

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

AGENDA for October 7, 2019

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
1:00 p.m. to 4:00 p.m.

OPEN SESSION

1. **1:00 - Call to Order/Preliminary Matters**
2. **1:02 - Introductions**
3. **1:15 - Approval of September 9, 2019 Meetings Minutes – ACTION**
4. **1:20 - Review FY20 Meeting Schedule – ACTION**
5. **1:25 - Outreach Update**
6. **1:30 - Committee Reports**
 - Family Law Exam Workgroup
 - Family Law Practice Area Workgroup
7. **1:45 - LLLT Program Past & Future**
8. **3:00 – Committee Assignment and Next Steps**
9. **4:00 – Adjourn**

MEETING MATERIALS

1. September 9, 2019 Draft Meeting Minutes
2. Revised August 28, 2019 Meeting Minutes
3. FY20 Roster
4. FY20 Meeting Schedule
5. Outreach Update



6. LLLT Program Snapshot
7. FY19 Committee Rosters
8. Draft FY20 Committee Rosters
9. CMPR Recommendation, September 14, 2019
10. CMPR Letter to the Court, September 20, 2019
11. Previous CMPR Recommendations, 2016-2018
12. Letter from the LLLT Board to the Court, September 26, 2019
13. Copy of *Loosening a Legal Monopoly: Perspectives from Paraprofessional Pioneers* by Nicole Schilling



LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

Meeting Minutes for August 28, 2019

Washington State Bar Association

10:00 a.m. to 11:00 a.m.

By conference call only

LLLT Board Members in Attendance:

- ☒ Stephen Crossland, Chair
- ☒ Sarah Bove
- ☐ Glen Bristow
- ☒ Catherine Brown
- ☐ Christy Carpenter
- ☒ Brenda Cothary
- ☒ Jeanne Dawes
- ☐ Jennifer Petersen

- ☐ Stephanie Delaney
- ☒ Gail Hammer
- ☒ Nancy Ivarinen
- ☐ Andrea Jarmon
- ☒ Genevieve Mann
- ☒ Ruth McIntyre
- ☒ Carolyn McKinnon (Ex Officio)
- ☒ Amy Riedel

Staff and Others in Attendance during some or all of the meeting:

Jean McElroy (Chief Regulatory Counsel and Director of Regulatory Services), Renata Garcia (Innovative Licensing Programs Manager), and Rachel Konkler (Innovative Licensing Analyst).

Call to Order / Preliminary Matters

The meeting was called to order at 10:00 a.m.

Approval of Meeting Minutes

The July 8, 2019 meeting minutes were approved.

LLLT Board-approved schools (review of core curriculum)

The Board adopted a policy to allow applicants who have completed any part of the core curriculum at a LLLT Board-approved program prior to the program's LLLT Board-approval date,



to request review of courses taken prior to the date of LLLT-Board approval by submitting proof that each course is in compliance with the LLLT Board's core education requirements.

Discussion re Upcoming Family Law Classes

The Board discussed plans for offering the Family Law courses with an anticipated start in Winter quarter 2020. The practice area curriculum will need to be updated to include the enhancements to the LLLT scope of practice and changes to the LLLT RPCs. Jean suggested that the Board members should send their questions and concerns for discussion prior to the next meeting. Renata will work with the law school professors to begin reviewing the practice area curriculum prior to the next meeting.

Discussion re Recent Letters to the Supreme Court about the LLLT Program

The Board is working on responses to P.J. Grabicki's draft letter in addition to other recent communications that have been sent to the Supreme Court regarding the LLLT program. Jeanne Dawes volunteered to draft a response to Treasurer Dan Bridges' letter to the Supreme Court. Amy Riedel and Brenda Cothary volunteered to draft a response to the Treasure's Note in *NWLawyer*.

Adjournment

The meeting adjourned at 11:07 a.m.



Name	Position	Term Expiration
Stephen R. Crossland	Chair	2 nd term 9/30/2021
Zachary Ashby	Member	1 st term 9/30/2022
Sarah Bové	Member	1 st term 9/30/2020
Catherine Brown	Member	1 st term 9/30/2021
Christy Carpenter	Member	1 st term 9/30/2021
Stacy Davis	Public	1 st term 9/30/2022
Stephanie Delaney	Emeritus Pro Bono Member	1 st term 9/30/2020
Charlotte Frock	Public	1 st term 9/30/2020
Nancy Ivarinen	Member	2nd term 9/30/2020
Andrea Jarmon	Member	1 st term 9/30/2020
Jennifer Ortega	Member	1 st term 9/30/2022
Jennifer Petersen	Member	1 st term 9/30/2020
Judith Potter	Public	1 st term 9/30/2022
Amy Riedel	Public	2 nd term 9/30/2021
TBD	Member	
Ex Officio		
Carolyn McKinnon	SBCTC Representative	
BOG Liaison		
P.J. Grabicki		
ATJ Board Liaison		
Judge Fred Corbit		
WSBA Staff		
Renata de Carvalho Garcia	Innovative Licensing Programs Manager	
Rachel Konkler	Innovative Licensing Analyst	



LLLT BOARD MEETING SCHEDULE FY 2020

Meeting Date
October 7, 2019
November 18, 2019
December 9, 2019
January 13, 2020
February 3, 2020
March 16, 2020
April 13, 2020
May 11, 2020
June 8, 2020
July 13, 2020
August 10, 2020
September 14, 2020



LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

UPDATE: October 2019

Outreach & Press
<p>Press:</p> <ul style="list-style-type: none">September 18, 2019: The So-Called Lawyer Monopoly, by Stephen Chung. Above the Law.September 18, 2019: ANALYSIS: The Big 4 Is Knocking - Are State Bars Answering?, by Meg McEvoy. Bloomberg Law.September 22, 2019: Like It or Not, Law May Open Its Door to Nonlawyers, by Aeбра Coe. Law360.
Statistics & Other Events
<p>Recent Events:</p> <ul style="list-style-type: none">Summer 2019 LLLT Exam Results: Congratulations to 1 Applicant! <p>Upcoming Events:</p> <ul style="list-style-type: none">Presentation and Q&A with paralegal students at Highline College – October 11, 2019Presentation and Q&A with paralegal students at Tacoma Community College – October 22, 2019Presentation and Q&A with paralegal students at Portland Community College – November 6, 2019Steve Crossland will participate in a panel for a presentation on Independent Paralegals with the Organizing Committee for the ABA Unauthorized Practice of Law School, November 7-8 in Chicago, ILPresentation and Q&A with paralegal students at Spokane Community College – November 13, 2019 <p>LLLT Statistics:</p> <ul style="list-style-type: none">Number of current LLLTs: 434 LLLTs are inactive1 LLLT is suspended
Meetings
<p>Recent:</p> <ul style="list-style-type: none">LLLT Board Meeting on September 9, 2019 <p>Upcoming:</p> <ul style="list-style-type: none">LLLT Board Meeting on November 18, 2019



2019

LLLT Program Snapshot

October 4, 2019

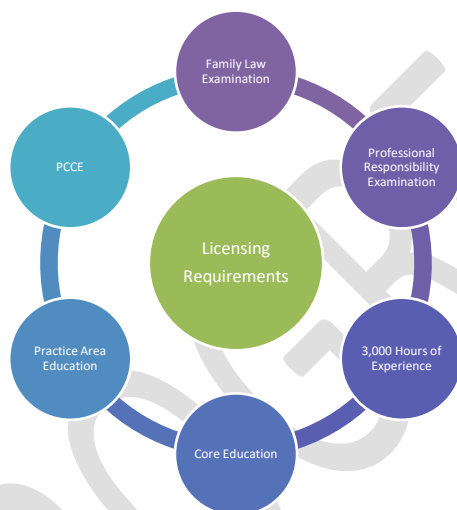


Table of Contents

The LLLT Pathway: from Core Education to Licensure	2
The Limited-Time Waiver.....	3
Family Law Practice Area Courses	4
Examinations and Licensing.....	6
Access to Education	9
LLLT Business Models.....	9
LLLT Discipline Information.....	9
Reports and Evaluations	9
Communications & Outreach	10
Program Administration Costs.....	10
Grants.....	10
LLLT Trend: Limited Licenses Across The Country	11
Pro Bono Legal Services	11

THE LLLT PATHWAY: FROM CORE EDUCATION TO LICENSURE

In order to become licensed, an LLLT candidate must demonstrate compliance with Admission and Practice Rules requirements, which include: core education, practice area education, examinations, and experience requirements. For someone starting with no legal experience, that means a commitment of at least four years, assuming the person is able to obtain the required 3,000 hours of experience while going to school, which is highly unlikely. For the majority of people starting out with no legal experience, that process realistically might take five to six years from start to finish. The core education (AA and 45 credits of paralegal studies) is the only requirement that can be waived if, and only if, the candidate is able to demonstrate at a minimum, 10 years of substantive legal work experience – signed off by the supervising lawyer(s).



LLLTs BY THE NUMBERS

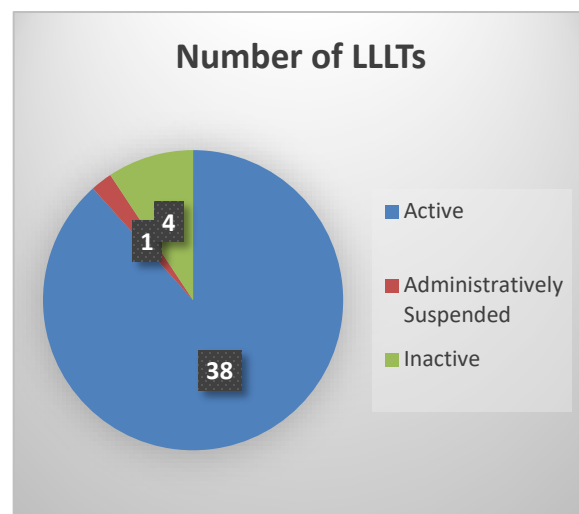
Currently, there are 43 LLLTs in Washington State. 38 are active, 4 are inactive, and 1 is on administrative suspension.

WHY ARE LLLTS GOING INACTIVE?

Work in progress.

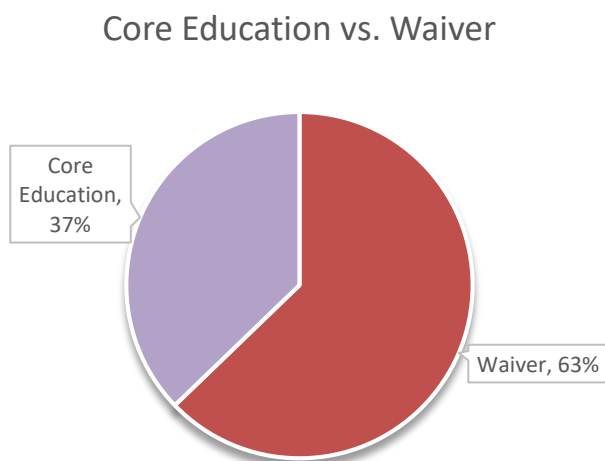
WSBA staff is planning on reaching out to inactive LLLTs and ask if they are willing to share why they went inactive. The idea is to identify barriers and address them as appropriate.

On September 6, 2019 an inactive LLLT shared that she has no intention of returning to active until another practice area becomes available; she is not very interested in family law but wants to keep her foot in the door.



THE LIMITED-TIME WAIVER

LLLT candidates who are able to demonstrate that they have at least 10 years of substantive legal work experience, signed off by the supervising lawyer(s), in addition to passing one of the qualifying paralegal competency exams, qualify for a limited-time waiver. Candidates with an approved limited-time waiver are eligible to enroll in the practice area education (currently Family Law) without the core education (AA and 45 credits of paralegal studies).



Considering that the LLLT license is the first of its kind, it is natural that the majority of LLLTs came from a legal background. In fact, most of the LLLTs currently licensed (63%) obtained a limited-time waiver, which means they had at least 10 years of experience prior to taking the practice area education.

BARRIERS TO OBTAINING A LIMITED-TIME WAIVER

Work in progress.

Staff is compiling information on previously denied waiver requests in order to identify any potential patterns/common barriers.

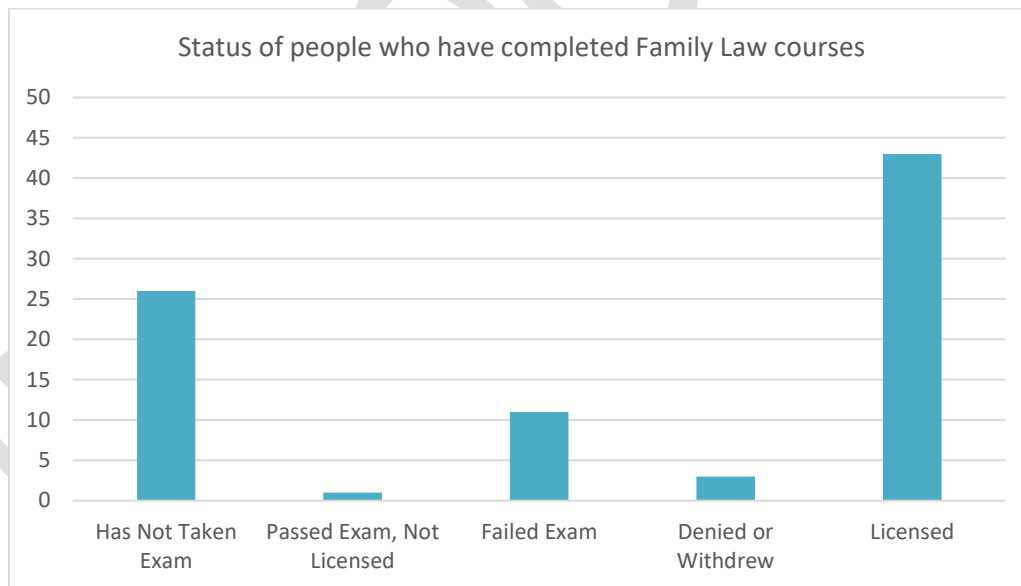
At a recent CLE at the WSBA offices, a LLLT in the audience mentioned that even though she had more than 10 years of substantive legal work experience, she preferred to go through the core education route in order to avoid having to contact every lawyer she worked for in the past and ask them to sign an affidavit. At the same CLE, a lawyer asked what would happen if a LLLT candidate has the experience but was unable to prove it due to supervising lawyer's passing.

We don't have specific data but we have also heard that some lawyers have refused to sign the required documentation.

FAMILY LAW PRACTICE AREA COURSES

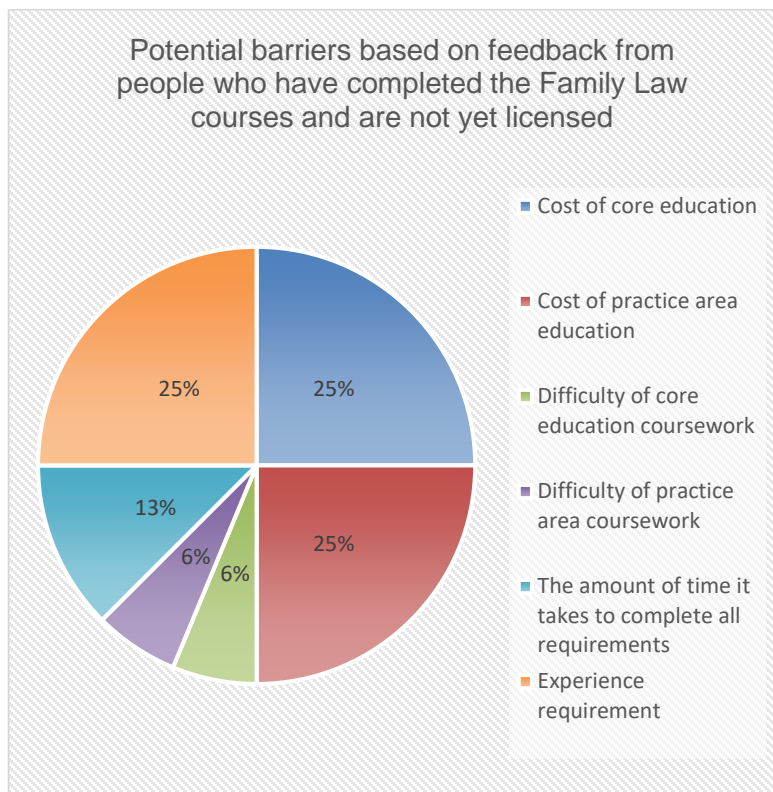
	# in Cohort	Not Yet Licensed	Licensed LLLTs	Percentage Licensed
First Cohort	14	3	11	78%
Second Cohort	20	6	14	70%
Third Cohort	16	10	6	38%
Fourth Cohort	22	14	8	36%
Fifth Cohort	12	8	4	33%
Sixth Cohort				
TOTAL	84	41	43	51%

Out of the 84 individuals who have finished the Practice Area Education (Family Law classes), 41 are not yet licensed.



