a copy of the request for review on all parties to the disciplinary matter. The Board considers the review under such procedure as it determines, but must allow comment from any person or party affected by the decision under review. Any participant in the disciplinary matter who has actual notice of the request for review is prohibited from taking any action which would violate the relief requested by the party seeking review if granted. On review, the Board may affirm, reverse, or modify the protective order. The Board's decision is not subject to further review.

(6) *Relief from Protective Order.* Any person may apply to the authority that issued a protective order for specific relief from the order upon good cause shown, provided that notice and an opportunity to respond to the requested relief must be afforded any person affected by the order.

(e) Wrongful Disclosure or Release. Disclosure or release of information made confidential by these rules, except as permitted by rule 3.4(a) or otherwise by these rules may subject a person to an action for contempt of the Supreme Court. If the person is a lawyer or LLLT, wrongful disclosure or release may also be grounds for discipline.

RULE 3.3 APPLICATION TO STIPULATIONS; DISABILITY PROCEEDINGS, CUSTODIANSHIPS, AND DIVERSION CONTRACTS

(a) Application to Stipulations. A stipulation under rule 9.1 providing for imposition of a disciplinary sanction or admonition is confidential until approved, except that a grievant may be advised concerning a stipulation and its proposed or actual content at any time. An approved stipulation is public, unless:

(1) it provides for dismissal of a grievance without a disciplinary sanction or admonition; and
(2) proceedings have not been instituted for failure to comply with the terms of the stipulation.

(b) Application to Disability Proceedings. Disability proceedings under title 8 or rule 9.2 are confidential. However, the following are public information: the fact that an LLLT has been

transferred to disability inactive status, the fact that an LLLT has been reinstated to active status from disability inactive status, and the fact that a disciplinary proceeding is stayed pending supplemental proceedings under title 8.

(c) Custodianships. The fact that a custodian has been appointed under rule 7.7, together with the custodian's name and contact information and orders appointing and discharging such custodians, are public information and the notices required by rule 3.5(b) will be given. Client files and records under the control of such custodians will be held confidential absent authorization to release from the client.

(d) Diversion Contracts. Except as provided by rule 6.6, diversion contracts and supporting affidavits and declarations under rules 6.5 and 6.6 are confidential, despite rule 3.1(b)(1), When a matter that has previously become public under rule 3.1(b) is diverted by a diversion contract, that contract and the supporting documents are confidential but the fact that the matter was diverted from discipline is public information and a notice of diversion will be placed in the public file. Upon the conclusion of the diversion, whether by successful completion of diversion and dismissal of the grievance, or by breach of the diversion contract, a notice of that result will be placed in the public file.

RULE 3.4 RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION

(a) Disclosure of Information. Except as prohibited by rule 3.2(d), court order, or other law, the grievant, respondent, or any witness may disclose any information in their possession regarding a disciplinary matter.

(b) Investigative Disclosure. The Board, Clerk, or other Association staff performing duties under these rules may disclose otherwise confidential information as necessary to conduct the investigation, recruit counsel, or to keep a grievant advised of the status of a matter except as prohibited by rule 5.4(b) or 5.1(c)(3), a protective order under rule 3.2(d), other court order, or other applicable law.

(c) Release Based upon LLLT's Waiver. Upon a written waiver by an LLLT, except as prohibited by rule 3.2(d), the Board may release the status of otherwise confidential disciplinary or disability proceedings and provide otherwise confidential information to any person or entity authorized by the LLLT to receive the information.

(d) Response to Inquiry or False or Misleading Statement.

(1) Except as prohibited by rule 3.2(d), the Chair, the Executive Director, , Chief Regulatory Counsel, or a designee of either of them, may release otherwise confidential information:

(A) to respond to specific inquiries about matters that are in the public domain; or
(B) if necessary to correct a false or misleading public statement.

(2) A respondent must be given notice of a decision to release information under this section unless the Chair, the Executive Director,, or the Chief Regulatory Counsel finds that notice would jeopardize serious interests of any person or the public or compromise an ongoing investigation.

(3) A decision regarding release of information is final and is not subject to further review.

(e) Discretionary Release. The Chair, the Executive Director, or the Chief Regulatory Counsel may authorize the general or limited release of any confidential information when it appears necessary to protect the interests of clients or other persons, the public, or the integrity of the disciplinary process, except as prohibited by rule 3.2(d). A respondent must be given notice of a decision to release information under this section before its release unless the Chair, the Executive Director,, or the Chief Regulatory Counsel finds that notice would jeopardize serious interests of any person or the public, or that the delay caused by giving the respondent notice would be detrimental to the integrity of the disciplinary process. A decision regarding release of information is final and is not subject to further review.

(f) Statement of Concern.

(1) *Authority.* The Chief Regulatory Counsel has discretion to file a statement of concern with the Clerk when deemed necessary to protect members of the public from a substantial threat, based on information from a pending investigation into an LLLT's apparent ongoing serious misconduct not otherwise made public by these rules. The statement may not disclose information protected by rule 3.2(d).

(2) *Procedure.*

(A) On or before the date it is filed, a copy of the statement of concern must be served under rule 4.1 on the LLLT about whom the statement of concern has been made. The statement of concern is not public information until 14 days after service.

(B) The LLLT may at any time appeal to the Chair to have the statement of concern withdrawn.

(C) If an appeal to the Chair is filed with the Clerk under rule 4.2(a) within 14 days of service of the statement of concern, the statement of concern is not public information unless the Chair so orders and becomes public information upon issuance of the Chair's order.

(D) The Chair's decision is not subject to further review.

(E) The Chief Disciplinary Counsel or the Chief Regulatory Counsel may withdraw a statement of concern at any time.

(g) Release to Judicial Officers. Any state or federal judicial officer may be advised of the status of a confidential disciplinary grievance about an LLLT representing a client in a matter over which the judicial officer presides and, except as prohibited by rule 3.2(d), may be provided with requested confidential information if the grievance is relevant to the LLLT's conduct in a matter before that judicial officer. The judicial officer must maintain the confidentiality of the matter.

(**h) Cooperation with Law Enforcement and Disciplinary Authorities.** Except as prohibited by rule 3.2(d), information or testimony may be released to authorities in any jurisdiction authorized to investigate alleged criminal or unlawful activity, or LLLT misconduct, or disability.

(i) Other Counsel. Conflicts review officers, special disciplinary counsel, adjunct disciplinary counsel, Association counsel, counsel for a petitioner under rule 8.9(d), counsel appointed under rule 8.10, and any lawyer representing the Association or Board in any matter have access to any otherwise confidential disciplinary information necessary to perform their duties.

(j) Chief Hearing Officer. The chief hearing officer under ELC 2.5(e) shall have access to any otherwise confidential disciplinary information necessary to perform their duties. The chief hearing officer shall be given notice when any grievance is filed against a hearing officer and of the disposition of that grievance. Confidential information provided under the terms of this rule shall not be further disseminated except as may be otherwise allowed under these rules.

(k) Release to Board of Governors or Officers. The or the Chief Regulatory Counsel may authorize release of otherwise confidential information to the Board of Governors or officers of the Association as necessary to carry out their duties under these rules, except as prohibited by rule 3.2(d), but the Board of Governors or officers of the Association must maintain its confidentiality.

(l) Release to Practice of Law Board. Information obtained in an investigation relating to possible unauthorized practice of law may, except as prohibited by rule 3.2(d), be released to the Practice of Law Board. The Practice of Law Board must maintain the confidentiality of the information unless the Executive Director, the, or the Chief Regulatory Counsel authorizes release.

RULE 3.5 NOTICE OF DISCIPLINARY ACTION; INTERIM SUSPENSION, OR TRANSFER TO DISABILITY INACTIVE STATUS

(a) Notice to Supreme Court. The Clerk must provide the Supreme Court with:

(1) a copy of any decision imposing a disciplinary sanction when that decision becomes final;

(2) a copy of any admonition, together with the order issuing the admonition, when the admonition is accepted or otherwise becomes final;
(3) a copy of any transfer to disability inactive status; and
(4) a copy of any voluntary cancellation in lieu of discipline.

(b) Website Notice. Notice of the imposition of a disciplinary sanction or admonition, a transfer to disability inactive status, interim suspension, or a voluntary cancellation in lieu of discipline of an LLLT, or the filing of a statement of concern under rule 3.4(f) must be published on the Association website. For transfer to disability inactive status, reference will be made to the disability inactive status, but no reference will be made to the specific disability. For interim suspension, the basis of the interim suspension will be stated. The Board may adopt formal publishing policies as consistent with this rule.

(c) Notice to Judges. The Board must promptly notify the presiding judge of the superior court of the county in which the LLLT maintained a practice of the LLLT's revocation, suspension, voluntary cancellation in lieu of discipline, interim suspension, or transfer to disability inactive status, and may similarly notify the presiding judge of any district court located in the county where the LLLT practiced, or the judge of any other court in which the LLLT may have practiced or is known to have practiced.

RULE 3.6 MAINTENANCE OF RECORDS

(a) Permanent Records. In any matter in which a disciplinary sanction or admonition has been imposed or the LLLT has voluntarily cancelled in lieu of discipline under rule 9.2, the bar file and transcripts of the proceeding are permanent records. Related file materials, including investigative files, may be maintained in the Clerk's discretion. Exhibits may be returned to the party supplying them, but copies should be retained where possible.

(b) Destruction of Files. In any matter in which a grievance or investigation has been dismissed without the imposition of a disciplinary sanction or admonition, whether following a hearing or otherwise, file materials relating to the matter may be destroyed three years after the dismissal first occurred, and must be destroyed at that time on the respondent's request unless the files are being used in an ongoing investigation or unless other good cause exists for retention. However, file materials on a matter dismissed after a diversion must be retained at least five years after the dismissal. If the Clerk opposes a request by a respondent for destruction of files under this rule, the Board rules on that request.

(c) Retention of Docket. If a file on a matter has been destroyed under section (b), the Board may retain a docket record of the matter for statistical purposes only. That docket record must not include the name or other identification of the respondent.

(d) Deceased LLLTs. Records and files relating to a deceased LLLT, including permanent records, may be destroyed at any time in the Clerk's discretion.

TITLE 4 – GENERAL PROCEDURAL RULES

RULE 4.1 SERVICE OF PAPERS

(a) Service Required. Every pleading, every paper relating to discovery, every written request or motion other than one which may be heard ex parte, and every similar paper or document issued by the Board, the Clerk, disciplinary counsel or the respondent under these rules must be served on the opposing party. If a hearing is pending and a hearing officer has been assigned, except for discovery, the party also must serve a copy on the hearing officer.

(b) Methods of Service.

(1) *Service by Mail.*
   (A) Unless personal service is required or these rules specifically provide otherwise, service may be accomplished by postage prepaid mail. If properly made, service by mail is deemed accomplished on the date of mailing and is effective regardless of whether the person to whom it is addressed actually receives it.
   (B) Service by mail may be by first class mail or by certified or registered mail, return receipt requested.
   (C) The address for service by mail is as follows:
      (i) for the respondent, or his or her attorney of record, the address in the answer, a notice of appearance, or any subsequent document filed by the respondent or his or her attorney; or, in the absence of an answer, the respondent's address on file with the Association;
      (ii) for the Clerk or disciplinary counsel, at the address of the Association or other address that the Clerk or disciplinary counsel requests;
      (iii) for a hearing officer assigned to a matter, at the address of the hearing officer set forth on the notice of assignment of the hearing officer, or such other address as the hearing officer directs; and
      (iv) for the chief hearing officer, the Chair, the Board, the Discipline Committee, Association counsel, or any other person or entity acting under the authority of these rules, addressed to that person or entity in care of the Clerk at the address of the Association.

(2) *Service by Delivery*. If service by mail is permitted, service may instead be accomplished by leaving the document at the address for service by mail.

(3) *Personal Service*. Personal service on a respondent is accomplished as follows:

(A) if the respondent is found in Washington State, by personal service in the manner required for personal service of a summons in a civil action in the superior court;

(B) if the respondent cannot be found in Washington State, service may be made either by:

(i) leaving a copy at the respondent's place of usual abode in Washington State with a person of suitable age and discretion then resident therein; or

(ii) mailing by registered or certified mail, postage prepaid, a copy addressed to the respondent at his or her last known place of abode, office address maintained for practice as an LLLT, post office address, or address on file with the Association.

(C) if the respondent is found outside of Washington State, then by the methods of service described in (A) or (B) above.

(c) Service Where Question of Mental Competence. If the Superior Court has appointed a guardian or guardian ad litem for a respondent, service under sections (a) and (b) above must also be made on the guardian or guardian ad litem.

(d) Proof of Service. If personal service is required, proof of service may be made by affidavit of service, sheriff's return of service, or a signed acknowledgment of service. In other cases, proof of service may also be made by certificate of a lawyer similar to that allowed by CR 5(b)(2)(B), which certificate must state the form of mail used. Proof of service in all cases must be filed but need not be served on the opposing party.

RULE 4.2 FILING; ORDERS

(a) Filing Originals. Except in matters before the Supreme Court, the original of any pleading, motion, or other paper authorized by these rules, other than discovery, must be filed with the Clerk. Filing may be made by first class mail and is deemed accomplished on the date of mailing. Filing of papers for matters before the Supreme Court is governed by the Rules of Appellate Procedure.

(b) Filing and Service of Orders. Any written order, decision, or ruling, except an order of the Supreme Court or an informal ruling issued under rule 10.8(f), must be filed with the Clerk, and the Clerk serves it on the respondent and disciplinary counsel.

(c) Electronic Filing. Filing of documents with the Clerk under subsections (a) and (b) of this rule may be accomplished by e-mail or by facsimile, provided that a document so filed with the Clerk after 5:00 p.m. or on weekends or legal holidays shall be deemed to have been filed on

the next business day. A paper original of documents filed under this subsection (c) should thereafter be filed as well.

RULE 4.3 PAPERS

All pleadings or other papers must be typewritten or printed, double spaced, on good quality 8½ by 11 inch paper. The use of letter size copies of exhibits is encouraged if it does not impair legibility.

RULE 4.4 COMPUTATION OF TIME

CR 6(a) and (e) govern the computation of time under these rules.

RULE 4.5 STIPULATION TO EXTENSION OR REDUCTION OF TIME

Except for notices of appeal or matters pending before the Supreme Court, the respondent and the Board, the Clerk, or disciplinary counsel may stipulate in any proceeding to extension or reduction of the time requirements.

RULE 4.6 SUBPOENA UNDER THE LAW OF ANOTHER JURISDICTION

Disciplinary counsel, the chief hearing officer, or the Chair may issue a subpoena for use in LLLT discipline or disability proceedings in another jurisdiction if the issuance of the subpoena has been authorized under the law of that jurisdiction and upon a showing of good cause. The subpoena may compel the attendance of witnesses and production of documents in the county where the witness resides or is employed or elsewhere as agreed by the witness. These rules apply to service, enforcement, and challenges to subpoenas issued under this rule.

RULE 4.7 ENFORCEMENT OF SUBPOENAS

(a) Authority. To enforce subpoenas issued under these rules, the Supreme Court delegates contempt authority to the Superior Courts as necessary for the Superior Courts to act under this rule.

(b) Procedure.

(1) If a person fails to obey a subpoena, or obeys the subpoena but refuses to testify or produce documents when requested, disciplinary counsel, the respondent or the person issuing the subpoena may petition the Superior Court of the county where the hearing is being conducted, where the subpoenaed person resides or is found, or where the subpoenaed documents are located, for enforcement of the subpoena. The petition must:

(A) be accompanied by a copy of the subpoena and proof of service;

(B) state the specific manner of the lack of compliance; and

(C) request an order compelling compliance.

(2) Upon the filing of the petition, the Superior Court enters an order directing the person to appear before it at a specified time and place to show cause why the person has not obeyed the subpoena or has refused to testify or produce documents. A copy of the Superior Court's show cause order must be served on the person.

(3) At the show cause hearing, if it appears to the Superior Court that the subpoena was properly issued, and that the particular questions the person refused to answer or the requests for production of documents were reasonable and relevant, the Superior Court enters an order requiring the person to appear at a specified time and place and testify or produce the required documents. On failing to obey this order, the person is dealt with as for contempt of court.

RULE 4.8 DECLARATIONS IN LIEU OF AFFIDAVITS

Whenever an affidavit is required by these rules, a declaration in the form authorized by GR 13 may be used.

RULE 4.9 SERVICE AND FILING BY AN INMATE CONFINED IN AN INSTITUTION

Service and filing of papers under these rules by an inmate confined in an institution will conform to the requirements of GR 3.1.

RULE 4.10 REDACTION OR OMISSION OF CONFIDENTIAL IDENTIFIERS

In all matters filed with the Discipline Committee, a hearing officer or the chief hearing officer, the Clerk, the Board, or the Supreme Court, both disciplinary counsel and respondents must redact or omit from all exhibits, documents, and pleadings all personal identifiers as are required to be redacted or omitted by the General Rules applicable to the Superior Court, including GR 15, 22, and 31. When it is not feasible to redact or omit a personal identifier, the filing party must seek a protective order under rule 3.2(d) to have the document filed under seal. This rule does not apply to a request for review of dismissal under rule 5.7(b) or a request for review of deferral under rule 5.3(d)(2).

TITLE 5 – GRIEVANCE INVESTIGATIONS AND DISPOSITION

RULE 5.1 GRIEVANTS

(a) Filing of Grievance. Any person or entity may file a grievance against an LLLT who is subject to the disciplinary authority of this jurisdiction.

(b) Consent to Disclosure.

(1) Subject to paragraph (2), by filing a grievance, the grievant consents to disclosure of all information submitted. This includes disclosure to the respondent or to any person under rules 3.1-3.4.

(2) Disclosure may be specifically restricted, such as:
    (A) when a protective order is issued under rule 3.2(d); or
    (B) when the grievance was filed under rule 5.2; or
    (C) when necessary to protect a compelling privacy or safety interest of a grievant or other individual.
(3) By filing a grievance, the grievant also agrees that the respondent or any other lawyer or LLLT contacted by the grievant may disclose to the Clerk or disciplinary counsel any information relevant to the investigation, unless a protective order is issued under rule 3.2(d).
(4) Consent to disclosure under this rule by submitting information to the Clerk or disciplinary counsel does not constitute a waiver of any privilege or restriction against disclosure in any other forum.

