



# WSBA

WASHINGTON STATE BAR ASSOCIATION

## LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

July 10, 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 June 19, 2014 meeting minutes
2. **RPC Subcommittee Recommendations Consent Agenda** (2:15 p.m.)
  - a. Proposed Title 4 is approved in its entirety.
  - b. Proposed revised RPC 6.5 is approved.
  - c. Proposed revised RPC 1.5 is approved.
3. **Report of Examination Subcommittee Meeting** (2:30 p.m.)
4. **Finalize Proposed Amendments to APR 28 and Appendix APR 28** (Thea Jennings) (2:45 p.m.)
5. **Proposed Amendments to Lawyer RPC Update** (Steve Crossland/Ellen Dial) (3:30 p.m.)
6. **Draft Amendments to Lawyer ELC 15.4 and 15.7** (Thea Jennings) (3:45 p.m.)
7. **Review of Proposed LLLT RPC** (Ellen Dial) (4:00 p.m.)
8. **Criteria for Approving Practice Areas** (Steve Crossland) (4:45 p.m.)
9. **Open Discussion**
10. **Adjourn** (5:00 p.m.)

### MEETING MATERIALS

1. 2014-06-19 Draft Meeting Minutes [pp. 1,105-1,108]
2. 2014-06-19 Appendix of Decisions [pp. 1,109-1,116]
3. 2014-06-19 RPC Subcommittee Minutes [pp. 1,117-1,120]
4. 2014-06-19 Examinations Subcommittee Minutes [pp. 1,121-1,122]

LLLT Board Meeting Agenda  
July 10, 2014

5. 2014-07-10 Proposed Title 4 [pp. 1,123-1,124]
6. 2014-07-10 Proposed RPC 6.5 [pp. 1,125]
7. 2014-07-10 Proposed RPC 1.5 [pp. 1,126-1,127]
8. 2014-06-30 Proposed Amendments to APR 28 [pp. 1,128-1,134]
9. 2014-06-30 Proposed Appendix APR 28 [pp. 1,135-1,150]
10. 2014-06-13 Draft ELC 15.4 [pp. 1,151]
11. 2014-06-13 Draaft ELC 15.7 [pp. 1,152-1,154]
12. 2014-07-02 Draft RPC 1.0 Terminology [pp. 1,155-1,156]
13. 2014-07-02 LLLT RPC Definitive Document [pp. 1,157-1,200]
14. 2014-06-30 Draft Criteria for Approving Practice Areas [pp. 1,201]
15. Table of Possible Practice Areas [pp. 1,202]
16. Excerpt Civil Legal Needs Study: Categories of Legal Problem [pp. 1,203-1,204]



# WSBA

WASHINGTON STATE BAR ASSOCIATION

## LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD MEETING MINUTES

**June 19, 2014**

**Washington State Bar Association  
Seattle, Washington**

Members present were Steve Crossland (Chair), Lupe Artiga, Greg Dallaire, Caitlin Davis Carlson, Jeanne Dawes, Ellen Dial, Lynn Fleischbein (by telephone), Janet Olejar, and Elisabeth Tutsch.

Also in attendance were Bobby Henry, RSD Associate Director, Thea Jennings, Staff Liaison, and Doug Ende, Chief Disciplinary Counsel. Also present were Emily Cardenas, LLLT Liaison from Tacoma Community College, Christy Carpenter, a member of the public, and Reva Siewert (by telephone) of the Pacific Northwest Paralegal Association.

The meeting was called to order at 2:05 p.m.

### **I. Preliminary Matters and Meeting Minutes**

The Board approved its May 15, 2014 and May 30-31, 2014 meeting minutes. Chair Crossland discussed meetings with various groups regarding possible new practice areas. Specifically, he mentioned that he had been approached by the Washington Prosecuting Attorneys Association regarding child support enforcement. The Board recommended reconvening the Scope Subcommittee to discuss this and other family law scope of practice issues, including prenuptial agreements, etc.

### **II. RPC Subcommittee Consent Agenda Items**

The Board then approved the June 19, 2014 consent agenda recommendation of the RPC Subcommittee:

- a. Proposed Title 7 is approved in its entirety.

Subcommittee Chair Dial noted that in the context of LLLT advertising and publicity, the Subcommittee discussed whether it would be appropriate for an LLLT to use the term "law firm" or a like name, e.g. "law office," in the firm name if no lawyer is employed by

the firm. The Board suggested adding a comment to the rules to caution against using names that might mislead the public about whether a lawyer works at the firm.

### **III. Timing of Proposed Amendments to Lawyer RPC**

Chief Disciplinary Counsel Doug Ende informed the Board that a workgroup has been formed to recommend amendments to the lawyer RPC where necessary to conform to the LLLT RPC. It is expected the Workgroup will finish its work in time to submit it with the LLLT Board's rules package to the Court in August. The Board decided it would be best if the LLLT Board were a joint proponent with the BOG for the lawyer RPC. Given that the proposed amendments will not be completed until after the July BOG meeting and the LLLT rules package must go to the Court in August, Chair Crossland and RPC Subcommittee Chair Dial will reach out to Chief Justice Barbara Madsen and the BOG officers to discuss how best to proceed.

### **IV. Report of RPC Subcommittee**

Subcommittee Chair Dial presented the report of the June 19, 2014 RPC subcommittee meeting. The Subcommittee reviewed draft Title 4 to ensure that rules regarding LLLT communications reflect the prohibitions against negotiation and conveying client/opposing party positions. The Subcommittee further considered proposed revisions to RPC 6.5 and 1.5. The proposed revision to RPC 6.5 reflects the addition of lawyers to the conflicts screening process in nonprofit and court-annexed legal service programs. The proposed revisions to RPC 1.5 will bring the rule in alignment with the requirement in APR 28 that LLLTs enter into written contracts with clients prior to performing any services for a fee. The Subcommittee then discussed draft Rule 1.0 Terminology. Title 4 and revised RPC 6.5 and 1.5 will be on the Board's July 10 consent agenda.

The Subcommittee will meet for the final time on July 31, 2014 for an all-day meeting. The Subcommittee will review and finalize the rules as whole at the meeting, including comments and terminology. The Board will have the final LLLT RPC for its review and approval on August 10, 2014.

Finally, the Subcommittee discussed a draft of the Professional Responsibility (PR) Testing Protocol, which identifies subjects to create a guideline for developing the multiple choice question bank. Chair Dial will ask non-Board members of the Subcommittee to volunteer for: (1) refining the PR Testing Protocol and (2) drafting and reviewing PR multiple choice questions. It is not expected that the Subcommittee will have time to address these issues until August.

### **V. Report of Examination Subcommittee**

Chair Lupe Artiga presented the report of the June 19, 2014 Examination Subcommittee meeting. The Subcommittee reviewed a table listing all the different family law exam topics and subtopics. The Subcommittee assigned the number of questions under each subtopic to be used on the examination. This table will be used by Staff Liaison Jennings to identify gaps in the questions created at the Board retreat to ensure there are enough

questions in the question bank under each subtopic. Ms. Jennings will then make multiple choice question writing assignments to complete in advance of the next Examination Subcommittee meeting on July 10. The PR Testing Protocol will undergo a similar process. On July 10, the Subcommittee and Advisory Workgroup members will review the family law questions in the bank.

Finally, the Subcommittee discussed pre-testing of the exam. The Subcommittee would like to reach out to young lawyers and the Family Law Section to find volunteers to take the exam. As a way to encourage participants, it was suggested that perhaps the mock test could be paired with a presentation on the LLLT Program and ethics, so that participants could obtain CLE credit. The administration of a pre-test could be done in mid-January or early 2015.

## **VI. Retreat Recap**

Staff Liaison Jennings discussed the Exam Retreat noting that the Board met its goal of creating a family law bank of questions that is triple the size of the exam. However, she noted that there were significant gaps in topics from the Family Law Testing Guide with some topics overlooked and other receiving too much attention; given this, more multiple choice question writing is necessary. Further, in large part, the PR questions cover family-law related ethics scenarios. The PR exam question bank is meant to be applicable to any practice area; thus, the questions must be refined to be more general and universal to any LLLT practice.

## **VII. Criteria for Approving Practice Areas**

The Board discussed a draft set of criteria for approving new LLLT practice areas. It was noted that considering all of the criteria on the list will not be required before making a recommendation but may be considered. The list was developed as follows:

- Whether the practice area represents an area of high unmet need for legal services;
- Whether an LLLT's limited scope of practice may act as a barrier to effective representation; and
- Whether the LLLT practice in limited scope of practice can be economically viable.

The Board recommended altering the language in the second bullet to put it into more positive language and to add language regarding whether the appropriate scope of practice should be broader than that permitted in APR 28, if the limited scope of practice presents a barrier to effective representation.

For the Board's next meeting, a new version of the criteria will be made available. Member Jeanne Dawes will review her materials from her tenure on the Practice of Law Board (POLB) to see whether the POLB used any criteria which may assist the LLLT Board. Ms. Jennings will prepare a list of possible practice areas.

**VIII. DRAFT Regulation 14: Continuing Education**

The Board then discussed the draft continuing education regulation for LLLTs. The Board decided to follow the recommendation of the Mandatory Continuing Legal Education Task Force and have no live requirement for LLLTs. The Board further recommended having new LLLTs first report their continuing education after one full year of licensure, meaning some LLLTs may report after one full year plus a partial year depending on the date of licensure.

**ADJOURNMENT**

The meeting adjourned at 4:54 p.m.

**NEXT MEETING**

The next meeting will be Thursday, July 10, 2014, beginning at 2 p.m. at the offices of the Washington State Bar Association, 1325 4<sup>th</sup> Avenue, Seattle, Washington.

APPENDIX OF LLLT BOARD DECISIONS

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.

APPENDIX OF LLLT BOARD DECISIONS

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)



APPENDIX OF LLLT BOARD DECISIONS

No.	Board Meeting Date	Requirement/Topic	Decision
28	5/16/2013	APR 28 Amendments	Under APR 28(F)(6), amend the language to " <u>Select, and complete, file, and effect service of</u> 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.

APPENDIX OF LLLT BOARD DECISIONS

No.	Board Meeting Date	Requirement/Topic	Decision
33	6/20/2013	Bankruptcy	LLTs 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.

APPENDIX OF LLLT BOARD DECISIONS

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.

APPENDIX OF LLLT BOARD DECISIONS

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	LLTs 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	LLTs shall not advise and assist clients with anti-stalking orders in domestic violence actions

APPENDIX OF LLLT BOARD DECISIONS

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	LLTs 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	LLTs 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.

APPENDIX OF LLLT BOARD DECISIONS

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
86	5/15/2014	Conflicts RPC	Proposed conflicts rules RPC 1.7-1.12, RPC 1.18, and RPC 6.5 are approved in their entirety.
87	5/15/2014	Title 3	Proposed Title 3 is approved in its entirety.
88	5/15/2014	Title 6	Proposed Title 6 is approved in its entirety.
89	5/15/2014	Title 8	Proposed Title 8 is approved in its entirety.
90	6/19/2014	Title 7	Proposed Title 7 is approved in its entirety.



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WASHINGTON STATE BAR ASSOCIATION

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

**June 19, 2014**

**Washington State Bar Association  
Seattle, Washington**

Members present were Ellen Dial (Chair), Vicky Chen, Greg Dallaire, Caitlin Davis Carlson, Doug Ende, Janet Olejar, Deborah Perluss, Nan Sullins, and Elisabeth Tutsch.

Also in attendance were Thea Jennings (Staff Liaison) and 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 its May 15, 2014 meeting minutes.