In September 2019, WSBA staff sent a survey to 40 students who completed the Family Law courses but have not yet become licensed. In total, 9 candidates responded to the survey. Staff learned that the majority of people who answered the survey are still interested in pursuing the LLLT license, and have not yet taken the LLLT exam. The single respondent who is no longer interested in the program stated that she has decided to go to law school instead.

In one survey question, respondents were asked what barriers, if any, they have faced throughout the LLLT program. Responses are illustrated in the chart below.



In another survey question, respondents were asked whether they have taken the LLLT exam, and if so, they were asked to provide feedback about their experience with the exam. The responses are as follows:

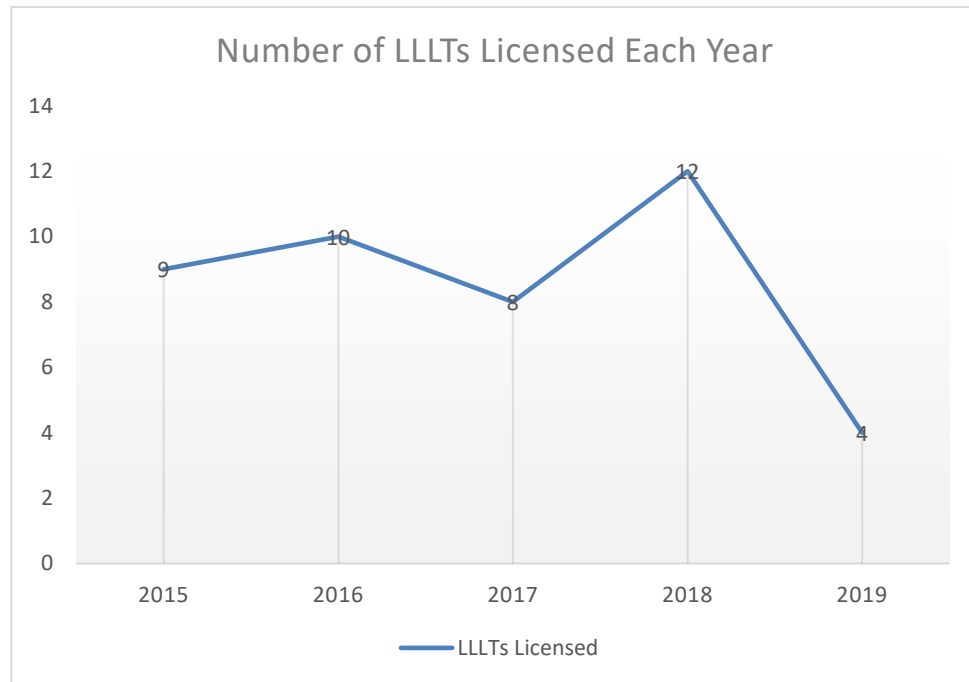
"There needs to be more about how the essays work. There is no information about how to answer those essays - information that an attorney would get in law school. I missed passing the first exam by one point because I did not understand the expectations for...the essay test."

"More helpful study materials. The study materials available are not very insightful."

"My experience is that there is not a proper study guide and it would be helpful to get the exam back to see what you actually missed."

EXAMINATIONS AND LICENSING

Since 2015, the Washington Supreme Court has licensed an average of 9 LLLTs per year.

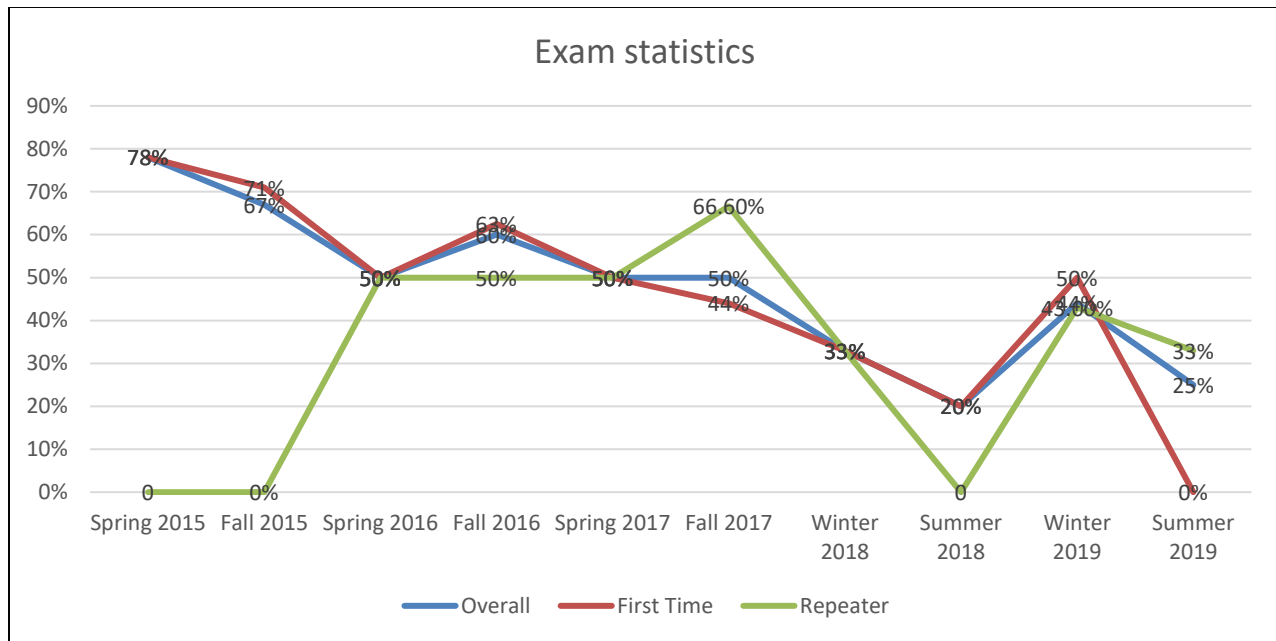


REASONS FOR DECLINE

Work in progress

EXAMINATION STATISTICS

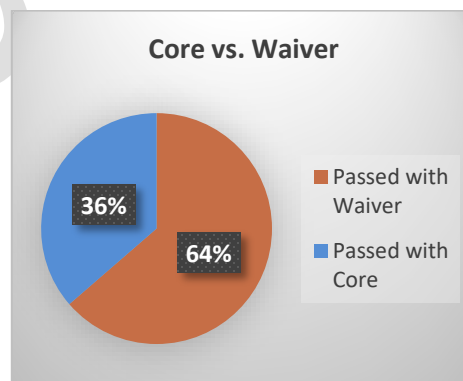
Exam	Applicants	Pass Exam	Pass Rate	First Time	First Time Pass	First Time Pass Rate	Repeater	Repeater Pass	Repeater Rate
Spring 2015	9	7	78%	9	7	78%	0	N/A	N/A
Fall 2015	15	10	67%	14	10	71%	1	0	0%
Spring 2016	6	3	50%	2	1	50%	4	2	50%
Fall 2016	10	6	60%	8	5	62.5%	2	1	50%
Spring 2017	6	3	50%	2	1	50%	4	2	50%
Fall 2017	12	6	50%	9	4	44%	3	2	66.5%
Winter 2018	9	3	33%	3	1	33%	6	2	33%
Summer 2018	5	1	20%	5	1	20%	0	N/A	N/A
Winter 2019	9	4	44%	2	1	50%	7	3	43%
Summer 2019	4	1	25%	1	0	0%	3	1	33.33%



CORE VS WAIVER

	Passed Exam [◇]	Failed Exam [*]
Core Education	16	7
Waiver	28	4
TOTAL	44	11

64% of applicants who passed the exam (not necessarily on the first attempt) received a limited-time waiver (have at least 10 years of experience).



Numbers are based on applicants who either passed the exam eventually (not necessarily on the first attempt) or failed the exam and have not passed it to date.

◇ Passed exam after one or more attempts

*Failed one or more attempts at the LLLT exam; has not passed exam to date.

ACCESS TO EDUCATION

Work in progress

- Start teaching core education at more colleges: Whatcom working with Yakima
- Transfer practice area education to a community college, where students may be eligible for financial aid

LLLT BUSINESS MODELS

Lawyer Firm	Lawyer & LLLT Firm	LLLT-Owned Firm or Solo Practice	VLP	Facilitator	Not practicing
10	0	27	1	1	5

LLLT DISCIPLINE INFORMATION

LLLT Disciplinary Statistics	2016	2017	2018	2019
Number of Active LLLTs	19	25	35	38
Disciplinary Grievances Received	0	0	3	To be determined
Disciplinary Grievances Resolved	0	0	3	To be determined
Disciplinary Actions Imposed	0	0	0	To be determined

Data from the 2018 WSBA Discipline System Annual Report

REPORTS AND EVALUATIONS

[Preliminary Evaluation of the Washington State Limited License Legal Technician Program, published March 2017.](#)

The National Center for State Courts is expected to begin a second evaluation in October 2019.

COMMUNICATIONS & OUTREACH

Each fall, staff gives a presentation and holds a Q&A session with paralegal students at the approved colleges. Typically, an LLLT joins as well to offer their unique, first-hand perspective on the profession.

The Regulatory Services Department has developed a relationship with the WSBA's Moderate Means Program (MMP), in an effort to increase access to justice to low and moderate income individuals. By connecting with the MMP, the goal is that LLLTs will be able to receive referrals for family law matters that fall within the LLLT's scope of practice.

In June 2019, WSBA staff and LLLTs attended the Annual Access to Justice Conference in Spokane, WA.

Outreach to historically underrepresented groups: WSBA staff recently learned about Legal Pathways (UW Tacoma initiative funded by the Washington State Legislature) and will reach out them and other groups/colleges focused on diversifying the legal field.

PROGRAM ADMINISTRATION COSTS

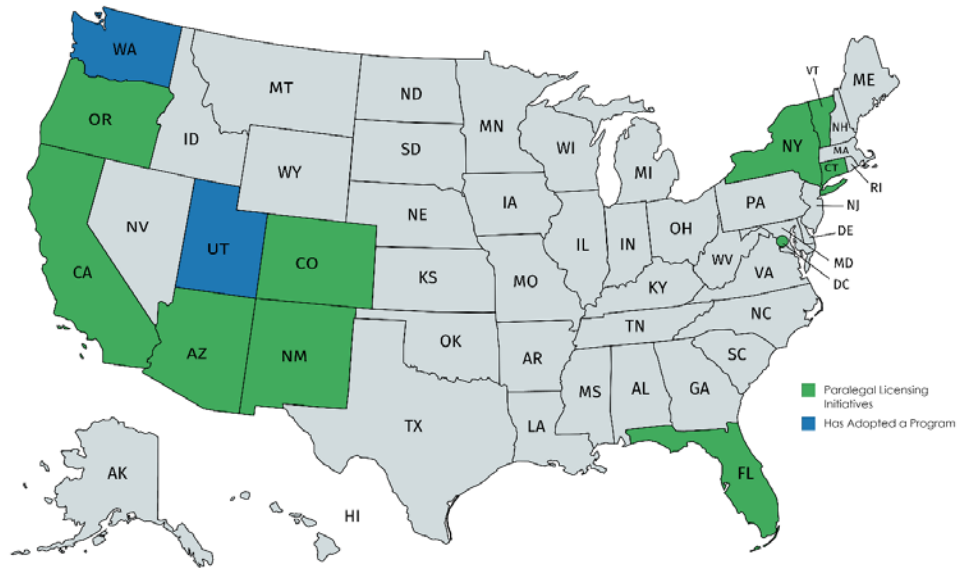
[LLLT Financials and Budget 2013 through 6.30.2019.pdf](#)

GRANTS

To date, the LLLT Program has applied for at least four grants, which are outlined below:

Name	Year Applied	Summary
Emil Gumpert Award	2018	Not awarded
	2019	Not awarded
American Bar Endowment Opportunity Grant	2018	Not awarded
J.M.K Innovation Prize	2019	Not awarded

LLLT TREND: LIMITED LICENSES ACROSS THE COUNTRY



Created with mapchart.net ©

PRO BONO LEGAL SERVICES

Work in progress

2019 Admissions and Education Committee Roster

Description: The Committee discusses and drafts any needed changes to the licensure requirements. When a school applies for LLLT Board approval as a Core Curriculum provider, the Committee reviews application materials and Site Team findings, then either requests more information or makes a recommendation to the LLLT Board to approve or deny the application.

Anticipated Commitment: The frequency of meetings varies depending on changes to the Core Curriculum. The Committee is formed as a standing committee but will meet ad hoc.

NAME	E-MAIL	Participant Type
Genevieve Mann, Chair	manng@gonzaga.edu	LLLT Board Member
Brenda Cothary	bcothary@msn.com	LLLT Board Member
Stephen R. Crossland	steve@crosslandlaw.net	LLLT Board Member
Stephanie Delaney	sdelaney@RTC.edu	LLLT Board Member
Nancy Ivarinen	nancy@ncilegal.com	LLLT Board Member
Amy Riedel	ariedel@whatcom.edu	LLLT Board Member
Bobby (Buzz) Wheeler	bwheeler@highline.edu	Committee Member
WSBA STAFF		
Renata de Carvalho Garcia RSD Innovative Licensing Programs Manager	renatag@wsba.org	
Rachel Konkler RSD Innovative Licensing Analyst	rachelk@wsba.org	



2019 Board Development Committee Roster

Description: Recruit & support board members so that they have the tools needed to contribute to further the mission of the LLLT Board. Provide support & cultivate relationships through various opportunities.

Anticipated Commitment: The Committee will hold approximately 3-5 meetings annually. The Committee will meet to develop a mission statement, develop a succession plan and review orientation materials.

NAME	E-MAIL	Participant Type
Jennifer Petersen, Chair	jen@saalawoffice.com	LLLT Board Member
Glen Bristow	gnelsonbristow@yahoo.com	LLLT Board Member
Brenda Cothary	bcothary@msn.com	LLLT Board Member
Steve Crossland	steve@crosslandlaw.net	LLLT Board Member
Stephanie Delaney	stephanie.delaney@seattlecolleges.edu	LLLT Board Member
WSBA STAFF		
Renata de Carvalho Garcia Innovative Licensing Programs Manager	renatag@wsba.org	
Rachel Konkler Innovative Licensing Analyst	rachelk@wsba.org	



2019 Core Curriculum Site Team Roster

Description: The Core Curriculum Site Team is appointed by the LLLT Board to review any applications submitted for approval under the [LLLT Educational Program Approval Standards](#). The Site Team reviews application materials, requests more information if needed, visits the applying institution, and writes a fact-finding report, which is submitted to the Board. The Committee when appointed will consist of:

- A representative from an ABA-approved paralegal program.
- A representative from a non-ABA approved paralegal program.
- A representative from the State Board of Community and Technical Colleges.
- An LLLT Board member.
- An additional person who may be an LLLT, paralegal, or anyone else appointed by the LLLT Board Chair.

