



WSBA

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

AGENDA for January 19, 2017

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
1:30 p.m. to 4:30 p.m.

1. **Call to Order/Preliminary Matters** (1:30 p.m.)
 - Outreach Update
 - Approval of Meeting Minutes
2. **New Practice Area Committee Report and Consent Agenda** (Greg Dallaire) (2:00 p.m.)
 - Consent Agenda
 - i. Adopt Outline of the Estate and Healthcare Law Practice Area
 - Establish Advisory Committee
3. **Family Law Advisory Committee Report & Consent Agenda** (Nancy Ivarinen) (2:45 p.m.)
 - Consent Agenda
 - i. Allow LLLTs to negotiate if they have written permission from the client
 - ii. Allow LLLTs to participate in dispute resolution proceedings (i.e., mediations, settlement conferences, and arbitration)
 - iii. Allow LLLTs to attend specific hearings
 - iv. LLLTs do not have to sign declarations that they prepare on behalf of a 3rd party
4. **Update on Rule Changes for Expanded Scope of LLLT Practice** (Ellen Reed & Bobby Henry) (3:30 p.m.)
5. **Open Discussion** (4:00 p.m.)
6. **Adjourn**

MEETING MATERIALS

1. January Update

2. Draft Meeting Minutes from December 15, 2016
3. Outline of Life Planning and Healthcare Law Practice Area
4. Memorandum on Family Law Consent Agenda Items
5. Outline of Changes to Family Law Scope
6. Pending Issues List



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UPDATE: JANUARY 2017

Outreach & Press

Upcoming:

- January 26, 2017: Washington State Paralegal Association (Eastside Chapter). Professor Terry Price and Ellen Reed
- February 3, 2017: Association of Professional Responsibility Lawyers, Panels Regarding LLLTs and Future of the Legal Profession. Steve Crossland and Paula Littlewood
- February 13, 2017: Presentation to Tacoma Community College. Steve Crossland and Ellen Reed
- April 20, 2017: ABA Standing Committee on Lawyers' Professional Liability. Steve Crossland

Meetings

Recent:

- 1-5-2017: New Practice Area Committee Meeting
- 1-10-2017: LLLT Spring Exam Review Meeting
- 1-18-17: Dinner at Greg Dallaire's House
- 1-19-2017: New Practice Area Committee Meeting

Upcoming:

- 1-23/24, 2017: LLLT Site Team Visit to Whatcom Community College
- 1/26-27, 2017: Board of Governors Meeting
- 2-16-2017: New Practice Area Committee Meeting
- 2-16-2017: LLLT Board Meeting
- 3-8-2017 (Tentative): Supreme Court Meeting
- 3-9/10, 2017: Board of Governors Meeting

Statistics

- Number of current LLLTs: 20

Other Developments

- Proposed changes to APR 28 and other portions of the APR (submitted in October 2016) are published for comment: https://www.courts.wa.gov/court_rules/?fa=court_rules.proposed



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LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

MEETING MINUTES for December 15, 2016

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
1:30 p.m. to 4:30 p.m.

Members present were Steve Crossland, Nancy Ivarinen, Ruth Walsh McIntyre, Brenda Cothary, and Greg Dallaire. Members attending remotely were Genevieve Mann, Amy Riedel, and Jeanne Dawes.

Also present were Sarah Bove, Jennifer Ortega, LLLT #118, Ellen Reed, LLLT Program Lead, and Bobby Henry, Associate Director of Regulatory Services.

Call to Order/Preliminary Matters

The meeting was called to order at 1:30pm.

- Outreach Update

Chair Steve Crossland will be attending several conferences in February and April, including a gathering of the Association of Professional Responsibility Lawyers, and an ABA Standing Committee Meeting on Lawyers' Professional Liability. In February Steve Crossland and Ellen Reed will present at Tacoma Community College. Chair Crossland also reported on a recent meeting with incoming Chief Justice Mary Fairhurst.

- Approval of Meeting Minutes

The minutes of the LLLT Board meeting on November 18th were unanimously approved.

Discussion of Proposed New Practice Area & Committee Report

Committee Chair Greg Dallaire reported on the recent work of the New Practice Area Committee. The Committee discussed an idea for a proposed practice area which contains elements of will drafting, probate, guardianship, and work with healthcare and government benefits. The practice would be forms-based, which will require subject matter experts to choose and create appropriate forms for those areas in which pattern forms are not available. The Board will vote on adoption of the practice area proposal at their meeting in January 2017.