### **II. Finalizing the LLLT RPC**

Chair Ellen Dial reviewed the timeline of the Subcommittee and the work that remains to be accomplished. An entire set of rules needs to be sent to the Supreme Court by the third week of August. The Subcommittee will meet for an all-day meeting on July 31, 2014 to finish its work. A workgroup is drafting comments for review at this meeting.

### **III. Consent Agenda Items**

The Subcommittee approved its June 19, 2014 consent agenda item:

- a) Proposed Title 7 is approved in its entirety.

The Subcommittee noted a comment is needed regarding RPC 7.2(b) that defines what “of value” means with respect to referrals and notes LLLTs are not allowed to pay referral fees or enter into fee sharing agreements.

### **IV. RPC Concordance Workgroup**

A workgroup has been formed to recommend amendments to the lawyer RPC where necessary to conform to the LLLT RPC. The RPC Concordance Workgroup includes Subcommittee members Doug Ende and Brooks Holland and Committee on Professional Ethics Chair Mark Fucile and Member Natalie Cain. The Workgroup recently met for the first time and divided up the work. It is expected the Workgroup will meet two times and finish its work in time for the LLLT Board to submit its rules package to the Court in August. The Subcommittee asked to review a draft of the lawyer RPC at its final meeting on July 31.

#### V. Revised Title 4

The Subcommittee considered a revised draft of Title 4 that was reconstructed to resemble the lawyer RPC. The Subcommittee voted unanimously to approve RPC 4.1 and 4.4. Then, the Subcommittee began discussions on the remaining provisions of Title 4. For RPC 4.2, the Subcommittee moved to make the following substantive changes:

- Change the title to “Communication with Persons Represented by ~~Counsel~~ a Lawyer.” Unanimous.
- In 4.2(a), reinstate the language in the introductory clause from the lawyer rule to read: “In ~~acting on behalf of~~ representing a client ....” Approved. Deborah Perluss and Elisabeth Tutsch opposed.
- In 4.2(b), amend the rule to read: “An LLLT shall not communicate about the subject of the representation with ~~the attorney or LLLT~~ a lawyer who the LLLT knows to be representing the opposing party another party in the matter.” Approved. Doug Ende abstained.

For RPC 4.3, the Subcommittee moved to make the following substantive changes:

- Change the title to “Dealing with ~~Unrepresented~~ a Person Not Represented by a Lawyer.” Unanimous.
- 4.3(a) approved without change.
- In 4.3(b), amend the rule to read: “An LLLT shall not communicate about the subject of the representation with ~~the opposing party~~ another party in the matter.” Approved. Doug Ende abstained.
- Add new 4.3(c): “An LLLT shall not communicate about the subject of the representation with an LLLT who the LLLT knows to be representing another party in the matter.” Approved. Doug Ende abstained.

The two title changes, the stricken language in 4.2(b) regarding an LLLT communicating with another LLLT employed by the other party, and the addition of RPC 4.3(c) are intended to clarify that an LLLT’s client is not represented for the purposes of Title 4.

Doug Ende abstained from voting where the language “another party in the matter” is used due to the need to define “party” in the context of the rule. The Subcommittee discussed whether a definition or comment is needed that reflects that “party” means a party to the action only.



The Subcommittee recommends a comment that would set forth an LLLT's duties in communications with other parties and their representatives when working in a dual capacity in a firm as an LLLT and acting under the direction of a lawyer as a paralegal in a matter.

The Subcommittee then voted to reinstate the title to Title 4: "~~Communications~~ Transactions with Persons Other than Clients." The motion was approved with Deborah Perluss and Caitlin Davis Carlson opposed. Elisabeth Tutsch did not vote.

Title 4 will be on the Board's consent agenda at its July meeting.

#### **VI. Revised RPC 6.5**

A proposed revision to RPC 6.5 reflected the addition of lawyers to the conflicts screening process in nonprofit and court-annexed legal service programs. The Subcommittee unanimously approved proposed RPC 6.5, which will be on the Board's July consent agenda.

#### **VII. Revised RPC 1.5**

Revisions to RPC 1.5(b) and RPC 1.5(f)(2) were proposed to the Subcommittee. Unlike a lawyer, an LLLT is required by APR 28G(3) to enter into a written contract with the client before the LLLT begins to perform any services for a fee that includes, among other things, identification of all fees and costs to be charged to the client for the services to be performed. The provisions concerning a flat fee described in RPC 1.5(f)(2) should be included in that contract. The proposed revisions will bring RPC 1.5 in alignment with APR 28G(3). The Subcommittee unanimously approved the proposed revisions with one slight change to RPC 1.5(f)(2) to avoid redundancy.

#### **VIII. RPC 1.0 Terminology**

The Subcommittee then discussed draft RPC 1.0 Terminology. The Subcommittee concluded the following:

- RPC 1.0 will become 1.0A and 1.0B. 1.0A will include only those terms found in the Lawyer Rule 1.0, in the same order and with the same lettering for the paragraphs. 1.0B will include the new terms.
- The definition of APR will be amended to conform to the new title of those Rules.
- The definition of counsel will be deleted altogether.
- The Subcommittee will propose a new definition of "represent," "representing," etc.

In addition, there are three places in the currently-proposed LLLT RPCs where the word "counsel" is used as a noun. In three of those cases, the Subcommittee voted, the word "counsel" would be replaced by a different noun. In Rule 1.16(d), the Subcommittee recommended that "employment of other counsel" would be replaced by "employment of

a lawyer or another LLLT.” In Rule 1.17(c)(2), “the client’s right to retain other counsel” would be replaced by “the client’s right to retain a lawyer or another LLLT.” In Rule 8.4(h), the Subcommittee recommended omitting the words “and/or their counsel” because LLLTs and lawyers have already been mentioned in the relevant clause. The phrase appears twice in that rule – following “other parties” and following “witnesses.” The word “counsel” appears in paragraph [6] of the Preamble as a noun, but the subcommittee agreed that it was innocuous as used in that case and could remain as currently written.

#### **IX. RPC 7.5 and Use of Term “Law Firm” When No Lawyer in Firm**

In the context of LLLT advertising and publicity, the Subcommittee discussed whether it would be appropriate for an LLLT to use the term “law firm” or a like name, e.g. “law office,” in the firm name if no lawyer is employed by the firm. Some proposed drafting a comment to RPC 7.5(a) to caution against using names that might mislead the public about whether a lawyer works at the firm. Chair Dial will present the issue to the Board for further discussion.

#### **X. Professional Responsibility Testing Protocol**

APR 28C(2)(c) provides that the LLLT examination shall cover the ethics rules for LLLTs. The Subcommittee discussed a draft of the Professional Responsibility (PR) Testing Protocol, which identifies subjects to create a guideline for developing the multiple choice question bank. Chair Dial identified two projects related to the PR exam, which she will ask non-Board members of the Subcommittee to volunteer for: (1) refining the PR Testing Protocol and (2) drafting and reviewing PR multiple choice questions. It is not expected that the Subcommittee will have time to address these issues until its September meeting. Deborah Perluss indicated her willingness to assist. Chair Dial will reach out to Brooks Holland to assist.

#### **XI. Next Meeting**

Title 4, RPC 6.5, and RPC 1.5 will appear on the Board’s July 10 consent agenda. The Subcommittee will not meet on that date. At its all-day, July 31 meeting, the Subcommittee will finalize the LLLT RPC, including the terminology section and all proposed comments. The Subcommittee will further review and discuss the draft amendments to the lawyer RPC.

### **ADJOURNMENT**

The meeting adjourned at 1:03 p.m.

### **NEXT MEETING**

The next meeting will be 9:00 a.m. Friday, July 31, 2014, at the offices of the Washington State Bar Association, 1325 4<sup>th</sup> Avenue, Seattle, Washington.



# WSBA

WASHINGTON STATE BAR ASSOCIATION

## LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD EXAMINATION SUBCOMMITTEE MINUTES

June 19, 2014

Washington State Bar Association  
Seattle, Washington

Members present were Chair Lupe Artiga, Bill Covington, Jeanne Dawes, Lynn Fleischbein (by WebEx), Ellen Reed, and Melissa Shaw. Also in attendance was Family Law Advisory Workgroup member 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 Subcommittee approved its meeting minutes from April 17, 2014 and May 15, 2014.

### BUSINESS

#### I. Retreat Recap

Mr. Henry discussed the Exam Retreat noting that, there were significant gaps in topics from the Family Law Testing Guide with some topics overlooked and other receiving too much attention; given this, more multiple choice question writing is necessary.

#### II. Number of Questions Under Subtopics and Exam Assignments

The Family Law Testing Guide is too detailed for the purposes of creating a question bank, which is why there were significant gaps in draft questions. For this reason, the Subcommittee reviewed a table listing all the different family law exam topics and subtopics. The Subcommittee assigned the number of questions under each subtopic to be used on the examination. This table will be used by WSBA staff to identify gaps in the questions created at the Board retreat to ensure there are enough questions in the question bank under each subtopic. Staff will then make multiple choice question writing assignments to complete in advance of the next Examination Subcommittee meeting on July 10. The Professional Responsibility Testing Protocol will undergo a similar process.

#### III. Pre-Testing

Finally, the Subcommittee discussed pre-testing of the exam. The Subcommittee would like to reach out to young lawyers and the Family Law Section to find volunteers to take the exam. As a way to encourage participants, it was suggested that perhaps the mock test could be paired with a presentation on the LLLT Program and ethics, so that participants could obtain CLE credit. The administration of a pre-test could be done in mid-January or early 2015.

#### **IV. Next Meeting**

At the next meeting, the Subcommittee and Advisory Workgroup members will review the family law questions in the bank.

#### **ADJOURNMENT**

The meeting adjourned at 1:00 p.m.

#### **NEXT MEETING**

The next meeting will be 9:00 a.m. Thursday, July 10, 2014, at the offices of the Washington State Bar Association, 1325 4<sup>th</sup> Avenue, Seattle, Washington.

## **Title 4. Transactions with Persons Other than Clients**

### **LLLT RPC 4.1 Truthfulness in Statements to Others**

In the course of representing a client an LLLT shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

#### *Comment*

### **LLLT RPC 4.2 Communication With Person Represented by Lawyer**

In representing a client, an LLLT shall not communicate about the subject of the representation with:

- (a) a person the LLLT knows to be represented by a lawyer in the matter; or
- (b) a lawyer who the LLLT knows to be representing another party in the matter.

#### *Comment*

### **LLLT RPC 4.3 Dealing With Person Not Represented by Lawyer**

- (a) In dealing on behalf of a client with a person who is not represented by a lawyer, an LLLT shall not state or imply that the LLLT is disinterested. When the LLLT knows or reasonably should know that the unrepresented person misunderstands the LLLT's role in the matter, the LLLT shall make reasonable efforts to correct the misunderstanding. The LLLT shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the LLLT knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.
- (b) An LLLT shall not communicate about the subject of the representation with another party in the matter.
- (c) An LLLT shall not communicate about the subject of the representation with an LLLT who the LLLT knows to be representing another party in the matter.

#### *Comment*

#### **LLLT RPC 4.4 Respect for Rights of Third Persons**

- (a) In representing a client, an LLLT shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) An LLLT who receives a document relating to the representation of the LLLT's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

#### ***Comment***

PROPOSED

**LLLT RPC 6.5 Nonprofit and Court-Annexed Limited Legal Service Programs [BOARD APPROVED]**

- (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 authorized scope of the LLLT's practice to a client if:
    - (i) any program LLLTs or lawyers 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 or lawyers 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.