Anticipated Commitment: The Committee will be appointed and will meet ad hoc as necessary to review applications. When formed, individuals are expected to conduct a thorough review of application materials, meet at least once as a group to review the application, schedule and attend an in-person site visit, and develop a fact-finding report.

NAME	E-MAIL	Participant Type
Stephanie Delaney, Chair	stephanie.delaney@seattlecolleges.edu	Representative from a non-ABA approved paralegal program
Amy Riedel	ariedel@whatcom.edu	LLLT Board Member
Glen Bristow	gnelsonbristow@yahoo.com	LLLT Board Member
TBD		Representative from the State Board of Community and Technical Colleges
Bobby Wheeler	BWHEELER@highline.edu	Representative from an ABA-approved paralegal program
WSBA STAFF		
Renata de Carvalho Garcia Innovative Licensing Programs Manager	renatag@wsba.org	
Jaimie Patneaude LLLT Program Lead	jaimiep@wsba.org	



2019 Discipline Committee Roster

Description: The Committee is governed by and performs the functions described in the Enforcement of Limited License Legal Technician Conduct Rules (ELLLTC) and those delegated by the LLLT Board Chair. The Committee is 3-5 members appointed by the LLLT Board Chair, who does not serve on the Committee.

Anticipated Commitment: The Committee meets at times and places as necessary to review grievances filed against LLLTs under the ELLLTC.

NAME	E-MAIL	Participant Type
Nancy Ivarinen, Chair	nancy@ncilegal.com	LLLT Board Member
Sarah Bove	sarah@ltdivision.com	LLLT Board Member
Gail Hammer	hammerg@gonzaga.edu	LLLT Board Member
Genevieve Mann	manng@gonzaga.edu	LLLT Board Member
Ruth Walsh McIntyre	Drruth1@havi.net	LLLT Board Member
WSBA STAFF		
Renata de Carvalho Garcia Innovative Licensing Programs Manager	renatag@wsba.org	
Jaimie Patneau LLLT Program Lead	jaimiep@wsba.org	



2019 Family Law Exam Workgroup Roster

Description: The Workgroup reviews the multiple choice, essay, and performance exam components of the LLLT Family Law Practice Area Exam. The Workgroup revises materials written by a third party exam writing company, Ergometrics. After the exam, the Workgroup grades the essays and performance exams.

Anticipated Commitment: The Workgroup meets at least 4-6 times each year. One or two meetings occur before each exam to review questions drafted by Ergometrics and provide subject matter feedback. Members are expected to work independently between meetings to revise draft materials. After the exam, Workgroup members will grade the essays and the performance exam according to grading guidelines created by Ergometrics then meet once to review the results for accuracy and consistency.

NAME	E-MAIL	Participant Type
Christy Carpenter, Chair	christy@myllt.com	LLLT Board Member
Jeanne Dawes	jjdawes@goregrewe.com	LLLT Board Member
Nancy Ivarinen	nancy@ncilegal.com	LLLT Board Member
Andrea Jarmon	jarmonlaw@hotmail.com	LLLT Board Member
Jennifer Petersen	jen@saalawoffice.com	LLLT Board Member
Lianne Malloy	LianneM@ATG.WA.GOV	Subject Matter Expert
Guadalupe (Lupe) Artiga (Grading exams only)	Lupea@nwjustice.org	Subject Matter Expert
WSBA STAFF		
Renata de Carvalho Garcia RSD Innovative Licensing Programs Manager	renatag@wsba.org	
Rachel Konkler Innovative Licensing Analyst	rachelk@wsba.org	



2019 Family Law Practice Area Workgroup Roster

Description: The Workgroup reviews the APR and the scope of the Family Law Practice Area. It suggests changes to scope or curriculum based on developments in the practice of family law. It considers enhancements to the Family Law Practice Area and develops any continuing legal education requirements and changes to practice area education necessary because of those enhancements.

Anticipated Commitment: The frequency of meetings varies depending on developments in the practice area. The workgroup will meet at least twice each year to review the practice area and any developments. While creating any potential enhancements or rule changes, the workgroup will meet monthly with members expected to perform individual research and writing between meetings.

NAME	E-MAIL	Participant Type
Sarah Bove, Chair	sarah@LTDivision.com	LLLT Board Member
Christy Carpenter	Christy@myllt.com	LLLT Board Member
Gail Hammer	hammerg@gonzaga.edu	LLLT Board Member
Nancy Ivarinen	nancy@ncilegal.com	LLLT Board Member
Andrea Jarmon	jarmonlaw@hotmail.com	LLLT Board Member
Jennifer Ortega	jennifer@LTdivision.com	LLLT
Jennifer Petersen	jen@saalawoffice.com	LLLT Board Member
Professor Patricia C. Kuszler	kuszler@u.washington.edu	University of Washington Faculty
Professor Terry Price	tprice@uw.edu	University of Washington Faculty
WSBA STAFF		
Renata de Carvalho Garcia RSD Innovative Licensing Programs Manager	renatag@wsba.org	
Rachel Konkler Innovative Licensing Analyst	rachelk@wsba.org	



2019 Nominations Committee Roster

Description: The Committee reviews applications for LLLT Board positions. As necessary, the Committee recruits applicants for Board positions and drafts any needed changes to rules regarding Board composition.

Anticipated Commitment: The Committee meets at least twice year; once to discuss and plan for Board recruitment and once to review submitted nominations.

NAME	E-MAIL	Participant Type
Brenda Cothary, Chair	bcothary@msn.com	LLLT Board Member
Nancy Ivarinen	nancy@ncilegal.com	LLLT Board Member
Amy Riedel	ariedel@whatcom.edu	LLLT Board Member
WSBA STAFF		
Renata de Carvalho Garcia Innovative Licensing Programs Manager	renatag@wsba.org	
Jaimie Patneaude LLLT Program Lead	jaimiep@wsba.org	



2019 New Practice Area Committee Roster

Description: The Committee determines possible new practice areas and the scopes of new practice areas. It also draft changes to APR 28 to add new practice areas.

Anticipated Commitment: The Committee will hold monthly meetings and members are expected to perform significant individual research, writing, and outreach between meetings.

Standing Committee Members		
NAME	E-MAIL	Participant Type
Nancy Ivarinen, Chair	nancy@ncilegal.com	LLLT Board Member
Sarah Bove	sarah@LTDivision.com	LLLT Board Member
Catherine Brown	CathyBrown2@gmail.com	LLLT Board Member
Christy Carpenter	Christy@mlllt.com	LLLT Board Member
Brenda Cothary	bcothary@msn.com	LLLT Board Member
Jeanne Dawes	jjdawes@goregrewe.com	LLLT Board Member
Stephanie Delaney	stephanie.delaney@seattlecolleges.edu	LLLT Board Member
Gail Hammer	hammer@gonzaga.edu	LLLT Board Member
Andrea Jarmon	andrea@jarmonlawgroup.com	LLLT Board Member
Genevieve Mann	manng@lawschool.gonzaga.edu	LLLT Board Member
Jennifer Petersen	jen@saalawoffice.com	LLLT Board Member
Ruth Walsh McIntyre	dr Ruth1@nwi.net	LLLT Board Member
Mark Case DOL Collection Agency Board liaison	mcase@receivablesperformance.com	Subject Matter Expert
Edgar Hall	edgar@wadebtlaw.com	Subject Matter Expert
Sam Leonard	sam@seattledebtdefense.com	Subject Matter Expert



Damian Mendez	mendezlaw@gmail.com	Subject Matter Expert
Jennifer Ortega	jennifer@LTDivision.com	Subject Matter Expert
Sheila O' Sullivan	Sheila.OSullivan@outlook.com	Subject Matter Expert
Eric Theile	eric@balcombgreen.com	Subject Matter Expert
WSBA STAFF		
Renata de Carvalho Garcia Innovative Licensing Programs Manager	renatag@wsba.org	
Rachel Konkler Innovative Licensing Analyst	rachelk@wsba.org	



2019 Outreach Committee Roster

Description: To create, initiate and coordinate community outreach programs to educate members of the public, educators, legal professionals and students about Limited Licensed Legal Technicians.

Anticipated Commitment: The Committee will hold approximately 3-5 meetings annually. The Committee will meet to develop code curriculum education for additional schools. Committee member engagement and participation is integral to this committee and members are anticipated to attend community events to educate the legal community and professionals about LLLTs.

NAME	E-MAIL	Participant Type
Catherine Brown, Chair	CathyBrown2@gmail.com	LLLT Board Member
Christy Carpenter	cristy@mylllt.com	LLLT Board Member
Brenda Cothary	bcothary@msn.com	LLLT Board Member
Steve Crossland	steve@crosslandlaw.net	LLLT Board Member
Amy Riedel	ariedel@whatcom.edu	LLLT Board Member
WSBA STAFF		
Renata de Carvalho Garcia RSD Innovative Licensing Programs Manager	renatag@wsba.org	
Jaimie Patneaude LLLT Program Lead	jaimiep@wsba.org	



2019 Rules of Professional Conduct Committee Roster

Description: The Committee reviews the LLLT RPCs and drafts any needed changes to LLLT RPCs. The Committee reviews the multiple choice questions for the LLLT Professional Responsibility Exam written by a third party exam writing company, Ergometrics. After the exam, the Committee reviews any questions that were especially problematic.

Anticipated Commitment: The Committee will hold approximately 4-6 meetings annually. The Committee will review LLLT RPCs at least once per year. One or two meetings occur before each exam to review questions drafted by Ergometrics and provide subject matter feedback. Members are expected to work independently between meetings to revise draft materials. After the exam, Committee members will review the results for accuracy and consistency.

NAME	E-MAIL	Participant Type
Genevieve Mann, Chair	manng@gonzaga.edu	LLLT Board Member
Sarah Bove	sarah@ltdivision.com	LLLT Board Member
Glen Bristow	gnelsonbristow@yahoo.com	LLLT Board Member
Catherine Brown	CathyBrown2@gmail.com	LLLT Board Member
Greg Dallaire	gdallaire1@comcast.net	Subject Matter Expert
WSBA STAFF		
Renata de Carvalho Garcia Innovative Licensing Programs Manager	renatag@wsba.org	
Rachel Konkler Innovative Licensing Analyst	rachelk@wsba.org	



2019 State of the Profession Committee Roster

Description: Strengthen the relationship between the Supreme Court and LLLTs and Board. Work to encourage supporters of LLLTs to engage with the Supreme Court.

Anticipated Commitment: The Committee will hold approximately 3-5 meetings annually. The Committee will work to provide bi-monthly letters to the court along with holding quarterly meetings with Judges.

NAME	E-MAIL	Participant Type
Jeanne Dawes, Chair	jjdawes@goregrewe.com	LLLT Board Member
Sarah Bove	sarah@LTDivision.com	LLLT Board Member
Steve Crossland	steve@crosslandlaw.net	LLLT Board Member
Andrea Jarmon	andrea@jarmonlawgroup.com	LLLT Board Member
Ruth Walsh McIntyre	druth@nwi.net	LLLT Board Member
WSBA STAFF		
Renata de Carvalho Garcia Innovative Licensing Programs Manager	renatag@wsba.org	
Jaimie Patneaude LLLT Program Lead	jaimiep@wsba.org	



WASHINGTON STATE
BAR ASSOCIATION
Committee on Mission Performance and Review

TO: WSBA Board of Governors
FROM: Rajeev D. Majumdar, WSBA President-elect & non-voting Chair of the WSBA Committee on Mission Performance and Review
DATE: September 14, 2019
RE: Report from the WSBA Committee on Mission Performance and Review

Action: Approve FY19 recommendations from WSBA Committee on Mission Performance and Review.

Action: Approve sun-setting of WSBA Committee on Mission Performance and Review by incoming President Majumdar under his administration and the tasking of the Executive Committee with those duties.

Dear Board:

I am the non-voting Chair of this committee and I am doing a faithful year-end reporting to you in line with those duties:

The charge of the Board of Governors' Committee on Mission Performance and Review (CMPR) is threefold: (1) to ensure WSBA's committees continue to do the work of the BOG, as directed by the BOG, consistent with our mission, guiding principles and strategic goals; (2) to make sure WSBA's regulatory boards are fulfilling their Supreme Court mandates and any other issues the BOG may have asked them to explore; and (3) to monitor the ongoing activities of the Supreme Court-created boards administered by WSBA, consistent with their charges from the Court. To accomplish these goals, the CMPR reviews annual reports submitted by these entities and forwards recommendations to the BOG for review and action as appropriate.

The FY19 CMPR met on July 19, 2019. CMPR members who participated either in person or by telephone: Chair Rajeev D. Majumdar, Gov. Dan Clark, Gov. Carla Higginson, Interim Executive Director Terra Nevitt, Gov. Kyle Sciuchetti, and Gov. Paul Swegle. Also present was Gov. Sunitha Anjilvel.

1. FY19 evaluation of consistency with our mission, guiding principles & strategic goals, and assignments:

The CMPR thanks all the WSBA committees and boards, as well as the Supreme Court-created boards administered by WSBA, for their work over the past year. After reviewing and discussing the

attached annual reports the CMPR makes the below recommendations and comments, which it asks the BoG to adopt.

- **Board of Bar Examiners:** The board should make it a priority to improve the racial/ethnic diversity that is represented on the board, so that it is reflective of our bar and the public, and thus bring an increased toolset and range of perspectives to the issues it handles. This is the first year of feedback that this concern is being raised, and the Board should be able to self-correct this problem.
- **Committee on Professional Ethics:** The committee should make it a priority to improve the racial/ethnic diversity that is represented on the committee, so that it is reflective of our bar and the public, and thus bring an increased toolset and range of perspectives to the issues it handles. This is the first year of feedback that this concern is being raised, and the Committee should be able to self-correct this problem.
- **Limited License Legal Technician Board:** Limited License Legal Technician Board: (1) The board should make it a priority to improve the gender diversity that is represented on the board, so that it is reflective of our bar and the public, and thus bring an increased toolset and range of perspectives to the issues it handles. If the board does not correct the gender imbalance in its membership which has persisted for the last several years of feedback from the CMPR, the Board of Governors should recruit potential new members. (2) In order to improve efficiency and long term program viability of the program the board should refocus the majority of its efforts towards making progress towards cost neutrality as opposed to emphasis on developing new practice areas, pursuant to the 2012 Supreme Court Order, 25700-A-1005.
- **Legislative Review Committee:** The BoG should support the transition of the structure of the committee to expand the membership to increase diversity by including non-voting members under the leadership of Gov. Sciuchetti. Gov. Sciuchetti and incoming President Majumdar have stated that they are trying to bring closer the BOG Leg Committee and Legislative Review Committee to work more closely together to better confront some of the issues from this 2018-2019 year.
- **Editorial Advisory Committee:** The CMPR notes that the EAC may be looking for increased guidance from the BoG regarding politics/Janus/Fleck. The BoG and Bog EAC liaison should foster that dialogue and contemplate these issues.

The CMPR had no concerns regarding the work of the following committees and boards in regards to being in line with the mission and goals of the WSBA, and makes no recommendations or comments:

- Access to Justice Board
- Character & Fitness Board
- Client Protection Fund Board
- Continuing Legal Education Committee

- Council on Public Defense
- Court Rules & Procedures Committee
- Disciplinary Board
- Editorial Advisory Committee
- Judicial Recommendation Committee
- Law Clerk Board
- Limited Practice Board
- Mandatory Continuing Legal Education Board
- Practice of Law Board
- Pro Bono and Public Service Committee
- WSBA Diversity Committee

2. Advisory ratification of sun-setting of CMPR:

The CMPR also discussed whether its oversight role might be better accomplished by transferring its duties to the Board of Governors Executive Committee.