Family Law Advisory Committee Report & Consent Agenda

Family Law Advisory Committee Chair Nancy Ivarinen explained the recent recommendations regarding changes to the LLLT domestic relations scope of practice which are on the Board's Consent Agenda. These included expanding scope to include contested nonparental custody, allowing division of single family residential dwellings with equity equal to or less than twice the homestead exemption, presentation of agreed/default orders on ex parte calendar, and

appearance at administrative hearings within the defined scope of practice. The consent agenda items were approved.

Chair Ivarinen also described the Family Law Advisory Committee consent agenda for the Board's January meeting, which will include allowing LLLTs to draft 3rd party declarations without signing them, a clarification on the prohibition regarding dividing retirement assets, participation in mediations, negotiation when agreed to in writing by the client, and limited court appearances.

Adjournment and Next Meeting

The meeting was adjourned at 3:10 p.m. The next meeting will be held on January 19th, 2017 at the WSBA headquarters.

LLLT NEW PRACTICE AREA COMMITTEE RECOMMENDATION

The New Practice Area Committee of the Limited License Legal Technician (LLLT) Board has approved the following recommendation for the LLLT Board. If adopted, the new LLLT practice area will be called “Estate & Healthcare Law” and the scope will be limited as follows:

Outline of Estate & Healthcare Law LLLT Practice Area	
Scope	Permitted Actions
Estate planning on non-taxable estates	<ul style="list-style-type: none"> • Drafting wills based on LLLT Board approved forms • Transfer on death deed • Designation of beneficiaries of non-probate assets • Creation of community property agreements based on LLLT Board approved forms • Revocation of community property agreements • Healthcare directives
Probate on non-taxable estates when not contested	<ul style="list-style-type: none"> • Completion of small estate affidavit • Completion of LLLT Board approved forms • Presentation of agreed or uncontested orders • Completing uniform transfer to minor act provisions • Completion of affidavit of surviving spouse
Power of Attorney	<ul style="list-style-type: none"> • Limited & durable powers of attorney, including for healthcare and minor children • Revocation of powers of attorney
Guardianships when not contested	<ul style="list-style-type: none"> • Completion of LLLT Board approved forms in uncontested guardianships • Presentation of agreed or uncontested orders • Transition planning for disabled minors
Vulnerable Adult Protection Orders (VAPO)	<ul style="list-style-type: none"> • Preparation of LLLT Board approved forms • Presentation and assistance at initial hearing for temporary order
Government benefits	<ul style="list-style-type: none"> • Representation in administrative hearings (where not prohibited by agency rules and regulations) • Negotiation and document preparation for applications, denials, disputes, and overpayments for social security benefits, Medicare, Medicaid, home health care, long term care, and other government benefit programs • Assistance with total and permanent disability discharge for student loan debts
Health insurance benefits	<ul style="list-style-type: none"> • Advice and assistance with health insurance disputes, including negotiation and writing appeal letters • Assistance with Charity Care applications and denials



WSBA

LIMITED LICENSE LEGAL TECHNICIAN BOARD

ISSUE STATEMENT

To: LLLT Board
From: Ellen Reed
Date: January 2017
Re: Family Law Advisory Committee Consent Agenda Items

Recommendations

The Family Law Advisory Committee recommends the following amendments to the LLLT domestic relations scope of practice:

- LLLTs may assist third parties with drafting declarations but do not have to sign them, as long as they are drafted and signed with the third party.
- LLLTs shall not advise or assist clients with the preparation of QDROs or supplemental orders dividing retirement assets or include language within a decree of dissolution to effectuate division of retirement assets when funds would be transferred from the account holder to another party. LLLTs may advise as to retirement asset allocation.
- LLLTs may attend mediation, arbitration and settlement conferences and prepare paperwork related to the conferences.
- LLLTs may negotiate on behalf of their client if they have prior written consent from the client defining the parameters the negotiation.
- LLLTs may appear and assist a client with a motion hearing for the issues that are within the scope of their practice. They would be permitted to speak to factual or legal issues.

Permitted hearings would include:

- Protection Orders
- Hearings on Motion for Temporary Orders
- Enforcement of Orders
- Modification of Child Support & Post-Secondary Child Support

Third Party Declarations

Because there is a declaration pattern form and declarations of third parties are often necessary in family law cases, LLLTs have been drafting third party declarations. The provision is APR 28 which requires that a LLLT sign all documents they prepare applies to third party declarations (which would not normally be signed by attorneys). LLLTs should not have to sign third party declarations as long as they are prepared with the third party and signed by that party.