***Comment***

[1] This Rule applies to LLLTs in the same way that Lawyer RPC 6.5 applies to lawyers.

### **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 commencing the representation. 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. A flat fee must be agreed to in advance in a writing signed by the client. The written agreement may specify that the 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. To qualify for the exception from the requirements of 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)(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.

[2] Unlike a lawyer, an LLLT is required by APR 28(G)(3) to enter into a written contract with the client before the LLLT begins to perform any services for a fee that includes, among other things, identification of all fees and costs to be charged to the client for the services to be performed. The provisions concerning a flat fee described in (f)(2) of this Rule, if applicable, should be included in that contract. The contract must be signed by both the client and the LLLT before the LLLT begins to perform any services for a fee. See Comment [2] to Rule 1.2 for other provisions that are to be included in the contract.

[3] An LLLT is ordinarily prohibited from modifying the written contract with the client that is required by APR 28(G)(3). Courts have applied the provisions of RPC 1.8(a) to modifications or renegotiations of fee arrangements by lawyers made during the representation of a client when the modified or renegotiated terms are more favorable to the lawyer than originally agreed upon. See, e.g., *Valley/50th Ave., L.L.C. v. Stewart*, 159 Wn.2d 736, 743-44, 153 P.3d 186, 189 (2007); *Rafel Law Grp. PLLC v. Defoor*, 176 Wn. App. 210, 223-24, 308 P.3d 767, 775 (2013), *review denied*, 179 Wn.2d 1011, 316 P.3d 495 (2014). Under these Rules, business transactions between LLLTs and clients are prohibited. See Rule 1.8(a). Accordingly, any changes in the basis or rate of an LLLT's fee that benefit the LLLT must be identified in the initial contract.

## ADMISSION AND PRACTICE RULES

### RULE 28 LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

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

- (b) "Must" or "shall" means "is required to."
- (c) "Should" means "recommended but not required."

### C. Limited License Legal Technician Board

- (1) *Establishment.* There is hereby established a Limited License Legal Technician Board. The Board shall consist of 13 members appointed by the Supreme Court of the State of Washington, nine of whom shall be active Washington lawyers, and four of whom shall be nonlawyer Washington residents. At least one member shall be a legal educator. The members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three year terms. No member may serve more than two consecutive full three year terms.
- (2) *Board Responsibilities.* The Board shall be responsible for the following:
  - (a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;
  - (b) Processing applications and fees, and screening applicants;
  - (c) Administering the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to Limited License Legal Technicians, rules relating to the attorney-client privilege, procedural rules, and substantive law issues related to one or more approved practice areas;
  - (d) Determining LLLT Continuing Legal Education (LLLT CLE) requirements and approval of LLLT CLE programs;
  - (e) Approving education and experience requirements for licensure in approved practice areas;
  - (f) Establishing and overseeing committees and tenure of members;
  - (g) Establishing and collecting examination fees, LLLT CLE fees, annual license fees, and other fees in such amounts approved by the Supreme Court as are necessary to carry out the duties and responsibilities of the Board; and
  - (h) Such other activities and functions as are expressly provided for in this rule.
- (3) *Rules and Regulations.* The Board shall propose rules and regulations for adoption by the Supreme Court that:
  - (a) Establish procedures for grievances and disciplinary proceedings;
  - (b) Establish trust account requirements and procedures;
  - (c) Establish rules of professional and ethical conduct; and
  - (d) Implement the other provisions of this rule.
- (4) *Administration and Expenses of the Board.* The Washington State Bar Association shall provide reasonably necessary administrative support for the Board. Members of the Board shall not be compensated for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties according to the Washington State Bar Association's expense policies. Funds accumulated from examination fees, annual fees, and other revenues shall be used to defray the expenses of the Board. All expenses incurred and fees collected shall be submitted on a budget approved by the Washington State Bar Association's Board of Governors.

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

- (1) *Age.* Be at least 18 years of age.
- (2) *Moral Character and Fitness to Practice.* Be of good moral character and demonstrate fitness to practice as a Limited License Legal Technician.
- (3) *Education.* Have the following education, unless waived by the Board through regulation:
  - (a) An associate level degree or higher;
  - (b) 45 credit hours of core curriculum instruction in paralegal studies as approved by the Board with instruction to occur at an ABA approved law school or ABA approved paralegal education program; and
  - (c) In each practice area in which an applicant seeks licensure, instruction in the approved practice area, which must be based on a curriculum developed by or in conjunction with an ABA approved law school. For each approved practice area, the Board shall determine the key concepts or topics to be covered in the curriculum and the number of credit hours of instruction required for admission in that practice area.
  - (d) For the purposes of satisfying APR 28(D)(3), one credit hour shall be equivalent to 450 minutes of Instruction.
- (4) *Application.* Execute under oath and file with the Board his/her application, in such form as the Board requires. An applicant's failure to furnish information requested by the Board or pertinent to the pending application may be grounds for denial of the application.
- (5) *Examination Fee.* Pay, upon the filing of the application, the examination fee and any other required application fees as established by the Board and approved by the Supreme Court.

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

- (1) *Examination.* Take and pass the examinations required under these rules;
- (2) *Experience.* Acquire 3,000 hours of substantive law-related work experience supervised by a licensed lawyer. The experience must be acquired no more than three years prior to licensure and no more than three years after passing the examination;
- (3) *Annual License Fee.* Pay the annual license fee;
- (4) *Financial Responsibility.* Show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rules. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe; and
- (5) Meet all other licensing requirements set forth in the rules and regulations proposed by the Board and adopted by the Supreme Court.

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

client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

- (1) Obtain relevant facts, and explain the relevancy of such information to the client;
- (2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- (3) Inform the client of applicable procedures for proper service of process and filing of legal documents;
- (4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, ~~which that~~ contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;
- (5) Review documents or exhibits that the client has received from the opposing ~~side~~party, and explain them to the client;
- (6) Select, 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 or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;
- ~~(7)~~ Perform legal research; ~~and~~
- ~~(7)(8)~~ Draft legal letters ~~and~~, pleadings, ~~and other legal~~ documents beyond what is permitted in ~~the previous~~ paragraph ~~(6)~~, if the work is reviewed and approved by a Washington lawyer;
- ~~(8)(9)~~ Advise a client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case;
- ~~(9)(10)~~ Assist the client in obtaining necessary documents ~~or records~~, such as birth, death, or marriage certificates.

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

- (1) A Limited License Legal Technician must have a principal place of business having a physical street address for the acceptance of service of process in the State of Washington;
- (2) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a nonlicensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;
- (3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician, that includes the following provisions:
  - (a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

- (b) Identification of all fees and costs to be charged to the client for the services to be performed;
  - (c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;
  - (d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the first page of the contract in minimum twelve-point bold type print;
  - (e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;
  - (f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and
  - (g) Any other conditions required by the rules and regulations of the Board.
- (4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client should seek the services of a lawyer.
- (5) A document prepared by an LLLT shall include the LLLT's name, signature, and license number beneath the signature of the client.

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

- (1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;
- (2) Retain any fees or costs for services not performed;
- (3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client;
- (4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized by the license held by the Limited License Legal Technician;
- (5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24(b);
- (6) Negotiate the client's legal rights or responsibilities, or communicate with another person the client's position or convey to the client the position of another party; unless permitted by GR 24(b).
- (7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client.
- (8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;
- (9) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

## **I. Continuing Licensing Requirements**

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

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

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

- (1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.
- (2) Limited License Legal Technicians shall be held to the ethical standards of the Limited License Legal Technicians' Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.
- (3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.

## **L. Confidentiality and Public Records**

- (1) GR 12.4 shall apply to access to Board records.
- (2) Unless expressly authorized by the Supreme Court or by the applicant, all application records, including related investigation files, documents and proceedings, for the limited admission to the practice of law as an LLLT are confidential and shall be privileged against disclosure, except as necessary to conduct an investigation, hearing, appeal, or review pursuant to these rules.
- (3) Unless expressly authorized by the Supreme Court, all examination questions, scoring keys and other examination data used by the Board to administer the LLLT licensing examinations are not subject to public disclosure.
- ~~(3)~~(4) Unless expressly authorized by the Supreme Court or the LLLT, the following Board records are exempt from public access: personal information in Board records for LLLTs and Board members to the extent that disclosure would violate their right of privacy, including home contact information (unless such information is their address of record), Social Security numbers, driver's license numbers, identification or security photographs held in Board records, and personal data including ethnicity, race, disability status, gender, and sexual orientation. LLLT license status, license number, dates of admission or licensing, addresses of record, and business telephone numbers, facsimile

numbers, and electronic mail addresses (unless there has been a request that electronic mail addresses not be made public) shall not be exempt, provided that any such information shall be exempt if the Chair of the Board approves the confidentiality of that information for reasons of personal security or other compelling reason, which approval must be reviewed annually.



## APPENDIX APR 28. REGULATIONS OF THE APR 28 LIMITED LICENSE LEGAL TECHNICIAN BOARD

### REGULATION 1: IN GENERAL

Every person desiring to be licensed and to maintain licensure as a Limited License Legal Technician (LLLT) pursuant to Admission and Practice Rule (APR) 28 shall satisfy all of the requirements of APR 28 and Appendix APR 28.

To facilitate prompt administration of APR 28 and these regulations, designated staff of the Washington State Bar Association (~~WSBA Association~~) may act on behalf of the LLLT Board under APR 28 and these regulations.

### REGULATION 2: PRACTICE AREAS—SCOPE OF PRACTICE AUTHORIZED BY LIMITED LICENSE LEGAL TECHNICIAN RULE

In each practice area in which an LLLT is licensed, the LLLT shall comply with the provisions defining the scope of practice as found in APR 28 and as described herein.

#### A. Issues Beyond the Scope of Authorized Practice.

An LLLT has an affirmative duty under APR 28F to inform clients when issues arise that are beyond the authorized scope of the LLLT's practice. When an affirmative duty under APR 28F arises, then the LLLT shall inform the client in writing that:

1. the issue may exist, describing in general terms the nature of the issue;
2. the LLLT is not authorized to advise or assist on this issue;
3. the failure to obtain a lawyer's advice could be adverse to the client's interests; and,
4. the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's interests.

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.

**Comment [TJ1]:** This makes it seem that they can only follow lawyer instructions for "final court orders." What about other forms, pleadings, etc?

