Outreach Update: March 2020

Press

Press:

- In New Mexico, Nonattorney Helpers Could Ease Justice Crisis
- Ariz. Tests Nonlawyer Advice for Domestic Violence Victims
- New Licensed Legal Advocates Pilot Program
- How a new program connects Utahns to lower-cost legal advice
- To increase access to justice, regulatory innovation should be considered, ABA House says

Outreach, Statistics, & Other Events

Recent Events:

- Paralegal Career Day at Portland Community College: February 1, 2020 (Sara Niegowski attended)
- Legal Pathways Presentation at UW Tacoma: February 6, 2020 (Renata Garcia and Katherine Skinner attended)
- Presentation to WSBA Diversity Committee: February 8, 2020
- Forum on Legal Pathways at Fairhaven College: February 20, 2020 (Amy Riedel, Jen Petersen, and Nancy Ivarinen)
- Career Panel at Showalter Middle School, Tukwila: March 4, 2020
- Iowa Supreme Court Access to Justice Commission meeting: March 13, 2020
- National Center for Access to Justice Workshop: March 16-17, 2020 (Christy Carpenter)
- College and Career Fair at Showalter Middle School, Tukwila: March 25, 2020
- ABA Standing Committee on Public Protection in the Provision of Legal Services "The Proliferation of Alternative Legal Service Providers and the Implications for Client Protection Funds: A New Frontier for the Practice of Law?" (Steve Crossland): May 29, 2020

LLLT Statistics:

- 10 applicants sat for the Winter 2020 LLLT Exam
- Number of current LLLTs: 43
- 4 LLLTs are inactive; 1 LLLT is administratively suspended

Meetings

Recent:

- LLLT Board Meeting on February 3, 2020

Upcoming:

- LLLT Board Meeting on April 13, 2020

Renata de Carvalho Garcia, WSBA Staff Liaison
1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
206-733-5912 | renatag@wsba.org | LLLT@wsba.org | **www.wsba.org**

From: Daniel Hale
To: Limited License Legal Technician; Diana Singleton; ondemand
Cc: Sorensen, Jennifer
Subject: Fwd: PCCE Eligibility
Date: Saturday, February 15, 2020 3:41:51 AM

Dear Washington State Bar Association & to whom it may concern:

I am a student at Tacoma Community College, where the Limited Licence Legal Technician (LLLT) core curriculum certificate is offered and I planned on completing this quarter. According to the WSBA website in order for one to become a LLLT they must pass the Paralegal Core Competency Exam (PCCE) administered by the National Federation of Paralegal Associations (NFPA), however it seems according to NFPA they do not offer that credential for those who possess an Associates Degree (in any studies) and earned the Limited Licence Legal Technician Certificate. As you can see, I forwarded the emails below I received in my inquiry with them regarding the matter. According to Linda Odermott the Vice President of NFPA, they do not have eligibility for those who completed an Associates Degree (in any studies) and hold the Limited Licence Legal Technician Certificate, that means that even though the Tacoma Community College is an ABA approved and accredited educational institution which offers the Limited Licence Legal Technician Certificate, it is essentially void and carries no true credential in order to meet the WSBA requirements for licensing to become a LLLT unless one completes the Paralegal Pro Certificate at TCC. Only then one would have then met the NFPA eligibility to take the PCCE and the built in LLLT core curriculum. Therefore, the only way for one to meet the WSBA requirement to take PCCE under the circumstances in an effort to be licensed as a LLLT, one must, with an Associates Degree (in any studies) and "no paralegal certificate", complete the 45 credit core curriculum at a ABA approved college, and then gain employment as a paralegal first and after "1 year experience and 6 months of CLE", then take the PCCE and LLLT Practice Area Examination and Professional Responsibility Examination altogether as the 3000 hours of paralegal work would have also been completed. It seems that the Limited Licence Legal Technician (LLLT) core curriculum certificate would be more tailored, or fit within the requirements set forth by the Certified Legal Assistant (CLE) administered by National Association of Paralegals (NALA) or NALS, the Association for Legal Professionals and should not be required by the WSBA for one to take the LLLT exams. One thing is apparent, it seems the PCCE put forth by NFPA and required by the WSBA is not compatible with the ABA approved Limited Licence Legal Technician certificate and therefore should be looked at for a new standard. Furthermore, it seems that the Family Law I, II and III thorough the Continuing Education facilitated at the University of Washington (also which is required by the WSBA) should also be offered along with the Limited Licence Legal Technician certification core curriculum and be implemented into the ABA approved programs at all the WSBA approved educational institutions which would give weight to the LLLT certificate program. The LLLT examinations by the WSBA should incorporate a paralegal certification part similar to the PCCE so that one is a qualified as a paralegal also by passing the LLLT exam.
I appreciate any information the WSBA can provide in clarifying this for me and other prospective and future students who would like to also explore other career opportunities beyond the paralegal professions. It would make sense that the purpose to fill the gap between people who need legal services and equal access to justice due to financial reasons or legal barriers by creating the LLLT profession would be better served by those same people who can also gain the experience and education they need without the like issues I clearly outlined.

Yours truly,

Daniel W. Hale-Huenergardt
6812 51st Ave E.
Tacoma WA, 98443
253-257-5326
huengaud@gmail.com

---------- Forwarded message ---------

dls Odermott <dlsodermott@gmail.com> Feb 14, 2020, 9:19 AM (16 hours ago)

to Certifications@paralegals.org, me

Thank you for your email and interest in the PCCE.

NFPA does not comment on the eligibility of an individual candidate without a completed application, supporting documents and the accompanying fee. For that reason, please review the eligibility pathways available to interested individuals located on NFPA's PCCE webpage https://www.paralegals.org/i4a/pages/index.cfm?pageid=3297 and further detailed in the PCCE Candidate Handbook. Please select the eligibility pathway that is appropriate for your unique situation for use in your application.

Please note that at present, NFPA does not offer an eligibility pathway that includes the completion of a LLLT program.

Best of luck,
Linda Odermott, RP, OCP | Vice President and Director of Paralegal Certification

Note - Our office is currently working through a transition of management companies and longer response times are expected. We apologize for any delays and ask for your patience during this transition. There is no need to send a follow up email to check on status of a submission, we will respond as soon as we are able.

Please update your records to reflect NFPA's new contact information:

NFPA – The Leader of the Paralegal Profession®

400 South 4th Street, Suite 754E, Minneapolis, MN 55415

Direct 317.454.8312 FAX 980.444.2269

www.paralegals.org or follow us @ facebook.com/NFPAparalegals

April 24-26, 2020 *- Annual Joint Conference in Tampa Bay, FL*

October 22-25, 2020 *- Annual Convention & Policy Meeting in Minneapolis/St. Paul, MN*

October 7-10, 2021 *-Annual Convention & Policy Meeting in Portland, OR*

---------- Forwarded message ---------

From: **Daniel Hale** <huengaud@gmail.com>
Date: Thu, Feb 13, 2020 at 11:56 AM
Subject: PCCE Eligibility
To: <vpdpc@paralegals.org>

Dear Vice President & Director of Paralegal Certification (NFPA):

Can I qualify to take the Paralegal Core Competency Exam (PCCE) ? If I have a

1. Associates's Degree-General Studies, Major in Social Sciences, and a
2. Limited Licence Legal Technician Certificate from Tacoma Community College Paralegal Program

I would like to take the PCCE as soon as possible. :-)

Yours truly,

Daniel W. Hale-Huenergardt
6812 51st Ave E, Tacoma, WA 98443
253-257-5326
huengaud@gmail.com

FILE DIVORCE PAPERS

NEED HELP?

A Limited License Legal Technician (LLLT—"triple LT"—for short) is a new type of legal professional licensed by the Washington Supreme Court who can help you with family law issues like divorce, child custody, parenting plans, and domestic-violence protection orders. A LLLT generally ***costs less*** than a lawyer and can get you started and guide you through the legal process.

Call a LLLT

Limited License Legal Technician

To get started, turn this card over for more information.

WASHINGTON STATE BAR ASSOCIATION

Find a LLLT

go online:
www.wsba.org

- Click “Legal Directory” at top of page
- Select “Advanced Search”
- Select “Limited License Legal Technician” under License Type
- Click “Search”
- Click a License Number on the list of LLLTs which loads their contact information

or call **206-727-8289**

A LLLT can help you with:

- Divorce
- Legal Separation
- Child Custody
- Child support and maintenance
- Parenting Plans
- Parentage and Paternity Actions
- Domestic violence protection orders
- Relocation actions for parents

A LLLT...

- is licensed for ***limited*** family law practice
- is ***not*** a lawyer, but can
  - explain procedures
  - complete and file forms
  - provide legal advice
  - assist with mediation

PLEASE NOTE: The Washington State Bar Association cannot provide legal advice or referrals to legal technicians or lawyers.

WASHINGTON STATE
BAR ASSOCIATION

FILE CUSTODY DOCUMENTS

NEED HELP?

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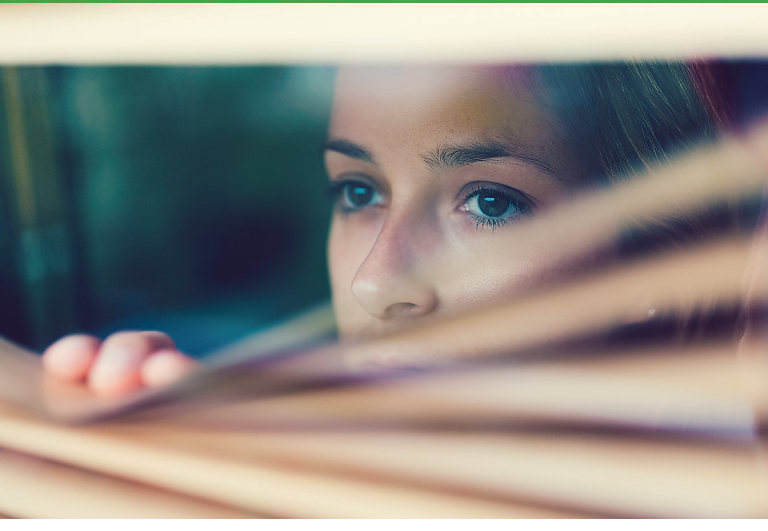
WASHINGTON STATE
BAR ASSOCIATION

FILE A PROTECTION ORDER



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- Select “Limited License Legal Technician” under License Type
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or call **206-727-8289**

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  - complete and file forms
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WASHINGTON STATE
BAR ASSOCIATION

Limited License Legal Technician (LLLT) Bench Card

LLLTs in the Courtroom

When and how LLLTs can assist clients in the Courtroom

When

The Washington Supreme Court under APR 28* has authorized LLLTs to assist and confer with their pro se clients at certain hearings:

- **Motion for Temporary Family Law Orders**
- **Enforcement of Domestic Relations Orders**
- **Domestic Violence Protection Orders** (and other protection or restraining orders arising from a domestic relations case)
- **Modification of Child Support**
- **Reconsideration/Revision**
- **Adequate Cause: Non-parental Custody and Parenting Plan Modifications**

With or without their client, LLLTs may also:

- **Present agreed, uncontested, and default orders****
- **Attend trial setting calendar procedures*****

* *See Appendix APR 28, Regulation 2(B)(2)(h)*
** *See Appendix APR 28, Regulation 2(B)(2)(g)*
*** *See Appendix APR 28, Regulation 2(B)(2)(h)(viii)*

How

Clients assisted by LLLTs are considered self-represented and should advance their own legal arguments.

LLLTs may answer only direct factual and procedural questions from the court and only in the types of hearings listed above on this bench card.

LLLTs cannot present their pro se client's cases or make legal arguments in court.

QUESTIONS about LLLTs and APR 28? Contact the Washington State Bar Association: 800-945-9722 or email **LLLT@wsba.org**.

VERIFICATION

LLLTs are licensed members of the Washington State Bar Association and are provided a bar card with their license number.

- You can easily verify a LLLT license by searching for the LLLT's name via the Legal Directory at **www.wsba.org**.
- For a list of all LLLTs use the Advanced Search in the Legal Directory.

For the most up-to-date LLLT license information visit the LLLT page at **www.wsba.org/LLLT**

LLLT Board,
a Washington Supreme Court Board

About

APR 28 authorizes LLLTs to represent pro se clients in matters concerning family law (additional practice areas are under consideration). Some of the issues a LLLT may assist with are divorce/legal separation, paternity/parentage, parenting-plan modifications, child-support modifications, non-parental custody, and protection.

In brief, LLLTs may render these legal services to a pro se client*:

- Obtaining relevant facts and records and reviewing documents or exhibits and explaining them to the client
- Informing the client of applicable procedures, including deadlines, and documents that must be filed
- Informing and assisting with service of process and filing of legal documents
- Selecting, advising on significance of selection, completing, filing, and effecting service of forms that have been approved under APR 28 as well as forms prepared by a Washington lawyer
- Performing legal research
- Drafting letters setting forth legal opinions
- Drafting documents beyond what is permitted if the work is reviewed and approved by a Washington lawyer
- Negotiating the client's legal rights or responsibilities, provided that the client has given written consent defining the parameters
- Communicating and negotiating with the opposing party or the party's representative regarding procedural matters

**See APR 28 for the full text and description of all services LLLTs may provide.*

> "We 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."

—Washington Supreme Court Order 25700-A-1005 at 5-6 in its order adopting APR 28

FAQs

Q. Do LLLTs file a notice of appearance?
A. No. LLLTs assist pro se clients who appear on their own behalf.
See *LLLT RPC 1.0B(h) and 1.16 Comment [1]*

Q. Do LLLTs accept service on behalf of their clients?
A. No. Clients of LLLTs are pro se and therefore must be served directly.
See *LLLT RPC 1.0B(h)*

Q. May LLLTs speak on behalf of their clients in court?
A. Generally, no. LLLTs may however speak on behalf of their clients in trial-setting calendar proceedings and negotiations, including mediation and arbitration, with certain limitations.
See *Appendix APR 28, Regulation 2 (B)(2)(h)(viii) and APR 28(F)(13)*

Q. Do LLLTs have to comply with ethical rules?
A. Yes. The LLLT RPCs are based on lawyer RPCs and require similar ethical requirements for LLLTs.

Q. What protection do LLLT clients have from potential LLLT malpractice?
A. LLLTs are required to have professional liability insurance. See *APR 28(I)(2).* In the event of professional dishonest conduct, LLLT clients are eligible for seeking a gift from the Client Protection Fund.

COMMUNITY AND TECHNICAL COLLEGES
Washington State Board

January 20, 2020

LIMITED LICENSE LEGAL TECHNICIAN

Opportunities for Colleges to Provide the LLLT Core Curriculum

Just like access to justice matters for all Washingtonians, prospective LLLT students need access to the LLLT core curriculum. Community and technical colleges can play an important role in creating access to this curriculum. The LLLT board seeks to expand the geographic availability of the core legal education for this license. Colleges may apply to the LLLT Board to offer the legal technician core curriculum. If your college is interested in applying, please review the program standards, application procedure, and policies information provided in detail on the LLLT website at: http://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians

Background

Washington is the first state in the country to offer an affordable legal services option to help meet the needs of those unable to afford the services of a lawyer. A limited license legal technician, also known as a legal technician or a LLLT, is licensed by the Washington Supreme Court to advise and assist people going through divorce, child custody, and other family law matters in Washington. Look for other practice areas to be approved in the future.

The Limited License Legal Technician (LLLT) Board derives its authority from the Washington Supreme Court under Rule 28 of the Washington Supreme Court Admission and Practice Rules (APR) adopted and effective Sept. 1, 2012, and as amended since that date. APR 28 authorizes a new level of licensed legal professionals who meet certain educational requirements to advise and assist clients on specific areas of law.

For More Information

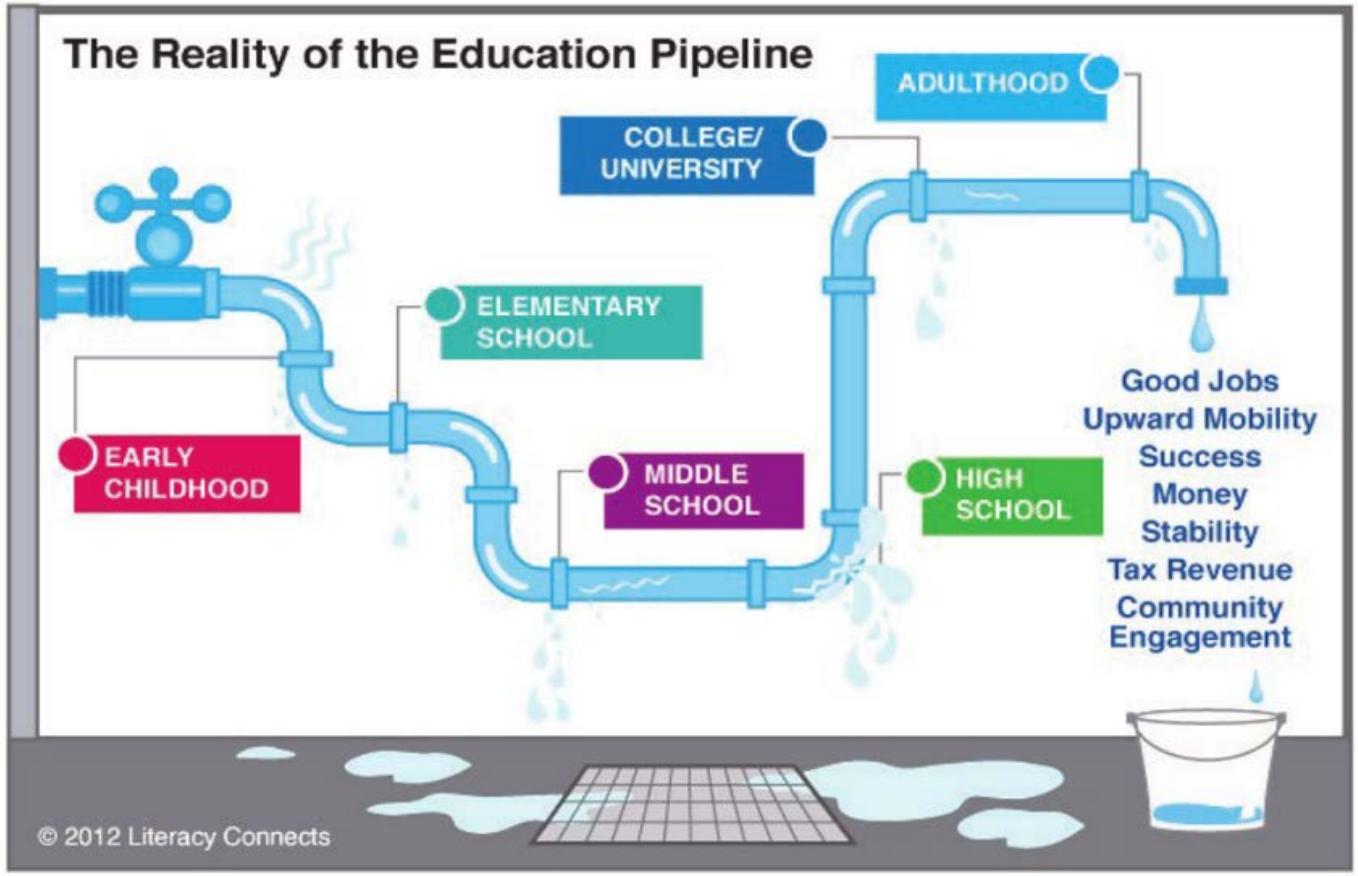
Limited License Legal Technician Contacts

Carolyn McKinnon
Policy Associate, Workforce Education
cmckinnon@sbctc.edu
360-704-3903

LLLT Board
Washington State Bar Association
lllt@wsba.org
206-443-9722

INNOVATIVE PATHWAYS TO THE LEGAL PROFESSION

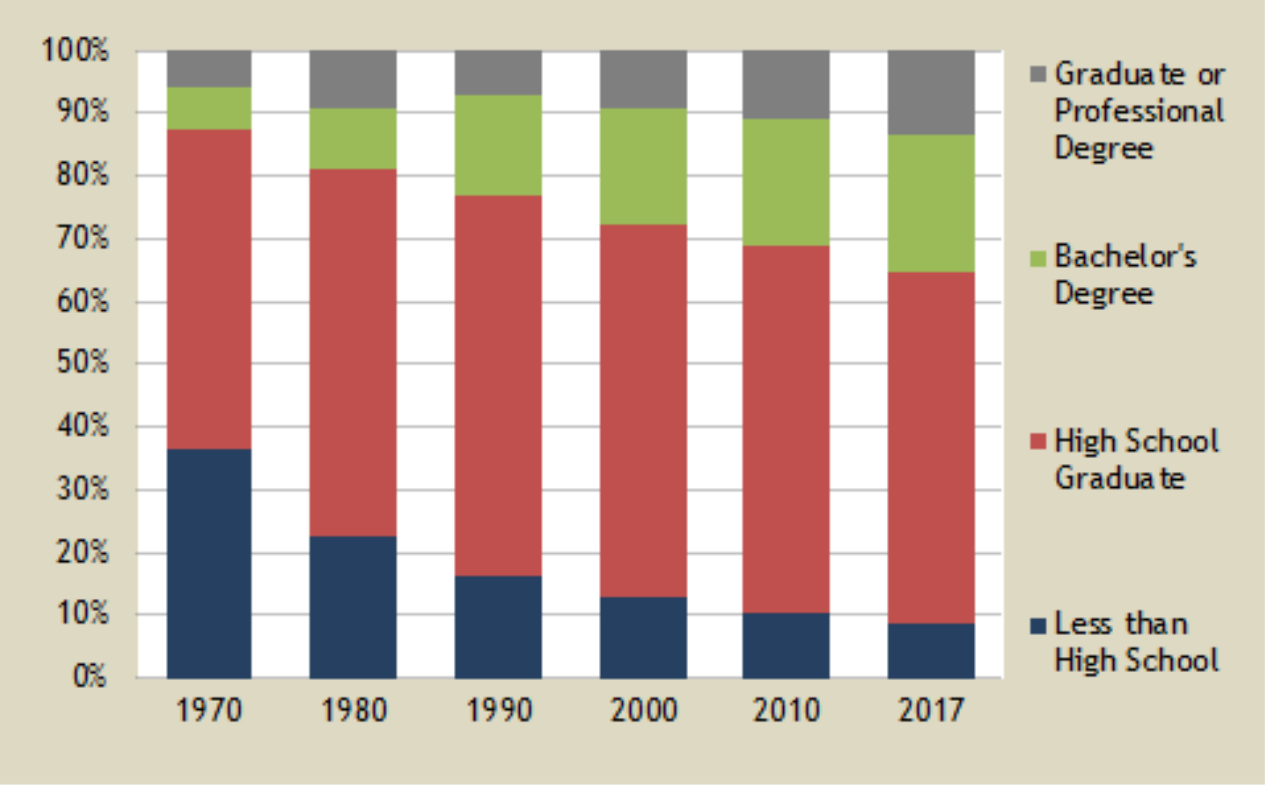
EDUCATION PIPELINE



Source: Literacy Connects

EDUCATIONAL ATTAINMENT

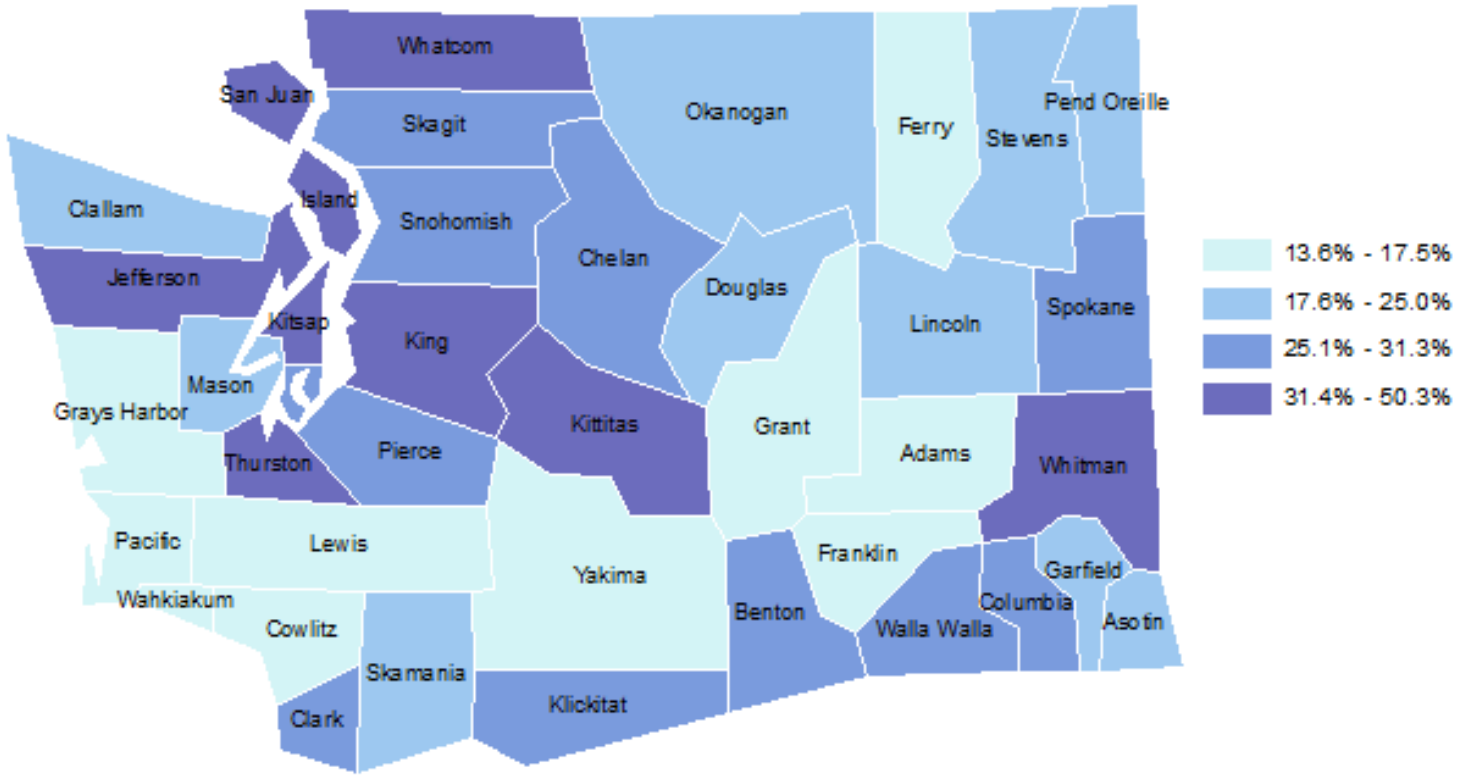
POPULATION 25 YEARS AND OVER



Year	Bachelor's Degree or Higher
2017	35.5%
2010	31.0%
2000	27.7%
1990	22.9%
1980	19.0%
1970	12.7%