(c) Grievant Rights. A grievant has the following rights:

(1) to be advised promptly of the receipt of the grievance, and of the name, address, and office phone number of the person assigned to its investigation if such an assignment is made;
(2) to have a reasonable opportunity to communicate with the person assigned to the grievance, by telephone, in person, or in writing, about the substance of the grievance or its status;
(3) to receive a copy of any response submitted by the respondent, subject to the following:
    (A) Withholding Response. The Clerk or disciplinary counsel may withhold all or a portion of the response from the grievant when:
        (i) the response refers to information protected by LLLT RPC 1.6 or LLLT RPC 1.9 to which the grievant is not privy; or
        (ii) the response contains information of a personal and private nature about the respondent or others; or
        (iii) the interests of justice would be better served by not releasing the response.
    (B) Challenge to Disclosure Decision. Either the grievant or the respondent may file a challenge to the Clerk's or disciplinary counsel's decision to withhold or not withhold all or a portion of a grievance or response within 20 days of the date of mailing of the decision. The challenge shall be resolved by the Discipline Committee, unless the matter has previously been dismissed under rule 5.7(d).
(4) to submit additional supplemental written information or documentation at any time;
(5) to attend any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(d), except that if the grievant is also a witness,

the hearing officer may order the grievant excluded during the testimony of any other witness whose testimony might affect the grievant's testimony;

(6) to provide relevant testimony at any hearing conducted into the grievance, subject to these rules and any protective order issued under rule 3.2(d);

(7) to be notified of any proposed decision to refer the respondent to diversion and to be given a reasonable opportunity to submit to the Clerk or disciplinary counsel a written comment thereon;

(8) to be advised of the disposition of the grievance; and

(9) to request reconsideration of a dismissal of the grievance as provided in rule 5.7(b).

(d) Duties. A grievant should do the following:

(1) give the person assigned to the grievance documents or other evidence in his or her possession, and witnesses' names and addresses;

(2) assist in securing relevant evidence; and

(3) appear and testify at any hearing resulting from the grievance.

(e) Vexatious Grievants.

(1) The Chair of the Board may enter an order declaring an individual or entity a vexatious grievant and restraining that individual from filing grievances or pursuing other rights under this rule, pursuant to the procedures set out in this subsection. A "vexatious grievant" is a person or entity who has engaged in a frivolous or harassing course of conduct that so departs from a reasonable standard of conduct as to render the grievant's conduct abusive to the disciplinary system or participants in the disciplinary system.

(2) Either the Clerk or disciplinary counsel or an LLLT who has been the subject of a grievance may file a motion to declare the grievant vexatious.

(3) The motion must set forth with particularity (A) the facts establishing that the grievant's conduct is vexatious and (B) the restrictions on the grievant's conduct that are sought.

(4) The moving party must serve a copy of the motion on the grievant. If the motion is filed by a respondent LLLT, the motion must also be served on disciplinary counsel or the Clerk. Service may be made by first class mail.

(5) The grievant, disciplinary counsel, the Clerk, and the respondent LLLT shall have 20 days to file a written response.

(6) If the Chair finds that the person is a vexatious grievant, the Chair shall enter an order setting out with particularity (A) the factual basis for such finding, (B) the restrictions imposed on the grievant's conduct, and (C) the basis for imposing such restrictions. The restrictions must be no broader than necessary to prevent the harassment and abuse found.

(7) The moving party, the grievant, the Clerk, and disciplinary counsel may seek review of the Chair's order by a petition for discretionary review under rule 12.4. No other appeal of the order shall be allowed.

(8) The fact that a person or entity has been determined to be a vexatious grievant and the scope of any restrictions imposed shall be public information. All other proceedings and documents related to a motion under this subsection are confidential.

RULE 5.2 CONFIDENTIAL SOURCES

If a person files a grievance or provides information to the Clerk, disciplinary counsel, or the Board about an LLLT's possible misconduct or disability, and asks to be treated as a confidential source, an investigation may be conducted in the name of the Board. The confidential source has neither the rights nor the duties of a grievant. Unless otherwise ordered, the person's identity may not be disclosed, either during the investigation or in subsequent formal proceedings. If the respondent requests disclosure of the person's identity, the Chair, the chair of the Discipline Committee, or a hearing officer before whom a matter is pending examines the Clerk and disciplinary counsel and any requested documents or file materials in camera without the presence of the respondent or respondent's counsel and may order disciplinary counsel or the Clerk to reveal the identity to the respondent if doing so appears necessary for the respondent to conduct a proper defense in the proceeding.

RULE 5.3 INVESTIGATION OF GRIEVANCE

(a) Review and Investigation. The chair of the Discipline Committee or the chair's designee must review and may refer for investigation by the Clerk or disciplinary counsel any alleged or apparent misconduct by an LLLT and any alleged or apparent incapacity of an LLLT to practice as an LLLT, whether the chair of the Discipline Committee learns of the misconduct by grievance or otherwise. If there is no grievant, the Clerk or disciplinary counsel may open a grievance in the name of the Board.

(b) Preliminary Request for Response. Following review of a matter under section (a), the Clerk or disciplinary counsel may request a preliminary written response from a respondent. If a request for information (1) requests only the respondent's preliminary written response, and (2) neither includes any other request for specific information nor requests that the respondent furnish or permit inspection of specific records, files, and accounts, the request is not subject to objection under section (i).

(c) Adjunct Disciplinary Counsel. Disciplinary counsel may assign a case to adjunct disciplinary counsel for investigation. Disciplinary counsel assists in those investigations and monitors the performance of adjunct disciplinary counsel. On receiving a report of an investigation by an adjunct disciplinary counsel, disciplinary counsel may, as appears appropriate, request or conduct additional investigation or take any action under these rules.

(d) Deferral by Disciplinary Counsel.

(1) The chair of the Discipline Committee or disciplinary counsel, with the approval of the chair of the Discipline Committee, may defer an investigation into alleged acts of misconduct by an LLLT:
    (A) if it appears that the allegations are related to pending civil or criminal litigation;
    (B) if it appears that the respondent is physically or mentally unable to respond to the investigation;
    (C) if a hearing has been ordered under Rule 8.2(a) or supplemental proceedings have been ordered under rule 8.3(a); or
    (D) for other good cause, if it appears that the deferral will not endanger the public.
(2) The Clerk or disciplinary counsel must inform the grievant and respondent of a decision to defer or a denial of a request to defer and of the procedure for requesting review. A grievant or respondent may request review of a decision on deferral. If review is requested, the Clerk or disciplinary counsel refers the matter to the Discipline Committee for reconsideration of the decision on deferral. To request review, the grievant or respondent must deliver or deposit in the mail a request for review to the Board no later than 45 days after the Clerk mails the notice regarding deferral.

(e) Dismissal of Grievance Not Required. None of the following alone requires dismissal of a grievance: the unwillingness of a grievant to continue the grievance, the withdrawal of the grievance, a compromise between the grievant and the respondent, or restitution by the respondent.

(f) Duty To Furnish Prompt Response. Any LLLT must promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation.

(g) Investigative Inquiries. Upon inquiry or request, any LLLT must:

(1) furnish in writing, or orally if requested, a full and complete response to inquiries and questions;
(2) permit inspection and copying of the LLLT's business records, files, and accounts;
(3) furnish copies of requested records, files, and accounts;
(4) furnish written releases or authorizations if needed to obtain documents or information from third parties; and
(5) comply with investigatory subpoenas under rule 5.5.

(h) Failure To Cooperate.

(1) *Noncooperation Deposition.* If an LLLT has not complied with any request made under this rule or rule 2.13(c) for more than 30 days, the Clerk or disciplinary counsel may notify the LLLT that failure to comply within ten days may result in the LLLT's deposition or subject the LLLT to interim suspension under rule 7.2. Ten days after this notice, disciplinary counsel may serve the LLLT with a subpoena for a deposition. Any deposition conducted after the ten day period and necessitated by the LLLT's continued failure to cooperate may be conducted at any place in Washington State.

(2) *Costs and Expenses.*

(A) Regardless of the underlying grievance's ultimate disposition, an LLLT who has been served with a subpoena under this rule is liable for the actual costs of the deposition, including but not limited to service fees, court reporter fees, travel expenses, and the cost of transcribing the deposition, if ordered by disciplinary counsel. In addition, an LLLT who has been served with a subpoena for a deposition under this rule is liable for a reasonable attorney fee of $500.

(B) The procedure for assessing costs and expenses is as follows:

(i) Disciplinary counsel applies to the Discipline Committee by itemizing the cost and expenses and stating the reasons for the deposition.

(ii) The LLLT has ten days to respond to disciplinary counsel's application.

(iii) The Discipline Committee by order assesses appropriate costs and expenses.

(iv) Rule 13.9(f) governs Board review of the Discipline Committee order.

(3) *Grounds for Discipline*. An LLLT's failure to cooperate fully and promptly with an investigation as required by this rule or rule 2.13(c) is also grounds for discipline.

(i) Objections. An LLLT who receives an investigative inquiry under section (g) of this rule may object as provided in rule 5.6.

RULE 5.4 PRIVILEGES

(a) Privilege Against Self-Incrimination. An LLLT's duty to cooperate is subject to the LLLT's privilege against self-incrimination, where applicable.

(b) LLLT-Client Privilege.

(1) *Assertion in Response to Investigative Inquiries*. In response to an investigative inquiry made under rule 5.3(g), or an investigatory subpoena under ELC 5.5, unless an LLLT makes an objection under rule 5.6, an LLLT may not assert the LLLT client privilege or other prohibitions on revealing information relating to the representation of a client as a basis for refusing to provide information.

(2) *Duties of the Clerk or Disciplinary Counsel*. The Clerk or disciplinary counsel receives, reviews and holds LLLT-client privileged and other confidential client information under

and in furtherance of the Supreme Court's authority to regulate the practice of law. Disclosure of information to the Clerk or disciplinary counsel is not prohibited by LLLT RPC 1.6 or LLLT RPC 1.9, and such disclosure does not waive any LLLT-client privilege. If the LLLT identifies the specific information that is privileged or confidential and requests that it be treated as confidential, the Board must, absent authorization under rule 5.6, maintain the confidentiality of information provided by an LLLT in response to an inquiry or request under these rules.

(3) *Non-Disclosure*. No information identified as confidential under this rule may be disclosed or released under Title 3 of these rules unless the client or former client consents, which includes consent under rule 5.1(b). Nothing in these rules waives or requires waiver of any LLLT's own privilege or other protection as a client against the disclosure of confidences or secrets.

RULE 5.5 INVESTIGATORY SUBPOENAS

(a) Procedure. Before filing a formal complaint, disciplinary counsel or the Clerk may issue a subpoena for a deposition or to obtain documents without a deposition. To the extent possible, CR 30 or 31 applies to depositions under this rule, however the respondent need not be given notice of a subpoena.

(b) Subpoenas. Disciplinary counsel or the Clerk may issue subpoenas to compel the respondent's or a witness's attendance, and/or the production of books, documents, or other evidence, at a deposition or without a deposition. CR 45 governs subpoenas under this rule, but the notice required by CR 45(b)(2) need not be given. Subpoenas may be enforced under rule 4.7.

(c) Challenges. Challenges by non-LLLTs and non-lawyers to subpoenas under this rule may be made to the chief hearing officer, who may issue a protective order under rule 3.2(d).

(d) Cooperation. Every LLLT must promptly respond to subpoenas and requests and inquiries from disciplinary counsel or the Clerk, subject to the provisions of rule 5.3 and rule 5.4.

(e) Objections By LLLTs.

(1) To protect confidential client information, or for other good cause shown, a respondent may object under rule 5.6 to an investigative subpoena issued pursuant to this rule.

(2) A timely objection suspends any duty to respond as to the subpoena until a ruling has been made.

RULE 5.6 REVIEW OF OBJECTIONS TO INQUIRIES AND MOTIONS TO DISCLOSE

(a) Review Authorized. The chief hearing officer, or a hearing officer designated by the chief hearing officer, may hear the following matters:

(1) When an LLLT has objected under rule 5.3(i) to an investigative inquiry;
(2) When an LLLT has objected under rule 5.5(e) to an investigatory subpoena; and
(3) When the Clerk or disciplinary counsel seeks authorization under rule 5.4(b) to disclose confidential information.

(b) Procedure.

(1) An objection must clearly and specifically set out the challenged inquiry or request and the basis for the objection.
(2) A motion to authorize use in an investigation of confidential information must clearly state the information which has been identified as confidential and the investigatory use for which the Clerk or disciplinary counsel seeks authorization.
(3) When deemed necessary by the chief or other hearing officer considering the matter, that hearing officer may conduct an in camera review of confidential client information.
(4) In considering an objection under this rule, the chief or other hearing officer should consider factors including:
    (A) the relevance and necessity of the information to the investigation;
    (B) whether the information requested by the inquiry is likely to lead to information relevant to the investigation;
    (C) the availability of the information from other sources;
    (D) the sensitivity of the information and potential impact on the client, including the client's right to effective assistance of counsel;
    (E) the expressed desires of the client;
    (F) whether the objection was made before the due date of the request or inquiry; and
    (G) whether the burden of producing the requested information outweighs the likely utility of the information to the investigation.
(5) In considering a motion to authorize the Clerk or disciplinary counsel to disclose information identified as confidential client information under this rule, the chief or other hearing officer should consider factors including:
    (A) the relevance and necessity of the disclosure of the information to the investigation;
    (B) whether the investigative disclosure is likely to lead to information relevant to the investigation;
    (C) the sensitivity of the information and potential impact on the client of the investigative disclosure, including the client's right to effective assistance of counsel;
    (D) the expressed desires of the client; and

(E) whether the above factors outweigh the likely utility of the information to the investigation.

(c) Ruling. In ruling on an objection, the chief or other hearing officer may deny the objection, or sustain the objection in whole or in part, and may establish terms or conditions under which specific information may be withheld, provided, maintained, or used. In ruling on a motion to authorize disclosure, the chief or other hearing officer may grant or deny the motion in whole or in part, and may establish terms or conditions for the investigative use of specific information. When appropriate, a ruling may take the form of, or may accompany a protective order under rule 3.2(d).

(d) Review. Any ruling by the chief or other hearing officer under this rule shall be subject to review as an interim ruling under rule 10.9.

RULE 5.7 DISPOSITION OF GRIEVANCE

(a) Dismissal by Disciplinary Counsel. The Chair of the Discipline Committee or disciplinary counsel may dismiss grievances with or without investigation. On dismissal, the Clerk or disciplinary counsel must notify the grievant of the procedure for review in this rule.

(b) Review of Dismissal. A grievant may request review of dismissal of the grievance by delivering or depositing in the mail a request for review to the Clerk no later than 45 days after the Clerk mails the notice of dismissal. Mailing requires postage prepaid first class mail. If review is requested the Clerk or disciplinary counsel may either reopen the matter for investigation or refer it to the Discipline Committee. If no timely request for review is made, the dismissal is final and may not be reviewed. Disputes regarding timeliness may be submitted to the Discipline Committee. A grievant may withdraw in writing a request for review, but thereafter the request may not be revived.

(c) Report in Other Cases. The Clerk or disciplinary counsel must report to the Discipline Committee the results of investigations except those dismissed or diverted. The report may include a recommendation that the committee order a hearing or issue an advisory letter or admonition.

(d) Authority on Review. In reviewing grievances under this rule, the Discipline Committee may:

(1) dismiss the grievance;
(2) affirm the dismissal;
(3) dismiss the grievance and issue an advisory letter under rule 5.8;
(4) issue an admonition under rule 13.5;
(5) order a hearing on the alleged misconduct; or

(6) order further investigation as may appear appropriate.

(e) Issuing Admonition or Ordering Hearing without Recommendation from the Clerk or Disciplinary Counsel. When the Discipline Committee decides to issue an admonition or order a matter to hearing, and such action has not been recommended by the Clerk or disciplinary counsel, the Committee shall issue notice of its intended action and state the reasons therefor. The matter shall be set for reconsideration by the Discipline Committee. The grievant, the respondent, the Clerk, and disciplinary counsel may submit additional materials. On reconsideration, the Committee may take any action authorized by subsection (d) of this rule.

(f) Action Final. Except as provided in subsection (e), the Discipline Committee's action under this rule is final and not subject to further review.

RULE 5.8 ADVISORY LETTER

(a) Grounds. An advisory letter may be issued by the Discipline Committee when:

(1) a respondent's conduct constitutes a violation, but does not warrant an admonition or sanction, but it appears appropriate to caution a respondent concerning his or her conduct; or
(2) a respondent's conduct does not constitute a violation but the LLLT should be cautioned.

(b) Discipline Committee. An advisory letter may only be issued by the Discipline Committee. An advisory letter may not be issued when a grievance is dismissed following a hearing.

(c) Effect. An advisory letter is not a sanction and is not disciplinary action. An advisory letter is not public information, and may not be introduced into evidence in any subsequent disciplinary hearing.

TITLE 6 – DIVERSION

RULE 6.1 REFERRAL TO DIVERSION

In a matter involving less serious misconduct as defined in rule 6.2, within 60 days of service of a formal complaint, the Clerk or disciplinary counsel may refer a respondent to diversion. Diversion may include

- fee arbitration;
- arbitration;
- mediation;
- law office management assistance;
- LLLT assistance programs;

- psychological and behavioral counseling;
- monitoring;
- restitution;
- continuing education programs; or
- any other program or corrective course of action agreed to by the Clerk or disciplinary counsel and respondent to address respondent's misconduct.

Disciplinary counsel or the Clerk may negotiate and execute diversion contracts, monitor and determine compliance with the terms of diversion contracts, and determine fulfillment or any material breach of diversion contracts, subject to review under rule 6.9.

RULE 6.2 LESS SERIOUS MISCONDUCT

Less serious misconduct is conduct not warranting a sanction restricting the respondent's license to practice as an LLLT. Conduct is not ordinarily considered less serious misconduct if any of the following considerations apply:

(A) the misconduct involves the misappropriation of funds;
(B) the misconduct results in or is likely to result in substantial prejudice to a client or other person, absent adequate provisions for restitution;
(C) the respondent has been sanctioned in the last three years;
(D) the misconduct is of the same nature as misconduct for which the respondent has been sanctioned or admonished in the last five years;
(E) the misconduct involves dishonesty, deceit, fraud, or misrepresentation;
(F) the misconduct constitutes a "felony" as defined in rule 7.1(a); or
(G) the misconduct is part of a pattern of similar misconduct.

RULE 6.3 FACTORS FOR DIVERSION

Diversion only applies in cases of less serious misconduct as described in rule 6.2. Disciplinary counsel or the Clerk considers the following factors in determining whether to refer a respondent to diversion:

(A) whether participation in diversion is likely to improve the respondent's future professional conduct and accomplish the goals of LLLT discipline;
(B) whether aggravating or mitigating factors exist; and
(C) whether diversion was already tried.