#### B. Domestic Relations.

1. Domestic Relations, Defined. For the purposes of these Regulations, domestic relations shall include only: (a) child support modification actions, (b) dissolution actions, (c) domestic violence actions, except as prohibited by Regulation 2B(3), (d) committed intimate relationship actions only as they pertain to parenting and support issues, (e) legal separation actions, (f) major parenting plan modifications when the terms are agreed to by the parties before the onset of the representation by the LLLT, (g) minor parenting plan modifications,

- (h) parenting and support actions, (i) paternity actions, and (j) relocation actions, except as prohibited by Regulation 2B(3).
2. Scope of Practice for Limited License Legal Technicians — LLLTs in domestic relations may provide legal services to clients as provided in APR 28F, except as prohibited by APR 28H and Regulation 2B(3). Unless an issue beyond the scope arises or a prohibited act would be required, LLLTs may advise and assist clients (1) to initiate and respond to actions and (2) regarding motions, discovery, trial preparation, temporary and final orders, and modifications of orders.
  3. Prohibited Acts. In addition to the prohibitions set forth in APR 28H, in the course of dealing with clients or prospective clients, LLLTs licensed to practice in domestic relations:
    - a. shall not represent more than one party in any domestic relations matter;
    - b. shall not provide legal services:
      - i. in defacto parentage or nonparental custody actions; and
      - ii. if 25 U.S.C. Chapter 21, the Indian Child Welfare Act, or RCW 13.38, the Washington State Indian Child Welfare Act, applies to the matter;
    - c. shall not advise or assist clients regarding:
      - i. division of owned real estate, formal business entities, or retirement assets that require a supplemental order to divide and award, which includes division of all defined benefit plans and defined contribution plans;
      - ii. bankruptcy, including obtaining a stay from bankruptcy;
      - iii. disposition of debts and assets, if one party is in bankruptcy or files a bankruptcy during the pendency of the proceeding, unless: (a) the LLLT's client has retained a lawyer to represent him/her in the bankruptcy, (b) the client has consulted with a 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 (c) the bankruptcy has been discharged;
      - iv. anti-harassment orders, criminal no contact orders, anti-stalking orders, and sexual assault protection orders in domestic violence actions;
      - v. ~~pseudo-community jointly acquired committed intimate relationship~~ property issues in committed intimate relationship actions;
      - vi. major parenting plan modifications unless the terms were agreed to by the parties before the onset of the representation by the LLLT;
      - vii. the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues under RCW 26.27 or Uniform Interstate Family Support Act issues under RCW 26.21A unless and until jurisdiction has been resolved;
      - viii. objections to relocation petitions, responses to objections to relocation petitions, or temporary orders in relocation actions;
      - ix. final revised parenting plans in relocation actions except in the event of default or where the terms have been agreed to by the parties.
    - d. shall not appear or participate at the taking of a deposition; and

e. shall not initiate or respond to an appeal to an appellate court.

### **REGULATION 3: EDUCATION REQUIREMENTS FOR APPLICANTS**

An applicant for licensure shall satisfy the following education requirements:

**A. Core Curriculum.** An applicant for licensure shall have earned the following course credits at an ABA approved law school or ABA approved paralegal program:

1. Civil Procedure, minimum 8 credits;
2. Contracts, minimum 3 credits;
3. Interviewing and Investigation Techniques, minimum 3 credits;
4. Introduction to Law and Legal Process, minimum 3 credits;
5. Law Office Procedures and Technology, minimum 3 credits;
6. Legal Research, Writing and Analysis, minimum 8 credits; and
7. Professional Responsibility, minimum 3 credits.

The core curriculum courses in which credit is earned shall satisfy the curricular requirements approved by the Board and published by the [WSBA Association](#). If the required core curriculum courses completed by the applicant do not total 45 credits as required by APR 28D(3)(b), then the applicant may earn the remaining credits by taking legal or paralegal elective courses at an ABA approved law school or ABA approved paralegal program.

**B. Practice Area Curriculum.** An applicant for licensure in a defined practice area shall have completed the prescribed curriculum and earned course credits for that defined practice area, as set forth below and in APR 28D(3)(c). Each practice area curriculum course shall satisfy the curricular requirements approved by the Board and published by the [WSBA Association](#).

1. Domestic Relations.
  - a. Prerequisites: Prior to enrolling in the domestic relations practice area courses, applicants shall 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.
  - b. Credit Requirements: Applicants shall complete five credit hours in basic domestic relations subjects and ten credit hours in advanced and Washington specific domestic relations subjects.

### **REGULATION 4: LIMITED TIME WAIVERS**

**A. Limited Time Waiver, Defined.** For the limited time between the date the Board begins to accept applications and December 31, 2016, the Board shall grant a waiver of the minimum associate-level degree requirement and/or the core curriculum education requirement set forth in APR 28D(3) if an applicant meets the requirements set forth in Regulation 4B. The Board shall not grant waivers for applications filed after December 31, 2016. The Board shall not waive the

practice area curriculum requirement. The limited time waiver application will be separate from the application process for licensure set forth in these regulations.

**B. Waiver Requirements and Applications.** To qualify for the limited time waiver, an applicant shall pay the required fee, submit the required waiver application form, and provide proof, in such form and manner as the Board requires, that he/she has:

1. Passed ~~the Certified Paralegal Exam conducted by the National Association of Legal Assistants (NALA) or the Paralegal Advanced Competency Exam (PACE) conducted by the National Federation of Paralegal Associations (NFPA)~~ a Board approved national paralegal certification examination;
2. Active certification ~~as a Certified Paralegal with NALA or as a PACE Registered Paralegal with NFPA~~ from a Board approved national paralegal certification organization; and
3. Completed 10 years of substantive law-related experience supervised by a licensed lawyer within the 15 years preceding the application for the waiver. Proof of 10 years of substantive-law related experience supervised by a licensed lawyer shall include the following:
  - a. the name and bar number of the supervising lawyer(s),
  - b. certification by the lawyer that the work experience meets the definition of substantive law-related work experience as defined in APR 28, and
  - c. the dates of employment or service.

**C. Review of Limited Time Waiver Application.** ~~WSBA staff~~ The Association shall review each limited time waiver application to determine if the application meets the waiver requirements. Any application that does not meet the limited time waiver requirements as established by this Regulation shall be denied by the ~~WSBA staff~~ Association on administrative grounds, with a written statement of the reason(s) for denial.

**D. Review of Denial.** An applicant whose application for waiver has been denied by ~~WSBA staff~~ the Association may request review by the Board chair. Such request shall be filed with ~~WSBA staff~~ the Association within 14 days of the date of the notification of denial. The applicant shall be provided with written notification of the chair's decision, which is not subject to review.

**E. Expiration of Limited Time Waiver Approval.** Approval of the limited time waiver application shall expire December 31, 2018. After expiration of the approval, any subsequent application for licensure by the applicant shall meet all of the standard requirements for licensure without waiver.

## **REGULATION 5: APPLICATIONS**

**A. Fees.** All applications shall be accompanied by the required examination and application fee.

**B. Application for Licensure.** An applicant for licensure as an LLLT shall complete and file with the WSBA Association:

1. a completed application for licensure ~~to limited practice under APR 28; in a form and manner prescribed by the Board;~~
  2. ~~all official transcripts~~ evidence in a form and manner prescribed by the Board demonstrating completion of
    - a. at a minimum, an associate level degree, except applicants who have been approved for a limited time waiver pursuant to Regulation 4,
    - b. the core curriculum required pursuant to Regulation 3A, except applicants who have been approved for a limited time waiver pursuant to Regulation 4, and
    - c. the practice area curriculum required pursuant to Regulation 3B; ~~and~~ 3. original proof of passing the Core Curriculum Examination as required by Regulation 8; and
- ~~3.4~~ a signed and notarized Authorization, Release and Affidavit of Applicant.

**C. Application for Additional Practice Area.** An LLLT seeking licensure in an additional practice area must complete and file with the WSBA Association:

1. a completed practice area application, ~~for licensure to limited practice under APR 28 in a form and manner prescribed by the Board;~~
2. ~~an official transcript~~ evidence in a form and manner prescribed by the Board demonstrating completion of the practice area curriculum required under Regulation 3B; and
3. a signed and notarized Authorization, Release and Affidavit of Applicant.

**D. Background Check.** Each applicant for licensure shall submit a fingerprint card to the Federal Bureau of Investigation (FBI) for a criminal history record check and provide to the FBI a release for the results of the criminal history check to be sent directly to the WSBA Association. A Washington LLLT applying for licensure in an additional practice area shall not be required to submit a fingerprint card, unless it has been more than two years since the LLLT was last issued a license.

The applicant shall furnish whatever additional information or proof may be required in the course of investigating the applicant, and failure to furnish such information may be grounds for denial of licensure.

## **REGULATION 6: APPROVAL OR DENIAL OF APPLICATION ON ADMINISTRATIVE GROUNDS**

**A. Review of Application.** ~~WSBA staff~~ The Association shall review each application to determine if the application meets the criteria for licensure established in APR 28. Any application that does not meet the initial criteria for licensure as established by APR 28 shall be denied by the ~~WSBA staff~~ Association on administrative grounds, except for those applications where there is a substantial question as to the applicant's good moral character or fitness to practice. The applicant will be notified whether the application has been approved or denied. If

the application has been denied, the applicant will be notified of the grounds for the denial and the review process.

**B. Review of Denial.** Every applicant who has been denied licensure under APR 28 on administrative grounds may request review by the Board chair. To request review, an applicant shall submit a written request within 14 days of the date the denial of application was issued and state the reason for the request.

**C. Procedure for Review.** The Board chair shall consider the request for review on the written record only and shall hear no oral arguments. The chair shall enter a written decision which may affirm or reverse the denial of the application or direct further investigation.

#### **REGULATION 7: CHARACTER AND FITNESS ~~HEARINGS~~**

**A. Question of Character and Fitness.** Each applicant for licensure as an LLLT shall establish good moral character and fitness to practice as defined in APR 21 and APR 22(a). When considering an applicant's good moral character and fitness to practice, the Board, Association staff, and Bar Counsel shall apply the factors set forth in APR 24.2. If there is a substantial question as to the good moral character or fitness to practice of an applicant for admission or admission after disciplinary revocation then the application will be referred to the Character and Fitness Committee of the Board for hearing.

**B. Character and Fitness Committee.** The Character and Fitness Committee shall be made up of three members of the Board appointed by the Board Chair. The Board Chair shall designate one member of the Board to act as chair of the Committee.

The Character and Fitness Committee shall have the power and authority to accept referrals from the Association concerning matters of character and fitness of applicants, order further investigation of matters relevant to the applications, conduct hearings, perform such other functions as necessary and proper to carry out its duties, and make appropriate recommendations.

**C. Association Review.** The Association shall review each application to determine whether any of the factors set forth in APR 24.2 are present. The Association shall review the material evidence in a light most favorable to the Association's obligation to recommend the licensing or admission to the limited practice of law only those persons who possess good moral character and fitness to practice.

**D. Service.** Service of papers and documents shall be made by first class postage prepaid mail to the applicant's, LLLT's, or his or her counsel's, last known address on record with the Association. If properly made, service by mail is deemed accomplished on the date of the mailing. Any notice of change of address shall be submitted in writing to the Association.

**E. Duty of Applicant.** It shall be the duty of every applicant to cooperate in good faith and furnish whatever additional information or documentation may be required in the course of

investigating the applicant. Failure to furnish such information may be grounds for denial of the application. Applicants shall not have direct contact with any member of the Committee or Board from the date of filing the application with the Association until the matter is resolved by the Board or Supreme Court, except to the extent direct contact is required during the hearing.

**F. Hearings.** APR 24.3 shall apply equally to character and fitness hearings conducted pursuant to this Regulation and is incorporated herein by reference, except that the Character and Fitness Board as referenced in APR 24.3 shall mean the Character and Fitness Committee of the LLLT Board. Reference to the chair or chairperson in APR 24.3, as applied in this rule, shall mean the Character and Fitness Committee Chair. Applicants shall appear in person at any hearing before the Character and Fitness Committee, unless the Committee waives the applicant's presence for good cause shown.

**G. Decisions and Recommendation of Character and Fitness Committee.**

1. Findings of Character and Fitness Committee. The Character and Fitness Committee will timely file with the Association written findings of fact, conclusions of law, and a recommendation or direct further investigation for the reasons stated in the written findings.

2. Action on Recommendation.

a. If the Committee recommends admission, the record, recommendation, and all exhibits shall be transmitted to the Supreme Court for disposition.

b. If the Committee recommends against licensure, the record and recommendation shall be retained in the office of the Association unless the applicant submits a written request for review by the Board within 15 days of service of the recommendation. If the applicant so requests, the Committee will transmit the record, recommendation, and all exhibits to the Board for a recommendation. No additional evidence, materials, or argument shall be considered by the Board.