Existence and composition of the CMPR appears to have been authorized by fiat of President O'Toole under the President of the WSBA's power to appoint "ad hoc entities to carry out policies established by the BOG." Previously, these duties were carried out by the Executive Committee. President-elect Majumdar, announced his intention to fold these duties back into the Executive Committee, for the following reasons:

1. Too many committees spread the governors too thin, and as this committee only meets once a year near the end, it is not well understood, or utilized;
2. The issues CMPR is supposed to deal with is something that all of the officers and executive staff should be aware of year round;
3. The Executive Committee meets in person regularly for a relatively short time-period, which could be combined with these duties to make the process more holistic and year-around as opposed to bunched up at the end of the year, and help the officers follow-up with liaisons to work with their respective committees on these issues.

The CMPR recommends that the CMPR be sun-setted effective October 1, 2019.

The President-elect is asking the BoG to support this structure of his administration. In the event that the President doesn't have the power to eliminate entities created by Presidential fiat, the Board of Governors has the authority to take this action as the existence of the CMPR is not mandated by the WSBA Bylaws or a Supreme Court rule.



DISTRICT 4 GOVERNOR
DANIEL D. CLARK

September 20, 2019

Chief Justice Mary E. Fairhurst
Associate Chief Justice Charles W. Johnson
Justice Barbara A. Madsen
Justice Susan Owens
Justice Debra L. Stephens
Justice Charles K. Wiggins
Justice Steven C. Gonzalez
Justice Sheryl McCloud
Justice Mary I. Yu

Dear Supreme Court Justices:

I am writing this advisory letter on behalf of and per authorization from the Washington State Bar Association Board of Governor's Committee on Mission Performance & Review ("CMPR"). The CMPR is charged by the Board of Governors with ensuring the various boards, committees, and councils administered by the WSBA adhere to the WSBA's mission, guiding principles, and strategic direction.

After conducting our annual review of various WSBA programs, the CMPR has significant concerns regarding the persistent and vast gender imbalance on the LLLT Board. Currently the committee has 14 members with 13 being female, and only 1 being male. This is the third year in a row that such a significant gender imbalance has been observed by the Committee and the third year in a row that the Committee has directly asked that the LLLT Board achieve more diversity in gender balance so as to achieve the GR 12 mandated goals of equity and inclusion. To date, those requests have not been responded to by the LLLT Board.

Given these circumstances, the Committee has decided to alert the Supreme Court of this situation and that we have asked the LLLT Board to come up with a specific plan to correct the imbalance.

Additionally, the LLLT Board's gender make up appears to reflect the LLLT membership recruitment strategy. In looking at the WSBA roster for LLLTs, as of the date of drafting of this letter, only two (2) of the forty-three (43) current LLLT members that have been admitted are men. Such vast disparity in gender is also very concerning to the Committee. It is paramount to the WSBA's mission that we are not shutting one gender out of the path to becoming a limited legal licensed professional, or that we are diverting females to the LLLT path rather than to the attorney at law path.

Please let us know if you have any questions regarding the contents of this letter.

Respectfully,

A handwritten signature in dark ink, appearing to read "Daniel D. Clark", is written over a horizontal line.

Daniel D. Clark
District 4 Governor

CC: Terra Nevitt
Committee members



WSBA

Committee on Mission Performance and Review

To: WSBA Board of Governors

From: Robin L. Haynes, WSBA President Elect and Chair of the BOG Committee on Mission Performance and Review (CMPR)

Date: September 16, 2016

Re: Report from the WSBA Committee on Mission Performance and Review

Consent: Approve the FY2016 CMPR Report

At the July 21-22 Board of Governors meeting, the CMPR Report received its first reading.

The Board had questions regarding the lack of diversity demographic information for some of the committees and boards. In past years, including FY16, demographic information was not collected by the WSBA for these entities. This was due to the various application processes and timelines some of the entities used to select their members. Beginning in FY17 the WSBA will collect uniform demographic data on all boards, committees, and councils.

In addition to the above clarification, all other recommendations contained in the July 13, 2016, memo will be adopted upon Board consent.

Attachment:

- July 13, 2016 Memo to Board from the CMPR (first reading)

Supplemental Materials:

- FY16 Annual Reports from boards, committees, and councils



WSBA

Committee on Mission Performance and Review

TO: WSBA Board of Governors

FROM: Robin L. Haynes, WSBA President-Elect and Chair of the BOG Committee on Mission Performance & Review (CMPR)

RE: Report from the WSBA Committee on Mission Performance & Review (First reading)

DATE: July 13, 2016

Action: Approve recommendations from WSBA Committee on Mission Performance and Review (CMPR). **(first reading)**

The WSBA Committee on Mission Performance & Review (CMPR) annually reviews the work of the WSBA's committees, boards, and councils (committees). Through reviewing annual reports, the CMPR assists the BOG in directing the WSBA's committee work and ensures their work is relevant and fulfills the WSBA's mission, guiding principles, and strategic direction. Following this analysis, the CMPR forwards its recommendations to the BOG for review and action as appropriate.

The FY16 WSBA Committee on Mission Performance & Review met on June 29, 2016. The CMPR thanks all the WSBA Committees for their work over the past year. Overall, the work being done was impressive and furthers the WSBA's mission.

After reviewing and discussing the attached FY16 committee reports the CMPR recommends that:

Recommendations applicable to all committees and boards to be implemented in FY17:

- All committees should address diversity in two aspects: 1) diversity of the committee itself, and 2) how the committee's work enhances and addresses diversity and inclusion.
- For FY17, committees that lack overall diversity will be asked to outline their outreach plans in order to increase the diversity of the applicant pool. The WSBA Diversity Specialist and the Diversity Program Manager can be consulted for ideas and assistance.

Notes and recommendations for specific committees:

Amicus Brief Committee

The CMPR noted that in FY16 there was only one request for an amicus brief, which was denied due to time constraints.

The work of this committee is valuable and beneficial to the WSBA and the broader legal community. However, the nature of the work requires a more nimble response to amicus requests. The recently established BOG Executive Committee meets frequently and could act upon amicus requests in a more efficient manner. If an amicus request is received and the WSBA chooses to participate, the BOG Executive Committee could delegate the drafting work to appropriate volunteers on an ad-hoc basis.

For these reasons, the CMPR recommends that the Amicus Brief Committee be sunsetted in FY18.

Court Rules and Procedures Committee

No specific comments.

WSBA Legislative Committee

Vetting of section-proposed legislation is necessary, however the CMPR is concerned that a more efficient process is needed. The pace of the state legislature and the WSBA has dramatically changed over the years, thus it is a good time to re-evaluate the processes we currently utilize.

The CMPR believes the existing committee structure does not meet current needs in light of the specialized skills required to evaluate proposals, the wide-ranging subjects that are brought for review, the potential duplicative role of the BOG Legislative Committee, the best way to utilize WSBA's volunteers, and the fast-paced climate of the legislature.

During FY17, the CMPR proposes that a work group be formed to determine best practices for a new and improved process for vetting legislative proposals from WSBA.

Editorial Advisory Committee (EAC)

The CMPR encourages the EAC to include more people of color and diversity in all issues of *NWLawyer*.

Judicial Recommendation Committee (JRC)

The CMPR acknowledges the hard work of this high-functioning committee, and was impressed that 414 references had been checked.

The Committee proposes that the JRC explore with the governor's office a way to place more emphasis on diversity. For example, wording on the judicial application forms could be revised to highlight the value of diverse references.

Pro Bono and Public Service Committee (PBPS)

The CMPR noted the continuing goal of member education around the topic of unbundled legal services, and would ask the PBPS to prioritize this issue in FY17.

The CMPR would like to see the PBPS work with staff to develop metrics/measures on how people are helped by the WSBA's public service programs.

The CMPR encourages the PBPS to work with staff to continue to add to WSBA programming, building on the success of the Moderate Means and Call to Duty Programs.

The Committee looks forward to meeting with the Public Service Program Manager at its next meeting to further discuss these ideas and the PBPS.

Committee on Professional Ethics (CPE)

The Committee is interested to learn how the CPE has implemented a two-step review process to its consideration of issues going forward since the *North Carolina Dental* case opinion from the US Supreme Court: that is, a preliminary review to evaluate whether there are anti-trust implications raised by the issue to be explored, and, a second step, assuming the answer to the first inquiry is no, on discussing the issue and offering any recommendations.

Character and Fitness Board

No specific comments.

Law Clerk Board (LCB)

The CMPR requests that the LCB explore options for encouraging diverse applicants to apply for the program.

Access to Justice (ATJ) Board

The CMPR applauds the completion of domestic relations plain language forms project.

The CMPR appreciates the ATJ Board's willingness to embrace new and young lawyers on its committees and through the training and networking opportunities it provides.

Lawyers' Fund for Client Protection (LFCP) Board

The CMPR appreciates the LFCP's comments regarding new lawyers and their suitability for this board, and the board's commitment to recruiting newer lawyers.

Disciplinary Board

No specific comments.

Limited Practice Board

No specific comments.

Mandatory Continuing Legal Education (MCLE) Board

No specific comments.

Practice of Law Board (POLB)

The CMPR noted that the POLB is working thru a backlog of items after its reinstatement in July 2015 and is excited about the various topics and issues the Board is exploring.

The Committee and BOG look forward to continued dialogue and work together with the Board.

Council on Public Defense

No specific comments.

Board of Bar Examiners

No specific comments.

CLE Committee

The Committee looks forward to meeting with the CLE Manager at its next meeting to discuss how the CLE Committee can be most effective and helpful to the CLE Department.

WSBA Committee on Diversity

No specific comments.

Washington Young Lawyers Committee (WYLC)

No specific comments.

Limited License Legal Technician (LLLT) Board

The CMPR noted that this is a very hard-working board. It was also noted that the LLLT Board, the POLB and the WSBA BOG coordinate and work well together.

The CMPR encourages the LLLT Board to add additional practice areas.

The CMPR encourages the LLLT Board to continue to address ways that would make the innovative LLLT program accessible and affordable for these new legal professionals.

The LLLT Board Chair will join the Committee Chair in Walla Walla to further discuss the work of the LLLT Board and how best the BOG can support its work.

WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Brad Furlong, WSBA President and Chair of the BOG Committee on Mission Performance and Review

DATE: September 15, 2017

RE: Report from the WSBA Committee on Mission Performance and Review

CONSENT: Approve recommendations from WSBA Committee on Mission Performance and Review.

The charge of the Board of Governors' Committee on Mission Performance and Review (CMPR) is threefold: (1) to ensure WSBA's committees continue to do the work of the BOG, as directed by the BOG, consistent with our mission, guiding principles and strategic goals; (2) to make sure WSBA's regulatory boards are fulfilling their Supreme Court mandates and any other issues the BOG may have asked them to explore; and (3) to monitor the ongoing activities of the Supreme-Court-created boards administered by WSBA, consistent with their charges from the Court (as the WSBA funds and administers these boards, the BOG has a continuing interest in their functioning). To accomplish this, the CMPR reviews annual reports submitted by these entities and forwards recommendations to the BOG for review and action as appropriate.

The FY17 CMPR met on June 21, 2017. All CMPR members attended and participated either in person or by telephone: Andrea Jarmon, Jill Karmy, Paula Littlewood, Rajeev Majumdar, Christina Meserve, Bill Pickett, and Kim Risenmay. Also attending were BOG members Ann Danieli and Dan Bridges, Legislative Work Group Chair Phil Brady, and WSBA staff members Pam Inglesby and Clark McIsaac.

The CMPR thanks all the WSBA committees and boards, as well as the Supreme Court-created boards administered by WSBA, for their work over the past year. After reviewing and discussing the attached annual reports the CMPR makes the below recommendations and comments.

The CMPR also reviewed the report of the BOG's Legislative Work Group, and voted to forward its recommendations to the BOG without comment. Former Governor Phil Brady addressed the full BOG concerning the recommendations at the July BOG meeting.

(cont.)

- Board of Bar Examiners: Concerns were raised about potential bias in the bar exam. WSBA staff noted that the content of the Uniform Bar Exam is in the purview of the National Conference of Bar Examiners, not the BOBE. That being so, WSBA has been working with the three Washington law schools and with the Loren Miller Bar Association on a potential study to examine the issue of whether there is bias in the Uniform Bar Examination. The result of the discussions to date is that, rather than conducting our own study, which would involve only about 1,500-2,000 applicants over several years, WSBA will review a study being done in New York, which will involve tens of thousands of applicants over three years and applicants from more than 100 law schools. The greater numbers will allow for greater accuracy and reliability in the study results. Based on these results, the WSBA will be able to have an informed discussion about possible bias in the Uniform Bar Exam.
- Committee on Professional Ethics: The BOG recognizes that the CPE has made impressive strides in its female to male ratio.
- Council on Public Defense: Develop a method for requesting demographic information from CPD members who are nominated by outside entities.
- Disciplinary Board: The BOG recognizes that the Board has increased the diversity of its membership for the coming year.
- Legislative Committee: See above for reference to the BOG's Legislative Work Group recommendations regarding this committee.
- Limited License Legal Technician Board: Further diversify the Board in all respects including gender and age.
- Limited Practice Board: Conduct outreach to attract a more diverse group of applicants to the Board.

The CMPR has no recommendations or comments regarding the following committees and boards:

- Access to Justice Board
- Amicus Curiae Brief Committee
- Character & Fitness Board
- Continuing Legal Education Committee
- Court Rules & Procedures Committee
- Editorial Advisory Committee
- Judicial Recommendation Committee
- Law Clerk Board
- Lawyers' Fund for Client Protection Board
- Mandatory Continuing Legal Education Board
- Practice of Law Board
- Pro Bono and Legal Aid Committee
- WSBA Diversity Committee
- Washington Young Lawyers Committee

WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors
FROM: Margaret Shane
DATE: September 13, 2018
RE: Report from the WSBA Committee on Mission Performance and Review

ACTION: Approve Recommendations from the WSBA Committee on Mission Performance and Review (CMPR).

Attached please find the cover memo and materials related to the CMPR recommendations that were on the agenda at the July 27-28, 2018, Board of Governors meeting for first reading. No changes have been made to the materials since the July Board meeting.

WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors
FROM: William Pickett, WSBA President and Chair of the WSBA Committee on Mission Performance and Review
DATE: July 12, 2018
RE: Report from the WSBA Committee on Mission Performance and Review

First Reading: Recommendations from WSBA Committee on Mission Performance and Review.

The charge of the Board of Governors' Committee on Mission Performance and Review (CMPR) is threefold: (1) to ensure WSBA's committees continue to do the work of the BOG, as directed by the BOG, consistent with our mission, guiding principles and strategic goals; (2) to make sure WSBA's regulatory boards are fulfilling their Supreme Court mandates and any other issues the BOG may have asked them to explore; and (3) to monitor the ongoing activities of the Supreme-Court-created boards administered by WSBA, consistent with their charges from the Court. To accomplish these goals, the CMPR reviews annual reports submitted by these entities and forwards recommendations to the BOG for review and action as appropriate.

The FY18 CMPR met on July 2, 2018. CMPR members who participated either in person or by telephone: Chair Bill Pickett, Dan Clark, Jean Kang, Paula Littlewood, Chris Meserve, Rajeev Majumdar, Kyle Sciuchetti. Also attending were WSBA staff members Pam Inglesby and Russell Johnson.