Source: Office of Financial Management

BACHELOR'S OR HIGHER DEGREE - 2017



Source: Office of Financial Management

EDUCATION REQUIREMENTS FOR WA LEGAL LICENSES & PROGRAMS

INNOVATIVE LICENSING APPROACH

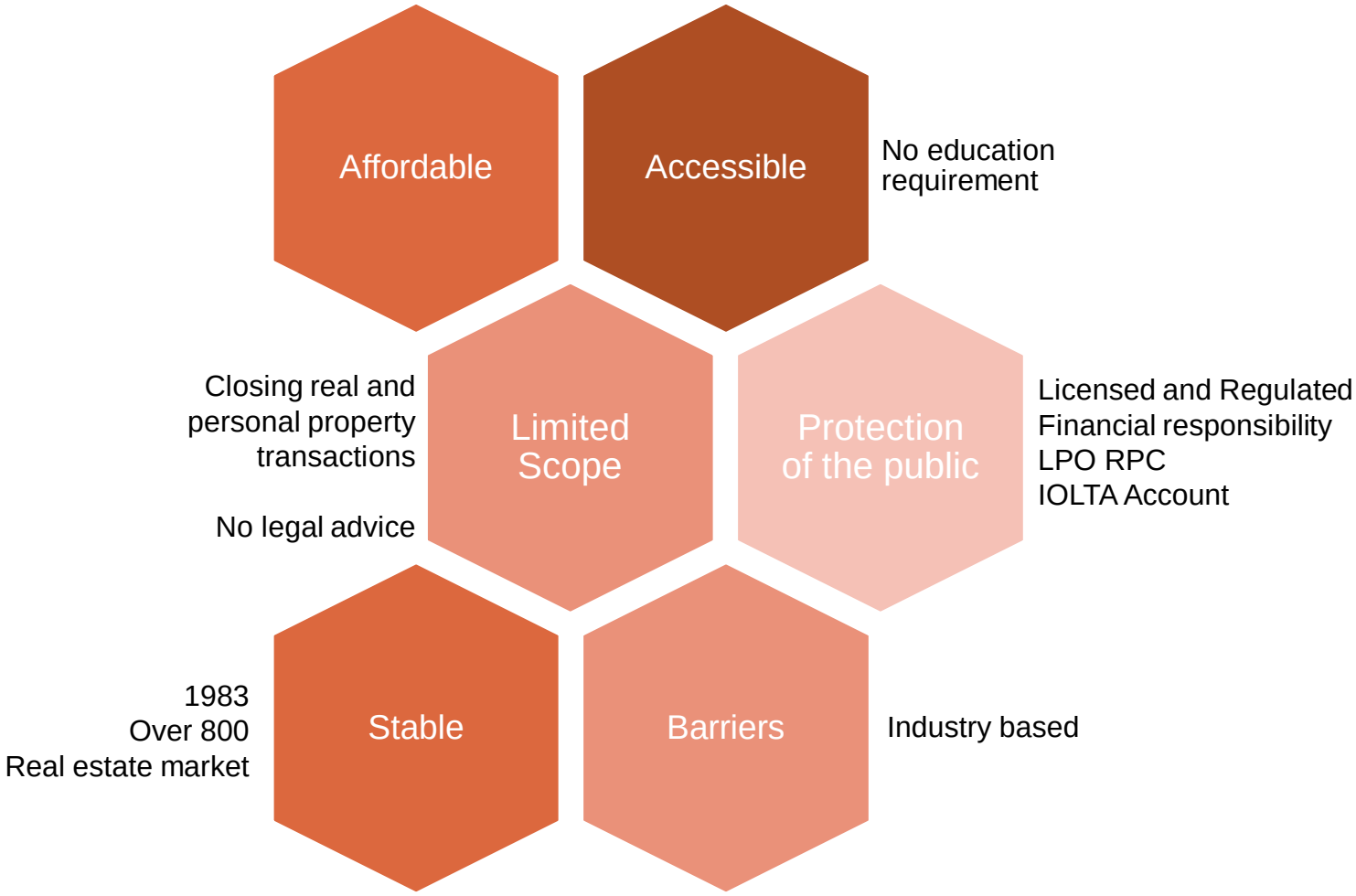
Increase options

- LPO
- LLLT
- Rule 6 Law Clerk Program
- Rule 9 Legal Intern

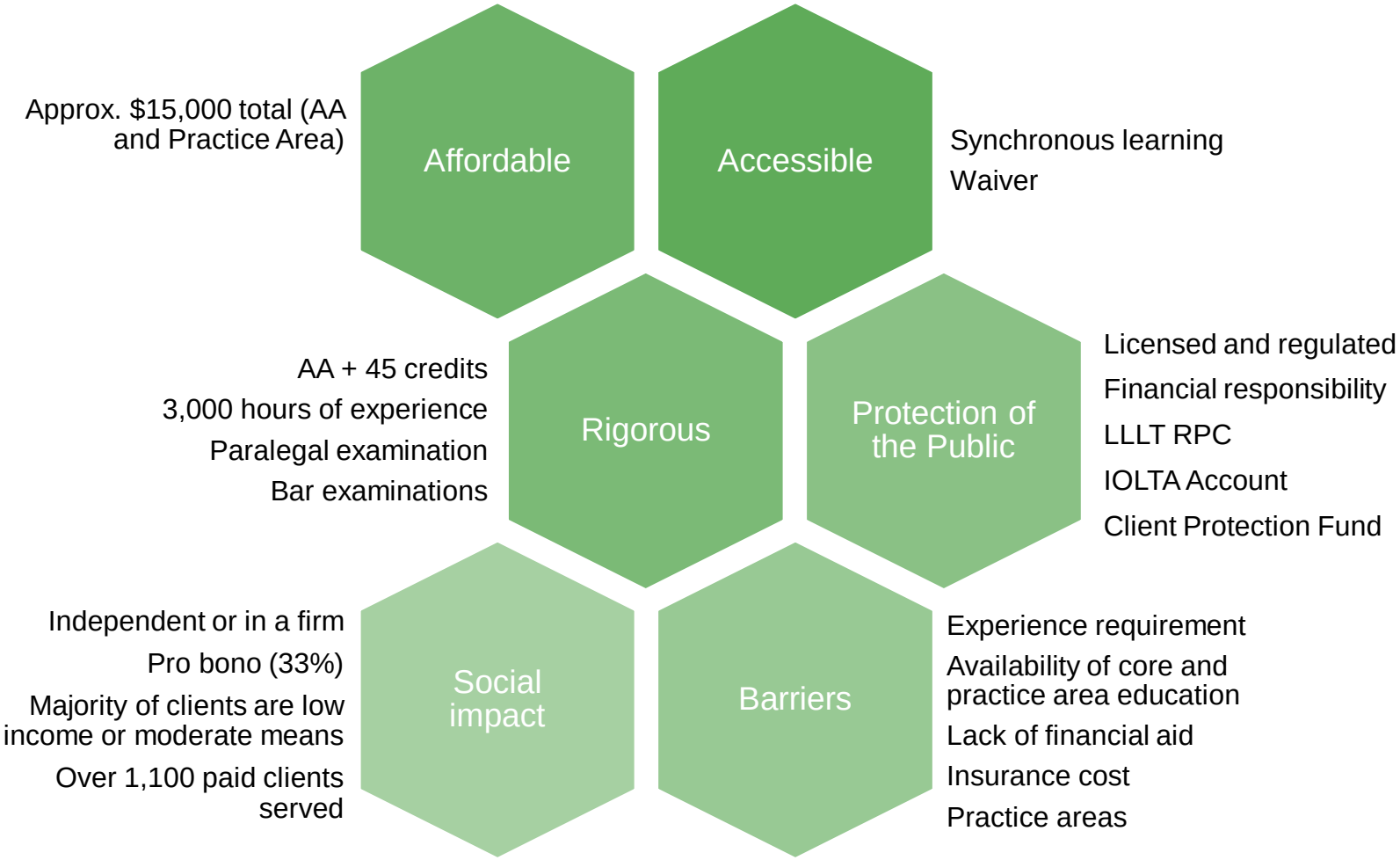
Reduce barriers

- Accessibility
- Cost
- Time

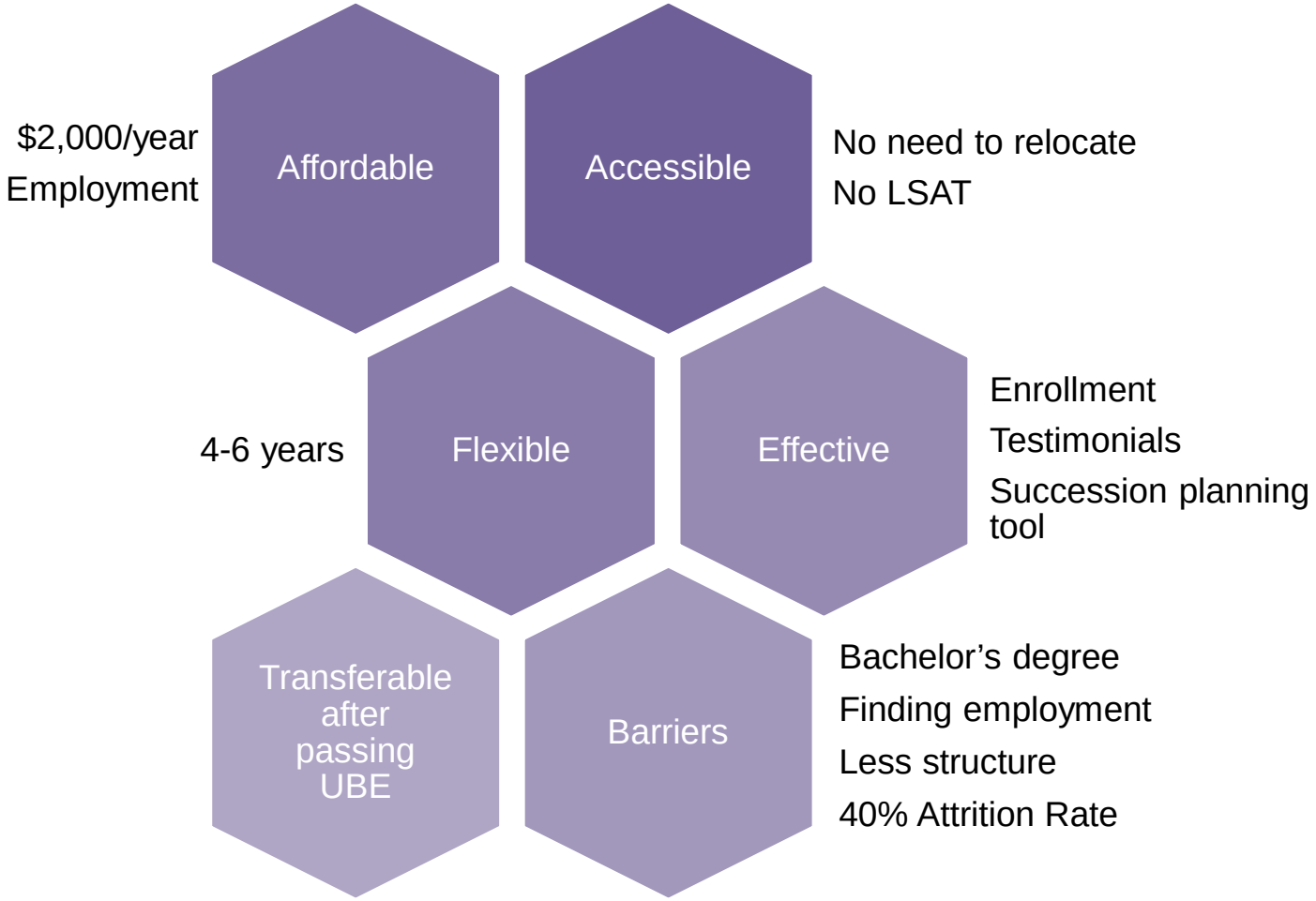
LPO


Affordable
Accessible
No education requirement
Closing real and personal property transactions
No legal advice
Limited Scope
Protection of the public
Licensed and Regulated
Financial responsibility
LPO RPC
IOLTA Account
1983
Over 800
Real estate market
Stable
Barriers
Industry based

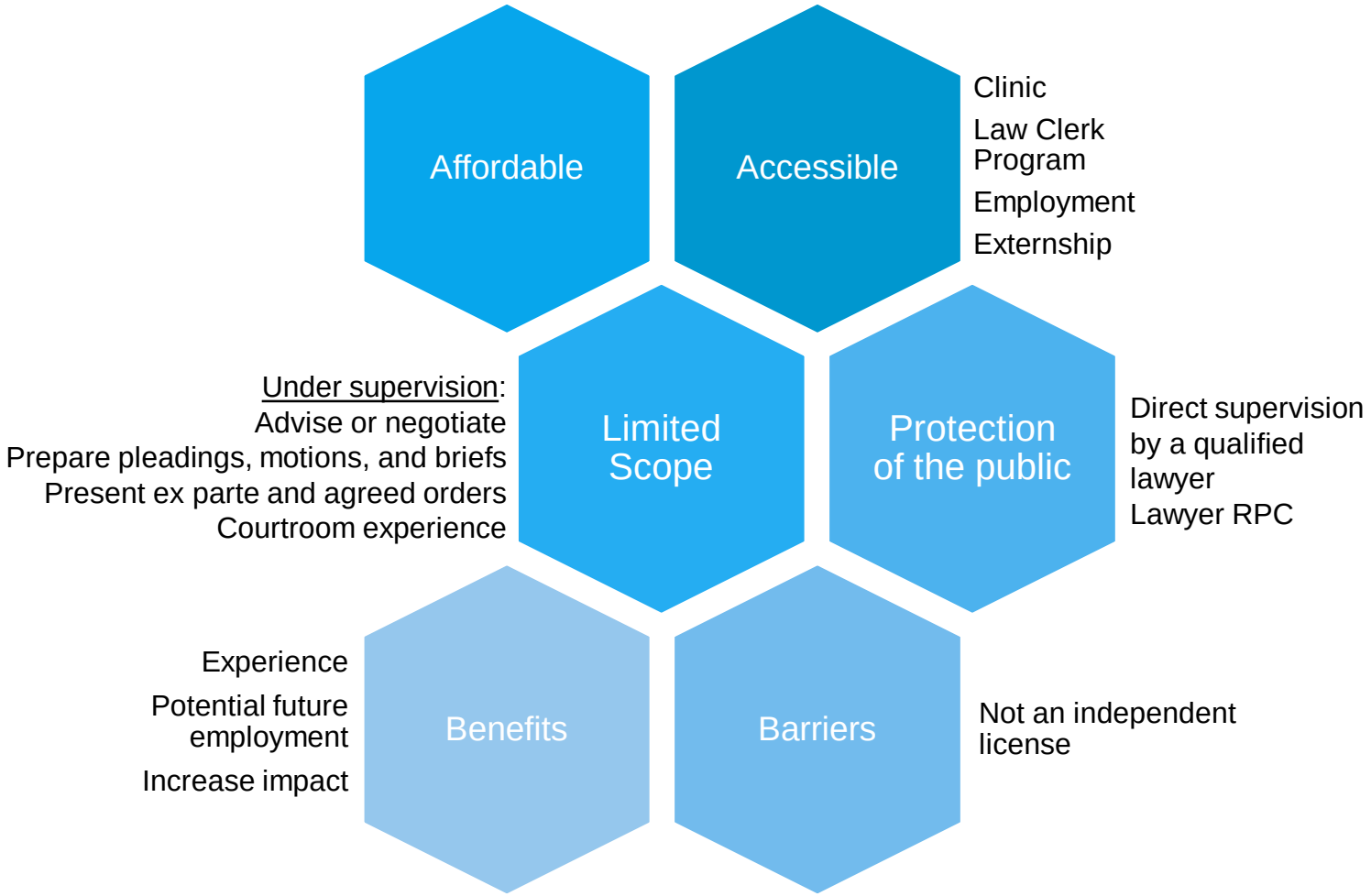
LLLT


Approx. $15,000 total (AA and Practice Area)
Affordable
Accessible
Synchronous learning
Waiver
AA + 45 credits
3,000 hours of experience
Paralegal examination
Bar examinations
Rigorous
Protection of the Public
Licensed and regulated
Financial responsibility
LLLT RPC
IOLTA Account
Client Protection Fund
Independent or in a firm
Pro bono (33%)
Majority of clients are low income or moderate means
Over 1,100 paid clients served
Social impact
Barriers
Experience requirement
Availability of core and practice area education
Lack of financial aid
Insurance cost
Practice areas

LAW CLERK PROGRAM (NOT A LICENSE)



RULE 9 LICENSED LEGAL INTERN



2020 OUTREACH

February

- Portland Community College Paralegal Career Day: February 1
- Legal Pathways Presentation at UW Tacoma: February 6
- Legal Pathways at Fairhaven College, Bellingham: February 20
- Washington School Counselor Association, Tukwila: February 27-28

March

- Career Panel at Showalter Middle School, Tukwila: March 4
- College and Career Fair at Showalter Middle School, Tukwila: March 25

April

- Legal Education and Networking Group, Spokane: April 22

March 3, 2020

LLLT Program Pipeline Update

Working on Core Education	Enrolled in Practice Area Classes (Current Cohort)	Completed Practice Area Classes	Approved to Take Practice Area Classes	Passed Exam (Not Yet Licensed)	Interested in Waiver	Interested but Unable to Access Core Education	TOTAL
173	TBD	58	33	1	5	2	**272**

WORKING ON CORE EDUCATION

Based on data received through phone calls, emails, presentations, and communications with the Washington and Oregon colleges who teach the LLLT core education, there are at least 173 students currently working on the core education for the LLLT license.

ENROLLED IN PRACTICE AREA (CURRENT COHORT)

This number will be updated once the next cohort has enrolled.

COMPLETED PRACTICE AREA CLASSES

58 students have completed the Practice Area Education but have not yet become licensed.

In September 2019, WSBA staff developed and distributed a survey to 41 students to gather data on their interest and experience with the program, and any barriers that may be preventing them from obtaining their license. Of the 10 responses received, 4 (40%) of the respondents have already attempted the LLLT exam at least once.

16 more students completed the Practice Area (Family Law) Classes in December 2019, and are now the sixth cohort to complete the classes. 7 of those students sat for the LLLT exam in February 2020.

March 3, 2020

APPROVED TO TAKE PRACTICE AREA CLASSES

33 students have been approved to take the Family Law classes (practice area education). 13 of the students were previously approved to enroll in a prior cohort but withdrew or did not enroll in the courses. 19 of the students are approved to enroll in the next (seventh) cohort; 1 student is conditionally approved pending submission of an unofficial transcript.

PASSED EXAM (NOT YET LICENSED)

1 applicant passed the July 2019 LLLT exam and has applied for licensure.

INTERESTED IN WAIVER

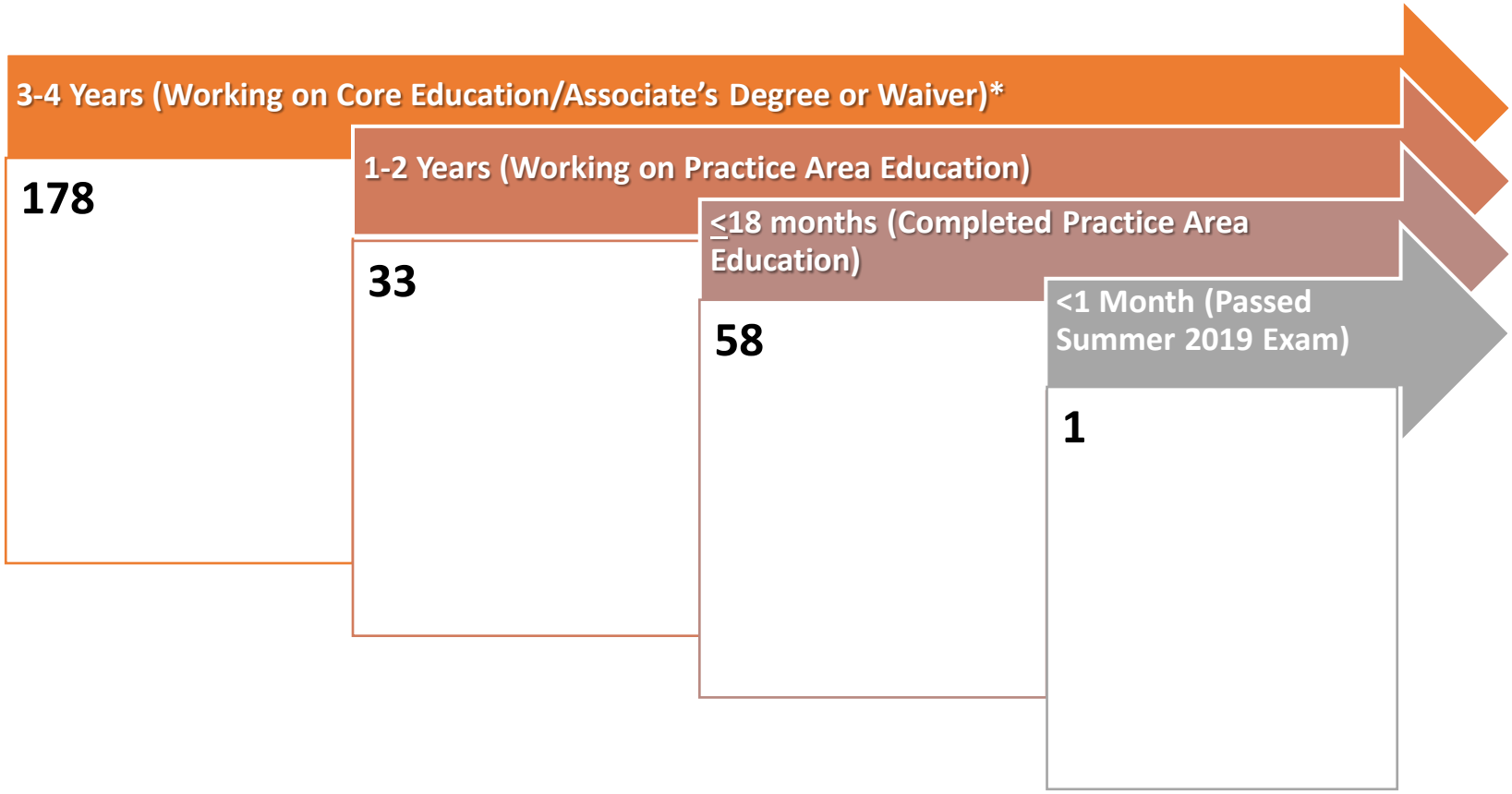
At least 5 candidates have contacted the WSBA recently with interest in applying for the limited time waiver, but have not yet submitted an application. WSBA has received 44 applications for the limited time waiver since 2013.

INTERESTED BUT UNABLE TO ACCESS CORE EDUCATION

Staff have received 2 recent inquiries from potential candidates for the LLLT license who are unable to access the core education and thus unable to complete the educational requirements at this time. One candidate is located in Yakima. The second candidate expressed that they need to take online coursework only, due to work and family obligations, however, none of the approved core education programs offer an entirely online program.

March 3, 2020

LLLT PIPELINE TIMELINE



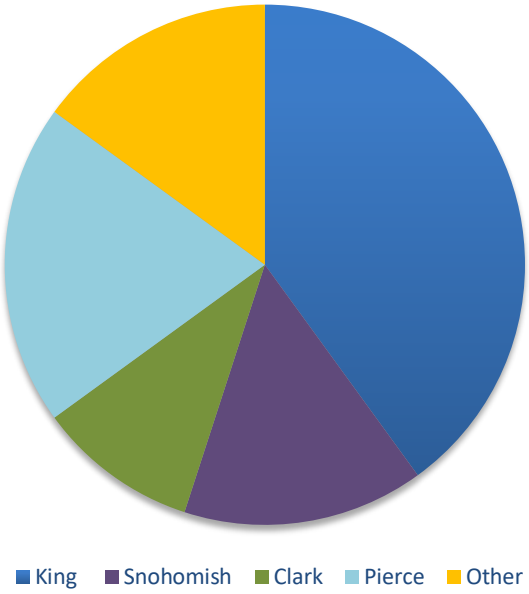
*This number includes 5 candidates that we are aware of who are interested in the waiver, but have not yet applied.

December 2019 LLLT Questionnaire Results

- 20 responses received
- Sent to 41 LLLTs

49% response rate

Where LLLTs are Located



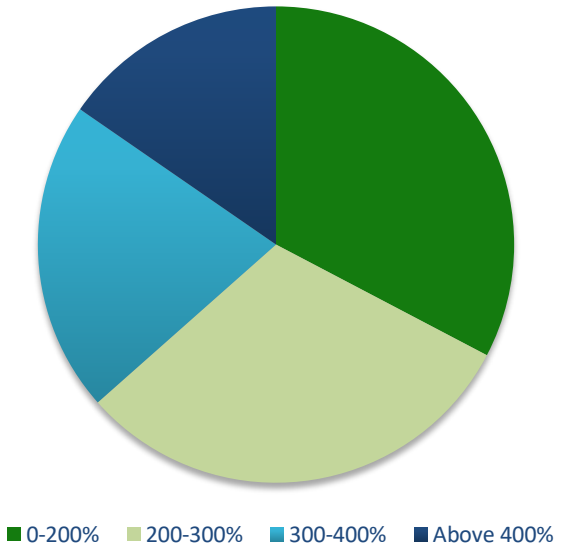
Most of the respondents are located in **King County** (40%)

Clients Served

1,527

Approximate number of paid clients served by 20 LLLTs since obtaining license

Where Paid Clients Fall in Relation to FPL



Affordable Legal Services

- 8 LLLTs reported that they offer a sliding fee scale.
- 1 LLLT does not offer a sliding fee scale but regularly gives discounts.

Pro Bono Services, Outreach, and Volunteerism

In addition to the pro bono hours reported by LLLTs during annual licensing, **50%** of the questionnaire respondents indicated that they also participate in outreach and volunteer work in their communities, through college outreach, the LLLT Board, outreach to prospective LLLTs, and WSBA Call to Duty Initiative Day of Service, and other opportunities.

Interest in Other Practice Areas

65% - Yes
10% - Maybe
25% - No

New Practice Areas Suggested by LLLTs:

Guardianship
Garnishments
School
Estate Planning/Healthcare/Wills/Probate
Real Estate
Immigration
Youth
Administrative Law
Landlord Tenant
Employment
Consumer & Debt

	Washington	Utah	Oregon	Arizona
Limited License Type	Limited License Legal Technician (LLLT)	Licensed Paralegal Practitioner (LPP)	Licensed Paraprofessional (LP)	Licensed Legal Advocate (LLA) *12 month pilot program*
Authority	APR 28	RGLPP 14-802	TBD	Supreme Court Order
Approved Practice Areas	Domestic Relations (Family Law)	Temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support Forcible entry and detainer; and Debt collection matters in which dollar amount does not exceed statutory limit for small claims	Family Law Landlord-Tenant	Domestic Violence issues in Family Law - Provide legal advice to domestic violence survivors with respect to critical domestic-violence-related legal issues
"Core" Educational Requirements	Associate's degree or higher; and 45 credits in legal studies, including: Civil Procedure (8) Contracts (3) Interviewing & Investigation Techniques (3) Intro to Law & Legal Process (3) Law Office Procedures & Technology (3) Legal Research, Writing, & Analysis (8) Professional Responsibility (3)	Law degree from ABA-approved law school; OR AA or Bachelor's degree in paralegal studies from accredited school; OR Bachelor's degree in any field from accredited school **plus** Paralegal Certificate from accredited program **or** 15 credit hours of paralegal studies from accredited school	Associate's degree or higher; and paralegal certificate from an ABA approved or accredited paralegal studies program	LLA Education Course through University of AZ - 7-week online and in-person instruction in 6 subjects: Procedure (8 hours) Case Preparation – Supporting Materials (8 hours) Family Law (12 hours) Child Welfare (12 hours) Advice and Counseling (10 hours) Collateral topics (12 hours)

	Washington	Utah	Oregon	Arizona
Practice Area or Other Educational Requirements	15 credits of Practice Area education: • 5 credit hours in basic domestic relations subjects • 10 credit hours in advanced and WA specific domestic relations subjects	If no law degree, must take LPP-approved professional ethics courses and approved course of instruction for each practice area they seek to be licensed	TBD	
Experience	3000 hours of substantive law-related experience • Supervised by licensed lawyer • Within 3 years before or 40 months after passing practice area exam	1500 hours of substantive law-related experience within last 3 years, under supervision of licensed attorney or LPP • 500 hours in specified family law/domestic relations topics for Family Law licensure • 100 hours experience in forcible entry and detainer or debt collection for other areas Not required if applicant has a law degree	1500 hours of substantive law-related experience under supervision of an attorney	First 100 hours of LLA work must be supervised by licensed attorney (after LLA is licensed)
Certification	None required (unless seeking a waiver; see Waiver section for requirements)	Certification by NALA, NALS, or NFPA: • NALA: Certified Paralegal (CP) or Certified Legal Assistant (CLA) • NALS: Professional Paralegal (PP) • NFPA: CORE Registered Paralegal (CRP) • Not required for applicants with a law degree	TBD	

	Washington	Utah	Oregon	Arizona
Waiver	Pass the NFPA PACE Exam, NALA CP Exam, or NALS PP Exam and have active certification Complete 10 years of substantive law-related experience within 15 years preceding application Proof certified by supervising lawyer Waives core education and Associate's degree requirements	Be at least 21 years old Complete 7 years of full-time substantive law related experience within 10 years preceding application (including practice area experience) • 500 hours in specified family law/domestic relations issues • 100 hours in forcible entry and detainer or debt collection • Proof certified by supervising attorney Waives minimum educational requirements	Waiver option for "highly experienced" paralegals and applicants with a law degree	
Examinations	PCC Exam (NFPA) Practice Area exam Professional Responsibility exam	LPP Ethics Exam Practice area exam	Oregon's Task Force has not recommended an exam at this time	LLA Licensing Exam
Authorized Scope of Practice	See APR 28(F)	Establish a contractual relationship with a client; Interview the client to understand the client's objectives and obtain facts relevant to achieving that objective; Complete forms approved by the Judicial Council; Inform, counsel, advise, and assist in determining which form to use and	Select, prepare, file, and serve model forms and other documents in an approved proceeding; Provide information and advice relating to the proceeding; Communicate and negotiate with another party;	Give legal advice on urgent issues during intake, during completion of forms, and about case preparation Assist pro se clients during certain types of hearings

	Washington	Utah	Oregon	Arizona
		give advice on how to complete the form; Sign, file, and complete service of the form; Obtain, explain, and file any documents needed to support the form; Review documents of another party and explain them; Inform, counsel, assist, and advocate for a client in mediated negotiations; Fill in, sign, file, and complete service of a written settlement agreement form in conformity with the negotiated agreement; Communicate with another party or party's representative regarding the relevant form and matters reasonably related thereto; and Explain a court order that affects that clients rights and obligations.	Provide emotional and administrative support to the client in court.	
Prohibitions	See APR 28(H)	An LPP may not appear in court with a client, nor may an LPP charge contingency fees.	Inherently complex proceedings in family- law and landlord-tenant cases would be excluded from	

	Washington	Utah	Oregon	Arizona
			the permissible scope of practice. Additionally, licensees would be prohibited from representing clients in depositions, in court, and in appeals.	
Financial Responsibility	Yes. Professional Liability Insurance.	No.	Yes. Professional Liability Insurance.	

Rule 14-802. Authorization to practice law.

(a) Except as set forth in subsections (c) and (d) of this rule, only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah.

(b) For purposes of this rule:

(b)(1) The "practice of law" is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances.

(b)(2) The "law" is the collective body of declarations by governmental authorities that establish a person's rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person's rights, duties, constraints and freedoms.

(b)(3) "Person" includes the plural as well as the singular and legal entities as well as natural persons.

(c) Exceptions and Exclusions for Licensed Paralegal Practitioners. A person may be licensed to engage in the limited practice of law in the area or areas of (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support; (2) forcible entry and detainer; and (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases.