RULE 6.4 NOTICE TO GRIEVANT

As provided in rule 5.1(c)(7), disciplinary counsel or the Clerk must notify the grievant, if any, of the proposed decision to refer the respondent to diversion, and must give the grievant a reasonable opportunity to submit written comments. The grievant must be notified when the

grievance is diverted and when the grievance is dismissed on completion of diversion. Such decisions to divert or dismiss are not appealable.

RULE 6.5 DIVERSION CONTRACT

(a) Negotiation. Disciplinary counsel or the Clerk and the respondent negotiate a diversion contract, the terms of which are tailored to the individual circumstances.

(b) Required Terms. A diversion contract must:

(1) be signed by the respondent and disciplinary counsel or the Clerk;
(2) set forth the terms and conditions of the plan for the respondent and, if appropriate, identify the use of a practice monitor and/or a recovery monitor and the monitor's responsibilities. If a recovery monitor is assigned, the contract must include respondent's limited waiver of confidentiality permitting the recovery monitor to make appropriate disclosures to fulfill the monitor's duties under the contract;
(3) include a statement in substantially the following form: "This diversion contract is a compromise and settlement of one or more disputes. Except as specifically authorized by the LLLT Rules for Enforcement of Conduct, it is not admissible in any court, administrative, or other proceedings. It may not be used as a basis for establishing liability to any person who is not a party to this contract";
(4) provide for oversight of fulfillment of the contract terms. Oversight includes reporting any alleged breach of the contract to disciplinary counsel or the Clerk;
(5) provide that the respondent will pay all costs incurred in connection with the contract. The contract may also provide that the respondent will pay the costs associated with the grievances to be deferred; and
(6) include a specific acknowledgment that a material violation of a term of the contract renders the respondent's participation in diversion voidable by disciplinary counsel or the Clerk.

(c) Limitations. A diversion contract does not create any enforceable rights, duties, or liabilities in any person not a party to the diversion contract or create any such rights, duties or liabilities outside of those stated in the diversion contract or provided by Title 6 of these rules.

(d) Amendment. The contract may be amended on agreement of the respondent and disciplinary counsel or the Clerk.

RULE 6.6 AFFIDAVIT SUPPORTING DIVERSION

A diversion contract must be supported by the respondent's affidavit or declaration as approved by disciplinary counsel or the Clerk setting forth the respondent's misconduct related to the grievance or grievances to be deferred under this title. If the diversion contract is

terminated due to a material breach, the affidavit or declaration is admissible into evidence in any ensuing disciplinary proceeding. Unless so admitted, the affidavit or declaration is confidential and must not be provided to the grievant or any other individual outside the Clerk and the Office of Disciplinary Counsel, but may be provided to the Discipline Committee or the Board considering the grievance.

RULE 6.7 EFFECT OF NON-PARTICIPATION IN DIVERSION

The respondent has the right to decline the offer to participate in diversion. If the respondent chooses not to participate, the matter proceeds as though no referral to diversion had been made.

RULE 6.8 STATUS OF GRIEVANCE

After a diversion contract is executed by the respondent and disciplinary counsel or the Clerk, the disciplinary grievance is deferred pending successful completion of the contract.

RULE 6.9 TERMINATION OF DIVERSION

(a) Termination. Respondent may provide the Clerk an affidavit or declaration demonstrating fulfillment of the terms of the contract. Upon receipt of such an affidavit or declaration, or upon expiration of the diversion period, disciplinary counsel or the Clerk may take any of the following actions:

(1) Upon disciplinary counsel's or the Clerk's determination that the contract has been completed, dismiss any grievances that were deferred pending the completion of the diversion.
(2) Amend the diversion contract under rule 6.5(d).
(3) Declare a material breach of the diversion contract under the provisions of subsection (b) of this rule.

(b) Material Breach. A material breach of the contract is cause for termination of the diversion. After a material breach, disciplinary counsel or the Clerk must notify the respondent of termination from diversion and disciplinary proceedings may be instituted, resumed, or reinstated.

(c) Review by the Chair of the Discipline Committee. The Chair of the Discipline Committee may review disputes about fulfillment or material breach of the terms of the contract on the request of the respondent, the Clerk or disciplinary counsel. The request must be filed with the Board within 15 days of notice to the respondent of the determination for which review is sought. Determinations by the Chair of the Discipline Committee under this section are not subject to further review and are not reviewable in any proceeding.

(d) Effect of Completion. The grievant cannot appeal a dismissal under this rule. Completion of the diversion is a bar to any further disciplinary proceedings based on the same allegations.

TITLE 7 – INTERIM PROCEDURES

RULE 7.1 INTERIM SUSPENSION FOR CONVICTION OF A CRIME

(a) Definitions.

(1) "Conviction" for the purposes of this rule occurs upon entry of a plea of guilty, unless the defendant affirmatively shows that the plea was not accepted or was withdrawn, or upon entry of a finding or verdict of guilty, unless the defendant affirmatively shows that judgment was arrested or a new trial granted.

(2) "Felony" includes any crime denominated as a felony in the jurisdiction in which it is committed.

(b) Reporting of Conviction. When an LLLT is convicted of a felony, the LLLT must report the conviction to the Clerk within 30 days of the conviction as defined by this rule.

(c) Disciplinary Procedure upon Conviction.

(1) If an LLLT is convicted of a felony, disciplinary counsel must file a formal complaint regarding the conviction. Disciplinary counsel must also petition the Supreme Court for an order suspending the respondent LLLT during the pendency of disciplinary proceedings. The petition for suspension may be filed before the formal complaint.

(2) If an LLLT is convicted of a crime that is not a felony, the Discipline Committee may consider a report of the conviction in the same manner as any other report of possible misconduct by an LLLT.

(d) Petition. A petition to the Supreme Court for suspension under this rule must include a copy of any available document establishing the fact of conviction. Disciplinary counsel may also include additional facts, statements, arguments, affidavits, and documents in the petition. A copy of the petition must be personally served on the respondent, and proof of service filed with the Court.

(e) Immediate Interim Suspension. Upon the filing of a petition for suspension under this rule:

(1) The Court must enter an order immediately suspending the respondent's LLLT license.

(2) Upon suspension, the respondent must comply with title Title 14.

(3) Suspension under this rule occurs:

(A) whether the conviction was under a law of this state, any other state, or the United States;

(B) whether the conviction was after a plea of guilty, nolo contendere, not guilty, or otherwise; and

(C) regardless of the pendency of an appeal.

(4) On or before the date established for the entry of the order of interim suspension the respondent may assert to the Court any jurisdictional deficiency that establishes that the suspension may not properly be ordered, such as that the crime did not constitute a felony or that the respondent is not the individual convicted.

(f) Duration of Suspension. A suspension under this rule must terminate when the disciplinary proceeding is fully completed, after appeal or otherwise. A copy of the final decision, stipulation or order terminating the disciplinary proceeding will be provided to the Court.

(g) Termination of Suspension.

(1) *Petition and Response*. A respondent may at any time petition the Court to terminate an interim suspension. Disciplinary counsel may file a response to the petition.

(2) *Court Action*. The Court determines the procedure for its consideration of a petition to terminate a suspension.

RULE 7.2 INTERIM SUSPENSION IN OTHER CIRCUMSTANCES

(a) Types of Interim Suspension.

(1) *Risk to Public*. Disciplinary counsel may petition the Supreme Court for an order suspending the respondent during the pendency of any proceeding under these rules if:

(A) it appears that a respondent's continued practice as an LLLT poses a substantial threat of serious harm to the public and the Discipline Committee recommends an interim suspension; or

(B) the Discipline Committee orders a hearing on the capacity of an LLLT to practice law under rule 8.2(d)(1); or

(C) when a hearing officer or the chief hearing officer orders supplemental proceedings on a respondent's capacity to defend a disciplinary proceeding under rule 8.3.

(2) *Board Recommendation for Revocation*. When the Board enters a decision recommending revocation, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. The respondent must be suspended absent an affirmative showing that the respondent's continued practice as an LLLT will not be detrimental to the integrity and standing of the profession and the administration of justice, or be contrary to the public interest. If the Board's decision is not appealed and becomes final, the petition need not be filed, or if filed may be withdrawn.

(3) *Failure To Cooperate with Investigation*. When any LLLT fails without good cause to comply with a request under rule 5.3(g) for information or documents, or with a subpoena issued under rule 5.3(h), or fails to comply with disability proceedings as specified in rule 8.2(d), disciplinary counsel may petition the Court for an order suspending the LLLT pending compliance with the request or subpoena. A petition may not be filed if the request or subpoena is the subject of a timely objection under rule 5.5(e) and the hearing officer has not yet ruled on that objection. If an LLLT has been suspended for failure to cooperate and thereafter complies with the request or subpoena, the LLLT may petition the Court to terminate the suspension on terms the Court deems appropriate.

(b) Procedure.

(1) *Petition*. A petition to the Court under this rule must set forth the acts of the LLLT constituting grounds for suspension, and if filed under subsection (a)(2) must include a copy of the Board's decision. The petition may be supported by documents or affidavits. The Board must serve the petition by mail on the day of filing. In addition, a copy of the petition must be personally served on the LLLT no later than the date of service of the show cause order.

(2) *Show Cause Order*. Upon filing of the petition, the Chief Justice orders the LLLT to appear before the Court on a date set by the Chief Justice, and to show cause why the petition for suspension should not be granted. Disciplinary counsel must have a copy of the order to show cause personally served on the LLLT at least ten days before the scheduled show cause hearing. Subsection (b)(5) notification requirements must be included in the show cause order.

(3) *Answer to Petition*. The LLLT may answer the petition. An answer may be supported by documents or affidavits. Failure to answer does not result in default or waive the right to appear at the show cause hearing.

(4) *Filing of Answer*. A copy of any answer must be filed with both the Court and disciplinary counsel by the date specified in the show cause order, which will be at least five days before the scheduled show cause hearing.

(5) *Notification*. The LLLT must inform the Court no less than 7 days prior to the show cause hearing, whether the LLLT will appear for the show cause hearing, or the hearing will be stricken and the Court will decide the matter without oral argument.

(6) *Application of Other Rules*. If the Court enters an order suspending the LLLT, the rules relating to suspended LLLTs, including Title 14, apply.

RULE 7.3 AUTOMATIC SUSPENSION WHEN RESPONDENT ASSERTING INCAPACITY

When a respondent asserts incapacity to conduct a proper defense to disciplinary proceedings, upon receipt of appropriate documentation of the assertion, the respondent must be suspended on an interim basis by the Supreme Court pending the conclusion of the disability proceedings. However, if the hearing officer in the supplemental proceeding files a decision that the respondent is not incapacitated, on petition of either party, the Court may terminate the interim suspension.

RULE 7.4 STIPULATION TO INTERIM SUSPENSION

At any time a respondent and disciplinary counsel may stipulate that the respondent be suspended during the pendency of any investigation or proceeding because of conviction of a felony, a substantial threat of serious harm to the public, or incapacity to practice as an LLLT. A stipulation must state the factual basis for the stipulation and be submitted directly to the Supreme Court for expedited consideration. When the stipulation is based on the LLLT's mental incapacity to practice as an LLLT, the LLLT must be represented by counsel, and if counsel does not otherwise appear, the Board will appoint counsel. Stipulations under this rule are public upon filing with the Court, but the Court may order that supporting materials are confidential. Either party may petition the Court to terminate the interim suspension, and on a showing that the cause for the interim suspension no longer exists, the Court may terminate the suspension.

RULE 7.5 INTERIM SUSPENSIONS EXPEDITED

(a) Expedited Review. Petitions seeking interim suspension under this title receive an expedited hearing, ordinarily no later than 14 days from issuance of an order to show cause.

(b) Procedure During Court Recess. When a petition seeking interim suspension under this title is filed during a recess of the Supreme Court, the Chief Justice, the Acting Chief Justice, or the senior Justice under SAR 10, subject to review by the full Court on motion for reconsideration, may rule on the motion for interim suspension.

RULE 7.6 EFFECTIVE DATE OF INTERIM SUSPENSIONS

Interim suspensions become effective on the date of the Supreme Court's order unless the order provides otherwise.

RULE 7.7 APPOINTMENT OF CUSTODIAN TO PROTECT CLIENTS' INTERESTS

(a) Custodians Allowed. The Chair, on motion by disciplinary counsel or any other interested person, may appoint one or more LLLTs, lawyers, or Association counsel as a custodian to act as counsel for the limited purpose of protecting clients' interests. A custodian may be appointed whenever an LLLT (1) has been transferred to disability inactive status, suspended, or revoked, and fails to carry out the obligations of Title 14 or fails to protect the clients' interests, or (2)

disappears, dies, abandons practice, or is otherwise incapable of meeting the LLLT's obligations to clients. A custodian should not be appointed if a partner, personal representative, or other responsible person appears to be properly protecting the clients' interests. The Chair may enter orders to carry out the provisions and purposes of this rule.

(b) Duties. The custodian takes possession of the necessary files and records and takes action as seems indicated to protect the clients' interests or required by the Chair's orders or these rules. Such action may include but is not limited to assuming control of trust accounts or other financial affairs. Any bank or other person honoring the authority of the custodian is exonerated from any resulting liability. In determining ownership of funds in the trust account, including by subrogation or indemnification, the custodian should act as a reasonably prudent LLLT maintaining a client trust account. The custodian may rely on a certification of ownership issued by a person who conducts audits for the Association under rule 15.1. If the client trust account does not contain sufficient funds to meet known client balances, the custodian may disburse funds on a pro rata basis.

(c) Discharge. On motion by disciplinary counsel or any interested person, the Chair may discharge the custodian from further duties. The Chair may also order destruction of files and records as appropriate.

(d) Fees and Costs. Payment of any fees and costs incurred by the Board under this rule may be a condition of reinstatement of a revoked or suspended LLLT or an LLLT transferred to disability inactive status, ordered as restitution in a disciplinary proceeding for failure to comply with rule 14.1, or claimed against the estate of a deceased or adjudicated incapacitated LLLT.

(e) Records. The Board maintains record of the custodianship permanently. The custodian maintains files and papers obtained as custodian until otherwise ordered by the Chair.

TITLE 8 – DISABILITY PROCEEDINGS

RULE 8.1 ACTION ON ADJUDICATION OF INCOMPETENCY OR INCAPACITY

(a) Grounds. The Board must automatically transfer an LLLT from active to disability inactive status upon receipt of a certified copy of the judgment, order, or other appropriate document demonstrating that the LLLT:

(1) was found to be incapable of assisting in his or her own defense in a criminal action;
(2) was acquitted of a crime based on insanity;
(3) had a guardian (but not a limited guardian) appointed for his or her person or estate on a judicial finding of incapacity; or

(4) was involuntarily committed to a mental health facility for more than 14 days under Ch. 71.05 RCW;

was found to be mentally incapable of conducting a professional practice in any other jurisdiction.**(b) Notice to LLLT.** The Board must forthwith notify the disabled LLLT and his or her guardian or guardian ad litem, if any, of the transfer to disability inactive status. The Association must also notify the Supreme Court of the transfer and provide a copy of the judgment, order, or other appropriate document on which the transfer was based.

RULE 8.2 DETERMINATION OF INCAPACITY TO PRACTICE LAW

(a) Discipline Committee May Order Hearing. The Clerk or disciplinary counsel reports to the Discipline Committee on investigations into an active, suspended, or inactive respondent LLLT's mental or physical capacity to practice as an LLLT. Subject to rule 5.2, the respondent and his or her guardian or guardian ad litem, if any, shall be provided with a complete copy of the Clerk's or disciplinary counsel's report and shall be afforded a reasonable opportunity to respond prior to the Discipline Committee taking action on the report. The Committee orders a hearing if it appears there is reasonable cause to believe that the respondent does not have the mental or physical capacity to practice as an LLLT. In other cases, the Committee may direct further investigation as appears appropriate or dismiss the matter.

(b) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(c) Procedure.

(1) *Applicable Rules and Case Caption*. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings except that the respondent's initials are to be used in the case caption rather than the LLLT's full name.
(2) *Appointment of Counsel*. If counsel for the respondent does not appear within the time for filing an answer, the Chair must appoint an active member of the Association as counsel for the respondent under rule 8.10.
(3) *Health Records*. After the Discipline Committee orders a hearing under this rule, disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the inquiry, subject to a motion to the hearing officer, or if no hearing officer has been appointed, to the chief hearing officer, to limit the scope of the requested releases or authorizations for good cause.
(4) *Examination*. Upon motion, the hearing officer, or if no hearing officer has been appointed, the chief hearing officer, may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in determining the

respondent's capacity to practice as an LLLT. Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(5) *Hearing Officer Recommendation*. If the hearing officer finds that the respondent does not have the mental or physical capacity to practice as an LLLT, the hearing officer must recommend that the respondent be transferred to disability inactive status.

(6) *Appeal Procedure*. Either respondent or disciplinary counsel may appeal from a final determination of the hearing officer as to the respondent's capacity to practice as an LLLT. The procedures for appeal and review of suspension recommendations apply to such appeals.

(7) *Transfer Following Board Review*. If, after review of the decision of the hearing officer, the Board finds that the respondent does not have the mental or physical capacity to practice as an LLLT, it must enter an order immediately transferring the respondent to disability inactive status. The transfer is effective upon service of the order under rule 4.1.

(d) Interim Suspension.

(1) When the Discipline Committee orders a hearing on the capacity of a respondent to practice as an LLLT, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a) unless the respondent is already suspended on an interim basis.

(2) Even if the Court previously denied a petition for interim suspension under subsection (d)(1), disciplinary counsel may petition the Court for the interim suspension of a respondent under rule 7.2(a)(3) if the respondent fails:

(A) to appear for an independent examination under this rule;

(B) to waive health care provider-patient privilege as required by this rule; or

(C) to appear at a hearing under this rule.

(**e) Termination of Interim Suspension.** If the hearing officer files a decision recommending that a respondent placed on interim suspension under this rule not be transferred to disability inactive status, upon either party's petition the Court may terminate the interim suspension.

RULE 8.3 DISABILITY PROCEEDINGS COURSE OF DISCIPLINARY PROCEEDINGS

(a) Supplemental Proceedings on Capacity To Defend. A hearing officer, or chief hearing officer if no hearing officer has been appointed, must order a supplemental proceeding on the respondent's capacity to defend the disciplinary proceedings if the respondent asserts, or there is reasonable cause to believe, that the respondent is incapable of properly defending the disciplinary proceeding because of mental or physical incapacity. A different hearing officer shall be appointed for the supplemental proceeding.

(b) Purpose of Supplemental Proceedings. In a supplemental proceeding, the hearing officer determines if the respondent:

(1) is incapable of defending himself or herself in the disciplinary proceedings because of mental or physical incapacity;
(2) is incapable, because of mental or physical incapacity, of defending against the disciplinary charges without the assistance of counsel; or
(3) is currently unable to practice as an LLLT because of mental or physical incapacity.