The CMPR thanks all the WSBA committees and boards, as well as the Supreme Court-created boards administered by WSBA, for their work over the past year. After reviewing and discussing the attached annual reports the CMPR makes the below recommendations and comments.

- **Board of Bar Examiners:** The Board of Governors looks forward to receiving and discussing the results of the national three-year study being conducted in New York regarding possible bias in the Uniform Bar Exam.
- **Disciplinary Board:** The CMPR appreciates that the trend toward greater diversity in Board membership is continuing into the coming year.

(cont.)



- Limited Legal License Technician Board: The CMPR encourages the Board to emphasize gender diversity in its recruitment.
- Limited Practice Board: The CMPR encourages the Board to continue its efforts to increase diversity among its membership.
- Washington Young Lawyers Committee: The CMPR applauds the Committee's progress in gender diversity among its membership, and asks it to focus on increasing diversity in other respects.
- The CMPR encourages WSBA to implement a volunteer recognition program, which an internal staff group has already been exploring.

The CMPR has no recommendations or comments regarding the following committees and boards:

- Access to Justice Board
- Character & Fitness Board
- Client Protection Fund Board
- Committee on Professional Ethics
- Continuing Legal Education Committee
- Council on Public Defense
- Court Rules & Procedures Committee
- Disciplinary Advisory Round Table
- Editorial Advisory Committee
- Judicial Recommendation Committee
- Law Clerk Board
- Mandatory Continuing Legal Education Board
- Practice of Law Board
- Pro Bono and Public Service Committee
- WSBA Diversity Committee
- WSBA Legislative Review Committee



September 26, 2019

Justices of the Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504

Re: The Cost and Performance of the LLLT Program

Dear Justices:

I write on behalf of the Limited License Legal Technician Board (LLLT Board) in response to the letter sent to you on July 9, 2019 from Dan'l Bridges in his capacity as Treasurer of the Washington State Bar Association. It has been difficult to decide how to most appropriately respond in light of the numerous misstatements and innuendos. We believe that the best response is for us to tell you what we believe the program to be and then advise you of the ways in which Dan'l Bridges erroneously characterizes the Limited License Legal Technician license.

The license was created to provide qualified, competent, and regulated legal services to those who may not be able to afford the services of a lawyer, and who may not qualify for government funded legal services, but who may be able to afford to pay some money for the services of a legal professional. The market for those legal services, sadly enough, includes not only people with little or no money, but also those of moderate income who still can't afford the services of a lawyer.

APR 28 was passed with the intention that we would at sometime in the future have "qualified and regulated" professionals who could provide some limited legal services at a price the consumer can afford. The Rule was intended to provide legal services to consumers in a multiple areas of law where there is a significant unmet need, of which there are many. Obviously the first practice area was family law, but there are many other areas of the practice of law that would be very appropriate. Both "civil legal needs studies" commissioned by the Supreme Court demonstrate the many areas of the practice of law in which there is unmet need.

There was no template for any of us in undertaking this venture. However, we knew that if the service providers were going to be "qualified and regulated", this meant that there must accountability in the education and testing component of this license. It also meant there must be accountability to the consumers, which led to rules of professional conduct and discipline almost identical to those applying to lawyers. And it also led to requiring that LLLTs must have malpractice insurance, a requirement that is not imposed on lawyers.

In the early phases of the implementation of APR 28, the LLLT Board developed a mnemonic to help explain the implementation of APR 28, which became known as the "Three As". The LLLT Board wanted the license to be **affordable**, so it did not simply follow in the footsteps of the legal profession for lawyers, with a very expensive education, that in many cases results in the reality for a lot of young

lawyers that they can't afford to serve the unmet needs of low and moderate income people because of their large student debt load. The LLLT Board also wanted the license to be **accessible**. We believe that making the core education component of this license available at the Community College level and working with the guidance of the Washington law schools to develop a 15 credit family law curriculum which could be earned through synchronistic distance learning (i.e., the classes are taught live and are received by the class, which is on line and around the state), allows LLLTs to be highly qualified while continuing to reside in their communities. We believe that this increases the likelihood that LLLTs will stay and serve their communities. The third and final "A" was **academically rigorous**. We relied upon professionals and academics to help us construct the training that would very well prepare the students to acquire the knowledge and skills that have been identified as important. The education is proving to be sufficient to the task.

The future is bright, but we recognize there are challenges that may require some changes in order to energize and grow the license. First is to fill the pipeline with LLLT students. We are in the process of implementing a distance learning relationship between community colleges so that we can reach more students without the need to increase overhead significantly. We hope that will be actually happening in a few months and would then pave the way for us to offer the same opportunity to all of the other community colleges. We are also looking at the possibility of having the synchronistic learning practice area curriculum taught through the Community Colleges, using the curriculum that has been fully developed and originally implemented with the assistance of law school faculty and teachers; this move would help to make the license more accessible and affordable, but no decision has been made on this point yet. And we will continue to grow our outreach efforts to increase public knowledge about both the career opportunity and the availability of affordable legal help.

The next thing that could tremendously assist in growing the license is adding new practice areas. There are an abundance of practice areas that have significant unmet need. Not all potential LLLTs want to do family law, just like not all lawyers want to do family law. By offering more practice areas, not only will the consumers benefit, but it will also increase interest and participation in the LLLT license.

We know that some have criticized the LLLT program because, so far, primarily women have become licensed to practice as LLLTs. Although gender diversity in any profession is important, the LLLT Board recognizes that part of what is happening is that it has become possible for many women to now enter into the practice of law, when previously they may have felt that they could not afford to spend the time and money to become a lawyer. The LLLT Board believes that empowering women in this way is a good thing. Additionally, of course, there is the recognition that many of the early entrants into the LLLT profession were already working as paralegals, and that the majority of paralegals are women; again, giving these knowledgeable participants in the legal field a way to actually be able to practice law is a good thing. The LLLT Board expects that gender diversity in the profession will increase as the profession grows.

The National Center for State Courts will begin a review of the license in October. We are thrilled that such a prominent group would offer to review what we are doing here in the State of Washington. As you may recall, the Public Welfare Foundation from Washington, D.C., completed a similar review in the early years of the implementation of APR 28, and the conclusion was that the program is viable and

replicable. In fact, it is so replicable that Utah already has implemented a similar license. Minnesota, New Mexico, Oregon, and California, among others, are in various stages of consideration or implementation of a rule similar to Washington's APR 28.

We think we can all agree upon the belief that access to justice is a primary goal, and that the WSBA and the Court play critical roles in making that become reality. The WSBA not only funds and administers the LLLT Board, but also the ATJ Board, the Practice of Law Board, and the Limited Practice Board (for LPOs). These are and continue to be ways in which the profession can help to make legal services more available to more people. We think spending less than \$200,000 per year to find a solution to at least some part of the access to justice problem is not unreasonable. Unlike all of the other Supreme Court Boards, except the Limited Practice Board and the MCLE Board, we are the only board that even has any ability to repay the funds.

As Chair of the LLLT Board, I think the focus needs to be further into the future. During President Mark Johnson's term as WSBA President, \$1,000,000 was transferred from WSBA to legal services. At the time I thought it was a good gesture, but unfortunately it wasn't an investment in something that could create a long term benefit; it was intended to, and did, simply meet a need at that moment. The LLLT license is an investment in the future. And others agree that it is a viable and reasonable way to assist in meeting the ever growing access to justice problem.

Indeed, the access to justice problem will soon explode in degrees not even imagined in the past. The number of people needing legal services is increasing as society becomes more complex. With the rising and significant cost of law school, the number of students graduating is not growing quickly enough to meet the need. Half of the lawyers in Washington are 50 years of age or older. They will likely not be replaced in the same numbers by those now entering the profession. If we can't meet the access to justice problem with the number of lawyers we now have, we will be even less able to meet the need in the future. Further, the access to justice problem will become even more dire in rural areas of our state. Graduates from law school are not likely to move to a small remote town with the expectation of starting a practice, raising a family and paying off large student debt. Therefore, we expect that we will have an ever increasing lack of lawyers for vast geographical portions of our state.

Admittedly, this crisis may be five years or more away, but the time to act to alleviate the crisis is now because it takes time for any program to be implemented to have any hope of meeting the present and future unmet need. The LLLT Board is striving to work on alleviating that crisis as quickly as possible.

Below is a compilation of facts and general information in response to specific statements made by the WSBA Treasurer.

Topic	Statement	Facts/Information
Cost of program	Total: over \$2 million Per year: \$250,000 (Page 1)	The LLLT program has operated at an average loss of less than \$200,000/year, and a total deficit of around \$1,300,000 since 2013. Please note: The first LLLT was licensed in 2015 so no revenue until then.

Topic	Statement	Facts/Information
Number of LLLTs	35 active LLLTs 4 let their licenses go inactive (Page 2)	38 active LLLTs as of September 23, 2019 A WSBA member does not “let” their license go inactive. They must request to change their status. Members of the bar can choose to go inactive for various reasons. They are still members and pay a license fee. 1 LLLT administratively suspended
LLLT business model	The program’s stated intention was to have LLLTs practice independently from law firms (Page 2)	Stand-alone LLLTs was not the only model foreseen. No explicit prohibition or restrictions were put in place limiting LLLTs to working independently only. In fact, the opposite is true - original LLLT RPC adopted by the Court in 2015, were written to permit different practice models including within a law firm. E.g., under LLLT RPC 5.9, LLLTs can share fees with a lawyer in the same firm as the LLLT and form a partnership with a lawyer where activities of the partnership consist of the practice of law.
Sustainability of business model	“The notion LLLTs can charge materially less than lawyers when their operating costs are the same as lawyers, is novel.” (Page 2)	Anecdotal, LLLTs <i>are</i> charging less than lawyers. Some report having thriving practices. Compared to lawyers, LLLTs do not have high law school debt and are therefore in a better position to offer low cost services.
Scope of Practice	“LLLTs’ practice as originally proposed and ordered was very limited; they could, independent of a law firm, help fill out pre-approved divorce forms.” (Page 2)	Scope not originally limited to filling out pre-approved divorce forms. Original Court Rule, adopted by the Court in 2012 sets forth the original scope of practice. Original APR 28(F) lists nine services LLLTs can provide. “Select and complete forms” is one of them. Others services include but are not limited to: <ul style="list-style-type: none"> - Obtain relevant facts, and explain the relevancy of such information to the client; - Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding; - Inform the client of applicable procedures for proper service of process and filing of legal documents; - Advise a client as to other documents that may be necessary to the client’s case, and

Topic	Statement	Facts/Information
		explain how such additional documents or pleadings may affect the client's case.
Experimental program	The Court implicitly acknowledged it was an experiment that may not work (Page 2)	<p>The statement in the original Court Order refers to whether it would be economically sustainable for LLLTs to charge rates lower than lawyer rates:</p> <p>"Opponents argue that it will be economically impossible for limited license legal technicians to deliver services at less cost than attorneys and thus, there is no market advantage to be achieved by creating this form of limited practitioner." See 2012 Order No. 25700-A-1005 at 8.</p> <p>The Court then continued, "No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it." <i>Id</i> at 8-9.</p>
Self-sufficiency	Program promised to be self-sufficient in 5 years (Page 4)	<p>At the time the Court adopted the LLLT rule, there was no program, and therefore the program didn't promise anything.</p> <p>The Order stated: "The Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership." <i>Id</i> at 11. No timeline was provided, and the LLLT Board and WSBA are currently working to achieve this.</p> <p>Although the program has not provided an actual plan for self-sufficiency, the LLLT Board and WSBA staff are working on efforts to increase exposure, education participation, and licensing, other revenue generating ideas, and additional cost savings.</p>

Topic	Statement	Facts/Information
Non-profit sector	Not a single LLLT is employed by a non-profit or social service organization (Page 2)	<p>WSBA does not play a role in the hiring processes of non-profits and legal aid programs.</p> <p>At least one LLLT works part-time for a non-profit. We only know that because she volunteered this information. It is not listed on her public profile. Also, LLLTs perform significant pro bono work. They are also very involved in their local legal communities. LLLT Dianne Loepker for example is serving as president of the Cowlitz-Wahkiakum bar association.</p> <p>WSBA staff and the LLLT Board are working to increase awareness of LLLTs among non-profits and social service organizations.</p>
Core Education	Provided a candidate has a paralegal certificate and meets the other requirements they are granted a license. AA will be required in 2023. (Page 3)	<p>AA is required now, including 45 paralegal/legal credits and an additional 15 credits in family law. The <u>Limited Time Waiver</u> waives the AA requirement and 45 credits, but not the family law requirement. In order to qualify for a waiver one must have at least 10 years of active paralegal experience and advanced paralegal certification through national testing. See APR 28, Regulation 4.A. & B.</p> <p>Please note: There are no education requirements for LPOs.</p>
Enhancement	“accompany and confer” & “respond...to direct question from the court” (Page 3)	The rule states, “LLLTs, when accompanying their clients, may assist and confer with their pro se clients and respond to direct questions from the court or tribunal regarding factual and procedural issues at the hearings listed below:” LLLTs can only respond to factual and procedural questions and only at certain hearings. LLLTs are not permitted to make legal arguments. Citation is wrong; should be App. APR 28 Reg. 2.B.2
Low income services	LLLTs are not providing low income services (Page 4)	The LLLT Board recently shared with the Court information from a voluntary survey of LLLTs. Collectively, the 11 LLLTs who responded to the survey served over 500 clients with the majority in the 0-300% of the Federal Poverty Level. According to WSBA’s pro bono hours reporting records, a significantly higher percentage of LLLTs

Topic	Statement	Facts/Information
		<p>(34%) report performing pro bono work than the percentage of lawyers (8%) who report doing so.</p> <p>LLLTs are very involved in their communities and are also being recognized for their efforts. LLLT Jennifer Petersen, for example, was awarded the annual “Outstanding Supporter” award by Law Advocates of Whatcom County for 2018. Several LLLTs are also very involved in volunteering their time to help develop the LLLT license and program.</p>
Moderate income services	<p>The LLLT program acknowledges it has failed to assist low-income families by pivoting to now argue LLLTs are really for people of “moderate means.” (Page 4)</p>	<p>There was no pivoting. The original intent of the LLLT license included serving moderate means individuals.</p> <p>“Our adversarial civil legal system is complex. It is unaffordable not only to low income people but, as the 2003 Civil Legal Needs Study documented, moderate income people as well.” See 2012 Order No. 25700-A-1005 at 4.</p>
Law firms are profiting	<p>“WSBA did not spend \$2 million to provide a few firms the ability to bill more.” “9 LLLTs work at law firms <u>already had</u> staff selecting and filling out divorce forms but now can charge for a LLLT.” (Page 4)</p>	<p>As stated above, the overall deficit is approximately \$1.3 million.</p> <p>Unlicensed paralegal staff simply cannot provide the same level of assistance, including providing legal advice, without committing UPL. LLLTs who work with firms, and lawyers who work in those firms, state that they have been able to help many more clients <u>at lower cost</u> than the firm could have otherwise.</p> <p>At first, LLLT critics complained that LLLTs were taking away lawyer business – now they are complaining that LLLTs are helping lawyer businesses. Having a vibrant LLLT practice may help lawyers cases are referred to, and also provide lower cost services to pro se clients – the two aren’t necessarily mutually exclusive.</p>
LLLT Board Retreat	<p>The LLLT program shifted \$10,000 in fees approved for two in-house meetings at the WSBA office to spend on a day and half retreat in Wenatchee (Page 4)</p>	<p>\$6,650 of funds budgeted for LLLT Board meetings were used for a board retreat in Wenatchee. There is no mandate that meetings must be held in Seattle. Most reimbursements were in the \$250-\$300 range, including attendees’ hotel and transportation, for the entire retreat. Rooms in Wenatchee were rented at \$123.08/night, well below Seattle rate.</p>

Topic	Statement	Facts/Information
		There is only one expense account for meetings of the LLLT Board—the money was not shifted, instead the board cancelled three board meetings at the WSBA in order to be able to have a longer time together to accomplish the work of the board. All the expenses remained in the same expense GL account (LLLT Board Meetings).
Cost to administer the program	<p>It would require approximately 1,250 LLLTs for the program to be self-sustaining.</p> <p>It will cost more to administer the program if we have more LLLTs. (Page 4)</p>	It would not cost more to have 1,000 LLLTs than it does the 43 because of the regulatory coordination which has taken place over the last couple of years.
Gender bias	<p>“To date, all LLLTs are women.” (Page 6)</p>	<p>There is at least one male LLLT.</p> <p>Demographic reporting is voluntary, so there may be more, and there may be more males who are completing the requirements to become a LLLT.</p> <p>Also, see the body of the letter for a more in-depth response to this “criticism”.</p>
Comparison with LPO license	<p>The program should return to original form and be “folded into the LPO program which is another license limited to selection and completion of pre-printed forms.” (Page 6)</p>	<p>LPOs can only select and prepare forms based on written agreement of the parties. They cannot provide any legal advice.</p> <p>Despite the fact that LPOs also have a limited license to practice law, comparison to the LPO license and program is not really apt. There were hundreds of people who essentially performed LPO services at the time the LPO license was established, and no additional education was required for those people to become licensed as LPOs; therefore, there were hundreds of people who could become licensed as LPOs within the first couple of years the license existed.</p>
New practice areas	<p>“Further, before it is expanded into other substantive areas, it needs to prove it is fiscally viable in the area it is operating now.” (Page 7)</p>	<p>Adopting new practice areas is critical for the program’s viability. Not every person who wants to become a LLLT wants to practice family law, just as not every lawyer wants to practice family law.</p> <p>In fact, according to recent WSBA member demographics, out of 32,633 currently Active status lawyers, only 2,579 list family law as one of their practice areas.</p>

Topic	Statement	Facts/Information
		In addition, there is a significant unmet need in other areas of law, including unlawful detainer and consumer issues – areas that Utah’s limited legal practitioners are allowed to engage in.