(c)(1)(A) Within a practice area or areas in which a Licensed Paralegal Practitioner is licensed, a Licensed Paralegal Practitioner who is in good standing may represent the interests of a natural person who is not represented by a lawyer unaffiliated with the Licensed Paralegal Practitioner by:

(c)(1)(B) establishing a contractual relationship with the client;

(c)(1)(C) interviewing the client to understand the client's objectives and obtaining facts relevant to achieving that objective;

(c)(1)(D) completing forms approved by the Judicial Council;

(c)(1)(E) informing, counseling, advising, and assisting in determining which form to use and giving advice on how to complete the form;

(c)(1)(F) signing, filing, and completing service of the form;

(c)(1)(G) obtaining, explaining, and filing any document needed to support the form;

(c)(1)(H) reviewing documents of another party and explaining them;

(c)(1)(I) informing, counseling, assisting and advocating for a client in mediated

negotiations;

(c)(1)(J) filling in, signing, filing and completing service of a written settlement agreement form in conformity with the negotiated agreement;

(c)(1)(K) communicating with another party or the party's representative regarding the relevant form and matters reasonably related thereto; and

(c)(1)(L) explaining a court order that affects the client's rights and obligations.

(d) Other Exceptions and Exclusions. Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

(d)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(d)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.

(d)(3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

(d)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(d)(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.

(d)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(d)(7) Representing a party in any mediation proceeding.

(d)(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(d)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(d)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(d)(11) Lobbying governmental bodies as an agent or representative of others.

(d)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(d)(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

(d)(12)(B) an abstractor or title insurance agent licensed by the state of Utah may

issue real estate title opinions and title reports and prepare deeds for customers.

(d)(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(d)(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(d)(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(d)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

Advisory Committee Comment:

Subsection (a).

"Active" in this paragraph refers to the formal status of a lawyer, as determined by the Bar. Among other things, an active lawyer must comply with the Bar's requirements for continuing legal education.

Subsection (b).

The practice of law defined in Subparagraph (b)(1) includes: giving advice or counsel to another person as to that person's legal rights or responsibilities with respect to that person's facts and circumstances; selecting, drafting or completing legal documents that affect the legal rights or responsibilities of another person; representing another person before an adjudicative, legislative or executive body, including the preparation or filing of documents and conducting discovery; negotiating legal rights or responsibilities on behalf of another person.

Because representing oneself does not involve another person, it is not technically the "practice of law." Thus, any natural person may represent oneself as an individual in any legal context. To the same effect is Article 1, Rule 14-111 Integration and Management: "Nothing in this article shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee."

Similarly, an employee of a business entity is not engaged in "the representation of the interest of another person" when activities involving the law are a part of the employee's duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of persons under the law is also not representing the interests of another person.

As defined in subparagraph (b)(2), "the law" is a comprehensive term that includes not only the black-letter law set forth in constitutions, treaties, statutes, ordinances, administrative

and court rules and regulations, and similar enactments of governmental authorities, but the entire fabric of its development, enforcement, application and interpretation.

Laws duly enacted by the electorate by initiative and referendum under constitutional authority would be included under subparagraph (b)(2)(A).

Subparagraph (b)(2)(B) is intended to incorporate the breadth of decisional law, as well as the background, such as committee hearings, floor discussions and other legislative history, that often accompanies the written law of legislatures and other law- and rule-making bodies. Reference to adjudicative bodies in this subparagraph includes courts and similar tribunals, arbitrators, administrative agencies and other bodies that render judgments or opinions involving a person's interests.

Subsection (c).

The exceptions for Licensed Paralegal Practitioners arise from the November 18, 2015 Report and Recommendation of the Utah Supreme Court Task Force to Examine Limited Legal Licensing. The Task Force was created to make recommendations to address the large number of litigants who are self-represented or forego access to the Utah judicial system because of the high cost of retaining a lawyer. The Task Force recommended that the Utah Supreme Court exercise its constitutional authority to govern the practice of law to create a subset of discreet legal services in the practice areas of: (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support; (2) unlawful detainer and forcible entry and detainer; and (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases. The Task Force determined that these three practice areas have the highest number of unrepresented litigants in need of low cost legal assistance. Based on the Task Force's recommendations, the Utah Supreme Court authorized Licensed Paralegal Practitioners to provide limited legal services as prescribed in this Rule and in accordance with the Supreme Court Rules of Professional Practice.

Subsection (c)(1)(D)

A Licensed Paralegal Practitioner may complete forms that are approved by the Judicial Council and that are related to the limited scope of practice of law described in Subpart (c) of this rule. The Judicial Council approves forms for the Online Consumer Assistance Program and for use by the public. The forms approved by the Judicial Council may be found at https://www.utcourts.gov/ocap/ and https://www.utcourts.gov/selfhelp/ .

Subsection (d).

To the extent not already addressed by the requirement that the practice of law involves the representation of others, subparagraph (d)(2) permits the direct and indirect dissemination of legal information in an educational context, such as legal teaching and lectures.

Subparagraph (d)(3) permits assistance provided by employees of the courts and legal-aid and similar organizations that do not charge for providing these services.

Subparagraph (d)(7) applies only to the procedures directly related to parties' involvement before a neutral third-party mediator; it does not extend to any related judicial proceedings unless otherwise provided for under this rule (e.g., under subparagraph (d)(5)).

Effective May 1, 2019

MEMORANDUM

To:	New Practice Area Subcommittee, WSBA LLLT Board
From:	Christy Carpenter, LLLT
Date:	February 8, 2018
RE:	VA Benefits Claims Representative Accreditation

U.S. DEPARTMENT OF VETERANS' AFFAIRS ACCREDITATION PROGRAM

https://www.va.gov/ogc/accreditation.asp

Role of Accredited Representative: Accredited claims agents or attorneys can legally represent a Veteran, Servicemember, dependent, or survivor before the Veterans' Administration. Agents/attorneys can give advice and assist individuals in applying for any VA benefits including: compensation, education, vocational rehabilitation and employment, home loans, life insurance, pension, health care, and burial benefits.

Accreditation Required: An individual must be accredited by the VA as an agent, attorney, or representative of a VA-recognized veterans service organization to assist in the preparation, presentation, and prosecution of a claim for VA benefits. The accreditation process includes an examination, a background investigation, and continuing education requirements. The application process can take several months.

Accreditation is governed by 38 CFR 14.629:
https://www.law.cornell.edu/cfr/text/38/14.629

Examination: Following approval of an Application for Accreditation, the regional Veterans' Benefits Administration (VBA) office will schedule a time for the candidate to take the free exam. The exam consists of 28 questions: 25 multiple choice and 3 ethics questions based on 38 CFR § 14.629-14.637).

LLLT Meets Definition of Attorney: 38 CFR 14.627(d): Attorney means a member in good standing of a State bar who has met the standards and qualifications in §14.629(b).

Power of Attorney Required: This requirement per 38 C.F.R. § 14.631 is satisfied by completion of VA Form 21-22a, "Appointment of Attorney or Agent as Claimant's Representative." This authorizes (1) the representation of a claimant before the VA and (2) the VA's disclosure of information to the representative. The POA must be filed with the Agent and Attorney Fee Coordinator with regional Veterans' Benefits Administration (VBA) office (Seattle). https://www.benefits.va.gov/seattle/

Records Access: Accredited individuals will have access to the electronic Veterans Benefits Administration (VBA) claims records of the claimants they represent.

Fee Agreements: Fee agreements must conform to the requirements of 38 CFR 14.636. Fees are presumed "reasonable" if they do not exceed 20% of past-due benefits and are presumed "unreasonable if they exceed 33⅓ %. Fee agreement can be "direct-pay" from past-due benefits from the VA to the representative. Direct-pay agreements cannot provide for fees that are more than 20% of past-due benefits. A copy of a direct-pay fee agreement must be filed with regional VBA office within 30 days of its execution. The VA will assess a 5% fee up to $100 to complete the payment. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution.

Services for Which Fees Cannot Be Charged: Agents/attorneys may not charge fees to claimants for assistance with preparing or presenting VA claims.

Services for Which Fees Can Be Charged: Agents/attorneys may charge fees to claimants after: (1) the VA has issued a decision on a claim, (2) a Notice of Disagreement has been filed initiating an appeal of that decision, and (3) the agent attorney has complied with power-of-attorney requirements and fee agreement requirements detailed above.

Fee Disputes: Claimants can challenge the reasonableness of a fee by filing a motion with the VA's Office of General Counsel.

Complaints About Representation: Claimants may file complaints against representatives regarding unlawful activities, misconduct, or incompetent representation via the VA's Office of General Counsel.

Ethical Rules Called Out by the Accreditation Program:

- When a representative operates a law-related business in a manner not readily distinguishable from the VA benefits representation, both the business and the representation must be in compliance with VA's standards of conduct (and, if applicable, the rules of professional conduct for the state in which the attorney is barred).
- Advertising in any way associated with VA benefits representation must be presented in an ethical manner. See RPC 7.1 thru 7.3; 38 C.F.R. § 14.632(c)(3), (8), (11) and (d).

Continuing Education: Accredited representatives must complete three hours of CLE during first 12 months following the date of accreditation; three additional hours during the first three years from the date of accreditation; and then, three hours every two years thereafter.

NATIONAL VETERANS' LEGAL SERVICES PROGRAM (NVLSP) TRAINING COURSE

http://www.nvlsp.org/store/the-basic-training-course-for-veterans-benefits

Cost: $150.00

Format: This an online course. There are 12 chapters, with self-quizzes at the end of most chapters.

Subjects Covered by Course:

- Eligibility for benefits
- Compensation benefits
- Disability evaluation process
- Death benefits
- Pension issues
- VA claims process
- Overview of US Court of Appeals for Veterans Claims
- Debt collection
- Request for discharge upgrade/military record correction
- Health care benefits
- Other benefits

Testing and Certificate: There is a graded final exam; upon passing the exam, a Basic Training Course Certificate is issued. Passing this test does not guarantee accreditation. The exam conducted by the VA is the official exam for accreditation.

Other Available Resources:

- Veteran's Benefits Manual ($174): Contains sample forms and briefs, flowcharts, checklists, citations to legal authorities, and other documents designed to streamline the claims process.
- Study Materials ($395):

The study materials include:

1. "**Preparing for the Accredited Agents Exam**" (80 pages) - Study Guide and 375 practice test questions.

2. "**Preparing for the Accredited Agents Exam**" (76 pages) - 375 practice questions with answers.

3. "**Training Manual for the Accreditation Exam.**" (480 pages). This book is compromised of 7 chapters (see more detail):

> *Chapter 1 – Part 1 Claimant's Rights and Debt Management*
> *Chapter 2 – Part 3 Adjudication General Rules and Procedures*
> *Chapter 3 – Part 3 Adjudication Rules for Specific Benefits*
> *Chapter 4 – Parts 4, 13 Disability Rating Decisions*
> *Chapter 5 – Part 14 Authority for Claim Representation*
> *Chapter 6 – Parts 3, 19, 20 Adverse Actions and Appeals*
> *Chapter 7 – Veterans Benefits and Issues Not Included on the Accreditation Exam*

4. "**Selections from Title 38 Code Of Federal Regulations Pertaining to the Accredited Agents Exam**" (648 pages)

This compilation includes applicable regulations that are covered by the accredited agents exam. We have included only those regulations that we feel apply to the test. Applicable regulations include sections of PART 1, PART 3, PART 4, PART 13 PART 14, PART 19 AND PART 20.

- Client Intake Forms (included with course):

1. Initial Interview Form: This form is designed to help the advocate identify potential VA benefits to which the claimant may be entitled.
2. Section 1151 and FTCA Intake Form: This form helps the advocate determine whether a claim for section 1151 benefits or a Federal Tort Claim Act action should be filed.
3. Individual Unemployability (IU) Intake Form: This form helps the advocate determine whether a claim for IU should be filed.
4. Post-Traumatic Stress Disorder (PTSD) Intake Form: This form helps the advocate determine whether a claim for PTSD should be filed.
5. Agent Orange (Herbicide Exposure) Intake Form: This form helps the advocate determine whether a claim based on exposure to herbicides, including Agent Orange, in Vietnam should be filed.
6. Dependency and Indemnity Compensation (DIC) Intake Form: This form helps the advocate determine whether a claim for service-connected death benefits should be filed.
7. Pension Intake Form: This form helps the advocate determine whether a claim for non-service-connected pension benefits should be filed.
8. Debt Collection Intake Form: This form helps the advocate identify how to help a claimant deal with VA debt collection efforts.
9. Board of Veterans' Appeals (BVA) Intake Form: This form helps the advocate gather information that will help a claimant (appellant) prepare an effective appeal to the BVA.
10. U.S. Court of Veterans Appeals (CVA) Intake Form: This form is designed to help the advocate identify cases that are eligible to be appealed to the CAVC and also identify other issues that can be acted upon while the case is at the CAVC.

ATTACHMENTS:

A: 38 CFR 14.629 Requirements for VA Accreditation
B: 38 CFR 14.636 Payment of Fees for Benefits Claims Representation
C: ABA Young Lawyers Memo re: Accreditation
D: How to Apply for Accreditation
E: Application for Accreditation
F: Appointment of Individual as Claims Representative
G: Standards of Conduct
H: Enforcement Authority
I: Notice of Disagreement
J: How to File a Complaint
K: How to Challenge a Fee
L: Accreditation Search
M: NVLSP Training Course, Chapter 1

38 CFR 14.629 - Requirements for accreditation of service organization representatives; agents; and attorneys.

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.
The Chief Counsel with subject-matter jurisdiction will conduct an inquiry and make an initial determination regarding any question relating to the qualifications of a prospective service organization representative, agent, or attorney. If the Chief Counsel determines that the prospective service organization representative, agent, or attorney meets the requirements for accreditation in paragraphs (a) or (b) of this section, notification of accreditation will be issued by the Chief Counsel and will constitute authority to prepare, present, and prosecute claims before an agency of original jurisdiction or the Board of Veterans' Appeals. If the Chief Counsel determines that the prospective representative, agent, or attorney does not meet the requirements for accreditation, notification will be issued by the Chief Counsel concerning the reasons for disapproval, an opportunity to submit additional information, and any restrictions on further application for accreditation. If an applicant submits additional evidence, the Chief Counsel will consider such evidence and provide further notice concerning his or her final decision. The determination of the Chief Counsel regarding the qualifications of a prospective service organization representative, agent, or attorney may be appealed by the applicant to the General Counsel. Appeals must be in writing and filed with the Office of the General Counsel (022D), 810 Vermont Avenue NW., Washington, DC 20420, not later than 30 days from the date on which the Chief Counsel's decision was mailed. In deciding the appeal, the General Counsel's decision shall be limited to the evidence of record before the Chief Counsel. A decision of the General Counsel is a final agency action for purposes of review under the Administrative Procedure Act, 5 U.S.C. 701- 706.

(a) *Service Organization Representatives.* A recognized organization shall file with the Office of the General Counsel VA Form 21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. The form must be signed by the prospective representative and the organization's certifying official. For each of its accredited representatives, a recognized organization's certifying official shall complete, sign and file with the Office of the General Counsel, not later than five years after initial accreditation through that organization or the most recent recertification by that organization, VA Form 21 to certify that the representative continues to meet the criteria for accreditation specified in paragraph (a)(1), (2) and (3) of this section. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation and has demonstrated an ability to represent claimants before the VA;

(2) Is either a member in good standing or a paid employee of such organization working for it not less than 1,000 hours annually; is accredited and functioning as a representative of another recognized organization; or, in the case of a county veterans' service officer or tribal veterans' service officer recommended by a recognized State organization, meets the following criteria:

(i) Is a paid employee of the county or tribal government working for it not less than 1,000 hours annually;

(ii) Has successfully completed a course of training and an examination which have been approved by the appropriate District Chief Counsel; and

(iii) Will receive either regular supervision and monitoring or annual training to assure continued qualification as a representative in the claim process; and

(3) Is not employed in any civil or military department or agency of the United States.

(Authority: 38 U.S.C. 501(a), 5902)

(b) *Accreditation of Agents and Attorneys.*

(1) No individual may assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by VA for such purpose.

(i) For agents, the initial accreditation process consists of application to the Office of the General Counsel, self-certification of admission information concerning practice before any other court, bar, or State or Federal agency, an affirmative determination of character and fitness by VA, and a written examination.

(ii) For attorneys, the initial accreditation process consists of application to the Office of the General Counsel, self-certification of admission information concerning practice before any other court, bar, or State or Federal agency, and a determination of character and fitness. The Office of the General Counsel will presume an attorney's character and fitness to practice before VA based on State bar membership in good standing unless the Office of the General Counsel receives credible information to the contrary.

(iii) As a further condition of initial accreditation, both agents and attorneys are required to complete 3 hours of qualifying continuing legal education (CLE) during the first 12-month period following the date of initial accreditation by VA. To qualify under this subsection, a CLE course must be approved for a minimum of 3 hours of CLE credit by any State bar association and, at a minimum, must cover the following topics: representation before VA, claims procedures, basic eligibility for VA benefits, right to appeal, disability compensation (38 U.S.C. Chapter 11), dependency and indemnity compensation (38 U.S.C. Chapter 13), and pension (38 U.S.C. Chapter 15). Upon completion of the initial CLE requirement, agents and attorneys shall certify to the Office of the General Counsel in writing that they have completed qualifying CLE. Such certification shall include the title of the CLE, date and time of the CLE, and identification of the CLE provider, and shall be submitted to VA as part of the annual certification prescribed by § 14.629(b)(4).

ATTACHMENT A

(iv) To maintain accreditation, agents and attorneys are required to complete an additional 3 hours of qualifying CLE on veterans benefits law and procedure not later than 3 years from the date of initial accreditation and every 2 years thereafter. To qualify under this subsection, a CLE course must be approved for a minimum of 3 hours of CLE credit by any State bar association. Agents and attorneys shall certify completion of the post-accreditation CLE requirement in the same manner as described in § 14.629(b)(1)(iii).

(2) An individual desiring accreditation as an agent or attorney must establish that he or she is of good character and reputation, is qualified to render valuable assistance to claimants, and is otherwise competent to advise and assist claimants in the preparation, presentation, and prosecution of their claim(s) before the Department. An individual desiring accreditation as an agent or attorney must file a completed application (VA Form 21a) with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, on which the applicant submits the following:

(i) His or her full name and home and business addresses;

(ii) Information concerning the applicant's military and civilian employment history (including character of military discharge, if applicable);

(iii) Information concerning representation provided by the applicant before any department, agency, or bureau of the Federal government;

(iv) Information concerning any criminal background of the applicant;

(v) Information concerning whether the applicant has ever been determined mentally incompetent or hospitalized as a result of a mental disease or disability, or is currently under treatment for a mental disease or disability;

(vi) Information concerning whether the applicant was previously accredited as a representative of a veterans service organization and, if so, whether that accreditation was terminated or suspended by or at the request of that organization;

(vii) Information concerning the applicant's level of education and academic history;

(viii) The names, addresses, and phone numbers of three character references; and

(ix) Information relevant to whether the applicant for accreditation as an agent has any physical limitations that would interfere with the completion of a comprehensive written examination administered under the supervision of the appropriate District Chief Counsel (agents only); and

(x) Certification that the applicant has satisfied the qualifications and standards required for accreditation as prescribed by VA in this section, and that the applicant will abide by the standards of conduct prescribed by VA in § 14.632 of this part.

(3) Evidence showing lack of good character and reputation includes, but is not limited to, one or more of the following: Conviction of a felony, conviction of a misdemeanor involving fraud, bribery, deceit, theft, or misappropriation; suspension or disbarment from a court, bar, or Federal or State agency on ethical grounds; or resignation from admission to a court, bar, or Federal or State agency while under investigation to avoid sanction.

(4) As a further condition of initial accreditation and annually thereafter, each person seeking accreditation as an agent or attorney shall submit to VA information about any court, bar, or Federal or State agency to which the agent or attorney is admitted to practice or otherwise authorized to appear. Applicants shall provide identification numbers and membership information for each jurisdiction in which the applicant is admitted and a certification that the agent or attorney is in good standing in every jurisdiction in which admitted. After accreditation, agents and attorneys must notify VA within 30 days of any change in their status in any jurisdiction in which they are admitted to appear.

(5) VA will not accredit an individual as an agent or attorney if the individual has been suspended by any court, bar, or Federal or State agency in which the individual was previously admitted and not subsequently reinstated. However, if an individual remains suspended in a jurisdiction on grounds solely derivative of suspension or disbarment in another jurisdiction to which he or she has been subsequently reinstated, the General Counsel or his or her designee may evaluate the facts and grant or reinstate accreditation as appropriate.

(6) After an affirmative determination of character and fitness for practice before the Department, applicants for accreditation as a claims agent must achieve a score of 75 percent or more on a written examination administered by VA as a prerequisite to accreditation. No applicant shall be allowed to sit for the examination more than twice in any 6-month period.

(c) ***Representation by Attorneys, Law Firms, Law Students and Paralegals.***

(1) After accreditation by the Office of the General Counsel, an attorney may represent a claimant upon submission of a VA Form 21-22a, "Appointment of Attorney or Agent as Claimant's Representative."

(2) If the claimant consents in writing, an attorney associated or affiliated with the claimant's attorney of record or employed by the same legal services office as the attorney of record may assist in the representation of the claimant.

(3) A legal intern, law student, or paralegal may not be independently accredited to represent claimants under this paragraph. A legal intern, law student, or certified paralegal may assist in the preparation, presentation, or prosecution of a claim, under the direct supervision of an attorney of record designated under § 14.631(a), if the claimant's written consent is furnished to VA. Such consent must specifically state that participation in all aspects of the claim by a legal intern, law student, or paralegal furnishing written authorization from the attorney of record is authorized. In addition, suitable authorization for access to the claimant's records must be provided in order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. The written consent must include the name of the veteran, or the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable VA file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable VA records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. The signed consent must be submitted to the agency of original jurisdiction and maintained in the claimant's file. In the case of appeals before

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the Board in Washington, DC, the signed consent must be submitted to: Director, Office of Management, Planning and Analysis (014), Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. In the case of hearings before a Member or Members of the Board at VA field facilities, the consent must be presented to the presiding Member of the hearing.

(4) Unless revoked by the claimant, consent provided under paragraph (c)(2) or paragraph (c)(3) of this section shall remain effective in the event the claimant's original attorney is replaced as attorney of record by another member of the same law firm or an attorney employed by the same legal services office.

NOTE TO § 14.629:

A legal intern, law student, paralegal, or veterans service organization support-staff person, working under the supervision of an individual designated under § 14.631(a) as the claimant's representative, attorney, or agent, may qualify for read-only access to pertinent Veterans Benefits Administration automated claims records as described in §§ 1.600 through 1.603 in part 1 of this chapter.

(Authority: 38 U.S.C. 501(a), 5904)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0018 and 2900-0605)

[53 FR 52421, Dec. 28, 1988, as amended at 55 FR 38057, Sept. 17, 1990; 68 FR 8545, Feb. 24, 2003; 71 FR 28586, May 17, 2006; 72 FR 58012, Oct. 12, 2007; 73 FR 29871, May 22, 2008; 73 FR 29871, May 22, 2008; 81 FR 32649, May 24, 2016; 82 FR 6272, Jan. 19, 2017; 82 FR 26753, June 9, 2017]

ATTACHMENT A

38 CFR 14.636 - Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

§ 14.636 Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

(a) ***Applicability of rule.*** The provisions of this section apply to the services of accredited agents and attorneys with respect to benefits under laws administered by VA in all proceedings before the agency of original jurisdiction or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) ***Who may charge fees for representation.*** Only accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representation. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized under § 14.630 of this part are not permitted to receive fees. An agent or attorney who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as an agent or attorney in accordance with § 14.631 of this part in his or her individual capacity as an accredited agent or attorney.

(c) ***Circumstances under which fees may be charged.*** Except as noted in paragraph (c)(2) and in paragraph (d) of this section, agents and attorneys may charge claimants or appellants for representation provided: after an agency of original jurisdiction has issued a decision on a claim or claims, including any claim to reopen under 38 CFR 3.156 or for an increase in rate of a benefit; a Notice of Disagreement has been filed with respect to that decision on or after June 20, 2007; and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(1) Agents and attorneys may charge fees for representation provided with respect to a request for revision of a decision of an agency of original jurisdiction under 38 U.S.C. 5109A or the Board of Veterans' Appeals under 38 U.S.C. 7111 based on clear and unmistakable error if a Notice of Disagreement was filed with respect to the challenged decision on or after June 20, 2007, and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(2) In cases in which a Notice of Disagreement was filed on or before June 19, 2007, agents and attorneys may charge fees only for services provided after both of the following conditions have been met:

(i) A final decision was promulgated by the Board with respect to the issue, or issues, involved in the appeal; and

(ii) The agent or attorney was retained not later than 1 year following the date that the decision by the Board was promulgated. (This condition will be considered to have been met with respect to all successor agents or attorneys acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(3) Except as noted in paragraph (i) of this section and § 14.637(d), the agency of original jurisdiction that issued the decision identified in a Notice of Disagreement shall determine whether an agent or attorney is eligible for fees under this section. The agency of original jurisdiction's eligibility determination is a final adjudicative action and may be appealed to the Board.

(d) ***Exceptions*** -

(1) ***Chapter 37 loans.*** With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) ***Payment of fee by disinterested third party.***

(i) An agent or attorney may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. An organization, governmental entity, or other third party is considered disinterested only if the entity or individual does not stand to benefit financially from the successful outcome of the claim. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: “I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid.”

(e) ***Fees permitted.*** Fees permitted for services of an agent or attorney admitted to practice before VA must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

ATTACHMENT B

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained;

(7) Rates charged by other representatives for similar services; and

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved.

(f) ***Presumptions.*** Fees which do not exceed 20 percent of any past-due benefits awarded as defined in paragraph (h)(3) of this section shall be presumed to be reasonable. Fees which exceed 33 1/3 percent of any past-due benefits awarded shall be presumed to be unreasonable. These presumptions may be rebutted through an examination of the factors in paragraph (e) of this section establishing that there is clear and convincing evidence that a fee which does not exceed 20 percent of any past-due benefits awarded is not reasonable or that a fee which exceeds 33 1/3 percent is reasonable in a specific circumstance.

(g) ***Fee agreements.*** All agreements for the payment of fees for services of agents and attorneys (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the agent or attorney.

(1) To be valid, a fee agreement must include the following:

(i) The name of the veteran,

(ii) The name of the claimant or appellant if other than the veteran,

(iii) The name of any disinterested third-party payer (see paragraph (d)(2) of this section) and the relationship between the third-party payer and the veteran, claimant, or appellant,

(iv) The applicable VA file number, and

(v) The specific terms under which the amount to be paid for the services of the attorney or agent will be determined.

(2) Fee agreements must also clearly specify if VA is to pay the agent or attorney directly out of past due benefits. A direct-pay fee agreement is a fee agreement between the claimant or appellant and an agent or attorney providing for payment of fees out of past-due benefits awarded directly to an agent or attorney. A fee agreement that does not clearly specify that VA is to pay the agent or attorney out of past-due benefits or that specifies a fee greater than 20 percent of past-due benefits awarded by VA shall be considered to be an agreement in which the agent or attorney is responsible for collecting any fees for representation from the claimant without assistance from VA.

(3) A copy of a direct-pay fee agreement, as defined in paragraph (g)(2) of this section, must be filed with the agency of original jurisdiction within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Only fee agreements that do not provide for the direct payment of fees, documents related to review of fees under paragraph (i) of this section, and documents related to review of expenses under § 14.637, may be filed with the Office of the General Counsel. All documents relating to the adjudication of a claim for VA benefits, including any correspondence, evidence, or argument, must be filed with the agency of original jurisdiction, Board of Veterans' Appeals, or other VA office as appropriate.

(h) ***Payment of fees by Department of Veterans Affairs directly to an agent or attorney from past-due benefits.***

(1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an agent or attorney may enter into a fee agreement providing that payment for the services of the agent or attorney will be made directly to the agent or attorney by VA out of any past-due benefits awarded in any proceeding before VA or the United States Court of Appeals for Veterans Claims. VA will charge and collect an assessment out of the fees paid directly to agents or attorneys from past-due benefits awarded. The amount of such assessment shall be equal to five percent of the amount of the fee required to be paid to the agent or attorney, but in no event shall the assessment exceed $100. Such an agreement will be honored by VA only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (*See* 38 U.S.C. 5304(a) and 38 38 CFR 3.750)

(2) For purposes of this paragraph (h), a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph (h), “past-due benefits” means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by a VA agency of original jurisdiction or the Board of Veterans' Appeals or the lump sum payment that represents the total amount of recurring cash payments that accrued between the effective date of the award,

ATTACHMENT B

as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the agent or attorney represents the claimant or appellant in that phase of the claim, the agent or attorney will be paid a supplemental payment based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the agent or attorney, the agent's or attorney's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) As required by paragraph (g)(3) of this section, the agent or attorney must file with the agency of original jurisdiction within 30 days of the date of execution a copy of the agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due.

(i) ***Motion for review of fee agreement.*** Before the expiration of 120 days from the date of the final VA action, the Office of the General Counsel may review a fee agreement between a claimant or appellant and an agent or attorney upon its own motion or upon the motion of the claimant or appellant. The Office of the General Counsel may order a reduction in the fee called for in the agreement if it finds by a preponderance of the evidence, or by clear and convincing evidence in the case of a fee presumed reasonable under paragraph (f) of this section, that the fee is unreasonable. The Office of the General Counsel may approve a fee presumed unreasonable under paragraph (f) of this section if it finds by clear and convincing evidence that the fee is reasonable. The Office of the General Counsel's review of the agreement under this paragraph will address the issues of eligibility under paragraph (c) of this section and reasonableness under paragraph (e) of this section. The Office of the General Counsel will limit its review and decision under this paragraph to the issue of reasonableness if another agency of original jurisdiction has reviewed the agreement and made an eligibility determination under paragraph (c) of this section. Motions for review of fee agreements must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable VA file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is unreasonable and must be accompanied by all evidence the moving party desires to submit.