(c) Not Disciplinary Proceedings. Proceedings under this rule are not disciplinary proceedings.

(d) Procedure for Supplemental Proceedings.

(1) *Applicable Rules and Case Caption*. Proceedings under this rule are conducted under the procedural rules for disciplinary proceedings except that the respondent's initials are to be used in the case caption rather than the LLLT's full name.
(2) *Effect on Pending Disciplinary Matters*. Pending the outcome of the supplemental proceedings, the hearing officer, or the chief hearing officer if no hearing officer has been appointed, must order any disciplinary proceedings pending against the respondent stayed. The Chair of the Discipline Committee or disciplinary counsel, with the approval of the Chair of the Discipline Committee, may defer any pending disciplinary investigation in accordance with the provisions of rule 5.3(d).
(3) *Appointment of Counsel*. If counsel for the respondent does not appear within 20 days of notice to the respondent of the issues to be considered in a supplemental proceeding under this rule, or within the time for filing an answer, the Chair must appoint an active member of the Association as counsel for the respondent in the supplemental proceedings under rule 8.10.
(4) *Health Records*. Disciplinary counsel may require the respondent to furnish written releases and authorizations for medical, psychological, or psychiatric records as may be relevant to the determination under section (b), subject to a motion to the hearing officer to limit the scope of the requested releases or authorizations for good cause. If the respondent asserted incapacity, there is a rebuttable presumption that good cause does not exist.
(5) *Examination*. Upon motion, the hearing officer may order an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition to assist in the determinations to be made under section (b). Unless waived by the parties, the examiner must submit a report of the examination, including the results of any tests administered and any diagnosis, to the hearing officer, disciplinary counsel, and the respondent.

(6) *Failure To Appear or Cooperate*. If the respondent fails to appear for an independent examination, fails to waive health care provider-patient privilege as required in these rules, or fails to appear at the hearing, unless the procedure under rule 8.10(d) is followed the following procedures apply:

(A) If the Association has the burden of proof, the hearing officer must hold a hearing and, if presented with sufficient evidence to determine incapacity, order the respondent transferred to disability inactive status. If there is insufficient evidence to determine incapacity, the hearing officer must enter an order terminating the supplemental proceedings and reinstating the disciplinary proceedings. A respondent who does not appear at the hearing may move to vacate the order of transfer under rule 10.6(c).

(B) If the respondent has the burden of proof, the hearing officer must enter an order terminating the supplemental proceedings and resuming the disciplinary proceedings.

(7) *Hearing Officer Decision.*

(A) Capacity To Defend and Practice as an LLLT. If the hearing officer finds that the respondent is capable of defending himself or herself and has the mental and physical capacity to practice as an LLLT, the disciplinary proceedings resume.

(B) Capacity to Defend with Counsel. Regardless of the hearing officer's determination as to mental or physical capacity to practice as an LLLT, if the hearing officer finds that the respondent is not capable of defending himself or herself in the disciplinary proceedings but is capable of adequately assisting counsel in the defense, the supplemental proceedings are dismissed and the disciplinary proceedings resume. If counsel does not appear on behalf of the respondent within 20 days of service of the hearing officer's decision, the Chair must appoint an active member of the Association as counsel for the respondent in the disciplinary proceeding under rule 8.10.

(C) Finding of Incapacity. If the hearing officer finds that the respondent either does not have the mental or physical capacity to practice as an LLLT, or is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity, the hearing officer must recommend that the respondent be transferred to disability inactive status.

(D) Review and Appeals. Either respondent or disciplinary counsel may appeal from a final determination of the hearing officer as to the respondent's capacity to practice as an LLLT or respondent's capacity to defend a disciplinary proceeding. The procedures for appeal and review of suspension recommendations shall apply.

(8) *Transfer Following Board Review*.

(A) The Board must enter an order immediately transferring the respondent to disability inactive status if after review of a hearing officer's recommendation of transfer to disability inactive status, the Board finds that the respondent:
    (i) does not have the mental or physical capacity to practice as an LLLT; or
    (ii) is incapable of assisting counsel in properly defending a disciplinary proceeding because of mental or physical incapacity.
(B) The transfer is effective upon service of the order on the respondent under rule 4.1.

(e) Interim Suspension. When supplemental proceedings have been ordered, disciplinary counsel must petition the Supreme Court for the respondent's interim suspension under rule 7.2(a)(1) or seek automatic suspension under rule 7.3 unless the respondent is already suspended on an interim basis.

RULE 8.4 APPEAL OF DISABILITY DETERMINATIONS

The respondent and disciplinary counsel may appeal a Board decision under rules 8.2 or 8.3. The procedures of title 12 apply to such appeals. The Board's order as to transfer to disability inactive status remains in effect, regardless of the pendency of an appeal, unless and until reversed by the Supreme Court.

RULE 8.5 STIPULATED TRANSFER TO DISABILITY INACTIVE STATUS

(a) Requirements. At any time a respondent, respondent's counsel, and disciplinary counsel may stipulate to the transfer of the respondent to disability inactive status under this title. The respondent, respondent's counsel, and disciplinary counsel must all sign the stipulation.

(b) Form. The stipulation must:

(1) state with particularity the nature of the respondent's incapacity to practice as an LLLT and the nature of any pending disciplinary proceedings that will be stayed and any disciplinary investigation that will be deferred as a result of the respondent's transfer to disability inactive status;
(2) state that it is not binding on the Association as a statement of all existing facts relating to the professional conduct of the respondent and that any additional existing facts may be proved in a subsequent disciplinary proceeding; and
(3) fix the amount of costs and expenses to be paid by the respondent.

(c) Respondent Must be Represented by Counsel. Respondent must be represented by counsel at the time of entering into the stipulation. If the respondent has not retained counsel, the Chair must appoint an active member of the Association as counsel for the respondent

pursuant to rule 8.10. Any counsel appointed for purposes of entering into a stipulation shall be deemed automatically discharged when the Board approves or rejects the stipulation.

(d) Approval. The stipulation must be presented to the Board. The Board reviews the stipulation based solely on the record agreed to by the respondent, respondent's counsel, and disciplinary counsel. The Board may either approve the stipulation or reject it. Upon approval, the transfer to disability inactive status is not subject to further review.

(e) Stipulation Not Approved. If the stipulation is rejected by the Board, the stipulation has no force or effect and neither it nor the fact of its execution is admissible in any pending or subsequent disciplinary proceeding or in any civil or criminal action.

RULE 8.6 COSTS IN DISABILITY PROCEEDINGS

When reviewing a matter under this title, the Board may authorize disciplinary counsel to seek assessment of the costs and expenses against the respondent. If the Board authorizes, disciplinary counsel may file a statement of costs within 20 days of service of the Board's order. Rule 13.9 governs assessment of these costs and expenses. The respondent is not required to pay the costs and expenses until 90 days after reinstatement to active status.

RULE 8.7 BURDEN AND STANDARD OF PROOF

In proceedings under rules 8.2 or 8.3, the party asserting or alleging the incapacity has the burden of proof. If the issue of incapacity is raised by a hearing officer, the Association has the burden of proof. A respondent establishes incapacity by a preponderance of the evidence. The Association establishes incapacity by a clear preponderance of the evidence.

RULE 8.8 REINSTATEMENT TO ACTIVE STATUS

(a) Right of Petition and Burden. A respondent transferred to disability inactive status may resume active status only by Board or Supreme Court order. Any respondent transferred to disability inactive status may petition the Board for transfer to active status. The respondent has the burden of showing that the disability has been removed.

(b) Petition. The petition for reinstatement must:

(1) state facts demonstrating that the disability has been removed;
(2) include the name and address of each psychiatrist, psychologist, physician, or other person and each hospital or other institution by whom or in which the respondent has been examined or treated since the transfer to disability inactive status; and
(3) be filed with the Clerk and served on disciplinary counsel.

(c) Waiver of Privilege. The filing of a petition for reinstatement to active status by a respondent transferred to disability inactive status waives any privilege as to treatment of any

medical, psychological, or psychiatric condition during the period of disability. The respondent must furnish, if requested by the Board or disciplinary counsel, written consent to each treatment provider to divulge information and records relating to the disability.

(d) Initial Review by Chair. The Chair reviews the petition and any response by disciplinary counsel and directs appropriate action to determine whether the disability has been removed, including investigation by disciplinary counsel or any other person or an examination by a physician of the respondent's physical condition or by a mental health professional (as defined by RCW 71.05.020) of the respondent's mental condition.

(e) Board Review.

(1) The respondent must have a reasonable opportunity to review any reports of investigations or examinations ordered by the Chair and submit additional materials before the matter is submitted to the Board.
(2) On submission, the Board reviews the petition and any reports as expeditiously as possible and takes one or more of the following actions:
    (A) grants the petition;
    (B) directs additional action as the Board deems necessary to determine whether the disability has been removed;
    (C) orders that a hearing be held before a hearing officer under the procedural rules for disciplinary proceedings;
    (D) directs the respondent to establish proof of competence and learning in the practice of an LLLT, which may include successful completion of the LLLT examination;
    (E) denies the petition;
    (F) directs the respondent to pay the costs of the reinstatement proceedings; or
    (G) approves or rejects a stipulation to reinstatement between the respondent and disciplinary counsel.
(3) The petition may be denied without the respondent having an opportunity for a hearing before a hearing officer only if the Board determines that a hearing is not necessary because:
    (A) the respondent fails to state a prima facie case for reinstatement in the petition; or
    (B) the petition does not indicate a material change of circumstance since a previous denial of a petition for reinstatement.

(f) Petition Granted. If the petition for reinstatement is granted, the Board restores the respondent to the respondent's prior status and notifies the Supreme Court of the transfer, unless disciplinary counsel files a notice of appeal under subsection (g) of this rule, in which

case respondent will not be returned to the respondent's prior status until that appeal is final. If a disciplinary proceeding has been stayed, or a disciplinary investigation has been deferred because of the disability transfer, the proceeding or investigation resumes upon reinstatement.

(g) Review by Supreme Court. Either the respondent or disciplinary counsel may appeal the Board's decision to the Supreme Court, by filing a notice of appeal with the Clerk within 30 days of service of the Board's decision on the respondent. Title 12 applies to review under this section.

RULE 8.9 PETITION FOR LIMITED GUARDIANSHIP

(a) Request for Authorization to Initiate Guardianship Proceedings. A hearing officer, the Chair, Association counsel, the respondent, or respondent's counsel may request that the Discipline Committee authorize the filing of a petition for a limited guardianship of a respondent.

(b) Notice. The person requesting authority to file the guardianship petition must give notice to the parties at the time of the request. The party not making the request shall be given a reasonable opportunity, under the facts and circumstances of the case, to respond before the Discipline Committee renders its decision. The Association and the respondent may submit declarations or affidavits relevant to the Discipline Committee's decision.

(c) Discipline Committee Determination. The Discipline Committee may authorize the filing of a petition for the appointment of a limited guardian when the Discipline Committee reasonably believes that grounds for such an appointment exist under RCW 11.88.010(2). The Discipline Committee may require the respondent to submit to any necessary examinations or evaluations and may retain independent counsel to assist in the investigation and the filing of any petition.

(d) Action for Limited Guardianship.

(1) Upon authorization of the Discipline Committee, the petitioning party may file a petition in any Superior Court seeking a limited guardian to act regarding the respondent's license to practice as an LLLT or any disciplinary or disability investigation or proceeding.
(2) Notwithstanding any other statutory qualifications, any guardian or guardian ad litem appointed pursuant to a petition filed under this rule must be a lawyer or LLLT qualified to maintain and protect the information protected by LLLT RPC 1.6 or LLLT RPC 1.9 of the respondent's clients.
(3) Upon application to the Superior Court, the respondent may have the matter moved to the county where the respondent is domiciled or maintains an office or another county as authorized by law.

(4) The guardianship proceedings must be sealed to the extent necessary to protect information protected by LLLT RPC 1.6 or LLLT RPC 1.9 of the respondent's clients or on any other basis found by the Superior Court.
(5) The costs of any guardianship proceeding are paid out of the guardianship estate, except if the guardianship estate is indigent, the Association pays the costs.

RULE 8.10 APPOINTMENT OF COUNSEL FOR RESPONDENT

(a) Appointment of Counsel for Respondent. If counsel for the respondent does not appear within the time for filing an answer, or as may otherwise be required, under Title 8 of these rules, the Chair must appoint an active member of the Association as counsel for the respondent.

(b) Counsel's Role. Counsel appointed for respondent shall act as an advocate for their client and shall not substitute counsel's own judgment for that of the client.

(c) Withdrawal of Appointed Counsel. Counsel appointed under this rule may withdraw only upon authorization from the Chair, upon a showing of good cause.

(d) Action Upon Withdrawal of Appointed Counsel. Upon authorizing appointed counsel to withdraw, the Chair will determine whether to appoint other counsel to represent the respondent, or, upon a finding that there is no reasonable chance that other counsel will be able to represent the respondent and that appointment of counsel would be futile, may recommend to the Board that the respondent be transferred to disability inactive status. The Board will review any order of the Chair recommending transfer to disability inactive status because appointment of counsel would be futile and may either affirm such order or direct that substitute counsel be appointed for the respondent. An unrepresented respondent may not participate in this review by the Board unless specifically authorized by the Chair to participate. The respondent may seek review under rule 12.3 of an order of the Board recommending transfer to disability inactive status under this rule but must be represented by counsel for purposes of such motion unless specifically authorized to proceed without representation by the Chair.

TITLE 9 – RESOLUTIONS WITHOUT HEARING

RULE 9.1 STIPULATIONS

(a) Requirements. Any disciplinary matter or proceeding may be resolved by a stipulation at any time. The stipulation must be signed by the respondent and approved by disciplinary counsel or the Clerk. The stipulation may impose terms and conditions of probation and contain any other appropriate provisions.

(b) Form. A stipulation must:

(1) provide sufficient detail regarding the particular acts or omissions of the respondent to permit the Board or hearing officer to form an opinion as to the propriety of the proposed resolution, and, if approved, to make the stipulation useful in any subsequent disciplinary proceeding against the respondent;
(2) set forth the respondent's prior disciplinary record or its absence;
(3) state that the stipulation is not binding on disciplinary counsel or the Clerk as a statement of facts about the respondent's conduct, and that additional facts may be proved in a subsequent disciplinary proceeding; and
(4) fix the amount of costs and expenses to be paid by the respondent.

(c) Stipulation to Alleged Facts. A respondent and disciplinary counsel may agree to stipulate to alleged facts in lieu of admissions to particular acts or omissions. The stipulation must also include an agreement that the facts and misconduct will be deemed proved in any subsequent disciplinary proceeding in any jurisdiction.

(d) Approval.

(1) *Standards.* The chief hearing officer, a hearing officer, or the Board must approve a stipulation unless the stipulation results in a manifest injustice.
(2) *Approval by Chief Hearing Officer.* Subject to subsection (1), the chief hearing officer may approve of a stipulation disposing of any matter that is not then pending before an assigned hearing officer, the Board, or the Supreme Court. Approval may be granted at any point, during an investigation or otherwise, prior to entry of final decision under rule 10.16(d). The chief hearing officer may not approve of a stipulation that requires the respondent's suspension or revocation.
(3) *Approval by Hearing Officer.* Subject to subsection (1), a hearing officer may approve of a stipulation disposing of a matter pending before the officer, unless the stipulation requires the respondent's suspension or revocation. This approval constitutes a final decision and is not subject to further review.
(4) *Approval by Board.* All other stipulations must be presented to the Board. The Board reviews a stipulation based solely on the record agreed to by the respondent and disciplinary counsel or the Clerk. The parties may jointly ask the Chair to permit them to address the Board regarding a stipulation. Such presentations are at the Chair's discretion. Subject to subsection (1), the Board may approve, conditionally approve, or reject a stipulation. Regardless of the provisions of rule 3.3(a), the Board may direct that information or documents considered in reviewing a stipulation be kept confidential.
(5) **Approval by Supreme Court.**

(A) *Suspension and Revocation*. All stipulations agreeing to suspension or revocation approved by the Board, together with all materials that were submitted to the Board, must be submitted to the Court. Following review, the Court issues an order regarding the stipulation.

(B) *Matters Pending Before the Supreme Court*. At any time a matter is pending before the Court, the parties may submit to the Court for its consideration a stipulation of the parties to resolve the matter. The Court will resolve the matter under such procedure as the Court deems appropriate.

(e) Conditional Approval.

(1) *By Hearing Officer*. Subject to subsection (d)(1), a hearing officer may condition the approval of a stipulation on the agreement by the respondent and disciplinary counsel or the Clerk to a different disciplinary action, probation, restitution, or other terms the hearing officer deems necessary to accomplish the purposes of LLLT discipline, provided the terms do not involve suspension or revocation. If the hearing officer conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the hearing officer, both parties serve on the hearing officer written consent to the conditional terms in the order of the hearing officer or chief hearing officer. For purposes of this subsection, "hearing officer" includes the chief hearing officer.

(2) *By Board*. Subject to subsection (d)(1), the Board may condition its approval of a stipulation on the agreement by the respondent and disciplinary counsel or the Clerk to a different disciplinary action, probation, restitution, or other terms the Board deems necessary to accomplish the purposes of LLLT discipline. If the Board conditions approval of a stipulation, the stipulation as conditioned is deemed approved if, within 14 days of service of the order, or within additional time granted by the Chair, both parties serve on the Clerk written consent to the conditional terms in the Board's order.

(f) Reconsideration. Within 14 days of service of an order rejecting or conditionally approving a stipulation, the parties may serve on the Clerk a joint motion for reconsideration. If the conditional approval was made by a hearing officer or chief hearing officer, the motion shall also be served on that officer. The parties may ask to address the Board or officer on the motion.

(g) Stipulation Rejected. An order rejecting a stipulation must state the reasons for the rejection. A rejected stipulation has no force or effect and neither it nor the fact of its execution is admissible in evidence in any disciplinary, civil, or criminal proceeding.

(h) Review. When a hearing officer or chief hearing officer rejects a stipulation, by agreement the parties may present the stipulation to the Board for consideration.

(i) Costs. A final order approving a stipulation is deemed a final assessment of the costs and expenses agreed to in the stipulation for the purposes of rule 13.9, and is not subject to further review.

(j) Failure to Comply. A respondent's failure to comply with the terms of an approved stipulation may be grounds for discipline.