Respectfully,



Stephen R. Crossland
Chair, Limited License Legal Technician Board

cc: Terra Nevitt, Interim WSBA Executive Director
William D. Pickett, WSBA President
Dan’L W. Bridges, WSBA Treasurer

**Loosening a Legal Monopoly:
Perspectives from Paraprofessional Pioneers**

Nicole Schilling

Professor Robert W. Gordon

The American Legal Profession

Spring 2017-2018

May 16, 2018

“As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer 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 lawyers should devote professional time and resources and use civic influence 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. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.”¹

The above excerpt from the American Bar Association (ABA)’s preamble to its Model Rules of Professional Conduct is an apt, if unintentional, microcosm of the problems of the modern legal profession. It recognizes that “access to the legal system” and “popular participation” are necessary to the administration of justice and the preservation of a constitutional democracy, while acknowledging that many “cannot afford adequate legal assistance.” And yet, to solve this problem, it calls for more legal education and increased self-regulation.

¹ Model Rules of Professional Conduct: Preamble and Scope, American Bar Association, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope.html.

One Hundred Years of Self Protection

For over a century, lawyers have claimed that greater self-policing is necessary to protect the public interest. As new law schools began opening their doors at the turn of the last century and the ranks of new law graduates multiplied from 1,600 students in 1870 to 13,000 students in 1900, the existing legal elites became concerned that “these new lawyers would further tarnish the already sullied reputation of the bar.”² In the view of one law school dean, these new law schools resulted in “a host of shrewd young men, imperfectly educated, all deeply impressed with the philosophy of getting on, but viewing the Code of Ethics with uncomprehending eyes.”³

Three years . . .

Whereas before a legal apprenticeship or a two-year law school program at a law school—or even, as Abraham Lincoln did, a thorough reading and re-reading of Blackstone’s *Commentaries*⁴—was considered perfectly adequate preparation to enter the profession, now that established practitioners faced a sudden increase in competition from the likes of Eastern Europeans, Italians, and Jews a three-year degree was all that would do.⁵

The legal profession continued to close ranks on itself throughout the twentieth century. In 1900, law school representatives created the Association of American Law Schools (AALS), whose inaugural Articles of Association required all member schools to enroll only high school graduates for a three year course of studies.⁶ In 1921 the ABA promulgated, for the first time, accreditation standards for law schools and required not only a three year curriculum taught by

² BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 21 (2012).

³ TAMANAHA, *supra* note 2, at 22.

⁴ BRIAN DIRCK, *LINCOLN THE LAWYER* 16, 21-22 (2007) (noting that Illinois in 1836 required merely an oral exam and a certification of good moral character to gain admission to the bar, and no state required as a written test to become a lawyer until 1855).

⁵ TAMANAHA, *supra* note 2, at 21-23.

⁶ TAMANAHA, *supra* note 2, at 22.

full-time academics but for law schools to admit only those students with at least two years of college education.⁷ ABA accreditation requirements only tightened from there, culminating in the Department of Justice filing a civil antitrust complaint against the ABA in 1995 for protectionist requirements that aimed to increase the resources necessary to open an accredited law school (high professor pay, large library collections, predominant focus on academia rather than skill practice, etc.).⁸

. . . of an expensive legal education . . .

Twenty-first century aspirants to the bar must not only study far longer than twentieth century applicants but pay far more for the privilege. In the 1956-57 academic year, median tuition charged at 121 of the AALS's 129 member schools was, in 2016 dollars, \$4,191 and represented 9.9 percent of the median American family's income (and only \$1,800, and 4.3 percent, if limited to public schools).⁹ By 2015, median private law school tuition took up 64.3 percent of the median family's income, and public law school education represented 33.3 percent of a family's income.¹⁰

These figures have contributed to a predictable profile of the modern law graduate—a face that the early twentieth century legal reformers would have recognized and been pleased to see. This person is likely to be rich and white—the data shows that three-quarters of law students

⁷ TAMANAHA, *supra* note 2, at 24-25.

⁸ TAMANAHA, *supra* note 2, at 11-13.

⁹ Paul F. Campos, *The Extraordinary Rise and Sudden Decline of Law School Tuition: A Case Study of Veblen Effects in Higher Education*, 48 SETON HALL L. REV. 167, 169, 172 (2017).

¹⁰ Campos, *supra* note 9, at 171-172

are white¹¹ and that they come from families with a household median income around the 75th percentile.¹²

Moreover, even among law students, students are sorted by socioeconomic status. Students from less wealthy families and minority students are more likely to attend lower-ranked schools, while 57 percent of students at the top ten law schools come from the top socioeconomic decile of households.¹³

. . . covering both more and less than needed.

Lastly, and contributing to the problem of the expense of a legal education, American law schools require students to learn law that they will never practice. While most law schools will require their students to study contract, tort, criminal, property, and constitutional law, few require—or even, offer—classes in immigration, financial services, elder, or health law. And yet, these areas have consistently been “hot” in the legal profession.¹⁴ Moreover, it is entirely

¹¹ Total Minority JD Enrollment, American Bar Association, https://www.americanbar.org/groups/legal_education/resources/statistics.html.

¹² Debra Cassens Weiss, “Higher-income kids were more likely to become lawyers than doctors, study finds,” ABA JOURNAL (Mar. 25, 2014), <http://www.abajournal.com/news/article/higher-income-kids-were-more-likely-to-become-lawyers-than-doctors/>; The Distribution of Income for 2010: Households, Political Calculations, https://politicalcalculations.blogspot.com/2011/09/distribution-of-income-for-2010_14.html#.Wtjz3NMbOL8

¹³ Brian Z. Tamanaha, *The Failure of Critics and Leftist Law Professors to Defend Progressive Causes*, 24 STAN. L. & POL’Y REV. 309, 324, 337 (2013).

¹⁴ Bob Denney, “2016 What’s Hot and What’s Not in the Legal Profession,” ATTORNEY AT WORK (Nov. 28, 2016), *available at* <https://www.attorneyatwork.com/2016-whats-hot-and-whats-not-in-the-legal-profession/>; Bob Denney, “2017 What’s Hot and What’s Not in the Legal Profession,” ATTORNEY AT WORK (Nov. 27, 2016), *available at* <https://www.attorneyatwork.com/2017-whats-hot-and-whats-not-in-the-legal-profession/>.

possible for a student to obtain a J.D. having never taken a class on statutory interpretation and administrative law—despite the fact that 8 percent of attorneys will work for the government.¹⁵

After graduating, a student who knows she wants to practice in family law, or immigration law, or environmental law will be forced to spend thousands more dollars and hundreds of hours memorizing by rote the vagaries of Constitutional Law, contracts, criminal law, evidence, real property, and torts in order to pass the Bar Exam. At most, one or two of those subjects will ever relate to her practice again. However, for her to make a return on her investment in a legal certification, she will have to pass the costs of studying constitutional law—to say nothing of “Law and the Greek Classics”—onto all of her clients to come.

Lack of Access to Justice

We force law students to spend obscene amounts of money to purchase more legal education that they will ever use, with the result that few buyers can afford or desire to enter the market—and this costs. Restricted entry to a legal education would not pose a larger problem than that of inequality among aspiring lawyers if those who did manage to become lawyers adequately provided access to justice. However, the rising time and money costs imposed upon law students does more than keep the poor and non-white from the Bar. These burdens also cost the public dearly.

When law school costs three years of a student’s life and results in an average debt of \$124,950 for private law graduates or \$75,728 for public law graduates (in addition to average

¹⁵ Lawyer Demographics, American Bar Association, *available at* https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2013.authcheckdam.pdf

undergraduate debt of \$25,000)¹⁶, graduates' choices are limited. According to a 2002 ABA survey, 66 percent of law students stated that law school debt kept them from considering a public interest or government job. Among those who ultimately accepted jobs in small or large private firms, 83 percent and 78 percent, respectively, reported that debt prevented them from seeking work with public interest organizations or the federal government.¹⁷

In the same survey, 68 percent of public interest employers reported difficulty recruiting and retaining the attorneys they need, with the vast majority of employer respondents citing low salaries and educational debt as the largest factors contributing to their struggle to hire and retain talented attorneys.¹⁸

The ramifications of this represent a chronic problem, and are acutely felt by those most in need. A 2017 report of more than 2,000 adults living in low-income households found that while “[71] percent of low-income households have experienced at least one civil legal problem in the past year,” 86 percent their problems received inadequate or no legal help.¹⁹ In the past year, 41 percent of low-income household respondents faced legal problems related to health issues, 37 percent faced consumer protection and finance issues, and 29 percent needed legal aid

¹⁶ Brian Z. Tamanaha, *Is Law School Worth the Cost?*, 63 JOURNAL OF LEGAL EDUC. 173, 175 (2013).

¹⁷ *From Paper Chase to Money Chase: Law School Debt Diverts Road to Public Service*, 1, 19 (Nov. 2002), available at <https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lrapsurvey.authcheckdam.pdf>.

¹⁸ *Id.* at 6, 20.

¹⁹ Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*, 1, 14, 21, 30 (June 2017), available at <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

related to rental housing.²⁰ Family law, education, disability, and income maintenance are further issues that affect approximately a quarter of low-income households.²¹

Although low-income people seek professional legal help for only twenty-two percent of their problems, they are most likely to seek that help for problems related to children and custody and to wills and estates.²² When they do turn to help, “they are most likely to receive this help in the form of legal advice. Two in five (40 percent) problems receiving some sort of professional legal help are addressed with legal advice. People report receiving assistance filling out legal documents or forms for 21 percent of these problems, being represented by a legal professional in court for 20 percent of them, and getting help negotiating a legal case for 14 percent of them.”²³

In the eighty percent of cases where low-income people do not seek professional help, they instead turn to non-professionals such as friends and family members (33 percent of problems), the internet (13 percent of problems), do both (8 percent), or do nothing (46 percent of problems).

Unfortunately, low-income Americans do not only lack legal aid in regards to civil problems. Despite *Gideon*’s mandate of a free legal defense for criminal defendants who cannot otherwise afford an attorney, that defense does not always materialize. In Louisiana, public defenders handle, on average, twice the recommended caseload limit and one profiled public defender had 265 open cases ranging from misdemeanor to felony life without parole cases.²⁴ In

²⁰ *Id.* at 22-23.

²¹ *Id.* at 23-24.

²² *Id.* at 30, 36.

²³ *Id.* at 31.

²⁴ Debbie Elliot, *Public Defenders Hard To Come By In Louisiana*, NAT. PUB. RADIO (Mar. 10, 2017), <https://www.npr.org/2017/03/10/519211293/public-defenders-hard-to-come-by-in-louisiana>.

Missouri, a recent class action complaint against the state’s public defender system alleged that Missouri “[p]ublic defenders average just 8.7 hours on the most serious non-homicide felonies, amounting to less than 20 percent of the minimum time recommended by the American Bar Association,” and that “[o]verall, they are forced to devote fewer than the minimum hours recommended by the ABA in more than 97 percent of their cases.”²⁵

Nearly nine hours on a case may seem luxurious when compared to a finding in a Washington State case that certain public defenders “often spent less than an hour on each case.”²⁶ As one legal expert complained,

*“This state of affairs also leads to exorbitant trial delays. Consequently, roughly 500,000 pre-trial detainees sit in jail year after year before being adjudged guilty of any crime. This makes a mockery of the innocent-until-proven-guilty principle so sacred to our system of justice.”*²⁷

In fact, while the United States prides itself on our drive to “establish justice” and “promote the general welfare,” the United States ranks only 26th worldwide in the World Justice Project’s survey of “civil justice,” a measure of people’s ability to access and afford effective civil justice free of discrimination, corruption, improper government influence, and unreasonable delay.²⁸ We rank below the United Arab Emirates, Uruguay, and Estonia.²⁹ Among the world’s

²⁵ Matt Ford, *A ‘Constitutional Crisis’ in Missouri*, THE ATLANTIC (Mar. 14, 2017), available at <https://www.theatlantic.com/politics/archive/2017/03/missouri-public-defender-crisis/519444/>.

²⁶ *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013).

²⁷ Alexa Van Brunt, THE GUARDIAN (June 17, 2015), available at <https://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked>.

²⁸ World Justice Project, *Rule of Law Index*, 1, 11, 150 (2018), available at https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition_0.pdf.

²⁹ *Id.* at 40.

top 35 high-income countries, the United States ranks 25th in our ability to provide civil justice to our citizens.³⁰ Worse still, within the general category of “civil justice,” the United States’ lowest factor was for the accessibility and affordability of our justice system. On this specific factor, the United States came in behind, among many others, Afghanistan, China, Egypt, El Salvador, Iran, Lebanon, Tunisia, Turkey, and Ukraine.³¹

Innovation in Washington State

Clearly, something must change. There are many places to point the blame for the present debacle of our system of “justice.” As mentioned above, the high cost of an attorney’s legal education, the fact that lawyers are required to study as generalists even if most will practice as specialists, and the ABA’s anticompetitive regulations are clearly among the culprits. One state’s innovative program attempts to tackle all three.

In 2002, the Washington Supreme Court adopted General Rule 25 to create the Practice of Law Board in order to:

“promote expanded access to affordable and reliable legal and law-related services, expand public confidence in the administration of justice, make recommendations regarding the circumstances under which non-lawyers may be involved in the delivery of certain types of legal and law-related services, enforce rules prohibiting individuals and organizations from engaging in unauthorized legal and law-related services that pose a threat to the general public, and to ensure that those engaged in the delivery of legal services in the state of Washington have the requisite skills and competencies necessary to serve the public.”³²

³⁰ *Id.* at 150.