(1) A claimant's or appellant's motion for review of a fee agreement must be served on the agent or attorney and must be filed at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel not later than 30 days from the date on which the claimant or appellant served the motion on the agent or attorney. Such responses must be served on the claimant or appellant. The claimant or appellant then has 15 days from the date on which the agent or attorney served a response to file a reply with the Office of the General Counsel. Such replies must be served on the agent or attorney.

(2) The Deputy Chief Counsel with subject-matter jurisdiction shall initiate the Office of the General Counsel's review of a fee agreement on its own motion by serving the motion on the agent or attorney and the claimant or appellant. The agent or attorney may file a response to the motion, with any relevant evidence, with the Office of the General Counsel (022D), 810 Vermont Avenue, NW., Washington, DC 20420, not later than 30 days from the date on which the Office of the General Counsel served the motion on the agent or attorney. Such responses must be served on the claimant or appellant.

(3) The Office of the General Counsel shall close the record in proceedings to review fee agreements 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Deputy Chief Counsel with subject-matter jurisdiction may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. The Deputy Chief Counsel shall forward the record and a recommendation to the General Counsel or his or her designee for a final decision. Unless either party files a Notice of Disagreement with the Office of the General Counsel, the attorney or agent must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the Office of the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(j) In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 of this chapter to terminate the agent's or attorney's accreditation to practice before VA.

(k) Notwithstanding provisions in this section for closing the record at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals shall be initiated and processed using the procedures in 38 CFR parts 19 and 20.. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 19.9 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.

(Authority: 38 U.S.C. 5902, 5904, 5905)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0605.)

[73 FR 29875, May 22, 2008, as amended at 80 FR 81193, Dec. 29, 2015; 82 FR 26754, June 9, 2017]

ATTACHMENT B

Obtain VA Attorney Accreditation

By Tammy M. Kudialis, Esq.

Main Checklist

Step 1: Understand when Veterans Administration (VA) accreditation is required.

In order to independently assist claimants in the preparation, presentation, and prosecution of claims for VA benefits, an individual must be accredited by the VA. An attorney's practice of advising veterans about VA benefits not involving a specific claim does not require accreditation. However, if an attorney advises clients regarding eligibility requirements, the attorney must be accredited. This advice constitutes preparation of a claim even if the attorney does not file the claim because it is given in regard to a specific application for benefits rather than general advice not related to a specific claim.

VA regulations allow interns and paralegals to *assist* in preparation, presentation, and prosecution of claims for VA benefits but only under the *direct supervision of the attorney of record and with the specific written consent of the claimant.* 38 CFR 14.629(c)(3).

VA attorney accreditation information can be found at http://www4.va.gov/ogc/accreditation.asp.

Step 2: Apply for accreditation.

You must fill out VA Form 21a, Application for Accreditation as a Claims Agent or Attorney. Once completed, Form VA 21a may be submitted by facsimile to (202) 495-5457, by e-mail to OGCAccreditationMailbox@va.gov, or by regular mail to Department of Veterans Affairs, Office of General Counsel, 810 Vermont Ave, NW, Washington DC, 20420.

Attorney applicants are not required to take an examination administered by the VA as a prerequisite of accreditation, but they must be in good standing with a state bar association and complete a qualifying continuing legal education (CLE) during the first 12-month period following the date of initial accreditation by the VA. 38 CFR 14.629(b). The VA will generally accept a state bar's character and fitness determination as fitness to practice before the VA. 38 CFR 14.629(b)(ii).

Step 3: Wait for notification of accreditation.

The VA has a stated goal that it will make attorney accreditation determinations

on complete applications in less than 30 days. However, recent applicants have waited more than 60 days to receive approval. The VA will send a letter via U.S. mail notifying the applicant of their accreditation determination. Initial approval is based on attorney certification of membership in good standing of the bar of the highest court of a state or territory of the United States.

If the applicant obtains accreditation, his or her name can be found online at http://www4.va.gov/ogc/apps/accreditation/index.asp.

Step 4: Satisfy the CLE requirement.

VA regulations require completion of qualifying CLE during the first 12-month period following the date of initial accreditation by VA. 38 CFR 14.629(b). This regulation also requires an additional three hours of qualifying CLE for every subsequent two-year period. Pursuant to 38 CFR 14.629(b)(1)(iii) and (iv), a qualifying CLE course must be approved for a minimum of three hours of CLE credit by any state bar association.

VA regulations do not specify a particular form of proof for verifying attendance at qualifying CLE. Instead, regulations require that accredited agents and attorneys certify in writing to the VA's Office of the General Counsel that they have completed qualifying CLE. The certification must include the title of the CLE, the date and time of the CLE, and identification of the CLE provider. See http://www4.va.gov/ogc/accred_faqs.asp.

Use this kit when you plan to independently assist claimants in the preparation, presentation, or prosecution of claims for VA benefits. *Using these materials is not a substitute for the attorney's independent judgment, drafting, and research.*

Other Resources
United States Department of Veterans Affairs
Department of Veterans Affairs Forms
Accreditation Frequently Asked Questions

VA ACCREDITATION PROGRAM

HOW TO APPLY FOR VA ACCREDITATION AS AN ATTORNEY OR CLAIMS AGENT

WHAT AN APPLICANT SHOULD KNOW ABOUT APPLYING FOR DEPARTMENT OF VETERANS AFFAIRS (VA) ACCREDITATION AS AN ATTORNEY OR CLAIMS AGENT

What is the VA accreditation program?

- The VA accreditation program exists to ensure that Veterans and their family members receive appropriate representation on their VA benefits claims. VA accreditation is for the sole and limited purpose of preparing, presenting, and prosecuting claims before VA.

When is VA accreditation required?

- An individual generally must first be accredited by VA to assist a claimant in the preparation, presentation, and prosecution of a claim for VA benefits—even without charge.[1] VA accredits three types of individuals for this purpose:
  - Representatives of VA-recognized veterans service organizations (VSO)[2]
  - Attorneys (accredited in their individual capacity, not through a law firm)
  - Claims agents (accredited in their individual capacity, not through an organization)

How do I apply to become a VA-accredited attorney or claims agent?

Step 1: > Complete VA Form 21a

- Be sure to fill out all portions of the form.

Step 2: > It is recommended that you attach any necessary documents to VA Form 21a

- We recommend that you attach a recently dated certificate of good standing from all state bars, courts, or Federal or state agencies to which you are admitted. (This applies to both attorneys and claims agents).
- On VA Form 21a, if you answer "yes" to question 13A, 14A, 15A, 16, 17, 18, 20, 22, 23A or 24A, please attach a detailed explanation of the surrounding circumstances.

Step 3: > Submit your VA Form 21a and any attachments to OGC (Please only choose 1 method of submission)**:**

- Mail: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC20420.
- Fax: (202) 273-0197.

[1] VA regulations allow a one-time exception to this general rule, which allows VA to authorize a person to prepare, present, and prosecute one claim without accreditation. The assistance must be without cost to the claimant, is subject to the laws governing representation, and may not be used to evade the accreditation requirements.

[2] To apply for accreditation as a VSO representative, please contact the organization's certifying official.

FAQs

Q1: How long will it take to process my application?

A1: Attorney applications generally take between 60 to 120 days from submission. Because there are more steps involved with claim agent applications, those applications take, on average, 1 year to process.

Q2: If I am accredited as an attorney or claims agent, what must I do to maintain my VA accreditation?

A2: You must: (1) Complete 3 hours of qualifying continuing legal education (CLE) requirements during the first 12-month period following the date of initial accreditation by VA, and an additional 3 hours no later than 3 years from the date of your accreditation, and every 2 years thereafter; (2) Provide a copy of your training certificate or certify in writing to VA's Office of the General Counsel your completion of the qualifying CLE, including the CLE title, date, time, and provider; (3) Submit an annual certification of good standing for any court, bar, or Federal or State agency to which you are admitted to practice.

Q3: Can I be accredited to help veterans with their claims if I am a federal employee?

A3: No. An employee of the Federal government generally cannot provide representational services before VA. However, if you are currently serving in a Reserve component of the Armed Forces, you are not considered a Federal employee as long as you are not on active duty or active duty for training.

Q4: May an accredited attorney or claims agent charge fees for preparing an initial VA claim?

A4: No. An accredited attorney or claims agent may generally charge claimants a fee only **after** an agency of original jurisdiction (e.g., a VA regional office) has issued a decision on a claim, a notice of disagreement has been filed, and the attorney or agent has filed a power of attorney and a fee agreement with VA.

Q5: If I advise veterans and their family members on VA benefit claims but do not file their applications for them, do I need to be accredited?

A5: Yes. You must be accredited to aid in the preparation, presentation, or prosecution of a VA benefit claim. Advising a claimant on a specific benefit claim or directing the claimant on how to fill out the application, even if you never put pen to paper, is considered claims preparation.

Q6: Can I use my VA accreditation to as a method to advertise or promote my other business interests?

A6: No. VA accredits individuals solely for purposes of ensuring VA claimants receive responsible, qualified representation when preparing presenting and prosecuting claims before the Department. You may not use your VA accreditation for promoting any other businesses, including financial services, referral businesses, or homecare businesses. If VA determines that an accredited agent or attorney is using VA accreditation for an improper purpose, VA may suspend or cancel the individual's accreditation. VA may also collaborate with state law enforcement authorities in the event that it is suspected that the individual's actions may have implications under State laws.

Q7: Are there standards of conduct that I must follow as an accredited individual?

A7: Yes. You must abide by the standards of conduct listed in 38 C.F.R. § 14.632 and summarized on the fact sheet labeled "How to File a Complaint Regarding Representation."

Q8: If I violate the standard of conduct or engage in any other unlawful or unethical conduct, what will happen?

A8: If VA determines that an accredited individual has violated the standard of conduct, VA may suspend or cancel his or her accreditation. VA is authorized to report the suspension or cancelation of VA accreditation to other bar associations, courts, or agencies to which you are admitted as well as employing entities. In addition, VA may collaborate with state law enforcement authorities in the event that it is suspected that the individual's actions may have implications under State laws.

Q9: What if I have questions regarding my VA accreditation?

A9: You may submit inquiries regarding VA accreditation to ogcaccreditationmailbox@va.gov.

For More Information: Visit the VA Office of the General Counsel website at:
http://www.va.gov/ogc/accreditation.asp

ATTACHMENT D

Form Approved, OMB No. 2900-0605
Respondent Burden: 45 minutes

Department of Veterans Affairs

APPLICATION FOR ACCREDITATION AS A CLAIMS AGENT OR ATTORNEY

INSTRUCTIONS: Please provide the applicable personal and employment data, then read each question and provide complete answers to all questions that apply to you. If additional space is needed, please attach a supplementary page(s). After providing all of the requested information, sign and date your application. Unsigned or incomplete applications will not be processed. Send completed applications to: Department of Veterans Affairs, Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, D.C. 20420. After an affirmative determination of character and fitness for practice before the VA, claims agent applicants must achieve a score of 75 percent or more on a written examination administered VA as a prerequisite to acreditation. Claims agent applicants will be given written instructions for arranging to take the examination if initial eligibility is established. Attorney applicants must be in good standing with a State bar and are not required to take an examination administered by VA as a prerequisite to accreditation. Denials of initial eligibility for accreditation as a claims agent or attorney are final and are not subject to appeal, but applicants may reapply.

1. LAST NAME - FIRST NAME - MIDDLE NAME	2A. HOME ADDRESS *(street, city, state, ZIP Code)*	2B. PHONE NUMBER *(Including area code)* 2C. E-MAIL ADDRESS *(If available)*

3A. EMPLOYMENT STATUS	3B. WORK ADDRESS *(street, city, state, ZIP Code)*	5. PLACE OF BIRTH *(City, State, Country)*	
☐ EMPLOYED *(Complete Item 3B)* ☐ UNEMPLOYED *(Skip Item 3B)* ☐ SELF-EMPLOYED *(Skip Item 3B)* ☐ STUDENT *(Skip Item 3B)*		6. BRANCH OF SERVICE	7. CHARACTER OF DISCHARGE
	4. DATE OF BIRTH *(Month, day, year)*	8. LIST DATES OF ALL ACTIVE MILITARY SERVICE	

9. EMPLOYMENT *(Provide information for past five years - use additional sheets if necessary)*

A. EMPLOYER NAME AND ADDRESS *(street, city, state, ZIP Code)*	B. EMPLOYER PHONE NO. *(Include area code)*	C. POSITION TITLE	D. EMPLOYMENT DATES *(Month/Day/Year)*	E. NAME OF SUPERVISOR
	EXTENSION:			
	EXTENSION:			
	EXTENSION:			

10. EDUCATION *(Provide information for high school graduation and list all colleges or universities attended and degrees received)*

A. NAME AND ADDRESS OF INSTITUTION *(street, city, state, ZIP Code)*	B. DATES ATTENDED *(Month/Year)*	C. DEGREE RECEIVED/MAJOR

ATTACHMENT E

11A. ARE YOU CURRENTLY A MEMBER IN GOOD STANDING OF THE BAR OF THE HIGHEST COURT OF A STATE OR TERRITORY OF THE UNITED STATES?	11B. IF "YES," LIST EACH JURISDICTION IN WHICH ADMITTED, THE DATE OF ADMISSION, AND MEMBERSHIP OR REGISTRATION NUMBER.		
	JURISDICTION IN WHICH ADMITTED	**DATE OF ADMISSION**	**MEMBERSHIP OR REGISTRATION NO.**
☐ YES ☐ NO			

12A. ARE YOU CURRENTLY ADMITTED TO PRACTICE BEFORE ANY STATE OR FEDERAL AGENCY OR ANY FEDERAL COURT?	12B. IF "YES," LIST EACH AGENCY OR FEDERAL COURT TO WHICH ADMITTED, THE DATE OF ADMISSION, AND MEMBERSHIP OR REGISTRATION NUMBER.		
	AGENCY IN WHICH ADMITTED	**DATE OF ADMISSION**	**MEMBERSHIP OR REGISTRATION NO.**
☐ YES ☐ NO			

BACKGROUND INFORMATION: Truthfulness and candor are essential elements of good moral character and reputation relevant to practice before the Department of Veterans Affairs. It is in your best interest; therefore, to provide the Office of the General Counsel with all available information in responding to the questions asked below. ***For each question answered "YES," provide a detailed statement setting forth all relevant facts and dates along with copies of relevant documents.***

Your responses must be updated as necessary prior to your accreditation. Failure to disclose the requested information may result in denial of accreditation under 38 C.F. R. § 14.629 or in disciplinary proceedings under 38 C.F.R. § 14.633 if you are already accredited.

For questions 13 through 15 your answers should include convictions resulting from a plea of nolo contendere *(no contest)*, but omit (1) traffic fines of $300 or less, (2) any violation of law committed before your 16th birthday, and (3) any conviction for which the record was expunged under Federal or state law.

13A. HAVE YOU EVER BEEN CONVICTED, IMPRISONED, SENTENCED TO PROBATION OR PAROLE? *(Include felonies, firearms or explosives violations, misdemeanors, and all other offenses.)* ☐ YES ☐ NO	13B. IF "YES," PROVIDE THE DATE, EXPLANATION OF THE VIOLATION, PLACE OF OCCURRENCE, AND THE NAME AND ADDRESS OF THE MILITARY AUTHORITY OR COURT INVOLVED.
14A. HAVE YOU EVER BEEN CONVICTED, BY A MILITARY COURT-MARTIAL? *(If no military service, answer "NO,")* ☐ YES ☐ NO	14B. IF "YES," PROVIDE THE DATE, EXPLANATION OF THE VIOLATION, PLACE OF OCCURRENCE, AND THE NAME AND ADDRESS OF THE MILITARY AUTHORITY OR COURT INVOLVED.
15A. ARE YOU NOW UNDER CHARGES FOR ANY VIOLATION OF LAW? ☐ YES ☐ NO	15B. IF "YES," PROVIDE THE DATE, EXPLANATION OF THE VIOLATION, PLACE OF OCCURENCE, AND THE NAME AND ADDRESS OF THE MILITARY AUTHORITY OR COURT INVOLVED.

16. HAVE YOU EVER BEEN SUSPENDED, EXPELLED OR ASKED TO RESIGN OR WITHDRAW FROM ANY EDUCATIONAL INSTITUTION, OR HAVE YOU RESIGNED OR WITHDRAWN FROM ANY SUCH INSTITUTION IN TIME TO AVOID DISCIPLINE, SUSPENSION, OR EXPULSION FOR CONDUCT INVOLVING DISHONESTY, FRAUD, MISREPRESENTATION, OR DECEIT?

☐ YES ☐ NO

17. HAVE YOU EVER BEEN DISCIPLINED, REPRIMANDED, SUSPENDED OR TERMINATED IN ANY JOB FOR CONDUCT INVOLVING DISHONESTY, FRAUD, MISREPRESENTATION, DECEIT, OR ANY VIOLATION OF FEDERAL OR STATE LAWS OR REGULATIONS?

☐ YES ☐ NO

18. HAVE YOU EVER RESIGNED, RETIRED FROM, OR QUIT A JOB WHEN YOU WERE UNDER INVESTIGATION OR INQUIRY FOR CONDUCT WHICH COULD HAVE BEEN CONSIDERED AS INVOLVING DISHONESTY, FRAUD, MISREPRESENTATION, DECEIT, OR VIOLATION OF FEDERAL OR STATE LAWS OR REGULATIONS, OR AFTER RECEIVING NOTICE OR BEING ADVISED OF POSSIBLE INVESTIGATION, INQUIRY, OR DISCIPLINARY ACTION FOR SUCH CONDUCT?

☐ YES ☐ NO

19. HAVE YOU EVER FUNCTIONED AS A REPRESENTATIVE, AGENT, OR ATTORNEY BEFORE A STATE OR FEDERAL DEPARTMENT OR AGENCY?

☐ YES ☐ NO

ATTACHMENT E

20. HAVE YOU EVER BEEN REPRIMANDED, SUSPENDED, OR BARRED FROM PRACTICE BEFORE ANY COURT, BAR, OR FEDERAL OR STATE AGENCY, OR HAVE YOU RESIGNED MEMBERSHIP IN THE BAR OF ANY COURT, OR FEDERAL OR STATE AGENCY TO AVOID REPRIMAND, SUSPENSION, OR DISBARMENT FOR CONDUCT INVOLVING DISHONESTY, FRAUD, MISREPRESENTATION, OR DECEIT?

☐ YES ☐ NO

21. HAVE YOU EVER APPLIED FOR ACCREDITATION BY THE DEPARTMENT OF VETERANS AFFAIRS AS A REPRESENTATIVE OF A VETERANS SERVICE ORGANIZATION, AGENT, OR ATTORNEY?

☐ YES ☐ NO

22. IF YOU WERE PREVIOUSLY ACCREDITED AS A REPRESENTATIVE OF A VETERANS SERVICE ORGANIZATION, WAS THAT ACCREDITATION TERMINATED OR SUSPENDED AT THE REQUEST OF THE ORGANIZATION?

☐ YES ☐ NO

23A. DO YOU HAVE ANY CONDITION OR IMPAIRMENT (SUCH AS SUBSTANCE ABUSE, ALCOHOL ABUSE, OR A MENTAL, EMOTIONAL, NERVOUS, OR BEHAVIORAL DISORDER OR CONDITION) THAT IN ANY WAY CURRENTLY AFFECTS, OR, IF UNTREATED OR NOT OTHERWISE ACTIVELY MANAGED, COULD AFFECT YOUR ABILITY TO REPRESENT CLAIMANTS IN A COMPETENT AND PROFESSIONAL MANNER?

☐ YES ☐ NO

23B. IF YOU ANSWERED "YES," TO ITEM 23A, PLEASE DESCRIBE THE CONDITION OR IMPAIRMENT, AND ANY TREATMENT YOU RECEIVED IN THE PAST YEAR OR RECEIVE NOW. IF YOU HAVE BEEN UNDER THE CARE OR SUPERVISION OF A HEALTH-CARE PROFESSIONAL, SUBMIT A STATEMENT BY THE HEALTH-CARE PROFESSIONAL SPECIFYING YOUR CURRENT DIAGNOSIS, TREATMENT REGIMEN, AND PROGNOSIS, AND ITS BEARING ON YOUR FITNESS TO REPRESENT CLAIMANTS BEFORE THE DEPARTMENT OF VETERANS AFFAIRS.

24A. DO YOU HAVE ANY PHYSICAL LIMITATIONS WHICH WOULD INTERFERE WITH YOUR COMPLETION OF A WRITTEN EXAMINATION ADMINISTERED UNDER THE SUPERVISION OF A VA REGIONAL COUNSEL *(Claims agent applicants only)* ?

☐ YES ☐ NO

24B. IF "YES," PLEASE STATE THE NATURE OF SUCH LIMITATIONS AND PROVIDE DETAILS OF ANY SPECIAL ACCOMMODATIONS DEEMED NECESSARY.

25. CHARACTER REFERENCES

(Please provide the full names, addresses, and current phone numbers of three individuals who are not immediate family members and who have personal knowledge of your character and qualifications to serve as a claims agent or attorney.)

NAME	ADDRESS	PHONE NUMBER *(Include area code)*	RELATIONSHIP TO APPLICANT
		EXTENSION:	
		EXTENSION:	
		EXTENSION:	

CERTIFICATION: I CERTIFY THAT the statements and entries on this form are true and correct. *(A willfully false statement or certification is a criminal offense and is punishable by law [18 U.S.C. 1001]).*

SIGNATURE OF APPLICANT *(Ink Signature)*	DATE SIGNED

ATTACHMENT E

PRIVACY ACT INFORMATION: The information requested on this form is solicited under Section 5904, Title 38, United States Code and Section 14.629(b) of Title 38, Code of Federal Regulations. It will enable VA to determine initial eligibility for accreditation as a claims agent or attorney to represent claimants before VA. Any information on this form may be disclosed outside VA only if authorized under the Privacy Act, including the routine uses identified in the VA system of records, 01VA022, Current and Former Accredited Representative, Claims Agent, Attorney, and Representative, Claims Agent, and Attorney Applicant and Rejected Applicant Records--VA, published in the Federal Register. Routine disclosures may be made for the following purposes: civil or criminal law enforcement or investigation; congressional communications; communications relevant to the delivery of VA benefits; verification of identity and status; litigation conducted by the Department of Justice; and communication with employing entities and governmental licensing organizations concerning information relevant to employment or licensing of a prospective, present, or former representative, claims agent or attorney. Providing the requested information is voluntary; however, failure to furnish information may delay or prevent action on the application.

RESPONDENT BURDEN: VA may not conduct or sponsor, and respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding this burden estimate or any other aspect of this collection of information send your comments to VA Clearance Officer (005R1B), 810 Vermont Avenue, NW, Washington, D.C. 20420. Please do not send applications for accreditation to this address.

ATTACHMENT E

OMB Control No. 2900-0321
Respondent Burden: 5 Minutes
Expiration Date: 08/31/2018

Department of Veterans Affairs

1. VA FILE NO(S) *(Include prefix)*

APPOINTMENT OF INDIVIDUAL AS CLAIMANT'S REPRESENTATIVE

Note - If you would prefer to have a service organization assist you with your claim, you may use VA Form 21-22, "Appointment of Veterans Service Organization As Claimant's Representative."

PRIVACY ACT NOTICE: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA, published in the Federal Register. Your obligation to respond is voluntary. However, failure to respond provide the requested information could impede the recognition of your representative and/or identification of disclosable records. Except for information protected by 38 U.S.C. 7332, your representative is not prohibited from redisclosing records. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to recognize the individuals appointed by claimants to act on their behalf in the preparation, presentation, and prosecution of claims for VA benefits (38 U.S.C. 5902, 5903, and 5904) and for those individuals to accept appointment. We will also use the information to verify consent for disclosure of VA records to the appointed representative (38 U.S.C. 5701(b) and 7332) Title 38, United States Code, allows us to ask for this information. We estimate that claimants and individuals appointed for purposes of representation will each need an average of 5 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. A Valid OMB control number can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

2. NAME OF CLAIMANT (*Veteran, guardian, beneficiary, dependent, or next of kin*)	3. ADDRESS OF CLAIMANT (*No. and street or rural route, city or P.O., State and ZIP Code*)
4. LAST NAME - FIRST NAME - MIDDLE NAME OF VETERAN	5. SERVICE NUMBERS

6. BRANCH OF SERVICE

☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ MARINE CORPS ☐ COAST GUARD ☐ OTHER (*Specify* _____)

7A. NAME OF INDIVIDUAL APPOINTED AS CLAIMANT'S REPRESENTATIVE

7B. INDIVIDUAL IS *(check appropriate box)*

☐ ATTORNEY ☐ AGENT ☐ INDIVIDUAL PROVIDING REPRESENTATION UNDER SECTION 14.630 *(*See required statement below. Signatures are required in Items 7C and 7D)*

☐ SERVICE ORGANIZATION REPRESENTATIVE (*Specify organization below*)

_____

***INDIVIDUALS PROVIDING REPRESENTATION UNDER SECTION 14.630**

(Skip to Item 8, if the box for "Individual Providing Representation Under Section 14.630" was not checked in Item 7B)

The appointment of the individual named in Item 7A (the representative) authorizes the individual to represent the claimant named in Item 2 for a particular claim pursuant to the provisions of 38 CFR 14.630. By our signatures below, we, the representative and the claimant, attest that no compensation will be charged or paid for the individual named in Item 7A.

7C. SIGNATURE OF REPRESENTATIVE NAMED IN ITEM 7A

7D. SIGNATURE OF CLAIMANT NAMED IN ITEM 2

8. ADDRESS OF INDIVIDUAL APPOINTED AS CLAIMANT'S REPRESENTATIVE *(No. and street or rural route, city or P.O., State, and ZIP code)*

(Continued on Reverse)

ATTACHMENT F

9. AUTHORIZATION FOR REPRESENTATIVE'S ACCESS TO RECORDS PROTECTED BY SECTION 7332, TITLE 38, U.S.C.

Unless I check the box below, I do not authorize VA to disclose to the individual named in Item 7A any records that may be in my file relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia.

☐ I authorize the VA facility having custody of my VA claimant records to disclose to the individual named in Item 7A all treatment records relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia. Redisclosure of these records by my representative, other than to VA or the Court of Appeals for Veterans Claims, is not authorized without my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the individual named in Item 7A, either by explicit revocation or the appointment of another representative.

10. LIMITATION OF CONSENT. My consent in Item 9 for the disclosure of records relating to treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), or sickle cell anemia is limited as follows:

11. AUTHORIZATION FOR REPRESENTATIVE TO ACT ON CLAIMANT'S BEHALF TO CHANGE CLAIMANT'S ADDRESS

Unless I check the box below, I do not authorize the individual named in Item 7A to act on my behalf to change my address in my VA records.

☐ I authorize the individual named in Item 7A to act on my behalf to change my address in my VA records. This authorization does not extend to any other individual with out my further written consent. This authorization will remain in effect until the earlier of the following events: (1) I revoke this authorization by filing a written revocation with VA; or (2) I revoke the appointment of the individual named in Item 7A, either by explicit revocation or the appointment of another representative.

CONDITIONS OF APPOINTMENT

I, the claimant named in Item 2, hereby appoint the individual named in Item 7A as my representative to prepare,present, and prosecute my claims for any and all benefits from the Department of Veterans Affairs (VA) based on the service of the veteran named in Item 4. If the individual named in Item 7A is an accredited agent or attorney, the scope of representation provided before VA may be limited by the agent or attorney as indicated below in Item 15. If the individual indicated in Item 7A is providing representation under 14.630, such representation is limited to a particular claim only. I authorize VA to release any and all of my records (other than as provided in Items 9 and 10) to that individual appointed as my representative, and if the individual in Item 7A is an accredited agent or attorney, this authorization includes the following individually named administrative employees of my representative:

Signed and accepted subject to the foregoing conditions.

12. SIGNATURE OF CLAIMANT	13. DATE OF SIGNATURE	14. CLAIMANT'S RELATIONSHIP TO VETERAN *(If other than the veteran)*

15. LIMITATIONS ON REPRESENTATION - AGENTS OR ATTORNEYS ONLY *(Unless limited by an agent or attorney, this power of attorney revokes all previously existing powers of attorney)*

16. SIGNATURE OF REPRESENTATIVE	17. DATE OF SIGNATURE

FEES: Section 5904, Title 38, United States Code, contains provisions regarding fees that may be charged, allowed, or paid for services of agents or attorneys in connection with a proceeding before the Department of Veterans Affairs with respect to benefits under laws administered by the Department.

ATTACHMENT F

VA ACCREDITATION PROGRAM

STANDARDS OF CONDUCT FOR VA-ACCREDITED ATTORNEYS, CLAIMS AGENTS, AND VSO REPRESENTATIVES

The standards of conduct in 38 C.F.R. § 14.632 establish the appropriate behavior for VA-accredited attorneys, agents, and representatives.