Clarification of Scope Regarding Retirement Assets

The current prohibition against dividing retirement assets which require a supplemental order to divide or award has been identified as being overly broad and overly narrow. For example, this provision restricts LLLTs from advising regarding assets that would require a Qualified Domestic Relations Order (QDRO) to award or divide. Many family law attorneys use the services of specialist lawyers to craft the QDROs. If the LLLT could rely on the same services, then they should not be prohibited from acting as a speaking agent to procure the QDRO. Another example of the need for clarification of this prohibition is that there are a number of other retirement plans that do not require a QDRO and yet are more complicated and potentially more risky for the LLLT, but are not prohibited. As this regulation stands now, the LLLT can wade into property division but cannot adequately perform the tasks, and potentially incur risks. The prohibition should be clarified: while it will remain consistent that LLLTs shall not advise or assist clients in regards to the preparation of QDROs or supplemental orders dividing retirement assets, or include language within a decree of dissolution to effectuate division of retirement assets when funds would be transferred from the account holder to another party, LLLTs may advise as to retirement asset allocation.

Alternative Dispute Resolution

Alternative dispute resolution (such as mediation, arbitration, or settlement conferences) is mandated in contested family law cases in Washington State. According to the Administrative Office of the Courts, on average 96% of family law cases settle and less than 4% go to trial. It would be a significant help to clients and to the court system to permit the LLLTs to assist with mediations in family law cases. The mediator is present to make sure the process is carried out appropriately. Sending a client into the mediation without any support, when that person may or may not understand the nature of the process or the details of their case, often sets up the client for failure.

Negotiation

The current prohibition against LLLTs negotiating for their clients has created significant problems in the LLLT family law practice area. LLLTs report that they frequently must schedule hearings regarding issues that they feel could easily be negotiated, wasting the client and the court's time and unnecessarily increasing the cost of the representation. LLLT clients who may be in the midst of a nasty dissolution or custody battle, or even a domestic violence dispute, may find themselves in the position of being contacted by their spouse or abuser when it would clearly be in their best interest to have a neutral third party be the contact person. It would be much easier for the opposing parties' attorney to deal with a legal professional rather than a pro se layperson. For LLLTs who are multilingual, being able to negotiate with opposing parties may allow them to provide essential services to clients who speak the same language(s) they do but may not speak English.

Appearance at Hearings

LLLTs report that mistakes made by clients at hearings (incorrectly answering questions from the judge due to a lack of legal terminology, handing the court the wrong proposed order, not understanding orders from the court or court procedures, etc.) are negatively impacting their practice by causing unnecessary confusion and delays in the process of their cases. LLLTs also are frequently unable to assist clients with writing their final orders in the absence of a hearing

transcript, as the client is not typically able to correctly transmit the words of the court to the LLLT. This adds time and significant costs for LLLT clients. The committee proposes that LLLTs may accompany and assist the client in hearings before a court or tribunal which may include presenting the issue and responding to any questions from the court or tribunal. They may speak to factual or legal issues. They would not speak at trials. For example, permitted hearings would include:

- Domestic Violence Protection Order Hearings
- Hearings on Motion for Temporary Orders
- Enforcement of Orders
- Modification of Child Support (whether court ordered or an administrative child support order being entered and modified in court).

LLLT FAMILY LAW ADVISORY COMMITTEE RECOMMENDATION

The Family Law Advisory Committee of the Limited License Legal Technician (LLLT) Board has approved the following recommendation for the LLLT Board. If adopted, the scope of the domestic relations practice area will be altered as follows:

Outline of Changes to Domestic Relations Practice Area	
Subject	Recommendation
Third Party Declarations	<ul style="list-style-type: none"> • LLLTs may assist third parties with drafting declarations but do not have to sign them, as long as they are drafted with the third party and signed by the third party.
Major Modifications	<ul style="list-style-type: none"> • LLLTs may assist with contested major modifications up to the point of the adequate cause hearing.
Nonparental Custody	<ul style="list-style-type: none"> • LLLTs may assist with contested or uncontested nonparental custody to the point of the adequate cause hearing.
Retirement Assets	<ul style="list-style-type: none"> • LLLTs shall not advise or assist clients with the preparation of QDROs or supplemental orders dividing retirement assets or include language within a decree of dissolution to effectuate division of retirement assets when funds would be transferred from the account holder to another party. LLLTs may advise as to retirement asset allocation.
Real Estate Division	<ul style="list-style-type: none"> • LLLTs may assist with gathering information on the value and potential encumbrances on a home. LLLTs may assist client with determining property division and division of a single family residential dwelling which has less than twice the homestead exemption in equity (currently \$125, 000 – see RCW 6.13.030).
Alternative Dispute Resolution	<ul style="list-style-type: none"> • LLLTs may prepare paperwork related to mediation, arbitration and settlement conferences and accompany the client to the conferences providing there is a third party neutral conducting the conference.
Negotiations	<ul style="list-style-type: none"> • LLLTs may communicate with opposing parties or third parties regarding procedural issues. If communicating with a pro se opposing party, they should do so in writing. • LLLTs may negotiate on behalf of their client if they have prior written consent from the client defining the parameters of the negotiation.
Appearances in Court and Administrative Tribunals	<ul style="list-style-type: none"> • LLLTs may present agreed, uncontested and default orders on the ex parte or motion calendar and attend trial setting calendar hearings. • LLLTs may represent clients at administrative hearings if the hearing relates to an issue within the permitted scope. • LLLTs may appear and assist a pro se client with a motion hearing for the issues that are within the scope of their practice. They would be permitted to speak to factual or legal issues. Permitted hearings would include: <ul style="list-style-type: none"> ➤ Protection Orders ➤ Hearings on Motion for Temporary Orders ➤ Enforcement of Orders ➤ Modification of Child Support & Post-Secondary Child Support

LLLT Board Pending Issues

In Progress

Topic	Details	Assigned To	Next Steps
<p>Family Law Scope</p> <ul style="list-style-type: none"> • Clarify, expand, or remove prohibition on dividing retirement assets • Incorporation of mediation, negotiations, communication, or court appearances • Possible incorporation of division of the family home, or basic real property law, into family law practice area; or decide if it should be a separate practice area • Discuss lifting non-parental custody prohibition • Discuss allowing contested major modifications 		Family Law Advisory Committee	Board will vote on recommended scope changes at January Meeting.
Define next practice area		New Practice Area Committee	Board will vote on recommended practice area at January Meeting.
Financial aid for LLLT practice area students		WSBA Staff / AEL Committee	Amy Riedel has identified several options; continuing to research.
Outreach program to paralegal students, lawyers, and potential clients	WSBA staff and Board members are engaged in ongoing outreach to members	Board Members and WSBA Communications Staff	WSBA has developed a new outreach plan that focuses on potential applicants for the license, LLLTs and the public.
Member benefits for LLLTs		WSBA Staff	LLLTs currently can access all member discounts and Casemaker. If the Court adopts proposed changes to APR 19, they may have access to LOMAP and the ethics line in Sept. 2017.
Expansion of core curriculum to non ABA-approved schools		Site Team	The site team will visit Whatcom on 1/23 to complete its review process.
Vision for long-term access to justice through LLLT program		Caitlin Davis, Greg Dallaire, Ellen Reed	Planning to correlate outreach to VLPs with licensing of actual LLLTs. When more LLLTs are licensed, Board members plan to reach out to VLPs, QLSPs and Facilitator Programs to encourage them to hire LLLTs.

Creation of local court rules to allow LLLTs to access files electronically	See Okanagon County rule. Pierce County wants to talk about it. Chelan county may have rule.	Steve Crossland/ Ellen Reed	Planning to send letter to AOC asking them to grant LLLTs access re Odyssey counties. Researching JIS and other systems regarding where LLLTs have problems.
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Future Issues/Deferred

Should core curriculum be revised (poverty/real estate)?		AEL Committee	TBD
Revise curriculum to require scope/ethics to be taught earlier than 3 rd of 3 courses?	To be considered after initial program development is complete	AEL Committee	TBD
May community colleges teach subject area courses?	To be considered after initial program development is complete	AEL Committee	TBD

Pending

Evaluate existing program- LLLT Board	Public Welfare Foundation spent a week studying the program in June 2016	WSBA staff and LLLTT Board Chair	Awaiting results of study
Revise APR 28 G (mailing address requirements) to conform with lawyer rules	Suggested rule change approved by Board of Governors	WSBA staff	Included in APR 28 suggested amendments sent to Court in October 2016
Revise fingerprint requirement for LLLTs to conform to lawyer rule	Suggested rule change approved by Board of Governors	WSBA staff	Included in APR 28 suggested amendments sent to Court in October 2016
Revise APR 28 to include LLLTs in Board composition	Rule change approved by Board of Governors	WSBA staff	Included in APR 28 suggested amendments sent to Court in October 2016