RULE 9.2 RECIPROCAL DISCIPLINE AND DISABILITY INACTIVE STATUS; DUTY TO SELF-REPORT

(a) Duty To Self-Report Discipline or Transfer to Disability Inactive Status. Within 30 days of being publicly disciplined by any legal, paralegal or licensing agency, including any cancellation in lieu of discipline, or being transferred to disability inactive status in another jurisdiction, an LLLT admitted to practice in this state must inform the Clerk or disciplinary counsel of the discipline or transfer and provide a copy of the order. Evidence of discipline as legal professional in another jurisdiction may subject the LLLT to discipline in this jurisdiction.

(b) Conclusive Effect. Except as this rule otherwise provides, a final adjudication in another jurisdiction that an LLLT has been guilty of misconduct or should be transferred to disability inactive status conclusively establishes the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

(c) Prior Matter In Washington. No action will be taken against an LLLT under this rule when the LLLT has already been the subject of discipline, disability transfer, or other final disposition of a grievance, disciplinary proceeding, or disability proceeding in Washington arising out of the same circumstances that are the basis for discipline, voluntary cancellation, or disability transfer in another jurisdiction.

RULE 9.3 VOLUNTARY CANCELLATION IN LIEU OF DISCIPLINE

(a) Grounds. A respondent who desires not to contest or defend against allegations of misconduct may, at any time before the answer in any disciplinary proceeding is due, or thereafter with disciplinary counsel's consent, voluntarily cancel his or her certification as an LLLT in lieu of further disciplinary proceedings. A voluntary cancellation in lieu of discipline shall apply to all practice areas in which an LLLT is licensed.

(b) Process. The respondent first notifies the Clerk or disciplinary counsel that the respondent intends to submit a voluntary cancellation and asks the Clerk or disciplinary counsel to prepare a statement of alleged misconduct and to provide a declaration of costs and a proposed voluntary cancellation form. After receiving the statement and the declaration of costs, if any,

the respondent may voluntarily cancel by signing and submitting to the Clerk or disciplinary counsel the voluntary cancellation form prepared by the Clerk or disciplinary counsel, sworn to or affirmed under oath and notarized, which must include the following:

(1) The Clerk's or disciplinary counsel's statement of the misconduct alleged in the matters then pending.
(2) Respondent's statement that he or she is aware of the alleged misconduct stated in the Clerk's or disciplinary counsel's statement and that rather than defend against the allegations, he or she wishes to permanently voluntarily cancel his or her certification as an LLLT.
(3) Respondent's affirmative acknowledgment that the voluntary cancellation is permanent and applies to all practice areas in which he or she is licensed including the statement: "I understand that my voluntary cancellation is permanent and applies to all practice areas in which I am licensed and that any future application by me for reinstatement as an LLLT is currently barred. If the Supreme Court changes this rule or an application is otherwise permitted in the future, it will be treated as an application by one who has been revoked for ethical misconduct, and that, if I file an application, I will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct on which this voluntary cancellation was based."
(4) Respondent's agreement:
    (A) to notify all other jurisdictions in which the respondent is or has been admitted to the limited practice of law of the voluntary cancellation in lieu of discipline;
    (B) to seek to voluntarily cancel permanently from the practice of law or the limited practice of law in any other jurisdiction in which the respondent is admitted;
    (C) to provide disciplinary counsel with copies of any of these notifications and any responses; and
    (D) acknowledging that the voluntary cancellation could be treated as a revocation by all other jurisdictions.
(5) Respondent's agreement to:
    (A) notify all other professional licensing agencies in any jurisdiction from which the respondent has a professional license of the voluntary cancellation in lieu of discipline;
    (B) seek to voluntarily cancel permanently from any such license; and
    (C) provide the Clerk or disciplinary counsel with copies of any of these notifications and any responses.
(6) Respondent's agreement that when applying for any employment or license the respondent agrees to disclose the voluntary cancellation in lieu of discipline in response to any question regarding disciplinary action or the status of the respondent's license to practice as an LLLT.

(7) Respondent's agreement to pay any restitution or additional costs and expenses ordered by the Discipline Committee, and attaches payment for costs as described in section (f) below, or states that the respondents will execute a confession of judgment or deed of trust as described in section (f).
(8) Respondent's agreement that when the voluntary cancellation becomes effective, the respondent will be subject to all restrictions that apply to a revoked LLLT.

(c) Public Filing. Upon receipt of a voluntary cancellation meeting the requirements set forth above, and the costs and expenses and any executed confession of judgment or deed of trust required under section (f), Clerk or disciplinary counsel will endorse the voluntary cancellation and promptly cause it to be filed with the Clerk as a public and permanent record of the Board.

(d) Effect. A voluntary cancellation under this rule is effective upon its filing with the Clerk. All disciplinary proceedings against the respondent terminate except the Clerk or disciplinary counsel has the discretion to continue any investigations deemed appropriate under the circumstances to create a record of the respondent's actions. The Association immediately notifies the Supreme Court of a voluntary cancellation under this rule and the respondent's name is forthwith stricken from the roll of LLLTs. Upon filing of the voluntary cancellation, the voluntarily cancelled respondent must comply with the same duties as a revoked LLLT under Title 14 and comply with all restrictions that apply to a revoked LLLT. Notice is given of the voluntary cancellation in lieu of discipline under rule 3.5.

(e) Voluntary Cancellation is Permanent. Voluntary cancellation under this rule is permanent. A respondent who has voluntarily cancelled under this rule will never be eligible to apply and will not be considered for admission or reinstatement to the practice of law nor will the respondent be eligible for admission for any limited practice of law.

(f) Costs and Expenses. If a respondent voluntarily cancels under this rule, the expenses under rule 13.9(c) are $1,000. With the voluntary cancellation, the respondent must pay this $1,000 expense, plus all actual costs as defined by rule 13.9(b). If the respondent demonstrates inability to pay these costs and expenses, instead of paying this amount, the respondent must execute, in disciplinary counsel's or the Clerk's discretion, a confession of judgment or a deed of trust for that amount. Clerk or disciplinary counsel may file a claim under section (g) for costs not covered by the payment, confession of judgment, or deed of trust.

(g) Review of Costs, Expenses, and Restitution. Any claims for restitution or for costs and expenses not resolved by agreement between the Clerk or disciplinary counsel and the respondent may be submitted at any time, including after the voluntary cancellation, to the Discipline Committee in writing for the determination of appropriate restitution or costs and expenses. The Discipline Committee's order is not subject to further review and is the final

assessment of restitution or costs and expenses for the purposes of rule 13.9 and may be enforced as any other order for restitution or costs and expenses. The record before the Discipline Committee and the Discipline Committee's order is public information under rule 3.1(b).

TITLE 10 – HEARING PROCEDURES

RULE 10.1 GENERAL PROCEDURE

(a) Applicability of Civil Rules. The civil rules for the superior courts of the State of Washington serve as guidance in proceedings under this title and, where indicated, apply directly. A party may not move for summary judgment, but either party may move at any time for an order determining the collateral estoppel effect of a judgment in another proceeding. Motions for judgment on the pleadings and motions to dismiss based upon the pleadings are available only to the extent permitted in rule 10.10.

(b) Meaning of Terms in Civil Rules. In applying the civil rules to proceedings under these rules, terms have the following meanings:

(1) "Court" or "judge" means the hearing officer; and
(2) "Parties" means the respondent and disciplinary counsel.

(c) Hearing Officer Authority. In addition to the powers specifically provided in these rules, the hearing officer may make any ruling that appears necessary and appropriate to insure a fair and orderly proceeding.

RULE 10.2 HEARING OFFICER ASSIGNMENT

(a) Assignment. The chief hearing officer assigns a hearing officer, from those eligible under rule 2.5.

(b) Disqualification and Removal.

(1) *Removal Without Cause*. Either party is entitled to have an assigned hearing officer removed, without establishing cause for the removal, by filing a written request with the Clerk within ten days after service on the respondent of that officer's assignment. A party may only once request removal without cause in any proceeding.
(2) *Disqualification for Cause*. Either party may move to disqualify any assigned hearing officer for good cause. A motion under this subsection must be filed promptly after the party knows, or in the exercise of due diligence should have known, of the basis for the disqualification.

(3) *Notice to Chief Hearing Officer*. The Clerk must promptly provide copies of requests or motions for removal or for disqualification to the chief hearing officer.
(4) *Decision*. The chief hearing officer decides all requests for removal and disqualification motions, except the Chair decides a request to remove or disqualify the chief hearing officer. The decision of the chief hearing officer or Chair on a request for removal or a motion to disqualify is not subject to interim review. After removal or disqualification of the assigned hearing officer, the chief hearing officer assigns a replacement.

RULE 10.3 COMMENCEMENT OF PROCEEDINGS

(a) Formal Complaint.

(1) *Filing*. After a matter is ordered to hearing, disciplinary counsel files a formal complaint with the Clerk.
(2) *Service*. After the formal complaint is filed, it must be personally served on the respondent, with a notice to answer.
(3) *Content*. The formal complaint must state the respondent's acts or omissions in sufficient detail to inform the respondent of the nature of the allegations of misconduct. Disciplinary counsel must sign the formal complaint, but it need not be verified.
(4) *Prior Discipline*. Prior disciplinary action against the respondent may be described in a separate count of the formal complaint if the respondent is charged with conduct demonstrating unfitness to practice as an LLLT.

(b) Filing Commences Proceedings. A disciplinary proceeding commences when the formal complaint is filed.

(c) Consolidation and Joinder. The Discipline Committee ordering a hearing on alleged misconduct, or the chief hearing officer after consultation with any assigned hearing officer, has discretion to consolidate for hearing two or more matters against the same respondent, or to join matters against two or more respondents. A consolidation or joinder ordered under this provision serves as authorization to combine multiple matters in one formal complaint or to amend the formal complaint to the extent necessary to implement the joinder or consolidation.

(d) Severance. On motion of a party, the hearing officer, in furtherance of convenience or to avoid prejudice, or when severance will promote a fair determination of the issues, may order a severance and separate hearing of any matter joined or consolidated for hearing under section (c) of this rule.

RULE 10.4 NOTICE TO ANSWER

(a) Content. The notice to answer must be substantially in the following form:

BEFORE THE LIMITED LICENSE LEGAL TECHNICIAN BOARD OF

WASHINGTON STATE

In re	)	NOTICE TO ANSWER;
	)	NOTICE OF HEARING OFFICER;
_____,)		NOTICE OF DEFAULT PROCEDURE
LLLT.	)	

To: The above named LLLT:

A formal complaint has been filed against you, a copy of which is served on you with this notice. You are notified that you must file your answer to the complaint within 20 days of the date of service on you, by filing the original of your answer with the Clerk to the Limited License Legal Technician Board care of the Washington State Bar Association, [insert address] and by serving one copy on the hearing officer if one has been assigned and one copy on disciplinary counsel at the address[es] given below. Failure to file an answer may result in the imposition of a disciplinary sanction against you and the entry of an order of default under rule 10.6 of the Rules for Enforcement of Conduct for LLLTs.

Notice of default procedure: Your default may be entered for failure to file a written answer to this formal complaint within 20 days of service as required by rule 10.6 of the Rules for Enforcement of Conduct for LLLTs. The entry of an order of default will result in the allegations and violations in the formal complaint being admitted and established AND discipline being imposed or recommended based on the admitted charges of misconduct. If an order of default is entered, you will lose the opportunity to participate further in these proceedings unless and until the order of default is vacated on motion timely made under rule 10.6(c) of the Rules for Enforcement of Conduct for LLLTs. The entry of an order of default means that you will receive no further notices regarding these proceedings except those required by rule 10.6(b)(2).

The hearing officer assigned to this proceeding is: [insert name, address, and telephone number of hearing officer].

Dated this _____ day of _____, 20___.

By _____
Disciplinary Counsel, Bar No.
Address: _____
Telephone: _____

(b) Notice When Hearing Officer Not Assigned. If no hearing officer has been assigned when a formal complaint is served, disciplinary counsel serves the formal complaint and a notice to answer as in section (a), but without reference to the hearing officer.

RULE 10.5 ANSWER

(a) Time to Answer. Within 20 days of service of the formal complaint and notice to answer, the respondent must file and serve an answer. Failure to file an answer as required may be grounds for discipline and for an order of default under rule 10.6. The filing of a motion to dismiss for failure to state a claim stays the time for filing an answer during the pendency of the motion.

(b) Content. The answer must contain:

(1) a specific denial or admission of each fact or claim asserted in the formal complaint in accordance with CR 8(b);
(2) a statement of any matter or facts constituting a defense, affirmative defense, or justification, in ordinary and concise language without repetition; and
(3) an address at which all further pleadings, notices, and other documents in the proceeding may be served on the respondent.

(c) Filing and Service. The answer must be filed and served under rules 4.1 and 4.2.

RULE 10.6 DEFAULT PROCEEDINGS

(a) Entry of Default.

(1) *Timing*. If a respondent, after being served with a notice to answer as provided in rule 10.4, fails to file an answer to a formal complaint or to an amendment to a formal complaint within the time provided by these rules, disciplinary counsel may serve the respondent with a written motion for an order of default.
(2) *Motion*. Disciplinary counsel must serve the respondent with a written motion for an order of de-fault and a copy of this rule at least five days before entry of the order of default. The motion for an order of default must include the following:
    (A) the dates of filing and service of the notice to answer, formal complaint, and any amendments to the complaint; and
    (B) disciplinary counsel's statement that the respondent has not timely filed an answer as required by rule 10.5 and that disciplinary counsel seeks an order of default under this rule; and
    (C) notice that a default will result in the allegations and violations in the formal complaint being admitted and established.
(3) *Entry of Order of Default*. If the respondent fails to file a written answer with the Clerk within five days of service of the motion for entry of an order of default, the hearing officer, or if no hearing officer has been assigned, the chief hearing officer, on proof of proper service of the motion, enters an order finding the respondent in default.

(4) *Effect of Order of Default*. Upon entry of an order of default, the allegations and violations in the formal complaint and any amendments to the complaint are deemed admitted and established for the purpose of imposing discipline and the respondent may not participate further in the proceedings unless the order of default is vacated under this rule.

(b) Proceedings After Entry of an Order of Default.

(1) *Service*. The Clerk serves the order of default and a copy of this rule under rule 4.2(b).
(2) *No Further Notices*. Notwithstanding any other provision of these rules, after entry of an order of default, no further notices, motions, documents, papers, or transcripts need be served on the respondent except for copies of the decisions of the hearing officer, the Board, and the Court.
(3) *Disciplinary Proceeding*. Within 60 days of the filing of the order of default, the hearing officer must conduct a disciplinary proceeding to recommend disciplinary action based on the allegations and violations established under section (a). At the discretion of the hearing officer, these proceedings may be conducted by formal hearing, written submissions, telephone hearing, or other electronic means. Disciplinary counsel may present additional evidence including, but not limited to, requests for admission under rule 10.11(b), and depositions, affidavits, and declarations regardless of the witness's availability.

(c) Setting Aside Default.

(1) *Motion To Vacate Order of Default*. A respondent may move to vacate the order of default and any decision of the hearing officer or Board arising from the default on the following grounds:
    (A) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining the default;
    (B) erroneous proceedings against a respondent who was, at the time of the default, incapable of conducting a defense;
    (C) newly discovered evidence that by due diligence could not have been previously discovered;
    (D) fraud, misrepresentation, or other misconduct of an adverse party;
    (E) the order of default is void;
    (F) unavoidable casualty or misfortune preventing the respondent from defending; or
    (G) any other reason justifying relief from the operation of the default.
(2) *Time*. The motion must be made within a reasonable time and for grounds (A) and (C) within one year after entry of the default. If the respondent's motion is based on

allegations of incapability of conducting a defense, the motion must be made within one year after the disability ceases.

(3) *Burden of Proof*. The respondent bears the burden of proving the grounds for setting aside the default. If the respondent proves that the default was entered as a result of a disability which made the respondent incapable of conducting a defense, the default must be set aside.

(4) *Service and Contents of Motion*. The motion must be filed and served under rules 4.1 and 4.2 and be accompanied by a copy of respondent's proposed answer to each formal complaint for which an order of default has been entered. The proposed answer must state with specificity the respondent's asserted defenses and any facts that respondent asserts as mitigation. The motion to vacate the order of default must be supported by an affidavit showing:

(A) the date on which the respondent first learned of the entry of the order of default;

(B) the grounds for setting aside the order of default; and

(C) an offer of proof of the facts that the respondent expects to establish if the order of default is vacated.

(5) *Response to Motion*. Within ten days of filing and service of the motion to vacate, disciplinary counsel may file and serve a written response.

(6) *Decision*. The hearing officer decides a motion to vacate the order of default on the written record without oral argument. If the proceedings have been concluded, the chief hearing officer assigns a hearing officer to decide the motion. Pending a ruling on the motion, the hearing officer may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the hearing officer has discretion to order appropriate conditions.

(7) *Appeal of Denial of Motion*. A respondent may appeal to the Chair a denial of a motion to vacate an order of default by filing and serving a written notice of appeal stating the arguments against the hearing officer's decision. The respondent must file the notice of appeal within ten days of service on the respondent of the order denying the motion. The appeal is decided on the written record without oral argument. Pending a ruling on the appeal, the Chair may order a stay of proceedings not to exceed 30 days. In granting a motion to vacate an order of default, the Chair has discretion to order appropriate conditions.

(8) *Decision To Vacate Is Not Subject to Interim Review*. An order setting aside an order of default is not subject to interim review.

(d) Order of Default Not Authorized in Certain Proceedings. The default procedure in this rule does not apply to a proceeding to inquire into an LLLT's capacity to practice as an LLLT under title 8 except as provided in that title.

RULE 10.7 AMENDMENT OF FORMAL COMPLAINT

(a) Amendments Adding Related Facts or Charges. Disciplinary counsel may amend a formal complaint at any time to add facts or charges that relate to matters in the formal complaint or to the respondent's conduct regarding the pending proceedings. The respondent may, within ten days of service of the amendment, object to the amendment by a motion to the hearing officer. The hearing officer will consider the motion under the procedure provided by rule 10.8.

(b) Other Amendments. Disciplinary counsel must obtain authorization from the chief hearing officer for amendments other than those under section (a) or rule 10.3(c). Disciplinary counsel must give respondent notice of a request for authorization to amend. A request to amend will be considered under the procedure provided by rule 10.8. The chief hearing officer, after consultation with any assigned hearing officer, may authorize the amendment, may require that the additional facts or charges be the subject of a separate formal complaint, or may direct disciplinary counsel to report the matter to the Discipline Committee under rule 5.7(c).

(c) Decision. In ruling on a motion under section (a) or (b), a hearing officer or the chief hearing officer may grant or deny the motion in whole or part. Authorization to amend should be freely given when justice so requires.