VA-accredited individuals providing VA claims assistance *shall:*

- Faithfully execute their duties on behalf of a VA claimant;
- Be truthful in their dealings with claimants and VA;
- Provide claimants with competent representation before VA; and
- Act with reasonable diligence and promptness in representing claimants.

See 38 C.F.R. §§ 14.632 (a) & (b).

VA-accredited individuals shall *not:*

(1) Violate the standards of conduct as described in 38 C.F.R. § 14.632.
(2) Circumvent the rules of conduct through the actions of another.
(3) Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty.
(4) Violate one or more of the provisions of title 38, United States Code, or title 38, Code of Federal Regulations.
(5) Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation.
(6) Solicit, receive, or enter into agreements for gifts related to representation provided before an agency of original jurisdiction has issued a decision on a claim or claims and a Notice of Disagreement has been filed with respect to that decision.
(7) Delay, without good cause, the processing of a claim at any stage of the administrative process.
(8) Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under programs administered by VA.
(9) Engage in, or counsel or advise a claimant to engage in, acts or behavior prejudicial to the fair and orderly conduct of administrative proceedings before VA.
(10) Disclose, without the claimant's authorization, any information provided by VA for purposes of representation.
(11) Engage in any other unlawful or unethical conduct.

*In addition, in providing representation to a claimant before VA, VA-accredited attorneys shall not engage in behavior or activities prohibited by the rules of professional conduct of any jurisdiction in which they are licensed to practice law.

See 38 C.F.R. § 14.632(c) & (d).

If I violate a standard of conduct or engage in any other unlawful or unethical conduct, what will happen? If VA determines that you have violated the standards of conduct, VA may suspend or cancel your accreditation. VA is authorized to report the suspension or cancellation to any bar association, court, or agency to which you are admitted. In addition, VA may collaborate with State and Federal enforcement authorities if it is suspected that your actions may have implications under State or other Federal laws.

For More Information: Visit the VA Office of the General Counsel website at: http://www.va.gov/ogc/accreditation.asp

ATTACHMENT G

VA ACCREDITATION PROGRAM

ENFORCEMENT AUTHORITY

WHAT VA CLAIMANTS SHOULD KNOW ABOUT THE ACCREDITATION PROGRAM'S ENFORCEMENT AUTHORITY COMPARED TO OTHER AGENCIES

The goal of our complaint process is to protect veterans and their family members and the Department of Veterans Affairs' (VA) benefits system from the unethical and unlawful conduct of those who represent VA claimants. The conduct of VA-accredited practitioners must comport to the standards set forth in 38 C.F.R. § 14.632. Congress has authorized VA to investigate and suspend or remove the VA accreditation of any individual who violates the standards of conduct for VA-accredited practitioners.

What the VA Accreditation Program Can Do

The primary purpose of the complaint system for VA-accredited practitioners is to protect veterans. It is our function and our duty to enforce VA's standards of conduct, which are the standards for VA-accredited practitioners in the performance of their work as well as in other activities bearing upon their character. If we determine that a VA-accredited practitioner has violated VA's standards of conduct, we may take action that will result in the practitioner being privately reminded of VA's standards. If the violation of the standards of conduct is serious, the practitioner's VA accreditation may be temporarily or even permanently taken from him or her. However, that action may not solve your own personal problem, as you will learn when you read the next section.

What the VA Accreditation Program Cannot Do

The complaint process is set up to determine if a VA-accredited practitioner has violated the standards of conduct. It is not a substitute for a civil claim against the VA-accredited practitioner. We cannot give you legal advice and cannot modify or change the decision on your VA benefit claim. We generally cannot take money or property from the accredited practitioner to return to you. We cannot sue a VA-accredited practitioner because of his or her careless handling of your claim. We cannot do the work the VA-accredited practitioner failed to do for you. The only action we can take is to impose disciplinary sanctions against the VA-accredited practitioner. By bringing a complaint to us, you help us learn of VA-accredited practitioners who need to correct their behavior or be suspended/cancelled from the practice of VA law. This helps us keep the VA legal profession honorable and competent. In that way, you help yourself, your government and your fellow veterans.

Where Else To File Your Complaint

- If you think someone is trying to sell you a bill of goods by "poaching" your VA pension, you may file a complaint with your State Attorney General or the Federal Trade Commission.
- If you want to report a problem with the sale of an annuity or other insurance product, you may file a complaint with your State Insurance Regulator.
- If you think a lawyer has behaved unethically or a non-lawyer is engaging in the unauthorized practice of law, you may file a complaint with your State Bar Association or your State Attorney General.
- If you think that an individual has committed a crime against the programs and operations of VA, you may file a complaint with VA's Office of Inspector General.

Department of Veterans Affairs

INFORMATION AND INSTRUCTIONS FOR COMPLETING NOTICE OF DISAGREEMENT (NOD)

IMPORTANT: Please read the information below carefully to help you complete this form quickly and accurately. Some parts of the form also contain notes or specific instructions for completing that part.

The use of this form is *mandatory* to initiate an appeal from the decision on disability compensation claims you received. This form has several key components, which, when filled out completely and accurately, will decrease the amount of time it takes to process your NOD.

FREQUENTLY ASKED QUESTIONS

How do I use this standard Notice of Disagreement (NOD) form?

You ***must*** use this form if you wish to indicate that you disagree with a decision you received regarding your claim for disability compensation. Examples of these decisions may include entitlement to service connection, percentage of evaluation assigned, and effective date among other things. This form is the only way that you can initiate an appeal from a decision on your claim for disability compensation.

Should I fill out this form?

You ***must*** fill out this form if you disagree with a decision issued by the VA regional office (RO) about your disability compensation claim. This includes an initial decision, a decision for an increased rating, or any other decision with which you disagree. Only those issues that you list on this NOD will be considered on appeal. For those issues you do not list on this NOD, you will still have one year from the date of the decision notification letter to file an appeal for those issues.

Where can I get help?

You can ask the Department of Veterans Affairs (VA) to help you fill out the form by contacting us at 1-800-827-1000. Before you contact us, please make sure you gather the necessary information and materials, and complete as much of the form as you can.

You can also contact your representative, if applicable, for assistance with completing this form. If you do not already have a representative, you can find a list of approved Veterans Service Organizations at www.va.gov/vso. You can be represented by a Veterans Service Organization representative, an attorney-at-law, or "agent". Contact your local RO for assistance with appointing a representative or visit www.ebenefits.va.gov.

What should I do when I have finished my NOD?

You should provide your signature in Item 13A and the date signed in Item 13B. Be sure to sign every form you fill out before you send it to us. If you don't sign the form, VA will return it for you to sign, and it will take longer to process.

Attach any materials that support and explain your NOD.

Mail your NOD to the address included on the VA decision notice letter or take your NOD to your local RO.

Do I need to keep a copy of this NOD form?

It is important that you keep a copy of all completed forms and materials you give to VA.

What constitutes a complete NOD form?

Generally, VA will consider your NOD "complete" if the following information is provided on the form:

(1) Part I - Information to identify the claimant such as name, Social Security Number, or VA claim number.

Please note that it would assist VA if you provide all the personal information in Part I. However, if you provide certain information specific to the claimant such as the claimant's last name and Social Security Number or VA file number, VA will be able to identify the claimant in our system and would not necessarily consider this NOD incomplete if other information in Part I, such as the claimant's address and telephone number, is excluded.

(2) Part IV - Information to identify the specific nature of the disagreement.

Please list the issues or conditions for which you seek appellate review in Item 11 of Part IV. At a minimum, please indicate the specific issue of disagreement in Item 11A such as "right knee disability" or "Post Traumatic Stress Disorder (PTSD)" and indicate the area of disagreement in Item 11B by checking the appropriate box. If you disagree with an evaluation of a disability, you may tell us what percentage evaluation you seek in Item 11C; however, you are not required to indicate the percentage of evaluation sought in Item 11C in order to complete this form.

(3) Part V - Claimant's signature.

Please be sure to sign the NOD, certifying that the statements on the form are true and correct to the best of the claimant's knowledge and belief.

IMPORTANT: If you do not provide the above information on this NOD, VA will consider your form incomplete and will request clarification from you. You must respond to this request for clarification either ***60*** days from the date of VA's request for clarification or ***one year*** from the date of mailing of the notice of decision of the RO, whichever is later. If you do not provide VA with a completed form within that time frame, the decision will become final, and you will have to file a new claim.

SPECIFIC INSTRUCTIONS FOR THE NOD

Part I - Personal Information

Please provide all personal contact information.

Part II - Telephone Contact

Why is VA asking to contact me by telephone?
The purpose of the optional telephone contact is to help process your NOD faster by requesting clarification of any ambiguous information on the form. If you indicate you wish to be contacted by telephone, VA may make up to two attempts to call you at the telephone number provided during the time slot you select. It is important to make sure you select a time period you will be available to speak with a RO representative by telephone.

Part III - Election of Decision Review Officer (DRO) Review or Traditional Appellate Review

How does the DRO Review Process work?
A DRO is a senior technical expert who did not participate in the decision being reviewed who is responsible for holding post-decisional hearings, if requested, and processing appeals. The DRO will conduct a new and complete review of your claim, without deference to the original decision. The DRO will determine if there is additional evidence necessary to resolve the appeal, may ask you to participate in an informal conference, and/or may pursue additional evidence. The DRO may issue a new decision that changes the original decision by the RO.

How does the Traditional Appellate Review Process work?
A VA staff member will examine your file and any new evidence that you submit with or after your NOD. The reviewer may change the original decision based on new evidence or upon a finding of clear and unmistakable error in that decision.

How do I complete this section?
If you wish to elect the DRO Review Process, please check the "Decision Review Officer (DRO) Review Process" box in Item 9**.** If you wish to continue in the Traditional Appellate Review Process, please check the "Traditional Appellate Review Process" box in Item 9. Please note that failure to complete this section will not render the form incomplete.

Part IV - Specific Issues of Disagreement

What date do I enter in the Notification/Decision Letter Date?
You should enter the date stamped on the notification or decision letter you received that you disagree with in Item 10. Please do not enter today's date in this field. If you need help identifying the date of the notification or decision you disagree with, contact us at 1-800-827-1000.

How do I complete this section?
The purpose of this section is for you to individually identify each area of disagreement that you have with the VA decision notification letter. Please list ***only*** the issues or disabilities with which you disagree. Only those issues that you list on this NOD will be considered on appeal. For those issues you do not list on this NOD, you will still have ***one*** year from the date of the decision notification letter to file an appeal for those issues.

In the Specific Issue of Disagreement column in Item 11A, please individually identify in separate boxes each of the issues with which you disagree. For example, "left knee condition," "hearing loss," etc.

In the "Area of Disagreement" column, Item 11B, please check the area with which you disagree. For example, if you disagree with the effective date that VA assigned for a particular benefit, check the "Effective Date of Award" option. If VA granted a benefit, but you disagree with the evaluation that we assigned, check the "Evaluation of Disability" option. If you were claiming service connection for an injury or disability that you believe to be the result of your military service, and VA denied that claim, please check the "Service Connection" option. If you are disagreeing with our decision for reasons other than listed in the "Area of Disagreement" column, please check "Other" and specify your reason.

If you disagree with a disability evaluation that we have assigned and believe that the evidence justifies a specific evaluation, please list the percentage that you believe the evidence to warrant in the "Percentage of Evaluation Sought If Known" column, Item 11C, within Part IV of the form. To assist, please refer to our decision notification letter where we indicate what the evidence must show for the evaluation we assigned as well as the next higher evaluation. Please note that this information is not required and that, even if you limit your appeal by indicating a specific percentage evaluation sought in Item 11C, evaluation levels above the percentage evaluation sought will be considered in cases where the evidence supports a higher evaluation.

There is extra space provided for you in Item 12A, to explain why you feel VA incorrectly decided your claim, and to list any disagreements not covered by the form. Please utilize this space to briefly and clearly explain why you disagree with our decision.

Part V - Certification and Signature

Sign and date the NOD, certifying that the statements on the form are true to the best of your knowledge and belief.

Privacy Act Notice: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58/VA21/22/28, Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by a Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

Respondent Burden: We need this information to determine entitlement to benefits (38 U.S.C. 501). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 30 minutes to review the instructions, find the information, and complete the form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at **www.reginfo.gov/public/do/PRAMain**. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

ATTACHMENT I

OMB Approved No. 2900-0791
Respondent Burden: 30 minutes
Expiration Date: 09/30/2018

Department of Veterans Affairs

NOTICE OF DISAGREEMENT

A CLAIMANT OR HIS OR HER DULY APPOINTED REPRESENTATIVE MAY FILE NOTICE EXPRESSING THEIR DISSATISFACTION OR DISAGREEMENT WITH AN ADJUDICATIVE DETERMINATION BY THE VA REGIONAL OFFICE. A DESIRE TO CONTEST THE RESULT WILL CONSTITUTE A NOTICE OF DISAGREEMENT (NOD.) WHILE SPECIAL WORDING IS NOT REQUIRED, THE NOD MUST BE IN TERMS WHICH CAN BE REASONABLY CONSTRUED AS DISAGREEMENT WITH THAT DETERMINATION AND A DESIRE FOR APPELLATE REVIEW. (AUTHORITY: 38 U.S.C. 7105)

TO FILE A VALID NOD, THERE IS A TIME LIMIT OF ***ONE*** YEAR FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT. FOR CONTESTED CLAIMS INCLUDING CLAIMS OF APPORTIONMENT, THIS TIME LIMIT IS ***60*** DAYS FROM THE DATE VA MAILED THE NOTIFICATION OF THE DECISION TO THE CLAIMANT.

(DO NOT WRITE IN THIS SPACE)
(VA DATE STAMP)

NOTE: You can ***either*** complete the form online or by hand. Please print information using blue or black ink, neatly, and legibly to help process the form.

PART I - PERSONAL INFORMATION

1. VETERAN'S NAME *(First, middle initial, last)*

2. VETERAN'S SOCIAL SECURITY NUMBER

3. VA FILE NUMBER

C/CSS -

CLAIMANT'S PERSONAL INFORMATION

4. CLAIMANT'S NAME *(First, middle initial, last)*

5. CURRENT MAILING ADDRESS *(Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)*

No. & Street

Apt./Unit Number

City

State/Province

Country

ZIP Code/Postal Code

6. PREFERRED TELEPHONE NUMBER *(Include Area Code)*

7. PREFERRED E-MAIL ADDRESS

PART II - TELEPHONE CONTACT

8. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR E-MAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD?

☐ YES ☐ NO

(If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)

☐ 8:00 a.m. - 10:00 a.m. ☐ 10:00 a.m. - 12:30 p.m. ☐ 12:30 p.m. - 2:00 p.m. ☐ 2:00 p.m. - 4:30 p.m.

Phone number I can be reached at the above checked time: _____

PART III - APPEAL PROCESS ELECTION

9. SELECT ONE OF THE APPEALS PROCESSING METHODS BELOW (See *Specific Instructions*, *Page 2*, *Part III* for additional information)

☐ Decision Review Officer (DRO) Review Process

☐ Traditional Appellate Review Process

ATTACHMENT I

VETERAN'S SSN ☐☐☐ - ☐☐ - ☐☐☐☐

PART IV - SPECIFIC ISSUES OF DISAGREEMENT

10. NOTIFICATION/DECISION LETTER DATE

☐

11. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.

A. Specific Issue of Disagreement	B. Area of Disagreement	C. Percentage (%) Evaluation Sought *(If known)*
	☐ Service Connection ☐ Effective Date of Award ☐ Evaluation of Disability ☐ Other *(Please specify below)*	
	☐ Service Connection ☐ Effective Date of Award ☐ Evaluation of Disability ☐ Other *(Please specify below)*	
	☐ Service Connection ☐ Effective Date of Award ☐ Evaluation of Disability ☐ Other *(Please specify below)*	
	☐ Service Connection ☐ Effective Date of Award ☐ Evaluation of Disability ☐ Other *(Please specify below)*	
	☐ Service Connection ☐ Effective Date of Award ☐ Evaluation of Disability ☐ Other *(Please specify below)*	

12A. IN THE SPACE BELOW, OR ON A SEPARATE PAGE, PLEASE EXPLAIN WHY YOU FEEL WE INCORRECTLY DECIDED YOUR CLAIM, AND LIST ANY DISAGREEMENT(S) NOT COVERED ABOVE:

12B. DID YOU ATTACH ADDITIONAL PAGES TO THIS NOD?

☐ YES ☐ NO *(If so, how many?)*

PART V - CERTIFICATION AND SIGNATURE

I CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

13A. SIGNATURE	13B. DATE SIGNED

PENALTY: THE LAW PROVIDES SEVERE PENALTIES WHICH INCLUDE A FINE, IMPRISONMENT, OR BOTH, FOR THE WILLFUL SUBMISSION OF ANY STATEMENT OR EVIDENCE OF A MATERIAL FACT, KNOWING IT TO BE FALSE.

ATTACHMENT I

VA ACCREDITATION PROGRAM

HOW TO FILE A COMPLAINT

WHAT A CLAIMANT SHOULD KNOW ABOUT FILING A COMPLAINT AGAINST AN INDIVIDUAL OR ORGANIZATION THAT HAS ASSISTED ON A VA BENEFITS CLAIM

What if I think that the person assisting me with my VA benefit claim is doing something illegal or unethical? If you believe that an attorney, claims agent, veterans service organization (VSO) representative, or other individual or organization has acted in an illegal or unethical manner, you can file a complaint with VA. The Office of General Counsel (OGC) of the Department of Veterans Affairs (VA) is authorized to investigate complaints and remove an individual's VA accreditation, when appropriate. In addition, OGC may refer a matter to the appropriate law enforcement authorities.

"I'm ready to file my complaint. What do I do?"

What to include in your complaint:

- ✓ A detailed summary of your allegations of misconduct by the individual or organization. (It may be helpful to review the Standards of Conduct for VA-accredited individuals included in the "Frequently Asked Questions" below).
- ✓ A completed and signed VA Form 3288 - Request for and Consent to Release of Information from Individual's Records. For assistance in locating a copy of this form or questions on how to complete this form, please call 202-461-7699.
- ✓ Any additional information pertinent to your complaint, such as a fee agreement, proof of payment, or correspondences between you and the individual or organization.

Where to send it: Complaints regarding unlawful activities, misconduct, or incompetent representation may be filed with VA's OGC in the following ways (Please choose one):

Email: ogcaccreditationmailbox@va.gov
Mail: Department of Veterans Affairs
Office of General Counsel (022D)
810 Vermont Avenue, NW
Washington, DC 20420
Fax: (202) 273-6404

Frequently Asked Questions

1. ***What are the required standards of conduct for VA-accredited individuals assisting on VA claims?***
   - ✓ *VA-accredited individuals providing VA claims assistance* ***shall:***
     - o Faithfully execute their duties on behalf of a VA claimant;
     - o Be truthful in their dealings with claimants and VA;
     - o Provide claimants with competent assistance with their benefit claim; and
     - o Act with reasonable diligence and promptness in providing claims assistance.

- ✓ *VA-accredited individuals providing VA claims assistance* ***shall not:***
  - Circumvent a rule of conduct through the actions of another;
  - Engage in conduct involving fraud, deceit, misrepresentation, or dishonesty;
  - Violate any of the provisions of title 38, United States Code, or title 38, Code of Federal Regulations;
  - Enter into an agreement for, charge, solicit, or receive a fee that is clearly unreasonable or otherwise prohibited by law or regulation (for more information, please see our fact sheet on "When a Fee May be Charged" at: http://www.va.gov/ogc/accreditation.asp);
  - Solicit, receive, or enter into agreements for gifts related to representation provided before VA has issued its initial decision on a claim or claims and a Notice of Disagreement has been filed with respect to that decision;
  - Delay, without good cause, the processing of a claim;
  - Mislead, threaten, coerce, or deceive a claimant regarding benefits or other rights under VA programs;
  - Engage in, or counsel or advise a claimant to engage in acts or behavior prejudicial to the fair and orderly conduct of VA proceedings;
  - Disclose, without the claimant's authorization, any information provided by VA for purposes of representation; or
  - Engage in any other unlawful or unethical conduct.
  - In addition, VA-accredited attorneys shall not engage in behavior or activities prohibited by the rules of professional conduct of any jurisdiction in which they are licensed to practice law.

2. ***If I file a complaint, will VA disclose my identity?*** Most likely. VA regulations require that OGC inform a VA-accredited individual of "the source of the complaint." Your completed and signed VA Form 3288 permits us to disclose this information. If you do not complete and sign that form, OGC may be unable to investigate and act on your complaint.

3. ***What will happen after I submit my complaint and privacy release?*** OGC will initiate its investigation. An investigation generally begins with OGC writing to the individual or organization regarding the allegations and ends with OGC making a determination as to whether further action, such as removal of a VA-accredited individual's accreditation, is warranted.

4. ***Does VA work with State and Federal Law Enforcement Authorities in monitoring the behavior of individuals assisting on VA benefits claims?*** Yes, VA has successfully partnered with State and Federal enforcement authorities in efforts to protect our nation's Veterans. For example, based in part on information provided by VA, in September 2014, the Maryland Attorney General used its existing consumer protection laws to find an individual guilty of illegally taking money from Veterans who had sought assistance with filing VA benefit claims. The Maryland Attorney General's Final Order required the return of all payments that were taken from Veterans, and found that the individual had violated the Maryland Consumer Protection Act by committing unfair or deceptive trade practices.

VA ACCREDITATION PROGRAM

HOW TO CHALLENGE A FEE

WHAT A CLAIMANT SHOULD KNOW ABOUT CHALLENGING A FEE CALLED FOR IN A FEE AGREEMENT WITH AN ATTORNEY OR AGENT

What if I believe that the attorney or claims agent that represented me did not earn the fee called for in our fee agreement? If you believe the fee is too high, or otherwise unreasonable, you can file a motion challenging the reasonableness of the fee. The Office of General Counsel (OGC) of the Department of Veterans Affairs (VA) will review fee agreement for reasonableness if you file a timely motion with our office.[1]

How Do I File a Motion With OGC?

I. What Are the Requirements for My Motion? There is no requirement to use any particular format or specific writing style when writing your motion. For example, your motion could simply be a letter from you to OGC. However, OGC will not review your fee agreement unless your motion meets **all** of the following requirements:

- Your motion must be in writing. A telephone call to your VA regional office, or to OGC, does not satisfy this requirement.
- Your motion must include your full name and VA file number.
- Your motion must state and explain the reason(s) why the fee called for in the agreement is unreasonable, i.e., the reason(s) the attorney or claim agent did not earn the fee.
- You must attach to your motion any evidence you want OGC to consider.

II. Do I Have To Inform the Attorney or Claims Agent of My Motion? Yes, you must serve a copy of your motion on the attorney or claims agent involved in this matter by mailing or delivering it to him or her.

III. How Do I File My Motion With OGC and Prove that I Served It On the Attorney or Claims Agent? To begin OGC's review of your fee agreement, you must mail a motion, as well as proof of service (meaning proof that you have sent the motion to the attorney or claims agent involved in this matter), to the following address:

Department of Veterans Affairs
Office of General Counsel (022D)
810 Vermont Avenue, NW
Washington, DC 20420

[1] An attorney or claims agent may only charge you for assistance with your claim if: (1) a notice of disagreement was filed with your claim, (2) you signed a VA Form 21-22a authorizing the attorney or claims agent to represent you, and (3) you signed a written agreement to pay the attorney or claims agent. If you believe that these requirements have not been met, but you have received a letter from VA stating that the attorney or claims agent is eligible to be paid, you should file a notice of disagreement (NOD) with the RO. Please note that your NOD must be received within 60 days of the date of that letter.

- Proof of service consists of a statement by the person who sent or delivered the motion. The statement must include the date and manner of service, the name of the person served, and the address of the place of delivery.
- For service by regular mail, proof of service shall include the date a statement that the motion was mailed through the U.S. Postal Service.
- A sample proof of service form that is commonly used by veterans to demonstrate that they have sent their motion to an attorney or claims agent is located here.
- We recommend that you submit proof of service to our office at the same time you file your motion.

III. When Must I File My Motion? You have **120 days** from the date of the final VA action, which in most cases means 120 days from the date of the fee eligibility decision, to file a motion for review of a fee agreement. This means that a motion meeting all of the regulation's requirements, **including proof of service,** must be filed at the address specified above prior to expiration of the 120-day time limit.

IV. What Factors Does the OGC Consider When Making Its Decision? The factors for determining reasonableness include:

1. The extent and type of services the representative performed;
2. The complexity of the case;
3. The level of skill and competence required of the representative in giving the services;
4. The amount of time the representative spent on the case;
5. The results the representative achieved, including the amount of any benefits recovered;
6. The level of review to which the claim was taken and the level of the review at which the representative was retained;
7. Rates charged by other representatives for similar services;
8. Whether, and to what extent, the payment of fees is contingent upon the results achieved; and
9. If the attorney or claims agent was discharged, the reasons why he was discharged.

V. What Happens After I File My Motion?

- The attorney or claims agent involved in this matter may file a response to your motion with OGC not later than 30 days from the date on which you serve him or her with your motion. He or she must serve you with a copy of his response.
- You will then have 15 days from the date the attorney or claim agent serves you with a response to file a reply with OGC; you must also serve the attorney or claims agent with a copy of your reply.
- OGC may extend the time period for the attorney or claims agent's response or your reply for a reasonable period of time if sufficient cause is shown.
- Fifteen days after the date on which the attorney or claims agent responds, or 30 days after you serve the attorney or claims agent, if he or she does not respond, OGC will close the record in the proceedings, and no further evidence or argument will be accepted.
- The General Counsel will issue the final decision on the matter. This decision is appealable to the Board of Veterans Appeals.

UNITED STATES
DEPARTMENT OF VETERANS AFFAIRS

Accreditation Search

Search Accredited Attorneys, Claims Agents, or Veterans Service Organizations (VSO) Representatives

Please choose the type of person you would like to search by:

○ Attorney ○ Claims Agent ○ VSO Representative

Last Name:
First Name:
City:
State:
Postal Code:

Search Reset

Search Recognized VSOs

Name:
City:
State:
Postal Code:

Search Reset

Download Complete Lists of Accredited Attorneys, Claims Agents, or Representatives in Excel (please close excel before downloading)

◉ Attorneys ○ Claims Agents ○ VSO Representatives ○ **VSOs with Reps**

Download

Search Tips:
You can search all the criteria or only one of the criteria. Example: You can search for 'Smith' 'Joe' 'Nowhere' 'MT' '55155' or just 'Smith' or just 'Sm'. Then hit 'Search' button. Do not enter words like 'AND' or 'OR' unless you want to search those letters. The Accredited Attorney, Claim Agent and VSO Representative Search is separate from the Recognized VSOs search, but the same rules apply. When searching for Recognized VSO, you can leave all the fields blank and hit Search to get a listing of all VSOs currently recognized by VA for purposes of claims assistance.

Note: You will be provided with information pertaining only to individuals currently accredited by VA and organizations currently recognized by VA. If your search does not produce any results, the person or organization is not currently authorized to provide representation but may have an application for accreditation or recognition pending with the VA Office of the General Counsel. The data linked to this page refreshes every Monday, Wednesday, and Friday evening. Questions concerning accreditation of individuals, recognition of organizations, or agents' and attorneys' fees may be sent to ogcaccreditationmailbox@va.gov.

Updated: The Basic Training Course for Veterans Benefits - Chapter 1

Every advocate's first rule should be: do no harm. Inaccurate or bad advice from an advocate can cost a veteran time or money or both.

CONTENTS:

Introduction

This course is an introduction to veterans law and advocacy. The authors hope that at least two groups of people will find it useful. Anyone who helps veterans and their family members get benefits from the U.S. Department of Veterans Affairs (VA) will find helpful information here. The course is also intended to make claimants for VA benefits better, more informed consumers.

This is not an advanced course. It does not attempt to cover every topic or issue in VA law, and the authors have had to omit some very complicated issues. This course will discuss many VA benefits, but will focus on entitlement to compensation because this benefit is most commonly claimed and is often especially difficult to obtain. For example, almost all the cases that come before the U.S. Court of Appeals for Veterans Claims (CAVC) deal with entitlement to compensation. We do not discuss the many varied state veterans' benefits programs.

We hope many veterans, as well as those providing (or interested in providing) informal advice about VA benefits, will take this course. However, veterans should not expect to represent themselves even after successfully completing this course. That would be a major mistake. But a claimant who takes this course will be better able to assist his or her representative. An informed veteran is far more likely to obtain his or her rightfully earned VA benefits.

There are 12 chapters in this course. This chapter is an introduction and overview. Chapter 2 deals with eligibility requirements. Chapter 3 covers service-connected compensation benefits, including benefits due a veteran injured by VA medical care. Chapter 4 explains how the VA evaluates disabilities and discusses claims for increase and rating reductions. Chapter 5 covers service-connected death benefits. Chapter 6 deals with non-service-connected pension (and death pension) issues. Chapter 7 explains the VA claims process, including the options claimants have after a denial by the Board of Veterans' Appeals (BVA or Board). Chapter 8 gives a general overview of the U.S. Court of Appeals for Veterans Claims (CAVC). Chapter 9 covers VA debt collection, including how an overpayment is created and how to ask for a waiver of debt. Chapter 10 explains how to apply for a discharge upgrade or correct a military record. Chapter 11 covers VA health care. Chapter 12 offers a summary of some lesser known VA benefits.

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Although this is a basic course, it contains a great deal of information. You may find it helpful to read each chapter more than once, and to take the short self-quizzes that appear at the end of most chapters. (Answers are under the page called Self-Quiz Answers) These self-quizzes are designed to let the reader test his or her knowledge of the chapter before going on in the course. Also, you should take the comprehensive test that comes with the course. We have the test graded and inform you of the results. If you pass, you will earn a Basic Training Course Certificate. Passing this test will not make you an accredited service representative. Formal accreditation from the VA must come through a veterans' service organization or state department of veterans affairs.