³¹ *Id.* at 44, 66, 76, 77, 94, 102, 144, 145, 147, 150.

³² WASH. GEN. R. 25(C)(4) (2001) (amended 2006).

Among its powers, the Practice of Law Board could “recommend that non-lawyers be authorized to engage in certain defined activities that otherwise constitute the practice of law.”³³ Any such recommendation must be accompanied by a determination that the authorization would expand “access to affordable and reliable” legal services while protecting the public’s reliance on the “quality, skill and ability of those non-lawyers who will provide such services.”³⁴

Over the next decade, the Practice of Law Board struggled to get approval for any recommendation that non-lawyers be allowed to deliver any type of legal services. Although the Board recommended authorizing non-lawyers to provide limited legal services in the areas of Family Law, Immigration, Landlord Tenant Matters, and Elder Law based upon a Civil Legal Needs Study that determined that “housing, family, employment and consumer matters account for more than half the legal issues experienced by low-income people” and that “[l]ow-income people face more than 85 percent of their legal problems without help from an attorney,”³⁵ the Board faced resistance from lawyers who feared that “these non-lawyers would not be qualified to deliver legal services and that they would take work away from lawyers.”³⁶

Finally, in 2012, the Washington Supreme Court adopted the “Limited Practice Rule for Limited License Legal Technicians,” reasoning in its Order that “[w]e have a duty to ensure that the public can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.”³⁷

³³ *Id.*

³⁴ *Id.*

³⁵ Task Force On Civil Equal Justice Funding, *The Washington State Civil Legal Needs Study*, 1, 8, 33 (2003), available at <http://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>

³⁶ Stephen R. Crossland, *The Evolution of Washington’s Limited License Legal Technician Rule*, THE BAR EXAMINER 20, 28 (June 2014), available at <http://www.ncbex.org/assets/Uploads/830214-Crossland.pdf>.

³⁷ *Id.*

The Limited License Legal Technician (LLLT) rule requires LLLT candidates to have received an associate-level degree or higher, taken 45 credit hours of core curriculum from an ABA-approved law school or ABA-approved paralegal program (including classes on contracts, civil procedure, professional responsibility, legal research and writing, and interviewing and investigation techniques), and studied practice-area courses with curriculum developed by an ABA-approved law school.³⁸ After meeting these preliminary requirements, the LLLT candidate must take a core education exam and a practice area exam. Once the candidate has passed these exams, the LLLT candidate must establish that he or she has 3,000 hours of substantive law-related experience working under the supervision of an attorney. Only then, and after paying the annual license fee, is a person qualified as a licensed technician who may provide legal services within the defined practice area for which he or she is licensed.³⁹

The legal services a licensed technician may provide include interviewing the client, informing the client of procedures and the course of the proceedings, providing the client with approved and lawyer-prepared self-help materials, explaining documents the client has received from the opposing side, filing certain forms, performing legal research, drafting letters setting forth legal opinions, advising the client as to what other documents may be needed for the case, and assisting the client in obtaining those documents.⁴⁰

The licensed technician may not engage in any activities beyond his or her defined practice area or “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

³⁸ WASH. ADMISSION AND PRACTICE R. 28, Reg. 3 (2013) (amended 2017).

³⁹ *Id.* R. 28, Reg. 9.

⁴⁰ *Id.* R. 28(F).

responsibilities.”⁴¹ This restriction prevents LLLTs from communicating the client’s position to another person or conveying to the client the position of another party.

Currently, family law is the only practice area in which LLLTs may be licensed. Within this practice area, licensed technicians may practice such domestic relations matters as child support modification actions, dissolution actions, domestic violence actions, legal separation actions, non-contested parenting plan modifications, paternity actions, and relocation actions.⁴² Although in 2014 the chair of the Limited Legal License Technicians Board wrote that the “LLLT Board will begin to study additional practice areas within the coming months,” no further practice areas have been recommended since then.⁴³

The first licensed technicians became licensed to practice in 2015.⁴⁴ Three years later, 28 licensed technicians are licensed in Washington, with three additional licensed technicians holding an inactive status.⁴⁵ By comparison, 4,678 people have joined the Washington State Bar Association (WSBA) since 2015 (and 96 percent of WSBA members are attorneys).⁴⁶

Perspectives from the Pioneers

As the first licensed, independent paraprofessionals in the country, this select group of LLLTs has a unique understanding of how this trail-blazing program operates in practice. While

⁴¹ *Id.* R. 28(G).

⁴² *Id.* R. 28, Reg. 2B.

⁴³ Crossland, *supra* note 36, at 25.

⁴⁴ Limited License Legal Technician Board, *Report of the Limited License Legal Technician Board to the Washington Supreme Court: The First Three Years* 1, 6 (Feb. 2016), available at <https://www.2civility.org/wp-content/uploads/February-2016-Report-of-the-LLLT-Board-to-the-Washington-Supreme-Court.pdf>.

⁴⁵ WSBA Member Licensing Counts Apr. 2, 2018, Wash. State Bar Ass’n, available at https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20180402.pdf?sfvrsn=ae6c3ef1_22.

⁴⁶ *Id.*

the Washington Supreme Court, Washington State Bar Association, and the Practice of Law Board have their reasons, theories, and goals for the license, these 28 women—and all but one are women—know better than anyone else what works, what does not, and what needs help with the program. Their commentary should be valued to understand both how a tiered model of legal services can work to break down barriers to justice as well as to improve and iterate upon the LLLT program.

To this end, I spoke with six practicing licensed technicians⁴⁷ as well as Buzz Wheeler, director of Highline Community College’s paralegal program, and Steve Crossland, chair of WSBA’s LLLT Board. As a group, all interviewed people agree that that “the largest impact the program has is meeting an access to justice issue.”⁴⁸ While most found the current requirements adequate to prepare students for practice and to protect the public, many also believed that the public would be best served by allowing licensed technicians to expand the scope of their practice. In their interviews, the group concurred that lack of support from the legal community and outright opposition from lawyers was a significant obstacle to both the success of licensed technicians’ practices and to that of the program at improving access to justice.

Program Impact

Licensed technicians improve access to justice by providing unbundled legal services at low and predictable rates and in a manner that clients find approachable and understandable.

- *“I love being a LLLT because of the clients who’ve said ‘thank you, I don’t know what I would have done without you.’”*⁴⁹

⁴⁷ Upon request and to ensure frankness, the six interviewed LLLTs shall remain anonymous. I have done my best to represent their words as spoken to me, but transcription errors and light paraphrasing are possible.

⁴⁸ Telephone Interview with Buzz Wheeler (April 23, 2018).

⁴⁹ Telephone Interview with F. Doe (April 30, 2018).

- *“I find it’s easier for my clients to work on a flat fee arrangement and the attorneys don’t do that. Then they know what it’s going to cost them and they don’t have to be shocked by their bill.”*⁵⁰
- *“The people that I see [are] so relieved that they’re getting help because they don’t understand the court process. When they go to the court facilitators, they just give them a packet and they’re like ‘I don’t understand it.’ When someone sits down with them and explains it, they are so relieved and so happy that they have someone to go to.”*⁵¹
- *“My mission in life is to educate the younger people so there are millions of us in the future so a lot more people can get access to legal advice. Every time I talk to someone they say ‘oh my god this is great because I can’t afford to go to an attorney.’”*⁵²
- *“Think of going to a Nurse Practitioner rather than a doctor. There are a whole lot of things that resonate . . . [Like the lawyer,] the doctor is elevated, they’re very respected, they’re intimidating. That dynamic really does exist . . . I think maybe it’s their higher education, I’m sure that intimidates clients . . . People come to me because they’re intimidated by the justice system and its costs. Period. That’s really the reason. It’s simple, I think, when people meet with me. With attorneys there’s this 10 page fee agreement, they feel like there are all these traps. It’s [a matter of] trust. Maybe with me it also keeps the temperature down.”*⁵³

All of the legal technicians I interviewed emphasized the potential of the LLLT program to increase the affordability of legal services. First, LLLTs can afford to offer services at lower rates than attorneys, with the result that “the kinds of clients [licensed technicians] have are not clients who could go to attorneys.”⁵⁴ For example, one licensed technician charges only 35 percent of what the attorneys in her firm charge⁵⁵, while another charges \$165 an hour, or 37

⁵⁰ Telephone Interview with E. Doe (April 25, 2018).

⁵¹ Telephone Interview with C. Doe (April 25, 2018).

⁵² Telephone Interview with C. Doe (April 25, 2018).

⁵³ Telephone Interview with A. Doe (April 23, 2018).

⁵⁴ Telephone Interview with B. Doe (April 30, 2018).

⁵⁵ Telephone Interview with C. Doe (April 25, 2018).

percent to 55 percent of the \$295/hour to \$450/hour that attorneys in her office charge⁵⁶. Another licensed technician charges \$120 an hour and requires a \$750 deposit while other attorneys in her county may charge \$300 an hour and require a \$5,000 deposit.⁵⁷ Second, the licensed technicians I spoke with highlighted the value to their clients of being able to perform “piecemeal” work at predetermined rates.⁵⁸ As one put it, we can “jump in and jump out” of a case, so that clients can have the initial processes and simpler paperwork performed by her, and then “spend the big bucks” when “things get complicated and they have to go to court.”⁵⁹

In addition to increasing affordability, licensed technicians may increase access to justice by their better ability to connect with clients to serve client needs. Clients may feel more comfortable with licensed technicians because “their lived experience is more similar to [the LLLT’s] own.”⁶⁰ There may be a cultural barrier between the “low income person who comes in and needs some help sitting across the table from someone who was able to afford law school.”⁶¹ As another licensed technician described,

*“Clients come in to me who feel betrayed, talked down to, and intimidated by their own counsel I see people spending their entire retirement, losing their home, all just to get divorce and their children. Attorneys are called counsel, they’re supposed to counsel their clients, but no, the way they make money is to take it to court and litigate it to death.”*⁶²

Licensed technicians may offer value because they can act as an approachable “partner” to the client and do not have the incentive lawyers face to escalate the acrimony of the case. One legal

⁵⁶ Telephone Interview with E. Doe (April 25, 2018).

⁵⁷ Telephone Interview with D. Doe (April 30, 2018).

⁵⁸ Telephone Interview with B. Doe (April 30, 2018); Telephone Interview with A. Doe (April 23, 2018); Telephone Interview with E. Doe (April 25, 2018).

⁵⁹ Telephone Interview with B. Doe (April 30, 2018).

⁶⁰ Telephone Interview with A. Doe (April 23, 2018).

⁶¹ *Id.*

⁶² Telephone Interview with D. Doe (April 30, 2018).

technician even speculated that licensed technicians—who are almost entirely female—may benefit clients by using the “empathic, communicative skill set” that is associated with the “feminine cultural characteristic.”⁶³ By charging less but spending more time connecting with clients, LLLTs improve access to legal services in both quantitative and qualitative terms.

Program Requirements

LLLTs are largely satisfied with the quality and quantity of their education and the prerequisites to practice. Indeed, many point out—accurately—that their training likely makes them more competent than most generalist attorneys at what they do.

- *“I think that the practice area courses through the UW are designed to help you practice law. They are not designed to necessarily help you pass the test.”*⁶⁴
- *“I don’t want them to crank out a bunch of people with this license because we’re under such scrutiny.”*⁶⁵
- *“The curriculum is rigorous and it needs to be The exam is around 60-65 percent pass rate—the ones who can’t pass shouldn’t be practicing as LLLTs.”*⁶⁶

Of the three components of the licensing structure—experience, education, and examinations—the LLLTs gave the most positive feedback to their core curriculum and practice area classes. Overwhelmingly the LLLTs appreciated the rigor of the classes and their emphasis on practical skills such as exercises to practice drafting functional business letters and fee agreements.⁶⁷ The LLLTs valued being taught by experienced practitioners who could give students advice on the things one learns only by doing—one LLLT expressed that while one of

⁶³ Telephone Interview with A. Doe (April 23, 2018).

⁶⁴ Telephone Interview with D. Doe (April 30, 2018).

⁶⁵ *Id.*

⁶⁶ Telephone Interview with B. Doe (April 30, 2018).

⁶⁷ B. Doe (April 30, 2018); Telephone Interview with A. Doe (April 23, 2018); Telephone Interview with D. Doe (April 30, 2018); Telephone Interview with C. Doe (April 25, 2018).

her instructors was generally excellent, she thought she could have gotten more out of the class if the instructor had practiced in that subject area.⁶⁸

While the quality of the courses was generally appreciated, some expressed concern about other features of the educational requirement. One legal technician stated that she thought the program would be improved if students could earn an associate degree in paralegal studies with a concentration in a designated practice area. This way students could graduate high school and complete the educational component of the license within two years, rather than the current three years it takes to earn an associates degree and then complete the LLLT core and practice area curriculum. Additionally, Buzz Wheeler, who served on the LLLT Board’s Admissions, Education & Licensing Committee, raised the issue that presently only the University of Washington can offer the practice area curriculum mandated for the license. Not allowing community colleges to offer this curriculum increases the cost of the program. “If the goal is to promote access, that’s a bit limiting.”⁶⁹

As for the second component of the licensing structure—the three examinations (core competency, practice area, and professional responsibility)—the LLLTs concurred that the examinations should be rigorous and difficult to pass to prevent unprepared students from becoming licensed, potentially harming the public, and sullyng the reputation of practicing LLLTs. While two of the legal technicians found the examinations easy because they had practiced as paralegals for many years in family law,⁷⁰ others expressed frustration that the courses did not adequately prepare students for the exams. On this issue, the LLLTs disagreed about whether the courses should be tailored to the test. One legal technician said that the

⁶⁸ Telephone Interview with E. Doe (April 25, 2018).

⁶⁹ Telephone Interview with Buzz Wheeler (April 23, 2018).

⁷⁰ Telephone Interview with D. Doe (April 30, 2018); Telephone Interview with B. Doe (April 30, 2018).

curriculum is “not a prep class to pass an exam, it’s education to go forth in your business.”⁷¹

Another concurred, stating,

*“I think that the practice area courses through the UW are designed to help you practice law. They are not designed to necessarily help you pass the test . . . I think that people think that the courses are sort of a test-prep course and so I don’t think they adequately prepare for the rules that they will have to know and apply on the exam.”*⁷²

By contrast, a third legal technician expressed frustration in the inadequate outlines offered to students to help them prepare for the exams. She felt there was a disconnect

*“in that teachers and professors were teaching off a curriculum that didn’t necessarily jive with the bar exam. And the bar exam is what you need to know in order to practice. I think the people that write the bar exam, the WSBA, needed to be having more discussions with the people teaching the course content.”*⁷³

Lastly, the LLLTs lauded the 3,000 hour experiential requirement as a fundamental part of the program. The LLLTs, Mr. Wheeler, and Steve Crossland, chair of the LLLT Board, repeated the complementary aspects of the educational and experiential requirements and the importance of practical experience to ensuring legal technicians’ competence. Several also noted that due to the experiential requirement, LLLTs commence their practice with practical skills that newly graduated and licensed attorneys do not have.⁷⁴

Indeed, the LLLTs consider their work experience to be so informative to their practice that some advocated for the experiential requirement to be changed to mandate that a portion of the legal work experience—generally 500 to 1000 hours—be served within the candidate’s

⁷¹ Telephone Interview with C. Doe (April 25, 2018).

⁷² Telephone Interview with D. Doe (April 30, 2018).

⁷³ Telephone Interview with F. Doe (April 30, 2018).