(d) Service and Answer. Disciplinary counsel serves an amendment to a formal complaint on the respondent as provided in rule 4.1 but need not serve a Notice to Answer with the amendment. Rule 10.5 governs the answer to an amendment except that any part of a previous answer may be incorporated by reference.

RULE 10.8 MOTIONS

(a) Filing and Service. Motions to the hearing officer, except motions which may be made ex parte or motions at hearing, must be in writing and filed and served as required by rules 4.1 and 4.2.

(b) Response. The opposing party has ten days from service of a motion to respond, unless the time is altered by the hearing officer for good cause.

(c) Reply. The moving party has seven days from service of the response to reply unless the time for reply is altered by the hearing officer for good cause.

(d) Consideration of Motion. Upon expiration of the time for reply, the hearing officer should promptly rule on the motion, with or without argument as may appear appropriate. Argument on a motion may be heard by conference telephone call.

(e) Ruling. A ruling on a written motion must be in writing and filed with the Clerk.

(f) Minor Matters. Alternatively, motions on minor matters may be made by letter to the hearing officer, with a copy to the opposing party and to the Clerk. The provisions of sections (b) and (c) apply to these motions. A ruling on such motion may also be by letter to each party with a copy to the Clerk.

(g) Chief Hearing Officer Authority. Before the assignment of a hearing officer, the chief hearing officer may rule on any prehearing motion.

RULE 10.9 INTERIM REVIEW

Unless these rules provide otherwise, the Board may review any interim ruling on request for review by either party, if the Chair determines that review is necessary and appropriate and will serve the ends of justice.

RULE 10.10 PREHEARING DISPOSITIVE MOTIONS

(a) Respondent Motion. A respondent may move for dismissal of all or any portion of one or more counts of a formal complaint for failure to state a claim upon which relief can be granted.

(b) Disciplinary Counsel Motion. Disciplinary counsel may move for an order finding misconduct based on the pleadings. In ruling on this motion, the hearing officer may find that all or some of the misconduct as alleged in the formal complaint is established, but will determine the sanction after a hearing.

(c) Time for Motion. A motion under section (a) of this rule must be filed within the time for filing of the answer to a formal complaint or amended formal complaint, and may be filed in lieu of filing an answer. If the motion does not result in the dismissal of the entire formal complaint or amended formal complaint, the respondent must file and serve an answer to the remaining allegations within ten days of service of the ruling on the motion. A motion under section (b) of this rule must be filed within 30 days of the filing of the answer to a formal complaint or amended formal complaint.

(d) Procedure. Rule 10.8 and CR 12 apply to motions under this rule. No factual materials outside the answer and complaint may be presented. If the motion results in dismissal of part but not all of a formal complaint, the Board must hear an interlocutory appeal of the order by either party. The appeal must be filed within 15 days of service of the order.

RULE 10.11 DISCOVERY AND PREHEARING PROCEDURES

(a) General. The parties should cooperate in mutual informal exchange of relevant non-privileged information to facilitate expeditious, economical, and fair resolution of the case.

(b) Requests for Admission. After a formal complaint is filed, the parties may request admissions under CR 36. Under appropriate circumstances, the hearing officer may apply the sanctions in CR 37(c) for improper denial of requests for admission.

(c) Other Discovery. After a formal complaint is filed, the parties have the right to other discovery under the Superior Court Civil Rules, including under CR 27–31 and 33 –35, only on motion and under terms and limitations the hearing officer deems just or on the parties' stipulation.

(d) Limitations on Discovery. The hearing officer may exercise discretion in imposing terms or limitations on the exercise of discovery to assure an expeditious, economical, and fair proceeding, considering all relevant factors including necessity and unavailability by other means, the nature and complexity of the case, seriousness of charges, the formal and informal discovery that has already occurred, the burdens on the party from whom discovery is sought, and the possibility of unfair surprise.

(e) Subpoenas. Subpoenas may be issued under CR 45. Subpoenas may be enforced under rule 4.7.

(f) Commissions. For a deposition outside Washington State, a commission need not issue, but a copy of the order of the chief hearing officer or hearing officer, certified by the officer, is sufficient to authorize the deposition.

(g) CR 16 Orders. The hearing officer may enter orders under CR 16.

(h) Duty to Cooperate. A respondent who has been served with a formal complaint must respond to discovery requests and comply with all lawful orders made by the hearing officer. The hearing officer may draw adverse inferences as appear warranted by the failure of either the Association or the respondent to respond to discovery.

RULE 10.12 SCHEDULING OF HEARING

(a) Where Held. Absent agreement of all parties, all disciplinary hearings must be held in Washington State.

(b) Scheduling Conference. Following the filing of respondent's answer, the hearing officer must convene a scheduling conference of the parties, by conference call or in person.

(c) Scheduling Order. The hearing officer must enter an order setting the date and place of the hearing. This order may include any prehearing deadlines the hearing officer deems required by the complexity of the case, as well as a determination regarding a settlement conference under section (h). The Scheduling Order may be in the following form with the following timelines:

SCHEDULING CONFERENCE DETERMINATION:

[ ] The hearing officer finds that this case may benefit from a settlement conference, and a settlement officer should be appointed.

IT IS ORDERED that the hearing is set and the parties must comply with prehearing deadlines as follows:

1. **Witnesses**. A preliminary list of intended witnesses, including addresses and phone numbers, and a designation of whether the witness is a fact witness, character witness, or expert witness, must be filed and served by [Hearing Date (H)-12 weeks].
2. **Discovery**. Discovery cut-off is [H-6 weeks].
3. **Motions**. Prehearing motions, other than motions to bifurcate, must be served by [H-4 weeks]. An exhibit not ordered or stipulated admitted may not be attached to a motion or otherwise transmitted to the hearing officer unless the motion concerns the exhibit's admissibility. The hearing officer will advise the parties whether oral argument is necessary, and, if so, the date and time, and whether it will be heard by telephone. (Rule 10.15 provides the deadline for a motion to bifurcate.)
4. **Exhibits**. Lists of proposed exhibits must be exchanged by [H-3 weeks].
5. **Service of Exhibits/Final Witness List**. Copies of proposed exhibits and a final witness list, including a summary of the expected testimony of each witness must be exchanged by [H-2 weeks]. A copy of the final witness list, excluding the summary of expected testimony, must be filed and served by [H-2 weeks].
6. **Objections**. Objections to proposed exhibits, including grounds other than relevancy, must be exchanged by [H-1 week].
7. **Briefs**. Any hearing brief must be filed and served by [H-1 week]. Exhibits not ordered or stipulated admitted may not be attached to a hearing brief or otherwise transmitted to the hearing officer before the hearing.
8. **Hearing**. The hearing is set for [H] and each day thereafter until recessed by the hearing officer, at [location].

(d) Failure to Comply With Scheduling Order. Upon a party failing to comply with a provision of the scheduling order, the hearing officer may exclude witnesses, testimony, exhibits or other evidence, and take such other action as may be appropriate.

(e) Motion for Hearing Within 120 Days. A respondent's motion under section (b) for a hearing within 120 days must be granted, unless disciplinary counsel shows good cause for setting the hearing at a later date.

(f) Notice. Service of a copy of an order or ruling of the hearing officer setting a date, time, and place for the hearing constitutes notice of the hearing. The respondent must be given at least ten days notice of the hearing absent consent.

(g) Continuance. Either party may move for a continuance of the hearing date. The hearing officer has discretion to grant the motion for good cause shown.

(h) Settlement Conference.

(1) *Procedure*. The hearing officer determines whether a settlement conference should be ordered whenever:
    (A) the hearing officer issues a scheduling order under section (c); or
    (B) a party requests a settlement conference in writing.
(2) *Timing*. Unless agreed to by the parties, a settlement conference may not be scheduled later than 30 days prior to the hearing date specified in the scheduling order.
(3) *Factors Considered*. When making a determination about whether to order a settlement conference, the hearing officer shall consider whether such a conference would be helpful in light of the complexity of the issues, the extent to which the relevant facts or charged violations are disputed, or any other relevant factor.
(4) *Appointment*. The chief hearing officer will determine whether to appoint the assigned hearing officer or another hearing officer to conduct the settlement conference. Following a settlement conference, the hearing officer who conducted the settlement conference may not conduct the disciplinary hearing without the consent of all parties.
(5) *Confidentiality*. Settlement conference proceedings are confidential and not admissible in any discipline proceeding.

RULE 10.13 DISCIPLINARY HEARING

(a) Representation. The respondent may be represented by counsel.

(b) Respondent Must Attend. A respondent given notice of a hearing must attend the hearing. Failure to attend the hearing, without good cause, may be grounds for discipline. If, after proper notice, the respondent fails to attend the hearing, the hearing may proceed, and the hearing officer:

(1) may draw an adverse inference from the respondent's failure to attend as to any questions that might have been asked the respondent at the hearing; and
(2) must admit testimony by deposition regardless of the deponent's availability. An affidavit or declaration is also admissible, if:
    (A) the facts stated are within the witness's personal knowledge;
    (B) the facts are set forth with particularity; and

(C) it shows affirmatively that the witness could testify competently to the stated facts.

(c) Respondent Must Bring Requested Materials. Disciplinary counsel may request in writing, served on the respondent at least three days before the hearing, that the respondent bring to the hearing any documents, files, records, or other written materials or things previously requested in accordance with these rules. The respondent must comply with this request and failure to bring requested materials, without good cause, may be grounds for discipline.

(d) Witnesses. Except as provided in subsection (b)(2), witnesses must testify under oath. Testimony may also be submitted by deposition as permitted by CR 32. If ordered by the hearing officer, testimony may be taken by telephone, television, video connection, or other contemporaneous electronic means. Testimony must be recorded by a court reporter or, if allowed by the hearing officer, by tape or electronic recording. The parties have the right to cross-examine witnesses who testify and to submit rebuttal evidence.

(e) Subpoenas. The parties may subpoena witnesses, documents, or things under the terms of CR 45. A witness must promptly comply with all subpoenas issued under this rule and with all lawful orders made by the hearing officer under this rule. Subpoenas may be enforced under rule 4.7. The hearing officer may additionally draw adverse inferences as appear warranted by the respondent's failure to respond.

(f) Prior Disciplinary Record. The respondent's record of prior disciplinary action, or the fact that the respondent has no prior disciplinary action, must be made a part of the hearing record before the hearing officer files a recommendation.

RULE 10.14 EVIDENCE AND BURDEN OF PROOF

(a) Proceedings Not Civil or Criminal. Hearing officers should be guided in their evidentiary and procedural rulings by the principle that disciplinary proceedings are neither civil nor criminal but are sui generis hearings to determine if an LLLT's conduct should have an impact on his or her license to practice as an LLLT.

(b) Burden of Proof. Disciplinary counsel has the burden of establishing an act of misconduct by a clear preponderance of the evidence.

(c) Proceeding Based on Criminal Conviction. If a formal complaint charges a respondent with an act of misconduct for which the respondent has been convicted in a criminal proceeding, the court record of the conviction is conclusive evidence at the disciplinary hearing of the respondent's guilt of the crime and violation of the statute on which the conviction was based.

(d) Rules of Evidence. Consistent with section (a) of this rule, the following rules of evidence apply during disciplinary hearings:

(1) evidence, including hearsay evidence, is admissible if in the hearing officer's judgment it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
(2) if not inconsistent with subsection (1), the hearing officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings;
(3) documents may be admitted in the form of copies or excerpts, or by incorporation by reference;
(4) Official Notice.
    (A) official notice may be taken of:
        (i) any judicially cognizable facts;
        (ii) technical or scientific facts within the hearing officer's specialized knowledge; and
        (iii) codes or standards adopted by an agency of the United States, of this state, or of another state, or by a nationally recognized organization or association.
    (B) the parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material noticed and the sources thereof, including any staff memoranda and data, and they shall have an opportunity to contest the facts and material noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(e) APA as Guidance. The evidence standards in this rule are based on the evidence provisions of the Washington Administrative Procedures Act, which, when not inconsistent with these standards, should be looked to for guidance. "Shall" has the meaning in this rule ascribed to it in the APA.

RULE 10.15 BIFURCATED HEARINGS

(a) When Allowed. Upon written motion filed no later than 60 days before the scheduled hearing, either party may request that the disciplinary proceeding be bifurcated. The hearing officer must weigh the reasons for bifurcation against any increased cost and delay, inconvenience to participants, duplication of evidence, and any other factors, and may grant the motion only if it appears necessary to insure a fair and orderly hearing because the respondent has a record of prior disciplinary sanction or because either party would suffer significant prejudice or harm.

(b) Procedure.

(1) *Violation Hearing*.

(A) A bifurcated proceeding begins with an initial hearing to make factual determinations and legal conclusions as to the violations charged, including the mental state necessary for the violations. During this stage of the proceedings, evidence of a prior disciplinary record is not admissible to prove the respondent's character or to impeach the respondent's credibility. However, evidence of prior acts of misconduct may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) At the conclusion of that hearing, the hearing officer files findings and conclusions.

(i) If no violation is found, the proceedings are concluded, the findings and conclusions are the decision of the hearing officer, and the sanction hearing is canceled.

(ii) If any violation is found, after the expiration of the time for a motion to amend under rule 10.16(c), or after ruling on that motion, the findings and conclusions as to those violations are not subject to reconsideration by the hearing officer.

(2) *Sanction Hearing*. If any violation is found, a second hearing is held to determine the appropriate sanction recommendation. During the sanction hearing, evidence of the existence or lack of any prior disciplinary record is admissible. No evidence may be admitted to contradict or challenge the findings and conclusions as to the violations. At the conclusion of the sanction hearing, the hearing officer files findings and conclusions as to a sanction recommendation, that, together with the previously filed findings and conclusions, is the decision of the hearing officer.

(3) *Timing*. If a motion for bifurcation is granted, the violation hearing is held on the date previously set for hearing. Upon granting a motion to bifurcate, the hearing officer must set a date and place for the sanction hearing. Absent extraordinary circumstances, the sanction hearing should be held no later than 45 days after the anticipated last day of the violation hearing.

RULE 10.16 DECISION OF HEARING OFFICER

(a) Decision. Within 30 days after the proceedings are concluded or (if applicable) the transcript of proceedings is served, the hearing officer should file with the Clerk a decision in the form of findings of fact, conclusions of law, and recommendations. This deadline may be extended by agreement.

(b) Preparation of Findings. Either party may submit proposed findings of fact, conclusions of law, and recommendation as part of their argument of the case. The hearing officer either (1) writes findings of fact, conclusions of law, and recommendations without requiring submission of proposed findings, conclusions, or recommendations or (2) announces a tentative decision then requests one or both parties to prepare proposed findings, conclusions, and recommendations. After notice and an opportunity to respond, the hearing officer considers the proposals and responses and enters findings, conclusions, and recommendations.

(c) Amendment.

(1) *Timing of Motion*. Either party may move to modify, amend, or correct the decision as follows:
    (A) In a proceeding not bifurcated, within 15 days of service of the decision on the respondent
    (B) In a bifurcated proceeding, within 15 days of service of:
        (i) the violation findings of fact and conclusions of law; or
        (ii) the sanction recommendation, but this motion may not seek to modify, amend, or correct the violation findings or conclusions.
(2) *Procedure*. Rule 10.8 governs this motion. The hearing officer should rule on the motion within 15 days after the filing of a timely reply or after the period to file a reply under rule 10.8(c) has expired. The ruling may deny the motion or may amend, modify, or correct the decision.
(3) *Effect of Failure to Move*. Failure to move for modification, correction, or amendment does not affect any appeal to the Board or review by the Supreme Court.

(d) When Final. If a hearing officer recommends reprimand or an admonition, or recommends dismissal of the charges, the recommendation becomes the final decision if neither party files an appeal. If a hearing officer recommends revocation or suspension, the recommendation becomes the final decision only upon entry of an order by the Supreme Court under rule 11.12(g) or final action on an appeal or petition for discretionary review under Title 12.

TITLE 11 – REVIEW BY BOARD

RULE 11.1 SCOPE OF TITLE

This title provides the procedure for Board review following a hearing officer's findings of fact, conclusions of law, and recommendation, or dismissal of all claims under rule 10.10(a). It does not apply to Board review of interim rulings under rule 10.9.

RULE 11.2 DECISION SUBJECT TO BOARD REVIEW

(a) Decision. For purposes of this title, "Decision" means:

(1) the hearing officer's findings of fact, conclusions of law, and recommendation, provided that if either party properly files a motion to amend under rule 10.16(c), the "Decision" includes the ruling on the motion, and becomes subject to Board review only upon the ruling on the motion; or
(2) the hearing officer's decision under rule 10.10(a) dismissing all claims.

(b) Review of Decisions. The Board reviews a Decision if:

(1) either party files a notice of appeal within 30 days of service of the Decision on the respondent; or
(2) the Board orders sua sponte review under rule 11.3.

(c) Cross Appeal. If a party files a timely notice of appeal under subsection (b)(1) of this rule and the other party wants relief from the Decision, the other party must file a notice of appeal with the Clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) within the time set forth in subsection (b) for filing a notice of appeal.

RULE 11.3 SUA SPONTE REVIEW

(a) Sua Sponte Review of Recommendations for Revocation and Suspension. If neither the Respondent nor Disciplinary Counsel files a timely notice of appeal from a Decision recommending suspension or revocation, the Decision shall be distributed to the Board members for consideration of whether to order sua sponte review and the matter shall be scheduled for consideration by the Board. The Decision shall be distributed to the Board within 30 days after the last day to file a notice of appeal. An order for sua sponte review shall set forth the issues to be reviewed. If the Board declines to order sua sponte review, the Board shall issue an order declining sua sponte review and adopting the Decision of the hearing officer.

(b) Sua Sponte Review of Other Recommendations. The Chair may file a notice of referral for sua sponte consideration of a Decision other than one recommending revocation or suspension under rule 11.2(b)(2). The notice shall be filed within 30 days after the last day to file a notice of appeal. Upon this filing, the Chair causes a copy to be served on the parties and schedules the matter for consideration by the Board. On consideration, the Board either issues an order for sua sponte review setting forth the issues to be reviewed or an order declining sua sponte review.

(c) Procedure. If the Board issues an order for sua sponte review, the Board's order must designate the appellant for purposes of rules 11.6 and 11.9, but either party may raise any issue for Board review. Board review is conducted as described in rule 11.12.

(d) Standards for Ordering Sua Sponte Review. The Board should order sua sponte review only in extraordinary circumstances to prevent substantial injustice or to correct a clear error.