If you want to learn much more about veterans law we suggest you purchase the latest edition of the Veterans Benefits Manual (VBM). This treatise is user-friendly, well-indexed, and packed with practical information. It includes sample forms and briefs, flowcharts, checklists, citations to legal authorities, and other documents designed to streamline the claims process and save valuable time. Click here for a more detailed description of the VBM. http://www.nvlsp.org/store/veterans-benefits-manual-2011

On a practical note, we have also included a number of sample "intake forms"--forms that veterans can fill in to organize the information that their advocates need. These intake forms should help advocates identify VA benefits for which a veteran may be eligible, although he or she may not even have realized the benefits existed.

The Advocacy Network

People seeking benefits from the federal government usually have to hire attorneys or paralegals. However, claimants seeking VA benefits can rely on a national network of lay advocates--post officers, county and state veterans' service officers, and service officers who work (locally or nationally) for a veterans' service organization. All of the groups listed above can help claimants in obtaining VA benefits. The lay advocates are prohibited by law from charging a claimant a fee.

Some of the infantry in this army of advocates are staff in "posts" established by national service organizations. Many of these posts have a post service officer or chapter service coordinator who provides claimants with basic information and claims forms. In most instances, the national service organizations prohibit their post service officers from dealing with the VA directly. This policy makes sense because post service officers usually do not have the training and support that is available to the service organizations' more advanced, accredited service officers.

Every advocate's first rule should be: do no harm. Inaccurate or bad advice from an advocate can cost a veteran time or money or both. In some cases, an advocate who gives bad advice may be liable to the claimant.

In general, post service officers should provide information and support, and they should refer the veteran (or claimant) to an accredited service officer. In fact, post service officers should send all applications and communications from claimants they are trying to help to the accredited service officer who is representing the veteran, not to the VA. They should advise veterans to contact the service officer before communicating with or responding to letters or phone calls from the VA.

Most states have state departments of veterans affairs. These organizations may employ service officers, who usually represent veterans before VA regional offices (ROs). The VA allows all state departments of veterans affairs to represent veterans. Other service officers working for state departments of veterans affairs represent claimants on behalf of national service organizations, when accredited by those organizations.

County service officers (sometimes called county directors of veterans affairs) provide a variety of services. In a few states there are no state service officers, just county service officers, who provide services similar to those offered elsewhere by state or national service officers. In other states, county service officers take information and pass it along to state or national organization service officers.

To represent a veteran, a county, state, or national service officer must have a signed power of attorney from that veteran. In most cases, an individual service officer does not represent claimants for VA benefits as an individual. Most claimants for VA benefits sign a power of attorney in favor of the organization that employs or has accredited the individual service officer. Therefore, the power of attorney usually permits any accredited representatives of the named service organization, not just the individual service officer, to represent the veteran.

It is a service officer's job, as a veterans advocate, to present information and, if necessary, supporting arguments. If the service officer is not prepared to argue for the claimant, some other advocate should be involved in the representation.

Advocates are entitled to--and should--screen information the veteran is considering sending to the VA. The advocate is not obliged to send negative evidence to the VA unless the VA specifically requests that information.

Most national service organizations provide representation before the Board of Veterans' Appeals (BVA). In fact, most national service organizations have advocates located in Washington, D.C., who review appeals submitted to the BVA and provide additional arguments (and sometimes help claimants obtain additional evidence).

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Overview: VA Claims System

There are at least 25 million veterans and many more millions of family members of veterans potentially eligible for federal veterans' benefits. Million of determinations relating to benefits are made each year within the 58 VA regional offices (ROs). For a listing of all the VA regional offices go to: http://www.vba.va.gov/vba/benefits/offices.asp

The VA has a dual role: it is a friend to veterans, but it is also a guardian of the taxpayer's money. This means that the VA is required to investigate applications so that it can reject unsupported claims. Because some claims depend on the VA's accepting the word of the veteran, it is important that claimants be consistent and accurate when they communicate with the VA. That is why all communications by the veteran to the VA should be reviewed by the advocate.

The VA claims system is unique in several important respects. First of all, "final" VA denials are not really final. A claimant can reopen a claim by presenting new and material evidence. New evidence is evidence that has not been presented to the VA before and material means that the evidence helps prove a previously unproven fact. When a veteran reopens a claim after a final denial, the VA (the RO and possibly the BVA) must perform a two-step analysis. First, the VA decides if the evidence submitted to support the reopening is new and material. If the submitted evidence is not new and material, the VA must notify the claimant of that decision and describe his or her appeal rights. If the evidence is accepted as new and material, all evidence (old and new together) must be considered afresh.

In some cases, an RO decision can be changed if the veteran can show that the decision was based on clear and unmistakable error. That is, the veteran must show that, based on the facts and the law existing at the time the claim was originally denied, the VA was clearly wrong. Claimants must first identify the error made by the VA and then show that they would have been entitled to benefits if the error had not been made. Another unique feature of the VA claims system is that the system is intended to be non-adversarial--that is, the VA is supposed to be fair and help the claimant, and no one is supposed to be arguing against the claimant.

Veterans and advocates alike must know that the VA claims system does not always work the way it is supposed to. As in any complex system run by human beings, mistakes, misinterpretations, and honest errors are common. Do not become discouraged if a meritorious claim does not succeed at first. The VA must operate under set legal rules, and a claim that has been denied at the regional office level may be granted on appeal.

Benefit of the Doubt

To ensure that the system favors veterans, VA law states that a veteran is entitled to the benefit of the doubt in the adjudication of his or her claim. This means that the VA can deny the claim only if the weight of the evidence (more than half) is against the claim. If the evidence for and against the claim is evenly balanced, then the claimant should be given the benefit of the doubt and the claim will be granted.

Advocates do not have to submit enough evidence to win overwhelmingly--just enough so that there is a balance of evidence for and against the veteran's claim. Thus, a good advocate should evaluate the evidence and explain why the majority of the evidence is not against the claim. In that way the advocate can help the VA apply the benefit of the doubt to the specific claim.

Duty to Assist

Another non-adversarial feature of the system is that the VA has a duty to assist claimants who submit a reasonably possible claim in developing evidence to support their claims. For example, the VA must try to obtain VA records, other government records (such as Social Security determinations) and private records for the claimant, and may be required to conduct a VA medical examination to assess the claimant's physical or mental condition and obtain an opinion from a medical expert concerning the medical issue in the case.

The VA must keep trying to obtain any relevant federal records until it is discovered that the records do not exist or are unobtainable. If private medical, hospital, employment, or other civilian records contain facts pertinent to the claim, the VA should either request them from the claimant or obtain them directly, if authorized by the claimant. Advocates should suggest possible sources of information to the VA that would help prove the veteran's claim. The VA can't request something if it doesn't know about it. It would be better, however, if the advocate obtained this information directly, because he or she can then review the information to see if it supports the claim--it may support the denial of benefits instead of their grant.

Elements of a Claim

Before the VA must assist in developing evidence, the claimant must present a reasonably possible claim. Generally, claimants will receive VA development assistance unless they are legally ineligible for the benefit (for example, the claimant doesn't have qualifying service) or the claim is inherently incredible. When the claim is submitted the advocate should present reasons why benefits should be granted and should cite appropriate statutes, regulations, and the VA's Adjudication Procedures Manual, the M21-1MR. If the VA decides that the claim is not reasonably possible or decides to deny the benefit the reasons and bases for

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that decision must be provided. The VA especially must explain how it reached any medical conclusions.

Disability compensation claims have three elements:

• The veteran must currently suffer a disability or have suffered from a disability since the claim was filed;
• There must have been some incident (for example, injury, treatment for a disease, symptoms exhibited, and so on) in service that could have caused this condition; and
• there must be some way to link the current condition to that incident.

The veteran almost always needs more than just his or her own testimony to support claims involving medical causation or diagnosis. It is extremely helpful if a medical expert states that the incident in service could have caused the disability. For example, if a veteran suffers from a knee condition some 30 years after discharge, a statement from the veteran's doctor indicating that it is likely (or as likely as not) that the current knee problem was caused by a specific incident in service would support the grant of benefits.

VA Central Office

The VA Central Office, located in Washington, D.C., directs the activities of the VA regional offices (sometimes called Veterans Service Centers) and the VA medical centers. The Central Office dictates standard rules and procedures the regional offices and medical centers must follow when handling claims.

The Central Office consists of the Veterans Benefits Administration (VBA), headed by the VA Undersecretary for Benefits; and the Veterans Health Administration (VHA), headed by the Undersecretary for Health, who oversees the VA medical care facilities. Other departments in VA Central Office (VACO) include the office that oversees the national cemetery system, the Office of the General Counsel, and the Office of Inspector General.

VA Regional Offices

There are 58 VA regional offices, at least one in every state, Puerto Rico, and the Philippines. A claimant's initial claim for benefits is filed at a VA regional office, and this is where the claim is initially granted or denied. Go to the following web site for more information about the VA regional offices: http://www.vba.va.gov/vba/benefits/offices.asp

The different divisions within the ROs are finance and administrative services, vocational rehabilitation, loan guaranty, district counsel, inspector general, and adjudication. Claims for compensation, pension, and education benefits are received by the regional offices' adjudication divisions (there is one in every RO). Each adjudication division is headed by a Veterans Service Center Manager and is subdivided into two sections--an authorization unit and a rating activity. When a veteran first files a claim at the RO, the VA first examines basic eligibility issues--for example, verifying the veteran's period of military service and type of discharge. If basic eligibility requirements are not met, the claim is denied. The VA will send the veteran a letter explaining the reason for the denial, and will also inform the veteran of his or her right to appeal the determination.

If basic eligibility is established, the VA begins to develop the evidence necessary to prove the claim. For example, they may try to obtain important records missing from the veteran's claims file, and may write to the veteran to ask for more information or evidence.

Any response or inquiry from the VA to a veteran or representative about a particular claim will include the claim number (C-number or C-file number). This number is assigned by the VA when a claim is first filed. It is a unique identifier and should be included in all correspondence.

The veteran, after consulting with his or her representative, should always respond (through the advocate) to the VA's letters requesting more information. If the veteran does not respond within a certain period of time (usually 60 days), the RO may deny the claim based on the veteran's failure to take steps to prosecute the claim. If a veteran needs more time, he or she (or, preferably, his or her representative) should ask the VA for additional time to respond, before the 60-day deadline expires. In any event, the veteran or claimant has one year to submit the requested evidence. Therefore, even if the claim is denied after 60 days, if the claimant submits the requested evidence and benefits are granted, the VA can pay from the original date of claim. The VA is also responsible for providing claimants and their representatives with information about the status of their claims, and for providing proper notice to claimants of their right to appeal denials.

Once basic eligibility requirements are met and most if not all of the evidence necessary to adjudicate the claim has been obtained, the claim is transferred to the rating activity if a medical or legal determination is needed. The rating activity reviews all the evidence in a case, orders additional development (requests more evidence) if needed, applies the relevant law, and then decides whether to grant or deny the claim. Rating activities decide, for example, whether a particular injury or disease is connected to a period of military service, what the level of the veteran's disability is, and whether a disability is permanent and total. If the rating activity determines that the evidence in the case is not sufficiently well developed to make an informed decision, it will send the case back to the authorization unit for further evidentiary development.

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A claimant may also file a claim at the RO in the Fully Developed Claims (FDC) program, which has the benefit of expedited processing time. The requirements to be eligible for this program are rigorous, and with very few exceptions, the claimant must submit all the evidence necessary to establish entitlement to the particular claim (i.e. compensation, etc), such as medical evidence and lay evidence.

Once a decision is made, the RO notifies the claimant (and his or her representative) by letter. If the claim is denied, the RO is required by law to explain in writing what evidence was considered and the reasons for the decision. If a claim involved more than one issue, the RO must explain the reasons for the decision on each issue considered. The RO's letter must also explain how the claimant can appeal the decision.

Decision Review Officer (DRO) Review

A claimant who files a timely appeal, commonly called a Notice of Disagreement (NOD) may request that the decision be reviewed at the Regional Office by a Decision Review Officer (DRO). The review is conducted de novo, meaning that the DRO provides a new and complete review without giving any weight to the fact that other RO personnel previously denied the claim.

The DRO review process is an optional review of an RO rating decision a claimant does not have to have a DRO review in order to appeal an RO decision to the Board of Veterans' Appeals (BVA) the next highest level of appeal. If a claimant does not want to take advantage of the de novo DRO review process, he or she does not have to request it.

Board of Veterans' Appeals

The next level of claims review is the Board of Veterans' Appeals. The BVA, which is located in Washington, D.C., renders final agency decisions on all appeals for entitlement to veterans' benefits, including claims for service-connected disability compensation, pension, educational benefits, home loan guaranties, and vocational rehabilitation. The Board will not consider purely medical determinations; treatment decisions are made by medical experts.

The Board's activities are directed by a chairman, who is appointed by the President for a six-year term. The BVA usually has over sixty Board Members, including the Vice Chairman and other Board members serving in managerial capacities. Board members use the title "Veterans Law Judge." Board members are subject to periodic performance reviews to determine whether they should be recertified as Board members, receive conditional certification, or be noncertified (in which case their appointment as a Board member is terminated). The BVA is organized into two "decision teams" each of which has responsibility for deciding appeals of VA regional office.

The Board is not supposed to give any special weight to the regional office decision or its reasoning during its review. The BVA reviews the case as if for the first time (this is called de novo review). Furthermore, new evidence can be submitted at the Board level.

U.S. Court of Appeals for Veterans Claims

Until the U.S. Court of Appeals for Veterans Claims (CAVC) was created, in 1988, there was no judicial review of veterans' benefits decisions; the BVA had the last word. The Court was created by Congress in the Veterans' Judicial Review Act of 1988 (VJRA). Before the act was passed, attorneys were forbidden to charge more than $10 to represent veterans with benefit claims at the VA.

Once the claim reaches the CAVC, which is a federal court, the process is no longer considered non-adversarial. In cases appealed to the CAVC, the claimant is opposed by lawyers from the VA's general counsel's office, so it is an especially good idea for veterans to obtain representation before heading to the Court. It not wise to litigate without assistance.

A few national veterans' service organizations provide free representation to some claimants at the CAVC, by the service organization's staff attorneys or by non-attorney practitioners. No service organization guarantees that it will take a case all the way to the Court level.

If a veteran is having trouble locating a representative, he or she can file a notice of appeal and the Court will send, on request, a list of attorneys who have been admitted to practice at the Court. This list is also available on the CAVC website at http://www.uscourts.cavc.gov/practitioners/. It is up to the veteran to contact one (or several) of the attorneys listed. Some attorneys charge fees; some may be willing to take the case pro bono (free) or work out a contingency agreement (the veteran pays the attorney nothing if he or she loses, but agrees to share a certain percentage of any past VA benefit award with the attorney).

The Court, concerned by the large number of unrepresented claimants who appear before it, helped create a program called the Veterans Consortium Pro Bono Program that matches unrepresented veterans' cases with pro bono attorneys. The Consortium staff screens veterans' cases for merit and trains volunteer attorneys in veterans law and practice before the CAVC. Each

ATTACHMENT M

attorney is then provided a mentor from one of the Consortium's member organizations (DAV, PVA, The American Legion, and NVLSP), given legal resources, and is assigned a case for representation.

VA Medical Care

The VA health care system is administered by the Veterans Health Administration (VHA), a branch of the VA that is separate from the Veterans Benefits Administration that runs the VA compensation and pension programs. The VA health care system is the nation's largest system of health care delivery.

Veterans are not automatically entitled to VA hospital care, nursing home care, or out-patient treatment simply because they are veterans. VA medical care is principally directed toward treating medical problems related to veterans' military service and towards helping some low-income veterans. In brief, certain veterans are eligible for free medical care and medications at VA facilities. Other veterans must pay a part of the cost of their care.

Sources of Law

Advocates might find it helpful to understand how statutes, regulations, and VA directives such as the VA's Adjudication Procedures Manual, the M21-1MR (Manual M21-1MR.) are related. Of these three sources of law, the statute, written by Congress, is the highest form. The statute that governs veterans' benefits is found in Title 38 of the United States Code (U.S.C.). The VA writes regulations to carry out the laws written by Congress; these are found in Title 38 of the Code of Federal Regulations (C.F.R.). The VA's internal instructions for adjudicating claims are contained in the Manual M21-1MR. VA regulations may not conflict with any statute; the manual's provisions may not conflict with either statute or regulations. If they do, the Court has the power to invalidate them.

Help Is Needed

Even though the VA claims system is not supposed to be adversarial, we strongly advise all claimants to obtain representation, and to work through an experienced veterans' advocate instead of dealing directly with the VA. It is really important to get the facts straight before submitting anything to the VA; in many instances, anything the claimant tells the VA can and will be used against him or her. Veterans are wise to take advantage of the free services provided by veterans' service organizations and other advocacy groups.

Chapter 1: Self-Quiz

1. About how many people in the United States are potentially eligible for some form of VA benefits?

2. Name two ways in which a final VA adjudication can be changed.

3. What percentage of the evidence has to be against a claim for the VA to deny the claim?

4. What part of the VA regional office evaluates or adjudicates claims for compensation or pension benefits?

5. The Board of Veterans' Appeals is required to give some weight to the regional office decision being appealed. True or false?

6. Veterans are not automatically entitled to free VA hospital, nursing home care, or out-patient treatment simply because they are veterans. True or false?

7. It is essential for veterans to seek the help of an advocate when they apply for VA benefits. True or false?

8. It is not necessary for an advocate to provide information to a claimant; all the advocate has to do is to fill out a form and send it to the VA. True or false?

9. Post service officers should send all applications and communications from the claimant to the claimant's accredited service officer, not to the VA. They should advise veterans to contact their service officer before communicating, or responding, in any way with the VA. True or false?

10. Under what circumstances may a claimant reopen a claim after the VA has issued a final denial?

11. According to VA Fast Letter 13-17, issued on August 2, 2013, in order to be eligible for retroactive benefits under the FDC program, the claim must be for compensation? True or False?

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WA AGENCIES THAT PERMIT LAY REPRESENTATIVES AT HEARINGS

Agency - Referring to Office of Administrative Hearings	Lay Reps Permitted*	Notes	WAC
Attorney General's Office for Executive Ethics Board	Yes		292-100-006
Department of Agriculture	Yes		16-08-011
Department of Children, Youth & Families	Yes		110-03-0100
Department of Financial Institutions	No		460-16A-010
Department of Labor and Industries	Yes		296-128-840
Department of Licensing	Yes		308-08-006
Department of Retirement Systems	No		415-08-040
Department of Services for the Blind	Yes		67-25-600
Department of Social and Health Services	Yes		388-02-0155
Department of Transportation	Yes		468-51-150
Employment Security Department	Yes		192-04-110
Gambling Commission	No	But maybe LLLTs: "hardship that would make it unduly burdensome"	230-17-045
Health Care Authority	Yes		182-526-0155
Human Rights Commission	No		162-08-021
Liquor and Cannabis Board	No		314-42-020
Lottery Commission	No	But maybe LLLTs: "hardship as would make it unduly burdensome"	315-20-020
Office of Financial Management	Yes		82-04-030
Office of Insurance Commissioner	Yes		284-02-070
Office of Minority, Women and Business Enterprises	No		326-08-040
Office of Superintendent of Public Instruction	Yes		392-101-005
Washington State Patrol	No		446-08-010
Washington State University	No	But maybe LLLTs: "persons admitted to the practice of law in the state of Washington"	504-04-130
Washington Student Achievement Council	Yes		250-61-210
Workforce Training and Education Coordinating	Yes		490-08B-010

*There may be additional rules or laws that limit who may appear at hearings involving these agencies. In addition, most agencies have more than one program that they administer. The WAC cited here is just an example of one program administered by the agency. Additional research and contact with the agency is required to verify that lay representatives may appear at a hearing involving the specific program.

Office of Administrative Hearings

Referring Agency Caseloads and Programs – 2019

Referring Agencies:

Attorney General's Office
Colleges
Department of Agriculture
Department of Children, Youth & Families
Department of Early Learning
Department of Financial Institutions
Department of Labor and Industries
Department of Licensing
Department of Retirement Systems
Department of Services for the Blind
Department of Social and Health Services
Department of Transportation
Employment Security Department
Gambling Commission
Health Care Authority
Human Rights Commission
Liquor and Cannabis Board
Local Governments
Lottery Commission
Office of Financial Management
Office of Insurance Commissioner
Office of Minority, Women and Business Enterprises
Office of Superintendent of Public Instruction
Washington State Patrol
Washington State University
Washington Student Achievement Council
Workforce Training and Education Coordinating Board

Referring Agencies' Programs:

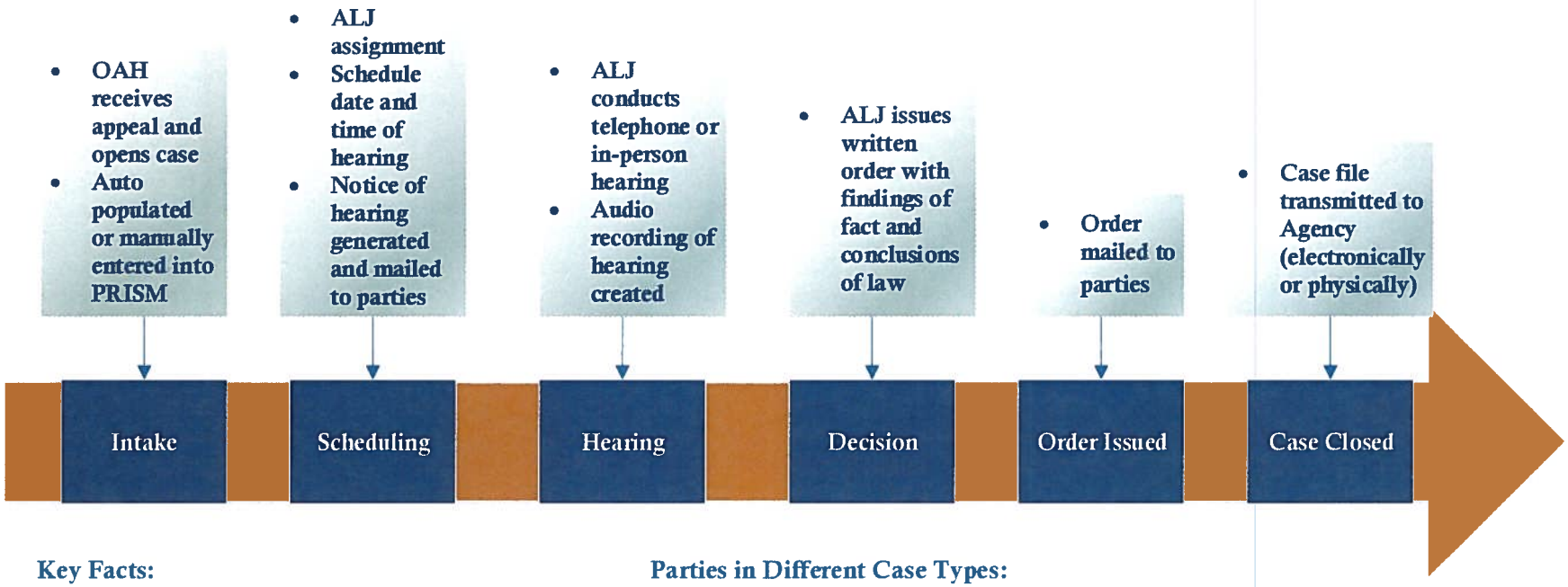
Agency Caseload	Programs
Attorney General's Office	• Executive Ethics Board • Manufactured Housing Unit
Colleges	• Pierce College • Renton Technical College
Department of Agriculture	• Food Safety • Pesticide Management
Department of Children, Youth & Families	• Adoption Support • Background Check • Child Care Assistance • Child Protective Services • Civil Fine • Daycare License • Daycare License Revocation / Suspension • Foster Care Licensing • Juvenile Rehabilitation Reimbursement • Vendor Overpayments
Department of Financial Institutions	• Consumer Loan Companies • Financial Institutions • Securities
Department of Labor and Industries	• Apprenticeship and Training Council • Child Labor • Contractors/Plumbers Compliance & Registration • Domestic Violence Leave • Electrical Board • Elevator • Family Care • Farm Labor Contractor • Prevailing Wage • Wage Payments
Department of Licensing	• Cosmetology • Dealer • Driver Training School • Fuel Tax • Real Estate Appraiser • Security Guard
Department of Retirement Systems	• LEOFF
Department of Services for the Blind	• Business Enterprises

Department of Social and Health Services	Division of Child Support: • Address Disclosure • Administrative Support Order • Child Support Services • Collection Non-Compliance • Court Ordered Support • Daycare Overpayment • DCS Support Staff • Debt Adjustment • License Suspension • Medical Responsibility • Modification • Order to Withhold and Deliver • Recovery or Recoupment • Support Debt • Support Establishment Notice • Support Order Registration Licensing: • Adult Family Home License • Adult Protective Services • Adult Residential Care Services • Assisted Living Facility License • Certified Community Residential Services and Supports • Division of Licensed Resources • Division of Licensed Resources Background Check • Foster Care Licensing • Interpreter Certification Revocation • Nursing Home Public Assistance: • Adoption Support • Aged, Blind, or Disabled • Child Care Assistance • Developmental Disabilities Administration • Division of Vocational Rehabilitation • Food Assistance • Food Assistance Disqualification • Housing and Essential Needs • PA Support Staff • Refugee Assistance • Temporary Assistance for Needy Families • Vendor Overpayment • WASHCAP

Department of Transportation	• Access • Toll Adjudication
Employment Security Department	• Emergency Unemployment Compensation • Extended Benefits • Fraud • Paid Family & Medical Leave • Tax • Training Benefits • Unemployment Insurance
Gambling Commission	• License Fees & Reports
Health Care Authority	• Alien Emergency Medical • Client Overpayment • DDA-Individual and Family Services • DDA-Intermediate Care Facility • DDA-Medicaid Personal Care • DDA-Waivers • HCA Support Staff • HCS Financial Eligibility • HCS/AAA Medicaid Personal Care • HCS/AAA Waivers • Individual Provider Disqualification • Individual Provider Training & Certification • Managed Care Organization • Medicaid Liens/Estate Recovery • Medical Assistance Eligibility / Transfer • Medical, Dental, Transportation & Equipment • Public Employees Benefits Board • Provider Overpayment • Washington Apple Health/MAGI
Human Rights Commission	• Discrimination
Liquor and Cannabis Board	• Liquor Enforcement • Liquor Licensing • Marijuana Enforcement • Marijuana Licensing • Tobacco Enforcement / Licensing
Local Governments	• Local Government Whistleblower

Lottery Commission	• Licensing • Prize Denial
Office of Financial Management	• State Employee Wage Overpayment
Office of Insurance Commissioner	• Insurance Brokers & Producers
Office of Minority, Women and Business Enterprises	• Office of Minority, Women and Business Enterprises
Office of Superintendent of Public Instruction	• Bus Driver Authorization • Food Service Programs • OSPI ALJ Training • Special Education • Student Transfer • Teacher Certification - Administrative • Teacher Certification – Discipline
Washington State Patrol	• Altered VIN • Controlled Substances Seizure and Forfeiture • Seizure
Washington State University	• Academic Integrity • Alcohol/Drug • Non-Title IX Assault • Title IX
Washington Student Achievement Council	• Degree Authorization
Workforce Training and Education Coordinating Board	• Workforce Training and Education Coordinating Board

OAH Appeal Process



Key Facts:

- Vast majority of hearings held by telephone
- Most parties are self-represented

Parties in Different Case Types:

- ESD – claimant, employer
- DCS – custodial & non-custodial parents, DSHS claims officer
- HCA – appellant, agency hearings coordinator
- OSPI – student/parent, school district
- LCB – licensee/applicant, Assistant Attorney General represents LCB

PRISM = OAH case management system

Office of Administrative Hearings – Case Examples

1. Employment Security Department - Unemployment Benefits

Issue Presented: Did the employee commit statutory misconduct by testing positive for marijuana in a random drug test at the place of work, which disqualified the employee (now "claimant") from receiving unemployment benefits?

Facts: The claimant's primary argument was that she could not be disqualified from unemployment benefits for misconduct for smoking marijuana, while off duty, when it is now legal to use the drug in Washington. The employer has policies that forbid drug use while on duty, or having drugs in one's system when working (whether the drug was used on or off duty). This is primarily a safety rule. Claimant knew the employer's policies, and agreed to these by signing an acknowledgment of her agreement, and by working for the employer after being put on notice of the rules.

Case Outcome: Misconduct was found for violation of known and reasonable employer policies, and claimant was not eligible for unemployment benefits. The employer's policy was found "reasonable" even though it is *legal t*o use marijuana in Washington, because it is reasonable for the safety of all employees that none be on any mind-altering drugs, or drugs, which can affect one's perceptions or reflexes, while working, whether the drug is legal or illegal, and whether used at home or at work. (The employer's policy excepted *medically prescribed drugs*, if the drug did not alter the employee's reflexes or perceptions while at work).

2. Employment Security Department - Employer Tax Hearing

Issue Presented: Were the tutors working for this employer's company independent contractors or employees? If employees, then the employer is required to pay taxes on their wages to the Department (which taxes are used to fund the unemployment insurance trust for the payment of unemployment benefits generally).