⁷⁴ Telephone Interview with Steve Crossland (May 1, 2018); Telephone Interview with B. Doe (April 30, 2018); Telephone Interview with A. Doe (April 23, 2018).

practice area.⁷⁵ As one LLLT with extensive family law experience put it, “I think that there were some in the class, who didn’t have that family law background—a surprising number who had no family law background—who felt that they weren’t entirely prepared after taking the classes.”⁷⁶

Program Scope

Given the extent of the qualifications LLLTs need to practice, and given the extent of the demonstrated need for basic, affordable legal services, LLLTs are frustrated that the Washington Supreme Court has hamstrung their ability to serve the public. Although one legal technician I interviewed was content with the current scope,⁷⁷ the others concurred that the way the scope is currently written, “it’s really hard to practice under this license.”⁷⁸

- *“It’s hard because we’ve been given this job to help people and yet we feel handcuffed and held to a higher standard than attorneys. [We] have to have malpractice insurance and our signature on declarations, we have to sign things that attorneys don’t have to sign, which puts us at more liability.”⁷⁹*
- *“I think it’s insane we can’t help on [non-parental custody or relocation cases]. I’ve heard some family law attorneys make statements like, ‘Attorneys make mistakes in these types of cases all the time; how can you expect LLLTs to handle them?’ I find this so insulting, because often it’s paralegals who review the statutes and write up the initial arguments for these cases. The argument that ‘it’s too hard’ for LLLTs [to handle relocation cases, propound discovery, and appear in mediation with clients] is offensive. With all the experience I, and many other LLLTs, have, I call BS on that.”⁸⁰*

⁷⁵ Telephone Interview with B. Doe (April 30, 2018); Telephone Interview with A. Doe (April 23, 2018).

⁷⁶ Telephone Interview with E. Doe (April 25, 2018).

⁷⁷ Telephone Interview with C. Doe (April 25, 2018).

⁷⁸ Telephone Interview with D. Doe (April 30, 2018).

⁷⁹ *Id.*

⁸⁰ Telephone Interview with B. Doe (April 30, 2018).

- *“Some people just need somebody to sit in the courtroom with them, and that’s really difficult for some people. Even if the LLLT could be there just to stand there with them. People don’t like to go to court—they get really anxious. Clients are just overwhelmed with the whole process, [it would be helpful] just to have someone there to answer questions about how the documents were prepared and why they were prepared and we can’t do that right now.”*⁸¹

The most chafing restriction is the one preventing LLLTs from giving their clients advice in court. In the words of one LLLT, “If given a choice between filling out the forms and going to court with me, they’re going to say I’ll wing it on the forms, I want someone to go to court for me.”⁸² While not all the legal technicians I spoke with wanted to go to court,⁸³ many shared stories where their clients could have benefitted from simple advice if they had been allowed to communicate with their client in the courtroom.

*“When there’s another attorney on the other side, my clients get bulldozed. If LLLTs were allowed to be there, I think attorneys on the other side will be much less likely to bully the clients. It happens all the time, that court room bullying. I had a client that went to a hearing and the opposing attorney handed up a case, but my client didn’t get a copy of the case. The judge didn’t even say anything.”*⁸⁴

*“I had a client through the volunteer lawyer program [who went to] court unrepresented. I was in the courtroom. Other side at that point had gotten a lawyer, who asked for a continuance. If they hadn’t gotten the continuance they wouldn’t have been prepared. My client was prepared, but she agreed to the continuance. She understood that ‘continuance’ meant ‘did you want to keep going, not postpone it.’ Not only was she confused, but she lost an advantage that she had. It took a couple months to get her back on her feet.”*⁸⁵

⁸¹ Telephone Interview with E. Doe (April 25, 2018).

⁸² Telephone Interview with D. Doe (April 30, 2018).

⁸³ Telephone Interview with C. Doe (April 25, 2018).

⁸⁴ Telephone Interview with B. Doe (April 30, 2018).

⁸⁵ Telephone Interview with A. Doe (April 23, 2018).

The LLLTs generally feel that the restriction on their appearing in court serves only to protect lawyers' interests, rather than the public's welfare. Mr. Crossland of the LLLT Board confirmed this sentiment, sharing that the restriction was in the original rule as a necessary condition to getting APR 28 passed. However, "once the rule was passed, we came to realize that that is a huge shortcoming in the access to justice in delivering services to people who need them."⁸⁶

In addition to helping clients navigate the courtroom, LLLTs told me that they wished they could take cases involving non-parental custody or major modifications of a parenting plan ("People that just have a minor change in the parenting plan don't go to court to change it, they can adjust it between themselves. Taking whole cases out of our scope [is] obstructing those people from getting the help that they need."⁸⁷), engage in some mediation and negotiation⁸⁸ ("Attorneys get to stand up [in court] and say the LLLT didn't cooperate, when I'm not allowed to do that and attorneys don't understand that I cannot even communicate that [the opposing side] is asking for a continuance."⁸⁹), propound discovery,⁹⁰ and draft quit claim deeds.⁹¹ LLLTs feel that the license to perform such services would be well within their capability and significantly improve their clients' experiences and expand the range of people LLLTs could help.

⁸⁶ Telephone Interview with Steve Crossland (May 1, 2018).

⁸⁷ Telephone Interview with D. Doe (April 30, 2018).

⁸⁸ Telephone Interview with A. Doe (April 23, 2018); Telephone Interview with B. Doe (April 30, 2018); Telephone Interview with D. Doe (April 30, 2018).

⁸⁹ Telephone Interview with D. Doe (April 30, 2018).

⁹⁰ Telephone Interview with B. Doe (April 30, 2018).

⁹¹ Telephone Interview with E. Doe (April 25, 2018).

Program Needs

While modifications to the licensing requirements and expansion of the scope of practice will help legal technicians to better meet the public's needs, the largest problem LLLTs face is the existing legal community. Although many attorneys, among them judges and commissioners and prominent members of Washington's legal community like WSBA's President William Pickett, have been supportive of the program and the newly minted LLLTs,⁹² many other practicing attorneys, judges, and family law commissioners have not. The resistance from the organized Bar was so strong that it took the Practice of Law Board thirteen years from its creation to the licensing of the first legal technicians.⁹³ This resistance did not disappear once legal technicians were admitted to WSBA membership and began practicing.

- *"It's not optimal the way [APR Rule 28] is right now, and the [proposed changes to LLLT's scope] would be really helpful from a practical standpoint. But my understanding of what those disagreements [regarding expanding LLLTs' scope] focus on is encroachment on the lawyers' services and the quality of our services."*⁹⁴
- *"When I speak to attorneys who are upset about the license, they have no idea about our experience or any of the requirements. A lot of them turn away, they don't even want to hear what the truth is. I ask, do you have any concern about new attorneys with no experience taking a case? You have no concerns about that, but with us . . ."*⁹⁵
- *"[There has been] initial nastiness, but I think once attorneys learn of the limitations on our scope and that we're not taking business away from them—it's my firm believe we're not taking business away from them, as the kinds of clients we have as LTs are not clients who could even go to attorneys—[things will be better]."*⁹⁶

⁹² Telephone Interview with Steve Crossland (May 1, 2018); Telephone Interview with D. Doe (April 30, 2018).

⁹³ Telephone Interview with Steve Crossland (May 1, 2018).

⁹⁴ Telephone Interview with A. Doe (April 23, 2018).

⁹⁵ Telephone Interview with D. Doe (April 30, 2018).

⁹⁶ Telephone Interview with B. Doe (April 30, 2018).

- *“Everyone wants to protect their turf.”*⁹⁷
- *“I was very naïve; I didn’t anticipate the pushback we received.”*⁹⁸
- *“I’m very hopeful that this will take off. It’s been three years and it’s hardly anything, but ten years from now it will be commonplace for people to know what they can get from LTs and for the legal community to know that too.”*⁹⁹

“People resist change” and view LLLTs as incompetent usurpers taking lawyers’ business.¹⁰⁰ This resistance seems to take two forms. First are those attorneys who are uninformed, who do not know the extent of LLLT’s qualifications or understand the scope of their practice. These are the attorneys who have gotten upset with legal technicians when they do not engage in negotiation discussions, or who believe that the conversations LLLTs have with their clients are not protected by privilege.¹⁰¹

Relations between legal technicians and lawyers would likely be greatly improved by increased awareness and communications from WSBA regarding the nature of the LLLT program. Greater attorney and public awareness of the nature of the limited legal technician license would not only alleviate attorney concerns that LLLTs are not as qualified as attorneys but would also increase consumer demand for this more affordable legal service, student demand to become licensed themselves, and attorney demand to partner with licensed technicians. With better information about how many people go under- or un-served in family law matters, lawyers would likely come to share the LLLTs’ view that “it’s ridiculous” that they would steal

⁹⁷ Telephone Interview with C. Doe (April 25, 2018).

⁹⁸ Telephone Interview with F. Doe (April 30, 2018).

⁹⁹ Telephone Interview with B. Doe (April 30, 2018).

¹⁰⁰ Telephone Interview with Steve Crossland (May 1, 2018).

¹⁰¹ Telephone Interview with C. Doe (April 25, 2018); Telephone Interview with D. Doe (April 30, 2018).

attorneys' clients.¹⁰² In the words of the LLLT Board Chair, if attorneys were serving this population and “doing this work, we wouldn't be having this discussion.”¹⁰³

“[The program] is so new no one knows about us . . . and they don't seek it out.”¹⁰⁴

“I think that we need to do some more open forum meetings, town hall type things, and not just attorneys and LLLTs, I think there's this huge disconnect between the attorneys I know and the people they're supposed to serve.”¹⁰⁵

“Some attorneys see the value of working with me [and] appearing in court for a flat rate. They can refer clients to me as a lower cost option I [wish] they would be willing to speak out to their attorney colleagues and say, ‘my practice has not been impacted, in fact, it's grown. I'm getting more referrals—I can do the part of the job that LLLTs cannot do and the client is happier because they can get this part done for that much [less] money. They've saved enough money in the beginning of the case to be able to afford an attorney when it really counts.’”¹⁰⁶

Second are those members of the legal community who are either blatantly territorial or just do not believe that legal technicians operating within their practice area could be as smart or as good as an attorney. These include people on the WSBA Family Law Executive Committee, one of whom went so far as to remove “Quick Cites,” a summary of Washington family law appellate decisions, from the WSBA Family Law Section website when he realized that LLLTs would have access to the resource. The committee member then founded the attorney-only organization Domestic Relations Attorneys of Washington (DRAW) and uploaded Quick Cites

¹⁰² Telephone Interview with F. Doe (April 30, 2018).

¹⁰³ Telephone Interview with Steve Crossland (May 1, 2018).

¹⁰⁴ Telephone Interview with C. Doe (April 25, 2018).

¹⁰⁵ Telephone Interview with D. Doe (April 30, 2018).

¹⁰⁶ *Id.*

to its website.¹⁰⁷ In the face of this welcome from members of the Family Law Section, LLLTs have had to increasingly rely upon their own Listserv to network and answer each others' questions.¹⁰⁸

Judges too can be part of this second, hostile group. While some commissioners have shared with LLLTs their appreciation for the work LLLTs do to streamline many pro se petitions;¹⁰⁹ others have been openly biased against LLLTs from the bench and expressed their view that LLLTs should not be allowed to practice or to recover standard hourly rates in fees.¹¹⁰

Even lawyers not in positions of power or influence can affect the success of the legal technician program by the respect they show—or fail to show—LLLTs in professional interactions. For example, one legal technician shared a story of how an attorney changed his tactics, with the intention of making life more difficult for her, when he learned that she would not be able to communicate his position to her client.¹¹¹

This sort of protectionism and provincialism is not unique to family law. In 2017, the LLLT Board's first proposal to the Washington Supreme Court to expand the program into a new practice area—estate and health care law—was scuttled by a barrage of criticism from estate planning and elder law attorneys.¹¹² Notwithstanding the fact that estate planning is one of the areas where low-income people face the greatest unmet need,¹¹³ “members of the WSBA Elder Law, Estate Planning, Real Property, Probate, and Trust Sections, as well as [the National

¹⁰⁷ Telephone Interview with B. Doe (April 30, 2018).

¹⁰⁸ Telephone Interview with F. Doe (April 30, 2018).

¹⁰⁹ Telephone Interview with D. Doe (April 30, 2018).

¹¹⁰ Telephone Interview with F. Doe (April 30, 2018).

¹¹¹ *Id.*

¹¹² Telephone Interview with Steve Crossland (May 1, 2018).

¹¹³ *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*, *supra* note 19, at 30, 36.

Academy of Elder Law Attorneys] NAELA and the Washington Chapter of NAELA (WAELEA) sent letters to the Supreme Court Clerk and the Justices individually.”¹¹⁴ Although the letters expressed “grave concern for public welfare,”¹¹⁵ those who observed the reaction commented that it may have more to do with the economic concerns of the lawyers’ themselves.

While education may not change the minds of these generally older attorneys, judges, and commissioners, WSBA could be more proactive about educating its members about the state’s access to justice needs, reminding its members of the tenets of professional courtesy and advocating for equal treatment for all WSBA members—lawyers and legal technicians alike.

Finally, in addition to working on changing the hearts and minds of its members, WSBA could provide greater technical help to this new cohort of its members. Many of the LLLTs I spoke with felt that WSBA and the LLLT Board put more time into promoting their innovation nationally than supporting their creation locally.¹¹⁶ Indeed, until 2017, LLLTs did not even get access to the ethics line that attorneys can call with confidential questions concerning Rules of Professional Conduct.¹¹⁷ Some LLLTs wished that, given how new their profession is and the ambiguities of their governing practice rule, they had someone to call—akin to an ethics line advisor—to interpret the scope of APR 28.¹¹⁸ They would also find CLE classes describing various scenarios under APR 28 and advising on the bounds of their profession to be helpful “to

¹¹⁴ Lynn St. Louis, “Washington State Supreme Court Votes Against Limited License Legal Technician Expansion into Elder Law,” NAELA NEWS + JOURNAL (Fall 2017), *available at* https://www.naela.org/NewsJournalOnline/News_Articles/2017/OctNovDec2017/CaseNote.aspx

¹¹⁵ *Id.*

¹¹⁶ Telephone Interview with F. Doe (April 30, 2018).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

make sure we're doing everything right and also because they are so many eyes on us and attorneys who are going to be the first to call us out.”¹¹⁹

Moving Forward

Washington's LLLT program is an opportunity to create synergies within the legal services market. Legal technicians do their work in complement with the work of attorneys—they can counsel and connect with their clients in ways that lawyers, who spent many thousands of dollars learning an adversarial model, do not. Legal technicians serve those who cannot afford, or do not need or desire, the high voltage of an attorney. They can do the work that lawyers, with their many years of education and corresponding fees, should not be doing. They triage clients and streamline needs. When, and ideally only when, a case becomes too complicated or too contested for a legal technician's training, legal technicians can transfer their cases to attorneys who will receive clients better positioned both financially and procedurally to continue their cases.

Although protectionism is understandable among people who have spent many thousands of dollars to earn the right to practice their profession, with time lawyers and their associations will hopefully come to understand that the old way is not the only way—indeed, it never was. People without three years of institutionalized learning have practiced law before, and it is in the public interest for them to do so again. Not only are new legal services providers in the public's interest, their entry into the market may be in lawyers' too. Providing affordable legal services is not a zero-sum game. Not only does the market currently bear vast unmet legal needs, but lawyers and legal technicians can work together and refer each others' services to increase each

¹¹⁹ *Id.*

service provider's practice—each doing what they do best at the highest level for which they were trained.

It is past time for attorneys and state bar associations to answer the call of the ABA's Model Rules of Professional Conduct, and "use civic influence 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."¹²⁰ Legal paraprofessionals are here, and it is the duty of those already within the legal profession to make sure they stay.

¹²⁰ Model Rules of Professional Conduct: Preamble and Scope, American Bar Association, *supra* note 1.