**H. Review by the Board.**

1. Decision of the Board. After receipt of the record, the Board will enter a written decision and may affirm or reverse the findings of the Character and Fitness Committee or direct further investigation for the reasons stated in the written decision.

2. Action on Recommendation.

a. If the Board recommends admission, the record, recommendation, and all exhibits shall be transmitted to the Supreme Court for disposition.

b. If the Board recommends against admission, the record and recommendation shall be retained in the office of the Association unless the applicant requests that it be submitted to the Supreme Court by filing a Notice of Appeal with the Board within 15 days of service of the

recommendation of the Board. If the applicant so requests, the Board will transmit the record, including the transcript, exhibits, and recommendation to the Supreme Court for review and disposition. The applicant must pay to the Supreme Court any fee required by the Court in connection with appeal and review.

**I. Action on Supreme Court's Determination.**

1. Application Approved. If the application is approved by the Supreme Court, admission shall be subject to the applicant's taking and passing of the licensing examination and complying with all other requirements for licensure.

2. Application Denied. If the application is denied by the Supreme Court, the Board shall maintain a record of the application, hearing, and appeal in the Association records.

**J. Reapplication.**

No application for admission may be filed within a period of one year after a final decision of the Character and Fitness Committee, Board, or Supreme Court recommending against admission.

**REGULATION 8: EXAMINATIONS; NOTIFICATION OF RESULTS**

**A. Administration of Examinations.** The examinations will be administered at such times and locations as the Board may designate.

An applicant for initial licensure shall pass a core curriculum examination and a practice area examination.

An LLLT who applies for licensure in an additional practice area shall be required to take only the qualifying practice area examination in the practice area for which he or she is seeking licensure.

**B. Core Curriculum Examination.** The core curriculum examination shall be ~~comprised of three parts: a multiple choice section, an essay section, and a performance section. The passing standard for the core curriculum examination is a score of 75 percent for each section of the exam. A failing grade in one section shall result in failure of the exam, in which case grading of any remaining sections shall not be completed~~satisfied by passing a national paralegal certifying examination as approved by the Board.

**C. Practice Area Examination.** The practice area exam will test applicants on one specific practice area and knowledge of LLLT scope and professional responsibility. All practice area examinations shall be comprised of three parts: a multiple choice section, an essay section, and a performance section. The duration, form, and manner of the exam shall be as prescribed by the Board. The passing standard for the practice area examination is a score of 75 percent for each section of the exam. A failing grade in one section shall result in failure of the exam, in which case grading of any remaining sections shall not be completed.



**D. Results and Reapplications.** Each applicant will be notified of the applicant's practice area examination results. ~~Those applicants who fail the examination will be informed of their score on each graded section of the examination. Examination scores shall not be disclosed to those applicants who pass the examination. Copies of the examination shall not be available to any applicant. An applicant who fails the practice area examination may request a copy of the essay and performance sections. An applicant who passes the exam will not receive a copy of the exam.~~

~~An applicant who passes the core curriculum examination but fails the practice area examination or vice versa may retake the failed exam at the next two administrations of the exam. The passing score shall be valid for one year from the date the applicant is notified of passing. If the applicant does not pass the failed exam after the next two administrations of the exam, the applicant shall be required to retake the exam he or she passed.~~

#### **REGULATION 9: SUBSTANTIVE LAW-RELATED WORK EXPERIENCE REQUIREMENT**

Each applicant for licensure as a limited license legal technician shall show proof of having completed 3,000 hours of substantive law-related work experience supervised by a licensed lawyer as required by APR 28E(2). The experience requirement shall be completed within three years before or after the date the applicant is notified of passing ~~both the core curriculum and practice area qualifying examinations~~. The proof shall be provided in such form as the Board requires, but shall include at a minimum:

1. the name and bar number of the supervising lawyer;
2. certification that the work experience meets the definition of substantive law-related work experience as defined in APR 28;
3. the total number of hours of substantive law-related work experience performed under the supervising lawyer; and
4. certification that the requisite work experience was acquired within the time period required by APR 28E(2).

#### **REGULATION 10: CERTIFICATION OF RESULTS TO SUPREME COURT; OATH**

**A. Recommendation for Licensure.** The Board shall recommend to the Washington State Supreme Court the licensure of all applicants who have met all licensing requirements set forth in APR 28 and these regulations, including good moral character and fitness to practice. All recommendations of the Board shall be accompanied by the application for licensure and any other documents deemed pertinent by the Board or requested by the Supreme Court. The recommendation and all accompanying documents and papers shall not be public record.

**B. Pre-licensure Requirements.** Before an applicant who has passed the qualifying examinations may be licensed, the applicant shall:

1. furnish proof of completion of the requisite hours of substantive law-related work experience supervised by a licensed lawyer as required by Regulation 9;
2. furnish proof of financial responsibility as required by Regulation 12;
3. pay the annual license fee and any assessments for the current year as required by Regulation 11;
4. file any and all licensing forms required for active limited license legal technicians; and
5. take the Oath of Limited License Legal Technician.

The pre-licensure requirements shall be completed within three years of the date the applicant is notified of the [practice area](#) examination results. If an applicant fails to satisfy all the requirements for licensure within this period, the applicant shall not be eligible for licensure under APR 28 without submitting a new application for licensure and retaking the [practice area](#) examination.

**C. Additional Practice Area Pre-licensure Requirements.** An LLLT who is seeking licensure in an additional practice area shall:

1. take and pass the additional practice area examination;
2. pay the ~~additional practice area annual~~ license fee [as stated in the fee schedule](#); and
3. file any and all licensing forms required for active limited license legal technicians.

The requirements above shall be completed within one year of the date the applicant is notified of the [practice area](#) examination results. If an LLLT fails to satisfy all the requirements for licensure in an additional practice area within this period, the LLLT shall not be eligible for licensure in the additional practice area without submitting a new application and retaking the [practice area](#) examination.

**D. Oath of Limited License Legal Technician.** The Oath of Limited License Legal Technician shall be taken before an elected or appointed judge, excluding judges pro tempore, sitting in open court in the state of Washington.

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

**OATH FOR LIMITED LICENSE LEGAL TECHNICIANS**

STATE OF WASHINGTON  
 COUNTY OF

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

1. I am fully subject to the laws of the ~~State-state~~ of Washington, the laws of the United States, Rule 28 of the Admission and Practice Rules, and APR 28 Regulations adopted by the Washington State Supreme Court and will abide by the same;

2. I will support the constitutions of the State of Washington and of the United States of America;
3. I will abide by the Limited License Legal Technician Rules of Professional Conduct approved by the Supreme Court of the State of Washington;
4. I will confine my activities as a Limited License Legal Technician to those activities allowed by law, rule and regulation and will only utilize documents approved pursuant to APR 28;
5. I will faithfully disclose the limitations of my services and that I am not a lawyer;
6. I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with the business of my client, unless this compensation is from or with the knowledge and approval of the client or with the approval of the court;
7. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;
8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

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Signature Limited License Legal Technician

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

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JUDGE

**F. Order Admitting to Limited Practice as LLLT.** After examining the recommendation and accompanying documents transmitted by the Board, the Supreme Court may enter such order in each case as it deems advisable. For those applicants it deems qualified, the Supreme Court shall enter an order admitting them to limited practice as LLLTs. Applicants shall be admitted under APR 28 only after the order has been entered by the Supreme Court.

**G. Order Admitting LLLT to Limited Practice in Additional Practice Area.** After examining the recommendation and accompanying documents transmitted by the Board, the Supreme Court may enter such order in each case as it deems advisable. For those LLLTs it deems qualified, the Supreme Court shall enter an order admitting them to limited practice in the additional practice area.

#### **REGULATION 11: ANNUAL LICENSE FEES**

**A.** Except as set forth in section B of this Regulation, every Limited License Legal Technician shall pay an annual license fee in an amount set by an established fee schedule approved by the Board with the approval of and the Supreme Court, ~~-. The annual license fee which~~ is due ~~July~~

August 1 of each year ~~and shall cover the annual license period of July 1 to June 30.~~ Annual license fees paid after ~~July-August~~ July-August 1 shall be subject to a late fee equal to one half the annual license fee.

~~The annual license fee is for the limited license to practice in one defined practice area.~~

**B.** ~~The prorated annual license fee for~~ LLLTs who pass the qualifying examination ~~given in the spring after January 1 but before July 1~~ and who request active status prior to July 1 of that same calendar year shall ~~be pay a prorated annual license fee of~~ one half the amount of the annual license fee. LLLTs shall pay the annual license fee set forth in Regulation 11A to retain their active status after June 30 of the calendar year of their licensure.

~~C. A LLLT shall pay an annual additional practice area fee for each additional practice area in which the LLLT is licensed. The annual additional practice area fee for each additional practice area shall be one half the amount of the annual license fee. The combined annual additional practice area fees and annual license fee shall not exceed the total cost of active lawyer annual license fees. Annual license fee payment due dates and late fees shall apply to additional practice area fees.~~

**DC.** An LLLT shall provide his or her residential and business addresses, telephone numbers, and business email address to the Board at the time of payment of the annual license fee. An LLLT whose address, telephone number, or email address changes shall notify the ~~WSBA Association~~ WSBA Association within 10 days after the change.

## **REGULATION 12: FINANCIAL RESPONSIBILITY**

**A. Insurance Requirement.** Each limited license legal technician shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 28 by:

1. Submitting an individual professional liability insurance policy in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit; ~~or~~
2. Submitting a professional liability insurance policy of the employer or the parent company of the employer who has agreed to provide coverage for the LLLT's ability to respond in damages in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit; or
- ~~2-3.~~ 3. Submitting proof of indemnification by the LLLT's government employer.

**B. Continuing Requirement.** Each active LLLT ~~who is covered by insurance shall file with the WSBA an annual certificate of coverage. The certificate of coverage shall name the covered LLLT(s) and the policy limits and dates shall certify annually by August 1 financial responsibility in a form and manner as prescribed by the Board.~~ Each LLLT shall notify the Board of any cancellation or lapse in coverage.

## **REGULATION 12: FINANCIAL RESPONSIBILITY**

**A. Financial Responsibility Requirement.** Each limited license legal technician shall show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted under APR 28 by:

1. Submitting an individual professional liability insurance policy in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit; ~~or~~
2. Submitting a professional liability insurance policy of the employer or the parent company of the employer who has agreed to provide coverage for the LLLT's ability to respond in damages in the amount of at least \$100,000 per claim and a \$300,000 annual aggregate limit;
3. Submitting an audited financial statement showing the applicant's net worth to be at least \$300,000;
4. Submitting an audited financial statement of the employer or other surety who agrees to respond in damages for the applicant, showing net worth of \$300,000 plus \$100,000 per each additional LLLT employee; or
5. Submitting proof of indemnification by the LLLT's government employer.

**B. Continuing Requirement.** Each active LLLT ~~who is covered by insurance shall file with the WSBA an annual certificate of coverage. The certificate of coverage shall name the covered LLLT(s) and the policy limits and dates shall certify annually by August 1 continued financial responsibility in a form and manner as prescribed by the Board.~~ Each LLLT shall notify the Board of any cancellation or lapse in coverage.

## **REGULATION 13: TRUST ACCOUNT DECLARATION**

Rules 15.4(a) and (b) and 15.7 of the Rules for Enforcement of Lawyer Conduct (ELC) shall apply to LLLT IOLTA accounts. Annually, each active LLLT shall certify compliance with Rules 1.15A and 1.15B of the Limited License Legal Technician Rules of Professional Conduct. Such declaration shall be filed by August 1 in a form and manner as prescribed by the Board and shall include the bank where each account is held and the account number.