Facts: The tutors were required by contract with this employer to provide the tutoring services personally, and could not "contract out" their services to other tutors; the tutors were required by the employer to use a specific reading methodology with the students; the tutors each had a business license, but not all were for tutoring businesses, and no tutors were shown to have been actively working in their *own* tutoring business separate from the employer's business. The majority of earnings for each tutor each year came from tutoring services provided through the employer's business. The employer received the payment for services from the students and

then paid each tutor an agreed amount, keeping a percentage. If the student failed to pay the employer for the sessions, the employer still paid the tutor for his/her time spent with the student.

Case Outcome: After a 3.5 hour telephone hearing, the administrative law judge determined that the tutors did not meet the statutory exemptions to be classified as independent contractors, and the employer was required to pay taxes to the Department on the wages paid to each tutor, as employees, plus penalty and interest for late payments.

3. Office of Superintendent of Public Education, Special Education Hearings:

Issues Presented: Were the student's needs properly addressed by the school district with respect to classroom placement and required level of teaching and special education in the educational plan. If the school had not provided the legally mandated level of education, what remedy applied?

Law: Federal and State laws require that special education students receive a written plan of education, which is then implemented and adjusted as needed, to meet the child's special education needs. The parents are closely involved, as are the special education teachers and any non-special education teachers from whom the student takes classes. As might be expected, conflicts often arise between the parents and the school staff over the educational plan, its implementation, and the general treatment of the student at the school.

Facts: The parent desired intensive individual tutoring and private summer school as a remedy, while the staff felt that the student needed to be placed in the more structured class room in the fall, and the tutoring and summer school were not needed, and would not be helpful (the student, in their opinions, needed time off from school or studies). The parents of the student at issue believed the school was not following the educational plan; that the student needed more technology, such as speech-enhancement devices, and specialized computer software. The school provided much of this, but the teaching staff did not agree that much of this was in the child's best educational or psychological interest.

The staff's plan was to bring the child out of his social isolation by setting up daily scenarios, which allowed more interaction with teachers, and students, during which the student could practice speaking, without using a machine to speak for him. The child disliked the speech machine, as well, and refused to use it most of the time. The staff made minimal efforts to work with the child on these technologies, apparently since they were not in favor, and this upset the parents, who felt the child would be progressing much faster if using the technology properly with staff assistance and encouragement.

The staff advanced the child to a less structured educational program, called a "mainstream" classroom, at the parent's insistence and against the teachers' collective better judgment. The staff was resistant to the mainstream plan for this child, feeling this plan would set the child up for failure. The school provided an individual teaching assistant for the student in the mainstream classroom, but he did poorly in the setting, both academically and psychologically.

The parent objected to the teaching assistant, because having this teacher present with the child made the child stand out as a "special education" student. The staff again recommended he be placed back in a more structured classroom, with exclusively special education students and teachers.

By the time of the hearing, the child had been languishing in the mainstream program where he was not doing well for most of the school year, since the parent and teachers could not agree what was the right thing to do.

Case Outcome: After a weeklong in-person hearing, the administrative law judge found that the school had failed in some respects to provide what the child needed, specifically, to be in the more structured program, rather than yielding to the parent's insistence on an inappropriate program, and then doing mostly nothing when the program failed, as staff had expected. The summer school and tutoring were ordered, along with the more structured classroom the next school year.

4. Department of Social and Health Services - Denial of Caregiver License/Payment to Daughter to provide care to her mother

Issue Presented: Did the proposed in-home caregiver meet the statutory requirements for a license from DSHS to be paid by that agency to care for her own mother in the mother's home?

Facts: An elderly woman, who received monies from DSHS to pay for an in-home caregiver, wanted her adult daughter in that role. The daughter had done it for several years, but the caseworker had some concerns about the level of care being provided and the "character" of the daughter to provide the care. On a home visit by the caseworker, the daughter/caregiver appeared to the caseworker to be intoxicated or under the influence of some drug, although she denied that to be so. The agency denied the daughter the right to be licensed and paid by the agency to provide care to her mother, even though the mother adamantly wanted the daughter as her caregiver, and felt that everything was being done well, and that needed to be done.

In a 2.5 hour in-person hearing, the daughter, the elderly woman, and the husband of the daughter testified to keep the daughter licensed to provide care to her mother. The agency's caseworker testified about the issues and concerns in the home, including some prior alcohol related incidents and arguments which occurred between the daughter and her husband at the elderly mother's home. The family countered with evidence that the couple had entered treatment and been sober for two years (although the worker believed the daughter was drinking or "on" something one day). The couple had also engaged in marital counseling since the untoward incidents had occurred.

Case Outcome: The agency's denial of license was reversed by the administrative law judge. On appeal by the agency, the Department of Social & Health Services' Board of Appeals (which makes a Final decision for the agency), reversed the administrative law judge and denied the license, finding the daughter lacked the "character" and "fitness" to do the job.

Washington State Office of Administrative Hearings

Independent | Very Accessible | Expert

Mission: We independently resolve administrative disputes through accessible, fair, prompt processes and issue sound decisions. *Holding independent, fair hearings since 1982*

Vision:

We offer a convenient, easy to navigate system to request and receive fair, impartial hearings on appeals of government actions. Washingtonians and government agencies trust OAH as the best neutral adjudicative forum to resolve administrative disputes.

History:

The Legislature created OAH in 1981, adopting the recommendation of the Washington State Bar Association Administrative Law Task Force to "***improve the appearance of fairness***" in the administrative hearing process.

The Legislature also intended administrative hearings to be easily accessible for the public: ***"Hearings shall be conducted with the greatest degree of informality consistent with fairness and the nature of the proceeding."***

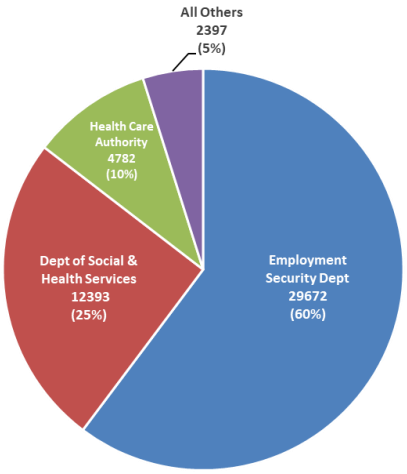
RCW 34.12.010

WWW.OAH.WA.GOV

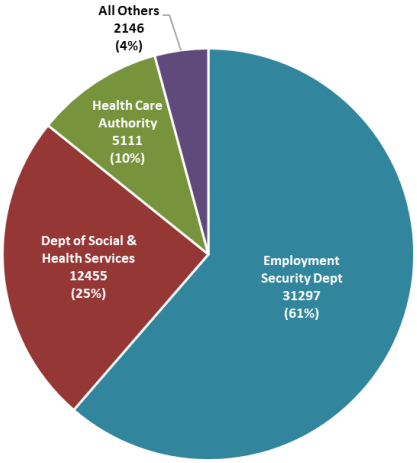
Why we hold hearings:

So that citizens and businesses who disagree with decisions made by state and some local government agencies have the opportunity to be heard. The Administrative Law Judge presiding over the hearing issues a written order deciding whether to affirm, modify or reverse the agency decision.

Number of Cases Received in CY 2019 – 49,244



Number of Cases Closed in CY 2019 – 51,009

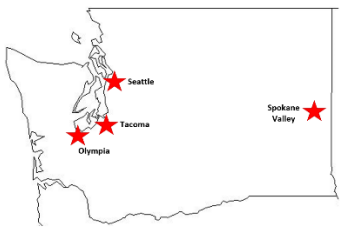


All Other Agencies	# Received	# Closed
Dept of Children, Youth & Families	1250	1011
Labor & Industries	333	331
Superintendent of Public Instruction	305	279
Liquor & Cannabis Board	179	222
Other Agencies	157	133
Gambling Commission	70	71
Office of Insurance Commissioner	29	22
Dept of Financial Institutions	27	26
Department of Licensing	26	30
Washington State University	21	21

Who hearings involve: People of Washington, Employment Security Department - Department of Social and Health Services - Health Care Authority - Department of Licensing - Gambling Commission - Washington State Patrol - Liquor and Cannabis Board - Office of the Insurance Commissioner - Executive Ethics Board - Department of Labor and Industries - Office of the Superintendent of Public Instruction - Washington State University - State Human Rights Commission - Department of Financial Institutions - Office of Minority and Women's Business Enterprises - Department of Children, Youth & Families – Department of Retirement Systems – Local Government Agencies.

OAH Workforce:

- 111 Administrative Law Judges
- 74 Field Office Support and HQ Administrative Staff



1-15-2020






Office of Administrative Hearings (OAH)

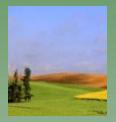
WSBA LLLT Board

New Practice Area Committee

February 3, 2020

- Lorraine Lee
- Chief Administrative Law Judge
- Lorraine.Lee@oah.wa.gov
- (360) 407-2710



Background

Mission: To hold fair and independent hearings for the public and for government agencies, and to issue quality and timely decisions.

History:

The Legislature created OAH in 1981, adopting the recommendation of the Washington State Bar Association Administrative Law Task Force to "***improve the appearance of fairness***" in the administrative hearing process.

Washington 7th state in the country to adopt the "central adjudicatory panel" model of administrative adjudications.

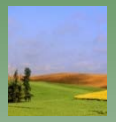
Who we are:

- Chief Administrative Law Judge
- 110 Administrative Law Judges
- 74 field office support & administrative staff

"OAH staff are passionate about the agency mission and take pride in doing meaningful work, particularly valuing their role of independence."
Stellar Associates Report on Fee Structure, Billing Methodology, Productivity, and Organizational Structure Review" (June 2019)

- OAH Locations



OAH Hearings

- **Informal**

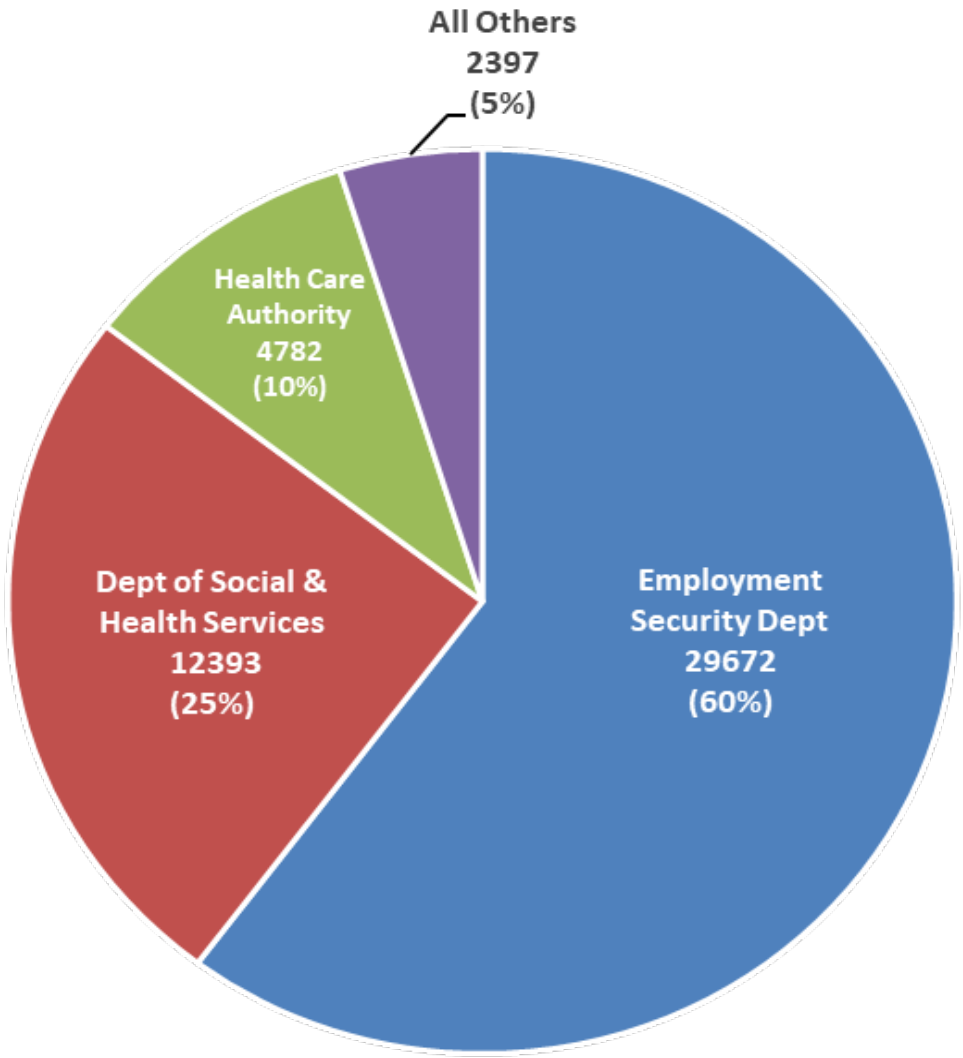
  The Legislature also intended administrative hearings to be easily accessible for the public:***"Hearings shall be conducted with the greatest degree of informality consistent with fairness and the nature of the proceeding."*** **RCW 34.12.010**

- **Non-agency parties mostly <u>pro se</u>**

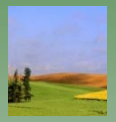
- **Mostly by phone**

- **No filing fee**

OAH Workload
CY 2019 – Intake 49,244 cases





OAH Workload
CY 2019

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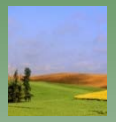


Types of Disputes

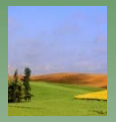
OAH Hearings involve

- Unemployment insurance
- Child Support Establishment / Modification
- Food Assistance
- Temporary Assistance for Needy Families
- Child or vulnerable adult abuse findings
- Medicaid
- Washington Apple Health/MAGI
- Special education
- Business license revocation / suspension
- Student misconduct & Title IX
- Paid Family Medical Leave (new)

Other state adjudicatory entities

- Board of Industrial Insurance Appeals (Worker's compensation)
- Dept of Health (Health providers regulation)
- Dept of Licensing (Driver's license suspension / revocation)
- Dept of Revenue & Board of Tax Appeals (tax)
- Environmental Land Use Hearings Office (environmental)



Laws Involved in OAH Hearings
Example: Unemployment Insurance

RCW 50.20.050(2)(b) provides eleven "good cause" reasons to quit work:

1. a bona fide offer of new work;
2. the death, disability, or illness of oneself or an immediate family member;
3. relocation for a spouse or domestic partner's employment;
4. protection of self or an immediate family member from domestic violence or stalking;
5. 25 percent or greater reduction in pay;
6. 25 percent or greater reduction in hours;
7. increased commute because of employer worksite change;
8. deterioration of worksite safety;
9. illegal activities at the worksite;
10. change in work duties that violates religious convictions or sincere moral beliefs; and,
11. beginning an apprenticeship program.

Case Example – Unemployment Insurance Benefits

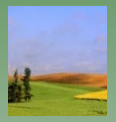
- News article in Seattle Capitol Hill Times, Jan. 30, 2020:

  Nearly 8,000 Nurses and Caregivers Continue Strike at Swedish-Providence

  "Multiple studies have proven that unsafe staffing levels in hospitals can lead to lower quality care, including falls, infections, medication errors, and increased deaths. Recently, the Washington State Office of Administrative Hearings found that, in the Swedish First Hill Organ Transplant Center, "The employer's failure to respond to the severe staffing shortages and manager hostility and retaliation, all of which jeopardized patient health and staff health, shows a complete disregard for patient care and safety as well as a complete lack of regard for their own employees."

- OAH ALJ reversed ESD's denial of unemployment insurance claim, finding that the nurse claimant had established good cause for quitting.



Representation

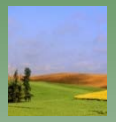
RCW 34.05.428 Representation.
(1) A party to an adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.
(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative.

(OAH Model Rule) WAC 10-08-083 - Notice of appearance.
If a party is represented, the representative should provide the presiding officer and other parties with the representative's name, address, and telephone number. The presiding officer may require the representative to file a written notice of appearance or to provide documentation that an absent party has authorized the representative to appear on the party's behalf. If the representative is an attorney admitted to practice in this state, the attorney shall file a written notice of appearance and shall file a notice of withdrawal upon withdrawal of representation.

(DSHS rule) WAC 388-02-0155 - Who represents you during the hearing process?

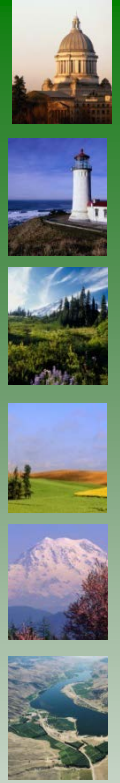
- (1) You may represent yourself or have anyone represent you, except a DSHS employee.
- (2) Your representative may be a friend, relative, community advocate, attorney, or paralegal.
- (3) You should inform DSHS or OAH of your representatives name, address, and telephone number.



Demographics of non-agency parties in OAH Hearings

- Wide spectrum
- Pro Se
  - 75% cases (approx 18,000 cases resolved on merits)
- Representation by attorneys
- Representation by non-attorneys
  - Unemployment Insurance
    - Unemployment law project (represents claimants)
    - Equifax (represents employers)
- May representatives charge a fee?



OAH Suitable Representative Initiative
An Access to Justice Program

- OAH Strategic Objective: Provide equal access to administrative justice for those facing economic and other barriers.
- WAC 10-24-010 (effective Jan. 1, 2018)
- “Suitable representative” form of ADA accommodation to address needs of pro se parties with disabilities
- Training online & self-paced, available on OAH website
- WSBA Legal Lunchbox Oct 29, 2019






Please visit our website:
www.oah.wa.gov

Thank you!

Administrative Procedure Act

RCW 34.05.428 Representation.

(1) A party to an adjudicative proceeding may participate personally or, if the party is a corporation or other artificial person, by a duly authorized representative.

(2) Whether or not participating in person, any party may be advised and represented at the party's own expense by counsel or, if permitted by provision of law, other representative.

[1989 c 175 § 15; 1988 c 288 § 407.]

OAH Model Rule

WAC 10-08-083 - Notice of appearance.

If a party is represented, the representative should provide the presiding officer and other parties with the representative's name, address, and telephone number. The presiding officer may require the representative to file a written notice of appearance or to provide documentation that an absent party has authorized the representative to appear on the party's behalf. If the representative is an attorney admitted to practice in this state, the attorney shall file a written notice of appearance and shall file a notice of withdrawal upon withdrawal of representation.

[Statutory Authority: RCW 34.05.020, 34.05.250, 34.12.030 and 34.12.080. WSR 99-20-115, § 10-08-083, filed 10/6/99, effective 11/6/99.]

Department of Social & Health Services

WAC 388-02-0155 - Who represents you during the hearing process?

(1) You may represent yourself or have anyone represent you, except a DSHS employee.

(2) Your representative may be a friend, relative, community advocate, attorney, or paralegal.

(3) You should inform DSHS or OAH of your representatives name, address, and telephone number.

[Statutory Authority: RCW 34.05.020. WSR 00-18-059, § 388-02-0155, filed 9/1/00, effective 10/2/00.]

Liquor & Cannabis Board

WAC 314-42-020 - Appearance and practice before the board—Who may appear.

During an adjudicative proceeding, no person may appear in a representative capacity before the Washington state liquor control board or its designated hearing officer other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law; and/or

(3) A bona fide officer, authorized manager, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation.

[Statutory Authority: RCW 66.08.030, 66.44.010, 66.24.010(3), chapter 34.05 RCW. WSR 01-11-058, § 314-42-020, filed 5/11/01, effective 6/11/01.]

Suitable Representative Uniform Qualification Training--WAC 10-24-010

Introduction to OAH and the Suitable Representative Accommodation

Module 1

- ☐ Watch me first: Introduction to Training (13-18 min)
- ☐ Read Overview of New Accommodation Rule WAC 10-24-010 (2 pages)
- ☐ Read Suitable Representative Role and Responsibilities (4 pages)
- ☐ Watch Scope of Duty (11:25 min)
- ☐ Watch How to Participate in Your Hearing – OAH Brochures (3-5 min)
    - Read one brochure (2 pages)
        - Unemployment Insurance
        - Public Assistance
        - Child Support
        - Washington Apple Health
        - Hearing – Other Types
- ☐ Watch Overview of Common Forms and Pleadings (optional for attorneys) (13:40)
- ☐ (Optional) Read Communicating with a Client through an Interpreter (2 pages)
- ☐ (Optional) Read Costs and Requests for Reimbursement (1 page)

Advocating for People with Disabilities

Module 2

- ☐ Read Introduction to the ADA (33 slides)
- ☐ Read Strategies for Working with People who have Disabilities (10 sections)
- ☐ Read Communicating With and About People with Disabilities (1 page)
- ☐ Read Guide to Etiquette and Behavior for Working with People with Disabilities (9 pages)
  or Watch Northwest ADA Center video Introduction to Respectful Interactions
- ☐ Watch at least two Northwest ADA Center videos
    - Select from people who are blind, have speech disabilities, use wheelchairs, are deaf or hard of hearing, have non-apparent disabilities, or use service animals (5-20 minutes)
- ☐ Read Rules of Professional Conduct Preamble & Scope, 1.0A, 1.2, 1.3, 1.4, 1.6, 1.14, 2.1
- ☐ Read Respecting Choice and Preferences of the Client (4 pages)
- ☐ (Optional) Take the Disability Implicit Association Test
    - This link is not to this specific test. You will need to "agree to proceed" and then select the Disability test from a list.

Or

- ☐ Equivalent experience or training

Adjudicative Proceedings—Procedural Rules

Module 3

- ☐ Watch Appointment Process, the Case Record, and NOA (16:36 min)
  - (Video is titled Expectations and Procedural Rules)
- ☐ Watch Administrative Law (14:08 min)
- ☐ Read selections from the Administrative Procedure Act
  - APA Chapter Headings
  - RCW 34.05.425 Presiding officers-Disqualification, substitution
  - RCW 34.05.434 Notice of hearing
  - RCW 34.05.437 Pleadings, briefs, motions, service
  - RCW 34.05.440 Default
  - RCW 34.05.446 Subpoenas, discovery, and protective orders
  - RCW 34.05.449 Procedure at hearing
  - RCW 34.05.452 Rules of evidence-Cross-examination
  - RCW 34.05.455 Ex parte communications
  - RCW 34.05.461 Entry of orders
  - RCW 34.05.464 Review of initial orders
  - RCW 34.05.470 Reconsideration
  - Read entire APA (optional)
- ☐ Read Model Rules WAC 10-08
- ☐ Watch one mock hearing video
  - OAH Unemployment Insurance (32:15 min)
  - OAH Child Support (27:32 min)
  - Oregon Unemployment Insurance Phone Hearing (12:34 min)
- ☐ Arrange to listen to a live hearing (optional)
  - Contact the ADA Coordinator

Or

- ☐ Equivalent experience or training

Adjudicative Proceedings—Substantive Law

Module 4

- ☐ Watch Substantive Law (15:11 min)
- ☐ Skim two typical formats on Washington Law Help
  - Do You Owe Child Support?
  - Questions and Answers on Medicaid for Nursing Home Residents

Or

- ☐ Equivalent experience or training

Resources Upon Appointment (not required for training)

Procedural Rules

Read procedural rules for the case type

- WAC 192-04 Unemployment Insurance
- WAC 388-02 DSHS Hearing Rules
- WAC 110 DCYF
- 182-526 HCA Medical Services Programs
- For other case types, go to OAH website for links

Substantive Law

Review program rules for the specific case type. Here are some links:

- OAH website
- Washington Law Help website

General Resources (not required for training)

Optional Videos

- Using a screen reader
- Making an Accessible Video
- CART video
- Invisible Disabilities
- Skill Boosters for dealing with disabled people
- TED talk - The Disability Conversation
- Too Quick to Judge
- State of Oregon – Mock telephone hearing (unemployment)
- Generic administrative hearing from Canada's Justice Education Society of BC
- Kids Meet a Deaf Person
- Kids Describe Color to a Blind Person
- Video Relay Service

Optional Articles

- Accommodating Parties with an Intellectual Disability
- Accommodating Parties with a Learning Disability
- Accommodating Parties with a Psychiatric Disability
- Accommodating Parties with a Head Injury
- Accommodating Parties with Low Vision or Blindness

PDF Reference Documents for OAH Videos
These documents are copies the slides shown during the OAH videos. You may use them for easy access to the hyperlinks or for future reference
• Introduction to Training - Slides • Scope of Duty - Slides • How to Participate in Your Hearing – OAH Brochures - Slides • Overview of Common Forms and Pleadings - Slides • Appointment Process, the Case Record, and NOA - Slides • Administrative Law - Slides • Substantive Law - Slides

EVICTION AND DEBT ASSISTANCE: LLLT NEW PRACTICE AREA – DRAFT

Outline of Eviction & Debt Assistance Practice Area	
Scope	**Permitted Actions**
Unlawful detainer (evictions) ■ For Tenant	• Advise as to remedies prior to court action • Move-out plans, payment plans • Negotiations & settlement offers • Respond to summons and complaint • Discovery • Show cause hearing • Stay/vacate writ of restitution • Advise as to resources for homelessness
Tenant's Rights	• Advise tenants about their rights • Advise tenants about landlord rights • Advise tenants about landlord responsibilities and duties
Unlawful detainer (evictions) ■ For Landlord ■ Individual landlords only (no business entities)	• Advise as to any duties necessary prior to court action • Summons and complaint • Show cause hearing • Writ of restitution • Advise landlords about their duties and responsibilities (landlords with tools and knowledge are better landlords)
Medical bills	• Advice and assistance with health insurance disputes, including negotiation and writing appeal letters • Assistance with Charity Care applications and denials
Identity Theft	• Advice • Best practices for protecting information • Contacting credit bureaus • Reporting to law enforcement and other agencies such as Federal Trade Commission
Legal Financial Obligations (LFOs)	• Assistance filling out forms (e.g. Motion for Order Waiving or Reducing Interest on LFO, Order to Waive or Reduce Interest on LFO)
Protection Orders	• Assistance completing and filing protection/anti-harassment orders
Small Claims	• Assistance preparing the Notice of Small Claims, Certificate of Service, Response to Small Claim, Small Claims Orders, Small Claims Judgment, Counterclaims • Preparation for mediation and trial • Obtaining and organizing exhibits

Outline of Eviction & Debt Assistance Practice Area	
Scope	**Permitted Actions**
Debt collection <u>defense</u> Debts valued at less than the jurisdictional limit of small claims court ($10,000) *Need an amendment to RCW 18.28.010, the Debt Adjusting statutes in order to negotiate and settle debt. The definition would need to exclude LLLTs as it does attorneys-at-law.*	• Answer a Complaint • Drafting Answers and Counterclaims • Deadlines to file answer • Affirmative defenses including statute of limitations • Family expense statute, RCW 26.16.205 • Discovery • Motion to set aside judgment • Reporting Fair Debt Collection Practices Act violation, including statute of limitations and state collection agency statute violations • Reporting to regulatory agencies • Negotiation and settlement of debt
Debt Collection Debts valued at less than the jurisdictional limit of small claims court ($10,000) *There's an issue with the Debt Collection statute and the possibility of being classified as a "collection agency". Need a court order invoking RCW 19.16.100(5)(c); "persons acting under court order" are not collection agencies.* *Eventually, better to have an amendment to RCW 19.16.100, the Collection Agency statutes.*	• Draft a Demand Letter • Draft a Complaint • Answers to counterclaims • Discovery • Judgment • Negotiation and settlement of debt
Student loans – federal *Need an amendment to RCW 18.28.010, the Debt Adjusting statutes in order to negotiate and settle debt.*	• Negotiation of debt or payment plans • Modifications, loan forgiveness and debt relief • Discharge

Commented [A1]: See RCW 19.16.250(27). Cannot serve a debtor with a summons and complaint unless the summons and complaint have been filed with the court and bear the case number assigned by the court.

Outline of Eviction & Debt Assistance Practice Area	
Scope	**Permitted Actions**
Garnishment *Need an amendment to RCW 18.28.010, the Debt Adjusting statutes in order to negotiate and settle debt. The definition would need to exclude LLLTs as it does attorneys-at-law.* *Need a court order invoking RCW 19.16.100(5)(c); "persons acting under court order" are not collection agencies.* *Eventually, better to have an amendment to RCW 19.16.100, the Collection Agency statutes.*	***Proposed Permitted Actions:*** • Negotiation • Voluntary Wage Assignments • Assistance filling out forms (Application for Writ of Garnishment, Continuing Lien on Earnings, Return of Service, Notice Exemption Claim, Release of Writ of Garnishment, Motion and Cert. for Default Answer to Writ of Garnishment, Application for Judgment, Motion/Order Discharging Garnishee, Satisfaction of Judgment) • Exemption Claims, including assistance at court hearings ***Proposed Limitations:*** • LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court (usually • $100,000) • LLLTs may render legal services for debt collection only when there is a direct relationship with the original creditor and may not act as or render legal services for collection agencies or debt buyers as defined under RCW 19.16. • No prejudgment attachments. • No executions on judgments. • No family law judgments.

Draft for Discussion and Comment:

Consumer, Money, and Debt Law

Proposed New Practice Area for Limited License Legal Technicians

Summary
The Limited License Legal Technician (LLLT) Board invites comment on a proposed new practice area: Consumer, Money, and Debt Law. This new practice area is designed to provide economic protection for the public and to provide legal assistance for certain financial matters, with a focus on consumer debt issues and other problems which contribute to consumer credit problems. For example, LLLTs licensed in this practice area would be able to assist clients with issues related to legal financial obligations, debt collection and garnishment defense, identity theft, preparing for small claims court, and filing protection orders.