RULE 11.4 TRANSCRIPT OF HEARING

(a) Ordering Transcript. A hearing transcript or partial transcript may be ordered at any time by the hearing officer, respondent, disciplinary counsel, or the Board. If a notice of appeal is filed under rule 11.2(b)(1), disciplinary counsel must order the entire transcript unless the parties agree that no transcript or only a partial transcript is necessary for review. For sua sponte review, the Chair determines the extent of the transcript necessary for review. If the Chair orders a partial transcript, either party may request additional portions of the transcript.

(b) Filing and Service. The original of the transcript is filed with the Clerk. Disciplinary counsel must cause a copy of the transcript to be served on the respondent except if the respondent ordered the transcript.

(c) Proposed Corrections. Within ten days of service of a copy of the transcript on the respondent, or within ten days of filing the transcript if the respondent ordered the transcript, each party may file any proposed corrections to the transcript. Each party has five days after service of the opposing party's proposed corrections to file objections to those proposed corrections.

(d) Settlement of Transcript. If either party files objections to any proposed correction under section (c), the hearing officer, upon review of the proposed corrections and objections, enters an order settling the transcript. Otherwise, the transcript is deemed settled and any proposed corrections deemed incorporated in the transcript.

RULE 11.5 RECORD ON REVIEW

(a) Generally. The record on review consists of:

(1) any hearing transcript or partial transcript; and
(2) bar file documents and exhibits designated by the parties.

(b) References to the Record. Briefs filed under rule 11.9 must specifically refer to the record if available, using the designations TR for transcript of hearing, EX for exhibits, and BF for bar file documents.

(c) Avoid Duplication. Material appearing in one part of the record on review should not be duplicated in another part of the record on review.

(d) No Additional Evidence. Evidence not presented to the hearing officer must not be presented to the Board.

RULE 11.6 DESIGNATION OF BAR FILE DOCUMENTS AND EXHIBITS

(a) RAP 9.6 Controls. The parties designate bar file documents and exhibits for Board consideration under the procedure of RAP 9.6, except as provided in this rule.

(b) Bar File Documents. The bar file documents are considered the clerk's papers.

(c) Limited License Legal Technician Board and Clerk. The Limited License Legal Technician Board is considered the appellate court and the Clerk to the Board is considered the trial court clerk.

(d) Responsibility and Time for Designation. When a party appeals to the Board, that party must file and serve that party's designation of bar file documents and exhibits within 15 days of filing the notice of appeal. In all other reviews, the party identified as appellant by the Board's order is responsible for designating bar file documents and exhibits.

(e) Hearing Officer Recommendation. The bar file documents must include the hearing officer's recommendation.

RULE 11.7 PREPARATION OF BAR FILE DOCUMENTS AND EXHIBITS

(a) Preparation. The Clerk prepares the bar file documents and exhibits in the format required by RAP 9.7(a) & (b), and distributes them to the Board. The Clerk provides the parties with a copy of the index of the bar file documents and the cover sheet listing the exhibits.

(b) Costs. Costs for preparing bar file documents and exhibits may be assessed as costs under rule 13.9(b)(9).

RULE 11.8 DELETED

RULE 11.9 BRIEFS

(a) Caption of Briefs. The parties should caption briefs as follows:

[Name of Party] Opening Brief
[Name of Party] Response
[Name of Party] Reply

(b) Opening Brief.

(1) The party seeking review must file an opening brief within 45 days of the later of:
   (A) service on the respondent of a copy of the transcript, unless the parties have agreed that no transcript is necessary; or
   (B) filing of the notice of appeal.

(2) Failure to file an opening brief within the required period constitutes an abandonment of the appeal.

(c) Response. The opposing party has 30 days from service of the opening brief to file a brief responding to the issues raised on appeal.

(d) Reply. The party seeking review may file a reply to the response within 30 days of service of the response.

(e) Procedure when Both Parties Seek Review or the Board Orders Sua Sponte Review. When both parties file notices of appeal the party filing first is considered the party seeking review. When the Board initiates sua sponte review, the order must designate the party seeking review. In these cases, the responding party may raise any issue for Board review, and the designated party seeking review has an additional five days to file the reply permitted by section (d).

RULE 11.10 SUPPLEMENTING RECORD ON REVIEW

The record on review may be supplemented under the procedures of RAP 9.6 except that leave to supplement is freely granted. The Board may direct that the record be supplemented with any portion of the record before the hearing officer, including any bar file documents and exhibits.

RULE 11.11 REQUEST FOR ADDITIONAL PROCEEDINGS

In any brief permitted in rule 11.9, either party may request that an additional hearing be held before the hearing officer to take additional evidence based on newly discovered evidence. A request for an additional hearing must be supported by affidavit describing in detail the additional evidence sought to be admitted and any reasons why it was not presented at the previous hearing. The Board may grant or deny the request in its discretion.

RULE 11.12 DECISION OF BOARD

(a) Basis for Review. Board review is based on the hearing officer's Decision, the parties' briefs filed under rule 11.9, and the record on review.

(b) Standards of Review. The Board reviews findings of fact for substantial evidence. The Board reviews conclusions of law and recommendation de novo. Evidence not presented to the hearing officer cannot be considered by the Board.

(c) Oral Argument. The Board hears oral argument if requested by either party or the Chair. A party's request must be filed no later than the deadline for that party to file his or her last brief, including a response or reply, under rule 11.9. The Chair's notice of oral argument must be filed and served on the parties no later than 14 days before the oral argument. The Chair sets the time, place, and terms for oral argument.

(d) Action by Board. On review, the Board may adopt, modify, or reverse the findings, conclusions, or recommendation of the hearing officer. The Board may also direct that the hearing officer hold an additional hearing on any issue, on its own motion, or on either party's request.

(e) Order or Opinion. The Board must issue a written order or opinion. If the Board amends, modifies, or reverses any finding, conclusion, or recommendation of the hearing officer, the Board must state the reasons for its decision in a written order or opinion. A Board member agreeing with the majority's order or opinion may file separate concurring reasons. A Board member dissenting from the majority's order or opinion may set forth in writing the reasons for that dissent. Regardless of whether or not a dissenting member files a written dissent, the Board order or opinion must set forth the result favored by each dissenting member. The decision should be prepared as expeditiously as possible and consists of the majority's opinion or order together with any concurring or dissenting opinions. None of the opinions or orders may be filed until all opinions are filed. A copy of the complete decision is served by the Clerk on the parties.

(f) Procedure to Amend, Modify, or Reverse if No Appeal.

(1) If the Board intends to amend, modify, or reverse the hearing officer's recommendation in a matter that has not been appealed to the Board by either party, the Board issues a notice of intended decision.
(2) Either party may, within 15 days of service of this notice, file a request that the Board reconsider the intended decision.
(3) If a request is filed, the Board reconsiders its intended decision and the intended decision has no force or effect. The Chair determines the procedure for the Board's reconsideration, including whether to grant requests for oral argument.
(4) If no timely request for reconsideration is filed, the Board forthwith issues an order adopting the intended decision effective on the date of the order. If a party files a timely request for reconsideration, the Board issues an order or opinion after reconsideration under section (e).

(g) Decision Final Unless Appealed. The Board's decision is final if neither party files a notice of appeal or a petition for review within the time permitted by title 12 or upon the Supreme Court's denial of a petition for discretionary review. When a Board decision recommending suspension or revocation becomes final because neither party has filed a notice of appeal or petition for discretionary review, the Clerk transmits to the Supreme Court a copy of the Board's decision together with the findings, conclusions and recommendation of the hearing officer for entry of an appropriate order.

RULE 11.13 CHAIR MAY MODIFY REQUIREMENTS

Upon written motion filed with the Clerk by either party, for good cause shown, the Chair may modify the time periods in title 11, and make other orders as appear appropriate to assure fair and orderly Board review. However, the time period for filing a notice of appeal in rule 11.2(b) may not be extended or altered.

RULE 11.14 MOTIONS

(a) Content of Motion. A motion must include (1) a statement of the name and designation of the person filing the motion, (2) a statement of the relief sought, (3) reference to or copies of parts of the record relevant to the motion, and (4) a statement of the grounds for the relief sought, with supporting argument.

(b) Filing and Service. Motions on matters pending before the Board must be in writing and filed with the Clerk. The motion and any response or reply must be served as required by rule 4.1.

(c) Response. The opposing party may submit a written response to the motion. A response must be served and filed within ten days of service of the motion, unless the time is shortened by the Chair for good cause.

(d) Reply. The moving party may submit a reply to a response. A reply must be served and filed within seven days of service of the response, unless the time for reply is shortened by the Chair for good cause.

(e) Length of Motion, Response, and Reply. A motion and response must not exceed ten pages, not including supporting papers. A reply must not exceed five pages, not including supporting papers. For good cause, the Chair may grant a motion to file an over-length motion, response, or reply.

(f) Consideration of Motion. Upon expiration of the time for reply, the Chair must promptly rule on the motion or refer the motion to the full Board for decision. A motion will be decided without oral argument, unless the Chair directs otherwise.

(g) Ruling. A motion is decided by written order filed with and served by the Clerk under rule 4.2(b).

(h) Minor Matters. Motions on minor matters may be made by letter to the Chair, with a copy served on the opposing party and filed with the Clerk. The provisions of sections (c), (d), and (f) of this rule apply to such motions. A ruling on such a motion is decided by written order filed with and served by the Clerk under rule 4.2(b).

TITLE 12 – REVIEW BY SUPREME COURT

RULE 12.1 APPLICABILITY OF RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure serve as guidance for review under this title except as to matters specifically dealt with in these rules.

RULE 12.2 METHODS OF SEEKING REVIEW

(a) Two Methods for Seeking Review of Board Decisions. The methods for seeking Supreme Court review of Board decisions entered under rule 11.12(e) are: review as a matter of right, called "appeal", and review with Court permission, called "discretionary review". Both "appeal" and "discretionary review" are called "review".

(b) Power of Court Not Affected. This rule does not affect the Court's power to review any Board decision recommending suspension or revocation and to exercise its inherent and exclusive jurisdiction over the LLLT discipline and disability system. The Court notifies the respondent and disciplinary counsel of the Court's intent to exercise sua sponte review within 90 days of the Court receiving notice of the decision under rule 3.5(a) or otherwise.

RULE 12.3 APPEAL

(a) Right to Appeal. The respondent or disciplinary counsel has the right to appeal a Board decision recommending suspension or revocation. There is no other right of appeal.

(b) Notice of Appeal. The appealing party must file a notice of appeal with the Clerk within 30 days of service of the Board's decision on that party.

(c) Subsequent Notice by the Other Party. When a timely notice of appeal has been filed by a party, if the other party wants relief from the Board's decision, that party must file a notice of appeal with the Clerk within 14 days after service of the notice filed by the other party.

(d) Filing Fee. The first party to file a notice of appeal must, at the time the notice is filed, either pay the statutory filing fee to the Clerk of the Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(e) Service. A party filing any notice of appeal must serve the other party.

RULE 12.4 DISCRETIONARY REVIEW

(a) Decisions Subject to Discretionary Review. Respondent or disciplinary counsel may seek discretionary review of Board decisions under rule 11.12(e) not subject to appeal under rule 12.3. The Court accepts discretionary review only if:

(1) the Board's decision is in conflict with a Supreme Court decision;

(2) a significant question of law is involved;
(3) there is no substantial evidence in the record to support a material finding of fact on which the Board's decision is based; or
(4) the petition involves an issue of substantial public interest that the Court should determine.

(b) Petition for Review. Respondent or disciplinary counsel may seek discretionary review by filing a petition for review with the Clerk within 30 days of service of the Board's decision on respondent.

(c) Content of Petition; Answer; Service; Decision. A petition for review should be substantially in the form prescribed by RAP 13.4(c) for petitions for Supreme Court review of Court of Appeals decisions. References in that rule to the Court of Appeals are considered references to the Board. The appendix to the petition or an appendix to an answer or reply may additionally contain any part of the record, including portions of the transcript or exhibits, to which the party refers. RAP 13.4(d) – (h) governs answers and replies to petitions for review and related matters including service and decision by the Court.

(d) Subsequent Petition by Other Parties. If a timely petition for discretionary review is filed by the Respondent or disciplinary counsel, and the other party wants relief from the Board's decision, he or she must file a petition for discretionary review with the Clerk within the later of:

(1) 14 days after service of the petition filed by the other party, or
(2) the time for filing a petition under subsection (b) of this rule.

(e) Filing Fee. The first party to file a petition for discretionary review must, at the time the petition is filed, either pay the statutory filing fee to the Clerk of the Board by cash or by check made payable to the Clerk of the Supreme Court, or by appropriate motion apply to the Clerk of the Supreme Court for a waiver of the filing fee based upon a showing of indigency.

(f) Acceptance of Review. The Court accepts discretionary review of a Board decision by granting a petition for review. Upon acceptance of review, the same procedures apply to matters subject to appeal and matters subject to discretionary review.

RULE 12.5 RECORD TO SUPREME COURT

(a) Transmittal. The Clerk should transmit the record, including the filing fee, to the Supreme Court within 30 days of the filing of the notice of appeal, service of the order accepting review, or filing of the transcript of oral argument before the Board, if any. Notwithstanding these deadlines, the Clerk should not transmit the record to the Supreme Court prior to payment of the filing fee or receipt of proof that the Supreme Court has waived the filing fee.

(b) Content. The record transmitted to the Court consists of:

(1) the notice of appeal, if any;
(2) the Board's decision;
(3) the record before the Board;
(4) the transcript of any oral argument before the Board; and
(5) any other portions of the record before the hearing officer, including any bar file documents or exhibits, that the Court deems necessary for full review.

(c) Notice to Parties. The Clerk serves each party with a list of the portions of the record transmitted.

(d) Transmittal of Cost Orders. Within ten days of entry of an order assessing costs under rule 13.9(e), the Clerk should transmit it to the Court as a separate part of the record, together with the supporting statements of costs and expenses and any exceptions or reply filed under rule 13.9(d).

(e) Additions to Record. Either party may request that the Clerk transmit additional portions of the record to the Court prior to or with the filing of the party's last brief. Thereafter, either party may move the Court for an order directing the transmittal of additional portions of the record to the Court.

RULE 12.6 BRIEFS

(a) Brief Required. The party seeking review must file a brief stating his or her objections to the Board's decision.

(b) Time for Filing. The brief of the party seeking review should be filed with the Supreme Court within 30 days of service under rule 12.5(c) of the list of portions of the record transmitted to the Court.

(c) Answering Brief. The answering brief of the other party should be filed with the Court within 30 days after service of the brief of the party seeking review.

(d) Reply Brief. A reply brief of a party seeking review should be filed with the Court within the sooner of 20 days after service of the answering brief or 14 days before oral argument. A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.

(e) Briefs When Both Parties Seek Review. When both the respondent and disciplinary counsel seek review of a Board decision, the respondent is deemed the party seeking review for the purposes of this rule. In that case, disciplinary counsel may file a brief in reply to any response the respondent has made to the issues presented by disciplinary counsel, to be filed with the

Court the sooner of 20 days after service of the respondent's reply brief or 14 days before oral argument.

(f) Form of Briefs. Briefs filed under this rule must conform as nearly as possible to the requirements of RAP 10.3 and 10.4. Bar file documents should be abbreviated BF, the transcript or partial transcript of the hearing should be abbreviated TR, and exhibits should be abbreviated EX.

(g) Reproduction and Service of Briefs by Clerk. The Supreme Court Clerk reproduces and distributes briefs as provided in RAP 10.5.

RULE 12.7 ARGUMENT

(a) Rules Applicable. Oral argument before the Supreme Court is conducted under Title 11 of the Rules of Appellate Procedure, unless the Court directs otherwise.

(b) Priority. Disciplinary proceedings have priority and are set upon compliance with the above rules.

RULE 12.8 MOTION FOR RECONSIDERATION

A motion for reconsideration may be filed as provided in RAP 12.4, but the motion does not stay the judgment or delay the effective date of a suspension or revocation unless the Court enters a stay.

RULE 12.9 VIOLATION OF RULES

Sanctions for violation of these rules may be imposed on a party under RAP 18.9. Upon dismissal under that rule of a review sought by a respondent and expiration of the period to file objections under RAP 17.7, or upon dismissal of review by the Court if timely objections are filed, the Board's decision is final.

TITLE 13 – SANCTIONS AND REMEDIES

RULE 13.1 SANCTIONS AND REMEDIES

Upon a finding that an LLLT has committed an act of misconduct, one or more of the following may be imposed:

(a) Sanctions.

(1) Revocation;
(2) Suspension under rule 13.3; or
(3) Reprimand.

(b) Admonition. An admonition under rule 13.5.

(c) Remedies.

(1) Restitution;
(2) Probation;
(3) Limitation on practice as an LLLT;
(4) Requirement that the LLLT attend continuing education courses;
(5) Assessment of costs; or
(6) Other requirements consistent with the purposes of LLLT discipline.

RULE 13.2 EFFECTIVE DATE OF SUSPENSIONS AND REVOCATIONS

Suspensions and revocations are effective on the date set by the Supreme Court's order or opinion, which will ordinarily be seven days after the date of the order or opinion. If no date is set, the suspension or revocation is effective seven days after the date of the Court's order or opinion.

RULE 13.3 SUSPENSION

(a) Term of Suspension. A suspension must be for a fixed period of time not exceedingthree years.

(b) Reinstatement.

(1) After the period of suspension, the Clerk may submit to the Court a recommendation that the LLLT be returned to the respondent's status before the suspension without further order by the Court upon:
    (A) the respondent's compliance with all current licensing requirements; and
    (B) the Clerk's or disciplinary counsel's certification that the respondent has complied with any specific conditions ordered, and has paid any costs or restitution ordered or is current with any costs or restitution payment plan.
(2) A respondent may ask the Chair to review an adverse determination by disciplinary counsel regarding compliance with the conditions for reinstatement, payment of costs or restitution, or compliance with a costs or restitution payment plan. On review, the Chair may modify the terms of the payment plan if warranted. The Chair determines the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

RULE 13.4 REPRIMAND

(a) Notice of Reprimand. When an order imposing a reprimand is final, Association Counsel prepares a notice of reprimand consisting of the order imposing the reprimand together with

the hearing officer's findings, conclusions and recommendation, any opinion or order of the Board or the Court, stipulation to discipline, or other final document that forms the basis for the order imposing a reprimand, together with a cover notation. The notice of reprimand is filed with the Clerk and served on the respondent as an order under rule 4.2(b).

(b) Form of Notice. The notice of reprimand must be in substantially the following form:

Notice of Reprimand

LLLT _____, LLLT No. _____, has been ordered Reprimanded by the following attached documents:

[Title and date of the attached documents.]

RULE 13.5 ADMONITION

(a) By the Discipline Committee.