## **REGULATION 14: CONTINUING EDUCATION**

**A. Minimum Requirement.** An LLLT shall complete a minimum of ten hours of approved continuing education each license year by June 30. A newly licensed LLLT shall be exempt for the first license year. The education must relate to the LLLT's area of practice, scope of practice or the subject matter covered in the required LLLT core curriculum and shall include a minimum of two hours in legal ethics and professional responsibility per license year.

Each continuing education course shall be approved in accordance with the procedures set forth in continuing education policies approved by the Board.

**B. Proof of Compliance.** An LLLT shall certify annually by August 1 compliance with the continuing education requirements in a form and manner as prescribed by the Board.

**C. Policies and Fees.** The Board shall establish continuing education policies for the efficient administration of this regulation and shall include, but not be limited to, standards for approval of continuing education courses, procedures for reporting attendance, and sponsor duties. The Board shall determine and adjust fees to defray the reasonably necessary costs of administering this regulation.

### **REGULATION 15: ADMINISTRATIVE SUSPENSION FROM LIMITED PRACTICE**

**A. Basis for Suspension from Limited Practice.** The Board shall request that the Supreme Court suspend an LLLT from limited practice upon:

1. notification from the Department of Social and Health Services that an LLLT is more than six months delinquent in noncompliance with a valid and enforceable order entered by a court of competent jurisdiction requiring the LLLT to pay child support; or

2. failure of an LLLT to comply with licensing requirements under APR 28 and these Regulations. This includes but is not limited to an LLLT's:

a. failure to pay the annual license fee as set forth in Regulation 11A;

b. failure to comply with financial responsibility requirements as set forth in Regulation 12;

c. failure to file an annual trust account declaration as set forth in Regulation 13;

d. failure to comply with continuing education requirements as set forth in Regulation 14; and

e. failure to timely notify the Association of a change of address, telephone number, or email address pursuant to Regulation 11C.

**B. Notice and Order of Suspension.** The Board shall provide at least 30 days written notice of intent to seek suspension to an LLLT at the LLLT's address of record with the Board. Written notice shall be sent by certified mail. The Board shall establish procedures consistent with these Regulations. An LLLT shall have a right to submit proof that the grounds for suspension do not or no longer exist. After such notice, the Court may enter an order suspending the LLLT from limited practice.

**C. Change of Status after Suspension Pursuant to This Regulation.** An LLLT who has been administratively suspended under this rule shall have a right to submit proof in a manner and form prescribed by the Board that the grounds for suspension no longer exist. The Court may enter an order changing status upon determination said proof is satisfactory and so long as the LLLT meets all other requirements for limited practice under APR 28 and these regulations.

### **REGULATION 16: INACTIVE STATUS**

An LLLT may request transfer to inactive status after being admitted. An LLLT who has been transferred to inactive status shall continue to meet all continuing requirements under APR 28 and these regulations except for the financial responsibility and trust account declaration requirements.

An LLLT on inactive status may return to active status by filing an application to return to active status with the Board. To be granted active status, the LLLT shall be current on all licensing requirements, including payment of the annual fees, the continuing education requirements, and the financial responsibility requirements.

### **REGULATION 17: VOLUNTARY CANCELLATION OF LICENSE**

**A. Voluntary Cancellation of LLLT License.** Any LLLT may request to voluntarily surrender the LLLT license by notifying the Board in writing of the desire to cancel the LLLT license. The Board may deny requests for voluntary cancellation from any LLLT who is the subject of a pending disciplinary investigation or proceeding. After entry of the cancellation order by the Supreme Court, the former LLLT shall not accept any new clients or engage in work as an LLLT in any matter. The Board will notify the LLLT of the effective date of the cancellation if approved. The former LLLT shall then promptly notify by registered or certified mail, return receipt request, all clients in pending matters of the license cancellation and the consequent inability to act as an LLLT.

**B. Voluntary Cancellation of Single Practice Area License.** An LLLT licensed in two or more practice areas may request to voluntarily surrender a single practice area license by notifying the Board in writing of the desire to cancel the LLLT single practice area license. The Board may deny requests for voluntary cancellation of a single practice area license from any LLLT who is the subject of a pending disciplinary investigation or proceeding. After entry of the cancellation order by the Supreme Court, the LLLT shall not accept any new clients or engage in work as an LLLT in any matter in the voluntarily cancelled practice area. The Board will notify the LLLT of the effective date of the cancellation if approved. The former LLLT shall then promptly notify by registered or certified mail, return receipt request, all clients with pending matters in the voluntarily cancelled practice area of the license cancellation and the consequent inability to act as an LLLT in the specific practice area.

**C. Reinstatement after Voluntary Cancellation.** In order to be reinstated, an LLLT who voluntarily cancels his or her license must reapply, pass the certifying examinations, and complete all other requirements for licensure pursuant to APR 28 and these Regulations.

### **REGULATION 18: REAPPLICATION FOR LICENSURE AFTER DISCIPLINARY REVOCATION**

No application for licensure after disciplinary revocation shall be filed within a period of five years after revocation or within one year after an adverse decision of the Supreme Court upon a

former application, or within one year after an adverse recommendation of the Board on a former application when that recommendation is not submitted to the Supreme Court. If prior to revocation the LLLT was suspended on an interim basis pending disciplinary proceedings, the period of suspension shall be credited toward the five years referred to above.

**REGULATION 19: NOTICE AND FILING**

All notices and filings required by these Regulations, including applications for licensure as a Limited License Legal Technician, shall be delivered to the headquarters of the Association.

**REGULATION 20: AMENDMENT AND BOARD POLICIES**

These Regulations may be altered, amended, or repealed by vote of the Board on approval of the Supreme Court. The Board has ongoing authority to adopt policies for the administration of the LLLT program consistent with APR 28 and these Regulations.



# RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

## RULE 15.4 TRUST ACCOUNT OVERDRAFT NOTIFICATION

**(a) Overdraft Notification Agreement Required.** To be authorized as a depository for lawyer trust accounts referred to in RPC 1.15A(i), limited license legal technician (LLLT) trust accounts referred to in LLLT RPC 1.15A(i), or LPO trust accounts referred to in LPO RPC 1.12A(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 a lawyer, LLLT, LPO or closing firm 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:

(A) the identity of the financial institution;

(B) the identity of the (1) the lawyer, LLLT, or law firm, or (2) the limited practice officer or closing firm;

(C) the account number; and

(D) 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 lawyer or law firm 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 RPC 1.15A(i)(1) and ELC 15.7(e).

**(d) Notification by Lawyer.** Every lawyer 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 Office of Disciplinary Counsel of the Association of the information required by section (b). The lawyer must include a full explanation of the cause of the overdraft.

## **ELC 15.7 TRUST ACCOUNTS AND THE LEGAL FOUNDATION OF WASHINGTON**

**(a) Legal Foundation of Washington.** The Legal Foundation of Washington (Legal Foundation) was established by Order of the Supreme Court of Washington to administer distribution of Interest on Lawyer's Trust Account (IOLTA) funds to civil legal aid programs.

- (1) Administrative Responsibilities. The Legal Foundation is responsible for assessing the products and services offered by financial institutions operating in the state of Washington and determining whether such institutions meet the requirements of this rule, ELC 15.4, ~~ELLLTC 15.4~~, and ELPOC 15.4. The Legal Foundation must maintain a list of financial institutions authorized to establish client trust accounts and publish the list on a website maintained by the Legal Foundation for public information. The Legal Foundation must provide a copy of the list to any person upon request.
- (2) Annual Report. The Legal Foundation must prepare an annual report to the Supreme Court of Washington that summarizes the Foundation's income, grants and operating expenses, implementation of its corporate purposes, and any problems arising in the administration of the IOLTA program.

**(b) Definitions.** The following definitions apply to this rule:

- (1) United States Government Securities. United States Government Securities are defined as direct obligations of the United States Government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States Government-Sponsored Enterprises.
- (2) Daily Financial Institution Repurchase Agreement. A daily financial institution repurchase agreement must be fully collateralized by United States Government Securities and may be established only with an authorized financial institution that is deemed to be "well capitalized" under applicable regulations of the Federal Deposit Insurance Corporation and the National Credit Union Association.
- (3) Money Market Funds. A money market fund is an investment company registered under the Investment Company Act of 1940, as amended, that is regulated as a money market funder under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act, and at the time of the investment, has total assets of at least five hundred million dollars (\$500,000,000). A money market fund must be comprised solely of United States Government Securities or investments fully collateralized by United States Government Securities.

(4) IOLTA. As used in these rules, the term IOLTA reference means interest on the lawyers' trust accounts of lawyers, interest on limited license legal technicians' (LLLT) trust accounts, and interest on LPOs' trust accounts, as set forth in in RPC 1.15A, LLLT RPC 1.15A, and LPORPC 1.12A, respectively, and Title 15 of these rules and ELPOC Title 15 and rule 1.15A of the Rules of Professional Conduct, interest on the trust accounts of Limited License Legal Technicians as set forth in Title 15 of the Rules for Enforcement of Limited License Legal Technician Conduct and rule 1.15A of the Limited License Legal Technician Rules of Professional Conduct; and trust accounts referenced in Title 15 of the Rules for Enforcement of Limited Practice Officer Conduct and rules 1.12A and 1.12B of the Limited Practice Officer Rules of Professional Conduct.

**(c) Authorized Financial Institutions.** Any bank, savings bank, credit union, savings and loan association, or other financial institution that meets the following criteria is eligible to become an authorized financial institution under this rule:

- (1) is insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration;
- (2) is authorized by law to do business in Washington;
- (3) complies with all requirements set forth in section (d) of this rule and in ELC 15.4; and
- (4) if offering IOLTA accounts, complies with all requirements set forth in section (e) of this rule.

The Legal Foundation determines whether a financial institution is an authorized financial institution under this section. Upon a determination of compliance with all requirements of this rule and ELC 15.4, the Legal Foundation must list a financial institution as an authorized financial institution under section (a)(1). At any time, the Legal Foundation may request that a listed financial institution establish or certify compliance with the requirements of this rule or ELC 15.4. The Legal Foundation may remove a financial institution from the list of authorized financial institutions upon a determination that the financial institution is not in compliance.

**(d) Requirements of All Trust Accounts.** All trust accounts established pursuant to RPC 1.15A(i), [LLLT RPC 1.15A\(i\)](#), or LPORPC 1.12A(h) must be insured by the Federal Deposit Insurance Corporation

or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments.

**(e) IOLTA Accounts.** To qualify for Legal Foundation approval as an authorized financial institution offering IOLTA accounts, in addition to meeting all other requirements set forth in this Rule, a financial institution must comply with the requirements set forth in this section.

- (1) Interest Comparability. For accounts established pursuant to RPC 1.15A, [or LLLT RPC 1.15A](#), authorized financial institutions must pay the highest interest rate generally available from the institutions to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate generally available to its non-IOLTA customers, authorized financial institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these factors do not include that the account is an IOLTA account. An authorized financial institution may satisfy these comparability requirements by selecting one of the following options:
  - (i) Establish the IOLTA account as the comparable interest-paying product; or
  - (ii) Pay the comparable interest rate on the IOLTA checking account in lieu of actually establishing the comparable interest-paying product; or
  - (iii) Pay a rate on IOLTA equal to 75% of the Federal Funds Targeted Rate as of the first business day of the month or IOLTA remitting period, or .75%, whichever is higher, and which rate is deemed to be already net of allowable reasonable service charges or fees.
- (2) Remit Interest to Legal Foundation of Washington. Authorized financial institutions must remit the interest accruing on all IOLTA accounts, net of reasonable account fees, to the Legal Foundation monthly, on a report form prescribed by the Legal Foundation. At a minimum, the report must show details about the account, including but not limited to the name of the lawyer, law firm, ~~limited license legal technician~~[LLLT](#), LPO, or Closing

Firm for whom the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the balance used to compute the interest. Interest must be calculated on the average monthly balance in the account, or as otherwise computed in accordance with applicable state and federal regulations and the institution's standard accounting practice for non-IOLTA customers. The financial institution must notify each lawyer, law firm, ~~limited license legal technician~~LLLT, LPO, or Closing Firm of the amount of interest remitted to the Legal Foundation on a monthly basis on the account statement or other written report.