(1) The Discipline Committee may issue an admonition when investigation of a grievance shows misconduct.
(2) A respondent may protest the Discipline Committee's prehearing issuance of an admonition by filing a notice to that effect with the Clerk within 30 days of service of the admonition. Upon receipt of a timely protest, the admonition is rescinded, and the grievance is deemed ordered to hearing. A rescinded admonition is of no effect and may not be introduced into evidence in any disciplinary proceeding or appeal.

(b) Following a Hearing. A hearing officer may recommend that a respondent receive an admonition following a hearing.

(c) By Stipulation. The parties may stipulate to an admonition under rule 9.1.

(d) Effect. An admonition is a permanent discipline record and is admissible in subsequent disciplinary or disability proceedings involving the respondent.

(e) Action on Board Review. Upon review under Title 11, the Board may dismiss, issue an admonition, or impose sanctions or other remedies under rule 13.1.

(f) Signing of Admonition. The Discipline Committee chair signs an admonition issued by the Discipline Committee. The Board Chair or the Chair's designee signs all other admonitions.

RULE 13.6 DISCIPLINE FOR CUMULATIVE ADMONITIONS

(a) Grounds. An LLLT may be subject to sanction or other remedy under rule 13.1 if the LLLT receives three admonitions within a five year period.

(b) Procedure. Upon being presented with evidence that a respondent has received three admonitions within a five year period, the Discipline Committee may authorize the filing of a formal complaint based solely on the provisions of this rule. A proceeding under this rule is conducted in the same manner as any disciplinary proceeding. The issues in the proceeding are whether the respondent has received three admonitions within a five year period and, if so, what sanction or other remedy should be recommended.

RULE 13.7 RESTITUTION

(a) Restitution May Be Required. A respondent who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) may be ordered to make restitution to persons financially injured by the respondent's conduct.

(b) Payment of Restitution.

(1) A respondent ordered to make restitution must do so within 30 days of the date on which the decision requiring restitution becomes final, unless the decision provides otherwise or the respondent enters into a periodic payment plan with the Clerk or disciplinary counsel.
(2) The Clerk or disciplinary counsel may enter into an agreement with a respondent for a reasonable periodic payment plan if:
    (A) the respondent demonstrates in writing present inability to pay restitution and
    (B) the Clerk or disciplinary counsel consults with the persons owed restitution.
(3) A respondent may ask the Chair to review an adverse determination by the Clerk or disciplinary counsel of the reasonableness of a proposed periodic payment plan for restitution. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should review the matter, the Chair directs the procedure for Board review and the Board's decision is not subject to further review.

(c) Failure To Comply. A respondent's failure to make restitution when ordered to do so, or to comply with the terms of a periodic payment plan may be grounds for discipline.

RULE 13.8 PROBATION

(a) Conditions of Probation. A respondent who has been sanctioned under rule 13.1 or admonished under rule 13.5(b) or (c) may be placed on probation for a fixed period of two years or less.

(1) Conditions of probation may include, but are not limited to requiring:
    (A) alcohol or drug treatment;
    (B) medical care;

(C) psychological or psychiatric care;
(D) professional office practice or management counseling; or
(E) periodic audits or reports.

(2) Upon the Clerk or disciplinary counsel's request, the Chair may appoint a suitable person to supervise the probation. Cooperation with a person so appointed is a condition of the probation.

(b) Failure to Comply. Failure to comply with a condition of probation may be grounds for discipline and any sanction imposed must take into account the misconduct leading to the probation.

RULE 13.9 COSTS AND EXPENSES

(a) Assessment. The Association's costs and expenses may be assessed as provided in this rule against any respondent who is ordered sanctioned or admonished,.

(b) Costs Defined. The term "costs" for the purposes of this rule includes all monetary obligations, except attorney fees, reasonably and necessarily incurred by the Association in the complete performance of its duties under these rules, whether incurred before or after the filing of a formal complaint. Costs include, by way of illustration and not limitation:

(1) court reporter charges for attending and transcribing depositions or hearings;
(2) process server charges;
(3) necessary travel expenses of hearing officers, disciplinary counsel, adjunct investigative counsel, or witnesses;
(4) expert witness charges;
(5) costs of conducting an examination of books and records or an audit under Title 15;
(6) costs incurred in supervising probation imposed under rule 13.8;
(7) telephone toll charges;
(8) fees, costs, and expenses of a lawyer appointed under rule 8.2 or rule 8.3;
(9) costs of copying materials for submission to the Discipline Committee, a hearing officer, or the Board; and
(10) compensation provided to hearing officers under rule 2.11.

(c) Expenses Defined. "Expenses" for the purposes of this rule means a reasonable charge for attorney fees and administrative costs. Expenses assessed under this rule may equal the actual expenses incurred by the Association, but in any case cannot be less than the following amounts:

(1) for an admonition that is accepted under rule 13.5(a), $750;
(2) for a matter that becomes final without review by the Board, $1,500;

(3) for a matter that becomes final upon a reciprocal discipline order under rule 9.2, in a matter requiring briefing at the Supreme Court, $1,500;
(4) for a matter that becomes final following Board review, without appeal to the Supreme Court, a total of $2,000;
(5) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review but not requiring briefing, a total of $2,500; and
(6) for a matter appealed to the Supreme Court or in which the Court accepts discretionary review in which briefing is required, a total of $3,000.

(d) Statement of Costs and Expenses, Exceptions, and Reply.

(1) *Timing*. The Clerk or disciplinary counsel must file a statement of costs and expenses with the Clerk within 20 days from any of the following events:
    (A) an admonition is accepted;
    (B) the decision of a hearing officer or the Board imposing an admonition or a sanction becomes final;
    (C) a notice of appeal from a Board decision is filed and served; or
    (D) the Supreme Court accepts or denies discretionary review of a Board decision.
    (E) entry of a final decision imposing reciprocal discipline under rule 9.2 in a matter requiring briefing at the Supreme Court.
(2) *Content*. A statement of costs and expenses must state with particularity the nature and amount of the costs claimed and also state the expenses requested. The Clerk or disciplinary counsel must sign the statement, and this signature constitutes a certification that all reasonable attempts have been made to insure the statement's accuracy.
(3) *Service*. The Clerk serves a copy of the statement on the respondent.
(4) *Exceptions*. The respondent may file exceptions no later than 20 days from service of the statement of costs and expenses.
(5) *Reply*. Disciplinary counsel may file a reply no later than ten days from service of any exceptions.

(e) Assessment. The Chair enters an order assessing costs and expenses after the expiration of the time for filing exceptions or replies.

(f) Review of Chair's Decision.

(1) *Matters Reviewed by Court*. In matters reviewed by the Supreme Court under Title 12, the Chair's decision is subject to review only by the Court.
(2) *All Other Matters*. In all other matters, the following procedures apply:

(A) Request for Review by Board. Within 20 days of service on the respondent of the order assessing costs and expenses, either party may file a request for Board review of the order.

(B) Board Action. Upon the timely filing of a request, the Board reviews the order assessing costs and expenses, based on the Clerk's or disciplinary counsel's statement of costs and expenses and any exceptions or reply, the decision of the hearing officer or of the Board, and any written statement submitted by either party within the time directed by the Chair. The Board may approve or modify the order assessing costs and expenses. The Board's decision is final when filed and not subject to further review.

(g) Assessment in Matters Reviewed by the Court. When a matter is reviewed by the Court as provided in Title 12, any order assessing costs and expenses entered by the Chair under section (e) and the statement of costs and expenses and any exceptions or reply filed in the proceeding are included in the record transmitted to the Court. Upon filing of an opinion by the Court imposing a sanction or admonition, costs and expenses may be assessed in favor of the Association under the procedures of RAP Title 14, except that "costs" as used in that title means any costs and expenses allowable under this rule.

(h) Assessment Discretionary. Assessment of any or all costs and expenses may be denied if it appears in the interests of justice to do so.

(i) Payment of Costs and Expenses.

(1) A respondent ordered to pay costs and expenses must do so within 30 days of the date on which the assessment becomes final, unless the order assessing costs and expenses provides otherwise or the respondent enters into a periodic payment plan with disciplinary counsel or the Clerk.

(2) The respondent must pay interest on any amount not paid within 30 days of the date the assessment is final at the maximum rate permitted under RCW 19.52.020.

(3) Disciplinary counsel or the Clerk may enter into an agreement with a respondent for a reasonable periodic payment plan if the respondent demonstrates in writing present inability to pay assessed costs and expenses.

(A) Any payment plan entered into under this rule must provide for interest at the maximum rate permitted under RCW 19.52.020.

(B) A respondent may ask the Chair to review an adverse determination by disciplinary counsel or the clerk regarding specific conditions for a periodic payment plan. The Chair directs the procedure for this review. The Chair's ruling is not subject to further review. If the Chair determines that the Board should

review the matter, the Chair directs the procedure for Board review, and the Board's decision is not subject to further review.

(j) Failure To Comply. A respondent's failure to pay costs and expenses when ordered to do so or to comply with the terms of a periodic payment plan may be grounds for discipline.

(k) Costs in Other Cases. Rule 9.1 governs costs and expenses in cases resolved by stipulation. Rule 8.6 governs assessment of costs and expenses in disability proceedings. Rule 5.3(h) governs assessment of costs and expenses pursuant to a respondent's failure to cooperate.

(l) Money Judgment for Costs and Expenses. After the assessment of costs and expenses is final, upon application by the Association, the Supreme Court commissioner or clerk may enter a money judgment on the order for costs and expenses if the respondent has failed to pay the costs and expenses as provided by this rule. The Association must serve the application for a money judgment on the respondent under rule 4.1. The respondent may file an objection with the commissioner or clerk within 20 days of service of the application. The sole issue to be determined by the commissioner or clerk is whether the respondent has complied with the duty to pay costs and expenses under this rule. The commissioner or clerk may enter a money judgment in compliance with RCW 4.64.030 and notify the Association and the respondent of the judgment. On application, the commissioner or clerk transmits the judgment to the clerk of the superior court in any county selected by the Association and notifies the respondent of the transmittal. The clerk of the superior court files the judgment as a judgment in that court without payment of a filing fee.

TITLE 14 – DUTIES ON SUSPENSION OR REVOCATION

RULE 14.1 NOTICE TO CLIENTS AND OTHERS; PROVIDING CLIENT PROPERTY

(a) Providing Client Property. An LLLT who has been suspended from the practice of law, has been revoked, has voluntarily cancelled in lieu of discipline, or has been transferred to disability inactive status must provide each client or the client's substituted counsel upon request with the client's assets, files, and other documents in the LLLT's possession.

(b) Notice if Suspended for 60 Days or Less. An LLLT who has been suspended for 60 days or less under rule 13.3 must within ten days of the effective date of the suspension:

(1) notify every client involved in litigation or administrative proceedings, of the suspension, that the suspension is a disciplinary suspension, and of the LLLT's consequent inability to act as an LLLT after the effective date of the suspension, and advise each of these clients to seek prompt legal advice and services from another LLLT or a lawyer; and

(2) notify all other clients of the suspension and consequent inability to act during the suspension. The notice must advise the client to seek legal advice elsewhere if needed during the suspension.

(c) Notice if Otherwise Suspended, Revoked, or Voluntarily Cancelled in Lieu of Discipline. An LLLT who has been revoked, has voluntarily cancelled in lieu of discipline, or has been suspended for more than 60 days, for nonpayment of dues, or under Title 7 or APR 28 or Appendix APR 28 must within ten days of the effective date of the revocation, suspension, or voluntary cancellation:

(1) notify every client of the LLLT's suspension, revocation, or voluntary cancellation in lieu of discipline, whether a suspension is a disciplinary suspension, an interim suspension, or an administrative suspension, and of the LLLT's consequent inability to act as the client's LLLT and advise the client to seek legal advice elsewhere; and
(2) advise every client involved in litigation or administrative proceedings to seek the prompt legal advice or services of another LLLT or a lawyer.

(d) Notice if Transferred to Disability Inactive Status. An LLLT transferred to disability inactive status, or his or her guardian if one has been appointed, must give all notices required by section (c), except that while the notices need not refer to the specifics of the disability, the notice must advise that the LLLT has been transferred to disability inactive status.

RULE 14.2 LLLT TO DISCONTINUE PRACTICE AS AN LLLT

(a) Discontinue Practice. A revoked or suspended LLLT, or an LLLT who has voluntarily cancelled in lieu of discipline, or an LLLT transferred to disability inactive status, must not practice as an LLLT after the effective date of the revocation, voluntary cancellation in lieu of discipline, suspension, or transfer to disability inactive status, and also must take whatever steps necessary to avoid any reasonable likelihood that anyone will rely on him or her as an LLLT authorized to practice as an LLLT.

(b) Continuing Duties to Former Clients. This rule does not preclude a revoked or suspended LLLT, or an LLLT who has voluntarily cancelled in lieu of discipline, or an LLLT transferred to disability inactive status, from disbursing assets held by the LLLT to clients or other persons or from providing information on the facts and the LLLT's summary of a case and its status to a succeeding LLLT or lawyer, provided that the LLLT not be involved in any discussion regarding matters occurring after the date of the suspension, voluntary cancellation in lieu of discipline, transfer to disability inactive status, or revocation. The LLLT must provide this information on request and without charge.

RULE 14.3 AFFIDAVIT OF COMPLIANCE

Within 25 days of the effective date of an LLLT's revocation, suspension, or transfer to disability inactive status, the LLLT must serve on the Clerk an affidavit stating that the LLLT has fully complied with the provisions of this title. The affidavit must also provide a mailing address where communications to the LLLT may thereafter be directed. The LLLT must attach to the affidavit copies of the form letters of notification sent to the LLLT's clients together with a list of names and addresses of all clients to whom notices were sent. The affidavit is a confidential document except the LLLT's mailing address is treated as a change of mailing address under APR 13(b).

RULE 14.4 LLLT TO KEEP RECORDS OF COMPLIANCE

An LLLT who has been revoked, suspended, or transferred to disability inactive status must maintain written records of the various steps taken by him or her under this title, so that proof of compliance will be available in any subsequent proceeding.

TITLE 15 – IOLTA, AUDITS, AND TRUST ACCOUNT OVERDRAFT NOTIFICATION

RULE 15.1 AUDIT AND INVESTIGATION OF BOOKS AND RECORDS

The Board and its Chair have the following authority to examine, investigate, and audit the books and records of any LLLT to ascertain and obtain reports on whether the LLLT has been and is complying with LLLT RPC 1.15A:

(a) Random Examination. The Board may authorize examinations of the books and records of any LLLT, law firm, or other entity through which an LLLT provides licensed services selected at random. Only the books and records of such an LLLT, law firm, or other entity may be examined in an examination under this section.

(b) Audit. After an examination under section (a) or as part of an investigation under rule 5.3, the Board may conduct an appropriate audit of the books and records of such an LLLT, or firm, other entity, including verification of the information in those records from available sources.

RULE 15.2 COOPERATION OF LLLT

Any LLLT, firm, or other entity who is subject to examination, investigation, or audit under rule 5.3 or rule 15.1 must cooperate with the person conducting the examination, investigation, or audit, subject only to the proper exercise of any privilege against self-incrimination, by:

(a) producing forthwith all evidence, books, records, and papers requested for the examination, investigation, or audit;

(b) furnishing forthwith any explanations required for the examination, investigation, or audit;

(c) producing written authorization, directed to any bank or depository, for the person to examine, investigate, or audit trust and general accounts, safe deposit boxes, and other forms of maintaining trust property by the LLLT, firm, or other entity in the bank or depository.

RULE 15.3 DISCLOSURE

The examination or audit report is only available to the Board, Clerk, disciplinary counsel, and the LLLT, firm, or other entity examined, investigated, or audited, unless a disciplinary proceeding is commenced in which case the disclosure provisions of Title 3 apply.

RULE 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION

(a) Overdraft Notification Agreement Required. To be authorized as a depository for LLLT trust accounts referred to in LLLT RPC 1.15A(i) , a financial institution, bank, credit union, savings bank, or savings and loan association must file with the Legal Foundation of Washington an agreement, in a form provided by the Washington State Bar Association, to report to the Washington State Bar Association if any properly payable instrument is presented against such a trust account containing insufficient funds, whether or not the instrument is honored. The agreement must apply to all branches of the financial institution and cannot be canceled except on 30 days' notice in writing to the Legal Foundation of Washington. The Legal Foundation of Washington must provide copies of signed agreements and notices of cancellation to the Washington State Bar Association.

(b) Overdraft Reports.

(1) The overdraft notification agreement must provide that all reports made by the financial institution must contain the following information:
   (i) the identity of the financial institution;
   (ii) the identity of the LLLT, law firm, or other entity in whose name the account is held;
   (iii) the account number; and
   (iv) either:
      (i) the amount of overdraft and date created; or
      (ii) the amount of the returned instrument(s) and the date returned.
(2) The financial institution must provide the information required by the notification agreement within five banking days of the date the item(s) was paid or returned unpaid.

(c) Costs. Nothing in these rules precludes a financial institution from charging a particular LLLT, law firm, or other entity in whose name the account is held for the reasonable cost of producing the reports and records required by this rule, but those charges may not be a

transaction cost charged against funds payable to the Legal Foundation of Washington under LLLT RPC 1.15A(i)(1) and Rule 15.7(e) of these rules.

(d) Notification by LLLT. Every LLLT who receives notification that any instrument presented against his or her trust account was presented against insufficient funds, whether or not the instrument was honored, must promptly notify the Clerk of the information required by section (b). The LLLT must include a full explanation of the cause of the overdraft.

RULE 15.5 DECLARATION

(a) Declaration. Annually each active LLLT must provide the Board with such written declaration or other information as the Board determines is needed to assure that the LLLT is complying with LLLT RPC 1.15A. Each active LLLT must complete, execute, and deliver this to the Board by the date specified by the Board.

(b) Noncompliance. any LLLT admitted to active practice as an LLLT who fails to comply with this rule by the date specified in section (a) may be ordered suspended from practice as an LLLT by the Supreme Court until such time as the LLLT complies.

RULE 15.6 REGULATIONS

The Board may adopt regulations regarding the powers in this title subject to the approval of the Supreme Court.

RULE 15.7 TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON

ELC 15.7 as amended shall apply to LLLT IOLTA accounts.

TITLE 16 – EFFECT OF THESE RULES ON PENDING PROCEEDINGS

RULE 16.1 EFFECT ON PENDING PROCEEDINGS

These rules and any subsequent amendments will apply in their entirety, on the effective date as ordered by the Supreme Court, to any pending matter or investigation that has not yet been ordered to hearing. They will apply to other pending matters except as would not be feasible or would work an injustice. The hearing officer assigned to hear a matter, or the Chair in a matter pending before the Board, may rule on the appropriate procedure with a view to insuring a fair and orderly proceeding.