- (3) Reasonable account fees. Reasonable account fees may only include per deposit charges, per check charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administration fee. No service charges or fees other than the allowable, reasonable fees may be assessed against the interest or dividends on an IOLTA account. Any service charges or fees other than allowable reasonable fees must be the sole responsibility of, and may be charged to, the lawyer, law firm, ~~limited license legal technician~~LLLT, LPO, or Closing Firm maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account must not be deducted from interest or dividends earned on any other account or from the principal.
- (4) Comparable Accounts. Subject to the requirements set forth in sections (d) and (e), an IOLTA account may be established as:
  - (i) A business checking account with an automated investment feature, such as a daily bank repurchase agreement or a money market fund; or
  - (ii) A checking account paying preferred interest rates, such as a money market or indexed rates; or
  - (iii) A government interest-bearing checking account such as an account used for municipal deposits; or
  - (iv) An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, business checking account with interest; or
  - (v) Any other suitable interest-bearing product offered by the authorized financial institution to its non-IOLTA customers.
- (5) Nothing in this rule precludes an authorized financial institution from paying an interest rate higher than described above or electing to waive any service charges or fees on IOLTA accounts.

## **LLLT RPC 1.0A Terminology [Draft]**

- (a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
- (b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that an LLLT promptly transmits to the person confirming an oral informed consent. See paragraph (h) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the LLLT must obtain or transmit it within a reasonable time thereafter.
- (c) "Firm" or "law firm" denotes a lawyer, lawyers, an LLLT, LLLTs or any combination thereof in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers or LLLTs employed in a legal services organization or the legal department of a corporation or other organization.
- (d) "Fraud" or "fraudulent" denotes conduct that has a purpose to deceive and is fraudulent under the substantive or procedural law of the applicable jurisdiction, except that it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.
- (e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the LLLT has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
- (f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- (h) "Reasonable" or "reasonably" when used in relation to conduct by an LLLT denotes the conduct of a reasonably prudent and competent LLLT.
- (i) "Reasonable belief" or "reasonably believes" when used in reference to an LLLT denotes that the LLLT believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) "Reasonably should know" when used in reference to an LLLT denotes that an LLLT of reasonable prudence and competence would ascertain the matter in question.
- (k) "Screened" denotes the isolation of an LLLT or a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated LLLT or lawyer is obligated to protect under these Rules, the Lawyer RPC or other law.
- (l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
- (m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.
- (n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or

videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

#### **LLLT 1.0B Additional Terminology [DRAFT]**

- (a) "APR" denotes the Washington Supreme Court's Admission and Practice Rules.
- (b) "ELLLTC" denotes the Washington Supreme Court's Rules for Enforcement of Limited License Legal Technician Conduct.
- (c) "GR" denotes the Washington Supreme Court's General Rules.
- (d) "Lawyer" denotes a person licensed and eligible to practice law in any United States jurisdiction.
- (e) "Lawyer RPC" denotes the Washington Supreme Court's Rules of Professional Conduct for lawyers.
- (f) "Limited License Legal Technician" or "LLLT" denotes a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by APR 28 and related regulations. The LLLT does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in APR 28 to a pro se client.
- (g) "Party" denotes a party to a legal action.
- (h) "Representation" or "represent" denotes a lawyer's provision of legal services to a client or the an LLLT's provision of limited legal services within the LLLT's authorized scope of practice to a client.

#### ***Comment***

WASHINGTON STATE BAR ASSOCIATION

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**7/2/2014**

**RULES OF PROFESSIONAL CONDUCT FOR LIMITED LICENSE LEGAL TECHNICIANS  
("LLLT RPC")**

**Effective \_\_\_\_\_**

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# **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 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, the LLLT should look to the relevant Lawyer RPC and comments to that rule for guidance. When a Rule has a counterpart in the Lawyer RPC, the comments to that Lawyer RPC may be looked to as a guide to interpretation of that Rule to the extent that both the Lawyer RPC and the LLLT RPC are substantially similar and the content of the comments is applicable to the conduct of an LLLT.

### ***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 1.0A Terminology [Draft]**

- (a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
- (b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that an LLLT promptly transmits to the person confirming an oral informed consent. See paragraph (h) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the LLLT must obtain or transmit it within a reasonable time thereafter.
- (c) "Firm" or "law firm" denotes a lawyer, lawyers, an LLLT, LLLTs or any combination thereof in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers or LLLTs employed in a legal services organization or the legal department of a corporation or other organization.

- (d) "Fraud" or "fraudulent" denotes conduct that has a purpose to deceive and is fraudulent under the substantive or procedural law of the applicable jurisdiction, except that it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.
- (e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the LLLT has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
- (f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- (h) "Reasonable" or "reasonably" when used in relation to conduct by an LLLT denotes the conduct of a reasonably prudent and competent LLLT.
- (i) "Reasonable belief" or "reasonably believes" when used in reference to an LLLT denotes that the LLLT believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) "Reasonably should know" when used in reference to an LLLT denotes that an LLLT of reasonable prudence and competence would ascertain the matter in question.
- (k) "Screened" denotes the isolation of an LLLT or a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated LLLT or lawyer is obligated to protect under these Rules, the Lawyer RPC or other law.
- (l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
- (m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.
- (n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

#### **LLLT 1.0B Additional Terminology [DRAFT]**

- (a) "APR" denotes the Washington Supreme Court's Admission and Practice Rules.
- (b) "ELLLTC" denotes the Washington Supreme Court's Rules for Enforcement of Limited License Legal Technician Conduct.
- (c) "GR" denotes the Washington Supreme Court's General Rules.
- (d) "Lawyer" denotes a person licensed and eligible to practice law in any United States jurisdiction.
- (e) "Lawyer RPC" denotes the Washington Supreme Court's Rules of Professional Conduct for lawyers.
- (f) "Limited License Legal Technician" or "LLLT" denotes a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved

practice areas of law as specified by APR 28 and related regulations. The LLLT does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in APR 28 to a pro se client.

- (g) "Party" denotes a party to a legal action.
- (h) "Representation" or "represent" denotes a lawyer's provision of legal services to a client or the an LLLT's provision of limited legal services within the LLLT's authorized scope of practice to a client.

*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*

### **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.

[2] Unlike a lawyer, an LLLT may perform only limited services for a client. Under APR 28(G)(3), before performing any services for a fee, an LLLT must enter into a written contract with the client, signed by both the client and the LLLT, that includes the following: (a) an explanation of the services to be performed, including a conspicuous statement that the LLLT may not appear or represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process, or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b); (b) identification of all fees and costs to be charged to the client for the services to be performed; (c) a statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the LLLT; (d) a statement that the LLLT is not a lawyer and may only perform limited legal services (this statement shall be on the first page of the contract in minimum twelve-point bold type print); (e) a statement describing the LLLT's duty to protect the confidentiality of information provided by the client and the LLLT's work product associated with the services sought or provided by the LLLT; (f) a statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees (this statement shall be conspicuously set forth in the contract); and (g) any other conditions to the LLLT's services that are required by the rules and regulations of the Limited License Legal Technician Board.

**LLLT RPC 1.3 Diligence [Board Approved]**

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

*Comment*

**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*

**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 commencing the representation. 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. A flat fee must be agreed to in advance in a writing signed by the client. The written agreement may specify that the 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. To qualify for the exception from the requirements of 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)(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.

[2] Unlike a lawyer, an LLLT is required by APR 28(G)(3) to enter into a written contract with the client before the LLLT begins to perform any services for a fee that includes, among other things, identification of all fees and costs to be charged to the client for the services to be performed. The provisions concerning a flat fee described in (f)(2) of this Rule, if applicable, should be included in that contract. The contract must be signed by both the client and the LLLT before the LLLT begins to perform any services for a fee. See Comment [2] to Rule 1.2 for other provisions that are to be included in the contract.

[3] An LLLT is ordinarily prohibited from modifying the written contract with the client that is required by APR 28(G)(3). Courts have applied the provisions of RPC 1.8(a) to modifications or renegotiations of fee arrangements by lawyers made during the representation of a client when the modified or renegotiated terms are more favorable to the lawyer than originally agreed upon. See, e.g., *Valley/50th Ave., L.L.C. v. Stewart*, 159 Wn.2d 736, 743-44, 153 P.3d 186, 189 (2007); *Rafel Law Grp. PLLC v. Defoor*, 176 Wn. App. 210, 223-24, 308 P.3d 767, 775 (2013), *review denied*, 179 Wn.2d 1011, 316 P.3d 495 (2014). Under these Rules, business transactions between LLLTs and clients are prohibited. See Rule 1.8(a).

Accordingly, any changes in the basis or rate of an LLLT's fee that benefit the LLLT must be identified in the initial contract.

#### **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***

#### **LLLT RPC 1.7 Conflict of Interest: Current Clients [Board Approved]**

- (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).

***Comment***

[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.

**LLLT RPC 1.8 Conflict of Interest: Current Clients: Specific Rules [Board approved]**

- (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 RPC.
- (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.]

### ***Comment***

[1] Given the scope of an LLLT's authorized practice, 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. LLLT 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 RPC.

[2] LLLTs may not advocate for, or appear in court on behalf of, a client. LLLT 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 RPC.

[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 RPC in accordance with that Rule.

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

### **LLLT RPC 1.9 Duties to Former Clients [Board Approved]**

- (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.

#### ***Comment***

[1] This Rule applies to LLLTs in the same way that Lawyer RPC 1.9 applies to lawyers.

### **LLLT RPC 1.10 Imputation of Conflicts of Interest: General Rule [Board Approved]**

- (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.

### ***Comment***

[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 RPC are needed.



**LLLT RPC 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees [Board Approved]**

- (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 therefrom; 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.

***Comment***

[1] This Rule applies 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.

**LLLT RPC 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral [Board Approved]**

- (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.

***Comment***

[1] This Rule applies 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.

### **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 representation of an organization, 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 paragraph (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]**

- (a) 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.

- (b) 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 a lawyer or another LLLT, 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 a lawyer or another LLLT 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 [Board Approved]**

- (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.

***Comment***

[1] This Rule applies 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 RPC should be reviewed regarding unilateral communications to a lawyer.

## **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 Evaluation for Use By Third Persons [Board Approved]**

[Reserved.]

#### ***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 Advising and Assisting Clients in Proceedings Before a Tribunal [Board Approved]**

- (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***

[1] Title 3 of the Lawyer RPC 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 RPC 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. 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.

**LLLT RPC 3.2 Expediting Litigation [Board Approved]**

[Reserved.]

***Comment***

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

**LLLT RPC 3.3 Candor Toward the Tribunal [Board Approved]**

[Reserved.]

***Comment***

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

**LLLT RPC 3.4 Fairness to Opposing Party and Counsel [Board Approved]**

[Reserved.]

***Comment***

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

**LLLT RPC 3.5 Impartiality and Decorum of the Tribunal [Board Approved]**

[Reserved.]

***Comment***

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

**LLLT RPC 3.6 Trial Publicity [Board Approved]**

[Reserved.]

***Comment***

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

**LLLT RPC 3.7 LLLT as Witness [Board Approved]**

[Reserved.]

***Comment***

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

### **LLLT RPC 3.8 Special Responsibilities of a Prosecutor [Board Approved]**

[Reserved.]

#### ***Comment***

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

### **LLLT RPC 3.9 Advocate in Nonadjudicative Proceedings [Board Approved]**

[Reserved.]

#### ***Comment***

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

## **Title 4. Transactions with Persons Other than Clients**

### **LLLT RPC 4.1 Truthfulness in Statements to Others [DRAFT]**

In the course of representing a client an LLLT shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

#### ***Comment***

### **LLLT RPC 4.2 Communication With Person Represented by Lawyer [DRAFT]**

In representing a client, an LLLT shall not communicate about the subject of the representation with:

- (a) a person the LLLT knows to be represented by a lawyer in the matter; or
- (b) a lawyer who the LLLT knows to be representing another party in the matter.

#### ***Comment***

### **LLLT RPC 4.3 Dealing With Person Not Represented by Lawyer [DRAFT]**

- (a) In dealing on behalf of a client with a person who is not represented by a lawyer, an LLLT shall not state or imply that the LLLT is disinterested. When the LLLT knows or reasonably should know that the unrepresented person misunderstands the LLLT's role in the matter, the LLLT shall make reasonable efforts to correct the misunderstanding. The LLLT shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the LLLT knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.
- (b) An LLLT shall not communicate about the subject of the representation with another party in the matter.
- (c) An LLLT shall not communicate about the subject of the representation with an LLLT who the LLLT knows to be representing another party in the matter.

#### *Comment*

### **LLLT RPC 4.4 Respect for Rights of Third Persons [DRAFT]**

- (a) In representing a client, an LLLT shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) An LLLT who receives a document relating to the representation of the LLLT's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

#### *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.

*Comment*

**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.

*Comment*

**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.

*Comment*

**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.

***Comment***

**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.

#### ***Comment***

#### **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.

*Comment*

**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 [Board Approved]**

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.

*Comment*

### **LLLT RPC 6.2 Accepting Appointments [Board Approved]**

[Reserved.]

*Comment*

### **LLLT RPC 6.3 Membership in Legal Services Organization [Board Approved]**

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.

*Comment*

### **LLLT RPC 6.4 Law Reform Activities Affecting Client Interests [Board Approved]**

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.

*Comment*

## **LLLT RPC 6.5 Nonprofit and Court-Annexed Limited Legal Service Programs [Board Approved]**

- (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 authorized scope of the LLLT's practice to a client if:
    - (i) any program LLLTs or lawyers 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 or lawyers 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.

### ***Comment***

[1] This Rule applies to LLLTs in the same way that Lawyer RPC 6.5 applies to lawyers.

## **Title 7. Information about Legal Services**

### **LLLT RPC 7.1 Communications Concerning an LLLT's Services [Board Approved]**

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

### ***Comment***

### **LLLT RPC 7.2 Advertising [Board Approved]**

- (a) Subject to the requirements of Rules 7.1 and 7.3, an LLLT may advertise services through written, recorded or electronic communication, including public media.
- (b) An LLLT shall not give anything of value to a person for recommending the LLLT's services, except that an LLLT may
  - (1) pay the reasonable cost of advertisements or communications permitted by this Rule;
  - (2) pay the usual charges of a legal service plan or a not-for-profit referral service for lawyer and/or LLLT legal services;
  - (3) pay for a law practice in accordance with Rule 1.17; and
  - (4) refer clients to a lawyer or to another LLLT pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the LLLT, if
    - (i) the reciprocal referral agreement is not exclusive, and
    - (ii) the client is informed of the existence and nature of the agreement.
- (c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer, LLLT or law firm responsible for its content.

#### ***Comment***

### **LLLT RPC 7.3 Direct Contact with Prospective Clients [Board Approved]**

- (a) An LLLT shall not directly or through a third person, by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the LLLT's doing so is the LLLT's pecuniary gain, unless the person contacted:
  - (1) is a lawyer or an LLLT;
  - (2) has a family, close personal, or prior professional relationship with the LLLT; or
  - (3) has consented to the contact by requesting a referral from a not-for-profit referral service for lawyer and/or LLLT legal services.
- (b) An LLLT shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:
  - (1) the prospective client has made known to the LLLT a desire not to be solicited by the LLLT; or
  - (2) the solicitation involves coercion, duress or harassment.
- (c) [Reserved; also reserved in Lawyer RPC.]
- (d) Notwithstanding the prohibitions in paragraph (a), an LLLT may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the LLLT that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

#### ***Comment***

#### **LLLT RPC 7.4 Communication of Fields of Practice and Specialization [Board Approved]**

- (a) In all advertising, an LLLT shall communicate the fact that the LLLT has a limited license practice in the particular fields of law for which the LLLT is licensed, and shall not state or imply that an LLLT is licensed to practice in any other areas of law, or has an unlimited license to practice law in any area of law.
- (b) [Reserved.]
- (c) [Reserved.]
- (d) An LLLT shall not state or imply that an LLLT is "certified", a "specialist", or an "expert", or use any other similar term to describe his or her qualifications as an LLLT, but may identify any award or recognition that the LLLT has received from a group, organization or association. If an LLLT has received any other legal title, credential or certificate from any group, organization, or association, then the LLLT may identify the legal title, credential or certificate provided that the reference must:
  - (1) be truthful and verifiable and otherwise comply with Rule 7.1;
  - (2) identify the group, organization, or association that issued the legal title, credential or certificate; and
  - (3) the reference must state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the legal title, credential or certificate is not a requirement of the LLLT's limited license to practice in the particular fields of law for which the LLLT is licensed.

#### ***Comment***

#### **LLLT RPC 7.5 Firm Names and Letterheads [Board Approved]**

- (a) An LLLT shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by an LLLT in private practice if the trade name does not imply that lawyers are members or employees of the firm unless that is the case, and if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If there are no lawyers in the firm, any firm name used by an LLLT in private practice shall include the words "Legal Technician."
- (b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers or LLLTs in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- (c) The name of an LLLT holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the LLLT is not actively and regularly practicing with the firm.
- (d) LLLTs may state or imply that they practice in a partnership or other organization only when that is a fact.

*Comment*

**LLLT RPC 7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges [Board Approved]**

An LLLT or law firm shall not accept a government legal engagement or an appointment by a judge if the LLLT or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

*Comment*

[1] Title 7 generally applies to LLLTs in the same way that it applies to lawyers. The exception is LLLT RPC 7.4. First, an LLLT must communicate the limited nature of the LLLT's license, both with respect to subject matter and as to the scope within that subject matter. Second, given the limited nature of an LLLT's license, it is never appropriate for an LLLT to use a term suggesting that he or she is a specialist or an expert.

**Title 8. Maintaining the Integrity of the Profession**

**LLLT RPC 8.1 Limited Licensure and Disciplinary Matters [Board Approved]**

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.

*Comment*

**LLLT RPC 8.2 Judicial and Legal Officials [Board Approved]**

- (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.]

*Comment*



### **LLLT RPC 8.3 Reporting Professional Misconduct [Board Approved]**

- (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.

#### *Comment*

### **LLLT RPC 8.4 Misconduct [Board Approved]**

It is professional misconduct for an LLLT to:

- (a) violate or attempt to violate the LLLT RPC, 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, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This

Rule does not restrict 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 APR 28, Appendix APR 28, or any related regulations.

*Comment*

**LLLT RPC 8.5 Disciplinary Authority [Board Approved]**

- (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.]

*Comment*

**Appendix**

**Guidelines for Applying Rule of Professional Conduct 3.6**

**I. Criminal**

*Comment*

**II. Civil**

*Comment*

## **LLLT Board Guidelines for Approving New Practice Areas**

The Limited License Legal Technician (LLLT) Board *may* consider the following guidelines when making decisions regarding recommending new LLLT practice areas to the Supreme Court:

- Whether the practice area represents an area of high unmet need for legal services;
- Whether an LLLT may effectively represent clients in the given practice area given the limited scope of their legal services and if not, whether the appropriate scope of practice should be broader than that permitted in APR 28; and
- Whether the LLLT practice in limited scope of practice can be economically viable.

Each of these criteria may be given significant weight when evaluating whether a practice area may be appropriate for recommendation to the Court.

TABLE OF POSSIBLE PRACTICE AREAS

Practice Area	Subtopics
Boundary disputes	
Child support enforcement	
Consumer	
Disabilities	
Education	
Elder abuse	
Elder law	
Employment	
Estates & trusts	
Health	
Housing	
Immigration	
Institutions	
Landlord/Tenant Law	
Migrant	
Native American	
Other civil rights	
Post-covinction Relief	Expungement, restoration of rights, pardons, clemency, legal financial obligations
Public benefits	
Public/municipal services	
Taxes	

# Categories of Legal Problem

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Following are categories of legal problem recognized by the field and telephone surveys, with descriptions of problems falling into each category. The study did not address criminal legal matters, or legal problems typically handled for contingency fee (e.g., personal injury).

- **Consumer.** Abusive collection practices, insurance issues, bankruptcy, contracts, warranties, discriminatory lending.
- **Disability.** Problems with reasonable accommodation and access, discrimination.
- **Education.** Truancy and discipline; problems with access to school services; inadequate, unsafe or discriminatory schools.
- **Elder abuse.** Abusive treatment; various problems in a group living facility, including lost or stolen property, improper medication, infringement on free association, unfair discipline.
- **Employment.** Hiring or on-the-job discrimination, wage claims, workers compensation, migrant issues.
- **Estates and trusts.** Problems involving wills, estate planning and guardianship.
- **Family.** Domestic violence, child support, issues relating to child residential placement, adoption and foster care, divorce and other dissolution-related matters.
- **Health.** Discrimination by providers, disputes over charges, Medicaid/Medicare and other insurance issues, exposure to hazards.
- **Housing.** Poor conditions, utilities problems, purchase and sale issues, problems with a landlord or housing authority, discrimination.
- **Immigration.** Claims for asylum, deportation, naturalization, work adjustment, right to petition for resident immigrant status under the Violence Against Women Act (VAWA), and other issues arising from a person's immigration status.
- **Institutional.** Problems in a prison, jail or juvenile detention facility, including access to medical treatment, arbitrary discipline, problems with access to legal material, interference with religion and threats to personal safety.
- **Migrant.** Employment, health, housing, immigration and other issues relating to a person's status as a migrant worker.
- **Municipal and public services.** Problems with schools and other government services, such as law enforcement responsiveness, planning and zoning.

- **Native American.** Issues relating to or arising from an individual's Native American status, including disputes with government agencies involved in Native American issues, problems with living off reservation, problems with tribal affiliation or enrollment, problems with tribal recognition or sovereignty, problems with fishing or hunting on tribal land.
- **Other civil rights.** Voting rights and other civil rights violations that did not fall within another category. Discrimination issues are addressed under the substantive problem area in which they occur. (e.g., housing discrimination is addressed under housing legal problems.)
- **Public benefits.** Problems related to any needs-based public benefit, such as Temporary Assistance for Needy Families (TANF)/Work First/state general assistance, food stamps, social security or unemployment benefits.
- **Taxes.** Problems related to taxation, including the ability to claim the federal Earned Income Tax Credit.