Introduction
The practice area was developed by a New Practice Area Committee of the LLLT Board in a workgroup chaired by LLLT Board member Nancy Ivarinen. The workgroup is requesting input from other interested parties prior to formalizing the request to the Supreme Court.

While researching new practice areas for LLLTs, the workgroup considered:

- whether the new practice area would increase access to justice for potential clients with moderate or low incomes;
- whether there is a demonstrable unmet legal need in that area;
- whether it's possible to include consumer/client protection for those who use LLLTs;
- whether the new area would provide a viable practice so LLLTs can afford to maintain a business;
- whether the substantive practice area classes can be developed and taught by the law schools in a three-class series, one per quarter, for five credits each; and
- whether there are experts available to help develop the curriculum and teach the classes.

In order to appropriately vet the potential new practice areas, the workgroup considered:

- statistics and reports discussing the legal need;
- comments by invited subject matter experts who explained what the practice areas entail;
- comments by these experts on what the LLLT could potentially do;
- committee discussion about the LLLT being properly trained in a limited scope within the practice area; and
- whether the practice area could be regulated appropriately so that the needs of the clients would be met, while also assuring that the clients would be protected.

The Better Business Bureau (BBB), the Attorney General's Consumer Protection Division, the Federal Trade Commission, and some organizations funded by United Way offer services related to consumer debt, such as debt management, debt renegotiation; and changing the behavior of businesses that prey upon low and moderate income consumers.

These services have been in existence for decades, and yet the demonstrated need in the Civil Legal Needs Study clearly shows that consumers with debt related legal issues are unaware of these services, do not believe these organizations can or will help them, have not been helped when using these services, or have needs that exceed the scope of the services these organizations can provide.

The proposed practice area is intended to help meet these significant unmet legal needs while giving LLLTs additional practice area options for expanding their businesses.

Evidence of Unmet Need

The starting point of the workgroup's analysis was identifying the unmet need that could be addressed by LLLTs licensed in a consumer law practice area. The workgroup found convincing evidence supporting the existing legal need for consumer law assistance in studies conducted at both the state and national levels. The workgroup also looked at statistics received from county-based volunteer legal services providers and the statewide Moderate Means Program, which demonstrated a consistent legal need in the consumer law area among low and moderate income people.

Statistics from State and Federal Studies

- The 2003 (Statewide 0-400% of Federal Poverty Level) and 2015 (Statewide, 0-200% of Federal Poverty Level) Civil Legal Needs Studies identified Consumer, Financial Services, and Credit among the three most prevalent problems that people experience and seek legal help to address. There was an increase in legal need in this area from 27% to 37.6% between 2003 and 2014.
- The Legal Services Corporation June 2017 Report: The Justice Gap (National, 0-125% of Federal Poverty Level) identified consumer issues as the second highest problem area for people at this income level.

Moderate Means Program Data

- The WSBA Moderate Means Program (Statewide, 200-400% of Federal Poverty Level) identified consumer issues as the second highest problem area. In addition, data provided by the program showed that consumer law represented 10% of the 2,321 requests for service from October 26, 2016 to October 27, 2017. Of the 233 consumer law requests, 74 related to bankruptcy or debtor relief and 71 were in collections, repossession, and garnishment.
- Data from the Moderate Means Program on requests for service from January 1, 2015 through May 1, 2017, show 523 of 3,062 requests for service in consumer law matters, about 17% of the total requests over that 28 month period.

Statistics from Volunteer Legal Service Providers

- The King County Bar Association's Neighborhood Legal Clinics 2016 data showed that 15% (1,298 of 8,259) of legal issues addressed at the clinic were consumer law related.
- From 2012-2017 the King County based Northwest Consumer Law Center received 2,499 requests for service, all directly related to consumer law needs.
- Over the last three years, the Tacoma-Pierce County Bar Association Volunteer Legal Services had an average of 160 clients per year visit their Bankruptcy Clinic and an average of about 43 clients per year attend the Foreclosure – Home Justice Clinic.

How LLLTs Can Meet the Legal Need

When reviewing the Civil Legal Needs Studies, the workgroup noted that it was unclear whether or not legal assistance would materially address the consumer law problems the subjects were reporting, and if so, whether that assistance could be provided through some method other than direct representation exclusively by a lawyer.

The workgroup discussed many examples of consumer legal problems that may not have a legal remedy, such as a debt collection lawsuit where the money is owed. While discussing each example, the workgroup saw advantages to providing the consumer with legal advice, even if there did not appear to be a legal resolution to the issue. For example, in a debt collection lawsuit, the statute of limitations on collection of the debt may have passed, so the debtor may not be obligated to pay even though the debt is owed. For those debtors who do have defenses or where collection agencies are attempting to collect a legitimate debt in an unfair or illegal manner, a LLLT could be a valuable consumer protection tool. Even for consumers who have no defense to a lawfully pursued debt collection lawsuit, having the assistance of a LLLT throughout the process of responding to a lawsuit would speed judicial efficiency, as the defendant would understand the procedures and be able to respond in an appropriate and strategic way.

The extensive collection of self-help resources offered on washingtonlawhelp.org regarding consumer debt confirms that many consumers already face this issue pro se, and would undoubtedly benefit from consulting with an affordable provider of legal services in this area.

The workgroup enlisted the advice of practitioners and other experts in the various areas of law to identify the legal work which could be effectively performed by LLLTs and provide an economically sustainable practice area. The workgroup identified that Consumer, Money and Debt Law LLLTs should be able to:

- offer advice regarding all identified topics
- fill out certain forms
- engage in limited negotiation in regard to particular issues
- attend specific hearings to advise the client and assist in answering procedural questions

- attend depositions
- prepare paperwork for mediation, and
- attend any administrative proceeding related to the practice area.

The workgroup carefully weighed the pros and cons of each of the above actions and determined that allowing this range of actions would greatly increase the quality of service that LLLTs could provide to their clients.

Target Clients and Scope

The target clients of this practice area are moderate and low income people with consumer debt or credit problems, or those to whom a small amount of debt is owed. The workgroup narrowly prescribed the focus of the recommended scope in order to provide a maximum benefit to these clients. The workgroup also identified limitations designed to ensure that LLLTs will provide service to consumers who currently do not have resources in this area.

The *2015 Civil Legal Needs Study* noted that the average number of legal problems per household has increased from 3.3 in 2003 to 9.3 in 2014. In addition, the legal problems that low-income people experience are interconnected in complex ways. Consumer debt, for example, can be exacerbated by landlord/tenant issues, divorce, identity theft, lack of access to benefits, problems with an employer, lack of exposure to options such as bankruptcy, and domestic violence and other protection orders.

The workgroup thought holistically about this range of issues which often go hand in hand with consumer debt and credit problems and identified a range of actions which could appropriately be performed by a LLLT in the areas of protection orders, bankruptcy education, wage theft, and identity theft. Including these areas as part of the consumer law relief a LLLT will be able to provide will allow LLLTs to proactively help their clients to break the cycle of debt creation.

Proposed Consumer, Money, and Debt Law LLLT Practice Area

Scope	Proposed Permitted Actions & Proposed Limitations
Legal Financial Obligations (LFOs)	***Proposed Permitted Actions:*** Assistance filling out forms (e.g., Motion for Order Waiving or Reducing Interest on LFO, Order to Waive or Reduce Interest on LFO)
Small Claims	***Proposed Permitted Actions:*** Assistance preparing the Notice of Small Claim, Certificate of Service, Response to Small Claim, Small Claims Orders, Small Claims Judgment, and counterclaims Preparation for mediation and trial Obtaining and organizing exhibits

Student Loans	***Proposed Permitted Actions:*** Negotiation of debt or payment plans Modifications, loan forgiveness and debt relief Discharge
Debt Collection Defense and Assistance	***Proposed Permitted Actions****:* Negotiation of debt Assistance filling out Complaints, Answers and Counterclaims Affirmative Defenses including Statute of Limitations defenses Reporting Fair Debt Collection Act violations, including statute of limitations and state collection agency statute violations Reporting to Regulatory Agencies ***Proposed Limitations:*** LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court ($100,000)
Garnishment	***Proposed Permitted Actions****:* Negotiation Voluntary Wage Assignments Assistance filling out forms (Application for Writ of Garnishment, Continuing Lien on Earnings, Return of Service, Notice Exemption Claim, Release of Writ of Garnishment, Motion and Cert. for Default Answer to Writ of Garnishment, Application for Judgment, Motion/Order Discharging Garnishee, Satisfaction of Judgment) Exemption Claims, including assistance at court hearings ***Proposed Limitations:*** LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court (usually $100,000) LLLTs may render legal services for debt collection only when there is a direct relationship with the original creditor and may not act as or render legal services for collection agencies or debt buyers as defined under RCW 19.16. No prejudgment attachments No executions on judgments

Identity Theft	***Proposed Permitted Actions:*** Advise regarding identity theft Best practices for protecting information Contacting credit bureaus Reporting to law enforcement and other agencies such as Federal Trade Commission
Wage complaints and Defenses	***Proposed Permitted Actions*:** Representation in negotiations or hearings with Labor and Industries Accompany and assist in court Advice and reporting regarding Minimum Wage Act Advice and reporting regarding Fair Labor Standards Act Actions permitted under RCW 49.48 (Wages-Payment-Collection) Actions permitted under RCW 49.52 (Wages-Deductions-Contributions-Rebates) ***Proposed Limitations****:* LLLTs may not represent clients in wage claims which exceed the jurisdictional limit set by the District Court ($100,000)
Loan Modification & Foreclosure Defense and Assistance	***Proposed Permitted Actions:*** Accompany and advise in mandatory mediation process Assist with non-judicial foreclosure actions and defenses under RCW 61.24.040 Advise regarding power of sale clauses and the Notice of Sale Right of Redemption ***Proposed Limitations:*** LLLTs would be prohibited from assisting with non-judicial foreclosures if the LLLT does not meet the requirements of RCW 61.24.010. No judicial foreclosures
Protection Orders	***Proposed Actions:*** Selecting and completing pleadings for Protection Orders for domestic violence, stalking, sexual assault, extreme risk, adult protection, harassment, and no contact orders in criminal cases
Bankruptcy Awareness and Advice	***Proposed Actions:*** Explain the options, alternatives, and procedures as well as advantages and disadvantages Refer to budget & counseling agency Refer to bankruptcy attorney ***Proposed Limitation:*** No assistance with bankruptcy filing in court

The LLLT Board will coordinate with the Washington law schools in the development of the practice area curriculum and ensure that appropriate faculty is available to teach the curriculum. The LLLT Board may modify the proposed practice area based on:

1. consideration of public comments;
2. issues discovered during the drafting of new practice area regulations; and
3. issues that arise during the law schools' development of the practice area curriculum.

Please provide comments to the LLLT Board via email to LLLT@wsba.org by July 16, 2018.

WASHINGTON STATE
BAR ASSOCIATION

TO: Limited License Legal Technician Board

FROM: Renata de Carvalho Garcia; Jaimie Patneaude

cc:

RE: Comments Received on the Proposed New Practice Area Consumer, Money, and Debt
DATE: July 18, 2018

OVERVIEW

The LLLT Board posted a draft of the proposed new practice area, Consumer, Money, and Debt Law, on the WSBA website and solicited comments between May 15, 2018 and July 16, 2018. Staff received a total of 50 comments from lawyers, the Washington State Collection Agency Board, the Northwest Justice Project, the Access to Justice Board, and members of the public.

COMMENTS OPPOSING THE PROPOSED NEW PRACTICE AREA

Although comments in opposition to the proposed new practice area were wide-ranging, at least four main themes stood out: 1) taking work away from lawyers, 2) potential for harming the public, 3) lack of data supporting the license, and 4) complexity of the law.

Out of the 36 comments opposing the proposed new practice area, 11 referred to the LLLT license as being damaging to attorneys or taking work away from practicing attorneys. Some commenters believe that the legal needs of low income people are being supported by organizations such as the Northwest Justice Project. There was also mention that WSBA should use its resources to help support attorneys in assisting low income clients rather than focus on the LLLT license. One person commented, "[t]here are plenty of attorneys willing to work with low income clients by offering their services pro bono or on a reduced fee schedule."

Seven of the comments suggested that LLLTs are ineffective and pose harm to the public in part because it can confuse people (clients would assume that LLLTs provide the same services as lawyers). Some also provided examples of situations they or their clients faced when working with someone other than a lawyer on a legal matter that was complicated.

Five people criticized the lack of data on the LLLT license and either asked or inferred that a comprehensive evaluation be completed prior to any expansion. One individual stated, "I think a true analysis of this "program" needs to be performed BEFORE expansion. It needs to be analyzed in terms of whether or not it is meeting the original purpose and evaluation of the unforeseen consequences."

Four people mentioned the complexity of the Consumer, Money, and Debt practice area as their reason for opposition. One person stated, "[i]t is one of the most impactful areas of the law on individuals. If someone misses a deadline, a house can be in jeopardy, a bank account can be attached or wages can be garnished."

COMMENTS SUPPORTING THE PROPOSED NEW PRACTICE AREA

We received a total of 10 comments in favor of the potential new practice area.

At least four people believe that LLLTs can help fulfill an unmet need. The following is an excerpt from one of the comments. “The lien services are of varying quality, but overall I think they do better than the majority of the liens and related documents I see that lawyers have prepared and recorded. Having an LLLT course would improve the quality of those services provide, and benefit a lot of individual workers and very small businesses”.

Access to justice was another common theme in support of the proposed new practice area. At least three commenters mentioned access to justice while expressing their support for the expansion. One person stated, “I used an LLLT for a family law matter and now have renewed faith in our legal system as a result”. Another example comes from a lawyer, with 49 years of experience in this practice area, who strongly supports the expansion due to successful collaboration with a LLLT to provide family law services to a mutual client.

SUBSTANTIVE COMMENTS

Comments from attorney Edgar Hall, the Washington State Collection Agency Board, and the Northwest Justice Project, offered concrete suggestions for revisions to the proposed permitted actions. These comments are incorporated in the attached revised proposed new practice area draft.

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César E. Torres
Executive Director

Northwest Justice Project

June 29, 2018

Washington State Bar Association
LLLT Board
LLLT@wsba.org

Re: Consumer, Money, and Debt Law
Public Comment From The Northwest Justice Project

Mr. Chairman Crossland and Members of the Board:

Please accept these comments of the Northwest Justice Project concerning the proposed new practice area for LLLTs in Consumer, Money and Debt Law.

A. ABOUT THE NORTHWEST JUSTICE PROJECT

The Northwest Justice Project (NJP) is a dynamic statewide law firm providing low income legal advice and representation, community partnerships, and education to empower low income clients and combat injustice in all its forms.

NJP also maintains WashingtonLawHelp.org, the public website referenced in your proposal which contains an extensive library of legal resources and self-help materials including necessary court forms in areas of law needed most by low income people, the great majority of whom are forced to appear in court unrepresented. In addition, NJP is an integral member of, and provides support for, the Alliance for Equal Justice, Washington's coordinated statewide civil legal aid delivery system which brings together a network of volunteer attorney programs, specialty legal aid providers, and supporters working to ensure equal justice for all low-income communities in Washington. It was largely through this network, and through the work of NJP staff and attorneys, that the Civil Legal Needs Study was conducted.

In response to the Civil Legal Needs Study, NJP re-organized its Strategic Advocacy Focus (SAF) and dedicated roughly one third of its resources to addressing consumer debt, legal financial obligations and landlord tenant debt. There is without a doubt an expanding need for representation in these areas. However, NJP has significant concerns with aspects of the proposal but is in support of others. More specifically,

THE ALLIANCE for Equal Justice MEMBER

LSC

the proposal to permit LLLTs to negotiate consumer debt would likely revive the predatory debt settlement industry. In addition, the Board's proposal to permit LLLTs to engage in debt collection, including garnishments, supplements the competitive debt collection industry, a result directly averse to the Board's mandate and the findings of the Civil Legal Needs Study.

Ancillary to NJP's primary concerns, the Board's proposal does not recognize or address the various legislative statutes and executive enforcement bodies that already regulate the majority of privileges the Board proposes to grant to LLLTs. In other words, the Board's proposal creates a secondary licensing system over non-legal professionals already engaging in many of the activities the Board intends to license. This is a concern that was not relevant to the debate over granting LLLTs the right to practice of family law, which is an exclusive domain of attorneys. Consumer law, by contrast, is substantially intertwined with market participants, statutory regulation and for profit non-lawyer services; many of which are historically predatory. For example, permitting an LLLT to "negotiate" debts would immediately subject LLLTs to regulation as a "debt adjuster" under the Debt Adjustment Act. LLLTs permitted by the WSBA to commence garnishments or prepare a debt collection complaint, would fall squarely within federal regulation as "debt collectors" under the Fair Debt Collection Practices Act, 15 USC § 1692a(5) and as "collection agencies" under Washington Collection Agency Act, RCW 19.16.100(4)(a). Moreover, the Board has not addressed the significant question of what the impact would be of creating a secondary licensing system under Washington's judicial branch of government regulating and licensing existing businesses already subject to statutory regulation and executive agency oversight.

Notwithstanding these concerns, with appropriate training and oversight, permitting LLLTs to engage in limited form based practices and non-adversarial proceedings (such as preparing answers to civil lawsuits, exemption claims to bank garnishments, and assisting with driver's relicensing and legal financial obligation waivers, restoration of civil rights etc.), and with training to identify and appropriately refer cases of unfair and abusive conduct to consumer attorneys or regulatory bodies, might positively serve the public and meet the Board's mission.

B. DEBT ADJUSTING

The proposal permits Consumer LLLTs to provide "Debt Collection Defense and Assistance" through "negotiation of debt or payment plans, loan modifications, loan forgiveness and debt relief discharge." NJP has grave concerns that these activities will increase the number of people operating as "Debt Adjusters" in Washington.

Debt adjusting is a highly regulated profession in this state. The Debt Adjusting Act was enacted in 1978, in response to rampant abuse and victimization of low income people struggling with debt collectors. The profession is defined by statute, and

clearly includes the activities proposed for LLLTs.[1] The licensing proposal also overlaps and interferes with federal bankruptcy law permitting non-lawyers to engage in credit counseling. *See* 11 U.S. Code § 111.

With respect to debt adjusting, Washington's Supreme Court observed that the Debt Adjuster Act was passed in response to "deep-seated concern about the abuses inherent in the debt adjusting industry." The Court found, "the lack of industry regulation, and the frequently unsophisticated and/or desperate client seeking relief from bill collectors' harassment, gave rise to numerous unfair and deceptive practices." *Carles v. Global Client Solutions*, 171 Wn.2d 486, P.3d 321 (2011) quoting *Performance Audit: Debt Adjusting Licensing and Regulatory Activities*, Report no. 77-13, Jan. 20, 1978, at 7 (on file with the Wn. State Archives, H.B. 86 (1979) at 7).

"Debt Adjusting," or selling services to negotiate settlement of debt with creditors, is an existing private industry that does not require either a full of limited license to practice law. However, people licensed as LLLTs who engage in debt negotiation will also meet the statutory definition of a "Debt Adjusters" and be separately regulated by that Act. This fact produces at least two truths in opposition to the proposed rule. First, requiring licensing as a LLLT merely supplements the existing legislative and executive regulatory framework of the debt adjusting profession with a licensing requirement governed by the judicial branch of government (raising separation of power concerns). More importantly, the proposal fails to achieve the purpose of fulfilling an "unmet need" where it merely supplements an existing, often predatory, highly regulated, non-legal profession.

The Board's current proposal also ignores the hard-learned lessons of the past. For example, NJP attorneys know from their clients' experiences that operators in the debt settlement industry often take consumers' money and fail to provide meaningful service, leaving the consumer with no benefit, and depleted resources to offer creditors. In response, many debt collectors have adopted policies to accelerate collection efforts and immediately sue debtors when a debt adjuster appears on their behalf in a race to collect depleting resources since the consumer has demonstrated an ability to pay something by hiring the service. In these instances, consumers are often betrayed by a false sense of security and allowed default judgments to be entered on the assumption the debt adjuster they hired is providing meaningful relief. Debt adjusters, as well as the putative Consumer LLLTs, cannot provide meaningful representation; Northwest Justice Project attorneys repeatedly expend substantial effort to vacate, when possible, default judgments resulting from this practice. The

[1] "Debt Adjusting means the managing, counseling, settling, adjusting, prorating, or liquidating of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor." RCW 18.28.010(2).

proposal does not offer any protection or solution, and NJP anticipates this portion of the LLLT proposal will lead to similar harm to low income debtors.

Further, fully licensed attorneys are subject to regulation under the Debt Adjustment Act, and it is axiomatic that LLLTs will be as well. *See Bronzich v. Persels & Assocs., LLC, No. CV-10-0364-EFS, 2011 WL 2119372, at *6 (E.D. Wash. May 27, 2011)* ("Even if the Attorney Defendants are licensed to practice in Washington and therefore can seek reliance on the services-solely-incidental-to-legal-practice exemption, the Court determines this exemption does not apply to an attorney or law firm specializing in debt adjustment").

Permitting LLLTs to engage in a business already available to non-lawyers, but subject to existing regulation, creates a confusing overlap of WSBA licensing policies with pre-existing state industry regulations. Worse, the licensing of LLLTs to specifically engage in debt settlement encourages a false perception that existing regulation is inapplicable to LLLT licensees. This perception is likely to lead to temporary growth in a predatory industry; it will likely be up to NJP and private consumer attorneys to bring consumer protection litigation against LLLTs unfamiliar with Washington's extensive consumer protection regulations to counter regulatory transgressions and generally unfair and deceptive practices that are part and parcel with this industry.

NJP encourages the Board to strike the provisions of the proposal that authorizes Consumer LLLTs to engage in any activities classified as "Debt Adjusting", debt settlement, credit counseling, or the like.

C. WASHINGTON STATE COLLECTION AGENCY ACT AND THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT

By allowing LLLTs to provide debt collection services, such as garnishments or ghost writing collection complaints, the Board's current proposal also infringes on existing state and federal regulatory statutes and unnecessarily supplements a competitive industry in derogation of the LLLTs mandate to meet unmet civil legal needs.[2] Similarly, the proposed licensing requirement to allow certain debt collection activity places the putative LLLTs squarely within existing state and federal debt collection regulation.

The FDCPA prohibits debt collectors from engaging in various abusive and unfair practices. *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 947–48 (9th Cir. 2011) (internal citations omitted). "The statute was enacted to eliminate abusive debt collection practices; to ensure debt collectors who abstain from such

[2] On March 27, 2018, 1,524 entities had an active collection agency licensed issued by the Department of Licensing, representing a growth of 35 licensees since the fall of 2017.

practices are not competitively disadvantaged; and to promote consistent state action to protect consumers." *Id;* 15 U.S.C. § 1692(e). The statute defines a "debt collector" as one who "regularly collects ... debts owed or due or asserted to be owed or due another," 15 U.S.C. § 1692a(6), and covers lawyers who regularly collect debts through litigation, *Heintz*, 514 U.S. at 293–94, 115 S.Ct. 1489. Consumer LLLTs licensed to garnish, draft collection complaints or participate in collection cases in Small Claims Court meet this definition and will be regulated by the FDCPA.

Similarly, the Washington State Collection Agency Act, chapter 19.16 RCW, enacted in 1971, requires collection agencies to obtain a license, follow certain internal procedures, and adhere to a code of conduct. Washington has a strong public policy underlying the state and federal laws regulating the practice of debt collection. *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 54, 204 P.3d 885, 897 (2009) ("the business of debt collection affects the public interest, and collection agencies are subject to strict regulation to ensure they deal fairly and honestly with alleged debtors"). Consumer LLLTs licensed to garnish, draft collection complaints or participate in collection cases in small claims courts meet this definition, are regulated by the WCAA and must be separately licensed by the Department of Licensing.

What is confusing about the LLLT proposal, is these "services" are already widely available by regulated non-lawyer businesses (i.e. collection agencies) which also happen to be the antithesis of consumer protection law.

The Board must seriously consider whether licensing LLLTs to engage in these activities serves any unmet need identified in the Civil Legal Needs Study. It must also seriously give weight to the fact that the proposal will extend WSBA regulatory authority over thousands of non-lawyers legally performing the function the LLLT Board intends to license.

D. CONCLUSION

Finally, it is concerning that the initial Consumer LLLT proposal was developed without seeking input from Washington's consumer protection community or legal services organizations. Consumer lawyers in this state are highly self-organized both as a subgroup of the National Association of Consumer Advocates, via participation in Washington based restricted email listservs, in person CLEs and galvanized together by the common experience of difficult litigation against well organized and well-funded corporate opponents. When the proposal was revealed, it came as a complete surprise to this community of consumer attorneys. It is regrettable that this wealth of experience and knowledge was not consulted in the development of this proposal. There is real and ongoing harm to low income consumer and debtor's in this state; there are not enough consumer attorneys helping them to enforce their rights. But while the proposal has some promising features for our client base, our experience predicts it will, as currently drafted, be largely ineffective and in several ways harmful to consumers with unmet legal needs. Moreover, the licensing proposal cuts both

ways: LLLTs will be able to represent creditors as well as debtors thereby increasing access to justice for creditors – the unintended consequence of this rule. The unintended consequence is not theoretical given the financial resources available to hire LLLTs are greater for creditors than for debtors.

Consumer LLLTs may have a role in the quest to combat predatory practices and inform the public, but the proposed rule as drafted seems ineffective to serve that purpose. Significant modifications should be made. NJP would like to see the proposal revised to focus more on helping consumers with form based or non-adversarial proceedings, and not grant any authority to engage debt collection or to engage directly with debt collectors on a consumer's behalf.

Therefore, NJP recommends that the LLLT Board:

1. **Abandon** the proposed permitted actions of:
    a. Negotiation of debt;
    b. Assistance filling out complaints and counterclaims;
    c. All actions related to garnishment except assistance with exemption claims;
    d. All actions related to loan modification and foreclosure defense and assistance; and
    e. Representation in court and at depositions.
2. **Consider** revising the scope of the proposed permitted actions of:
    a. Activity involving student loan debt by permitting LLLTs to assist a debtor only with *federal* student loan repayment options;
    b. Reporting unfair acts, deceptive practices, and consumer statutory violations to consumer protection attorneys and/or a legal services agency in addition to regulatory authorities;
    c. Providing bankruptcy advice in a manner that conforms with and does not overlap with 11 U.S. Code § 111 (creating non-lawyer credit counseling) and fulfills an identified legal need or supplements a need not already met by "credit counselors"; and
    d. Reducing the level of participation permitted in Small Claims Court cases to not exceed the participation restrictions in place against fully licensed attorneys. In addition, a strict prohibition against LLLTs assisting creditors in small claims litigation or engaging in other conduct

meeting the definition of "debt collector" under the FDCPA or a "collection agency" under WCAA.

3. **Adopt** the proposed permitted actions of:

    a. Assistance with waiving legal financial obligations or interest on legal financial obligations;

    b. Preparing answers to debt collection lawsuits, including helping consumers apply for Charity Care from hospitals where appropriate;

    c. Providing advice regarding identity theft, including assistance with filing police reports and filling out necessary forms from government entities or private creditors;

    d. Educate consumers on identity theft issues, best practices and provide resources (i.e. www.washingtonlawhelp.org);

    e. Assisting consumers with wage complaints to Labor and Industries, assistance with negotiation and administrative hearing in wage complaints cases, advice and reporting under the Minimum Wage Act and Fair Labor Standards Act, and referral to private attorneys or legal services of claims and statutory rights enforcement that requires civil litigation; and

    f. Assisting consumer with billing disputes with original creditors that are not in litigation, which may include preparing complaints to local, state and/or federal agencies.

4. **Add** proposed permitted actions of:

    a. Assisting consumers in obtaining relief in abbreviated or form based procedures in addition to applying for legal financial obligation (LFOs) interest waivers such as:

        i. Waiver of LFOs (or a limited waiver of LFO interest);

        ii. Exemption claims in garnishment;

        iii. Relicensing programs;

        iv. Expungement or sealing of criminal records;

        v. Restoration of civil rights (voting);

vi. GR 34 waiver of Court fees;

vii. Other appropriate form based or non-adversarial proceedings.

b. Assisting and advising consumers with pre-unlawful detainer landlord tenant disputes, such as documenting the condition of the property, habitability rights, applications for subsidized housing, education and resources.

Sincerely,

NORTHWEST JUSTICE PROJECT

Scott M. Kinkley[3]
Attorney at Law

smk/np

cc Cesar E. Torres, NJP Executive Director

[3] Presenter at twenty-two WSBA accredited CLEs on debt collection defense and related issues, author of the WSAJ's Consumer Protection Handbook chapters on the Fair Debt Collection Practices Act and the Washington Collection Agency Act, , and 10-year member of the National Association of Consumer Advocates.

From: Gary Morean
To: Limited License Legal Technician
Subject: [Possible Spam] LLLT
Date: Thursday, July 05, 2018 5:13:31 PM
Importance: Low

Dear LLLT Board,

Do **not** expand this monster into any other areas of law. It should never have been created in the first place. Please kill this expensive, ugly beast.

Gary A. Morean
WSBA #12052

Gary A. Morean, ***Partner***
Attorney at Law
INGRAM, ZELASKO & GOODWIN, LLP
120 East First Street | Aberdeen, WA 98520
360.533.2865 (phone) | 360.538.1511 (fax)
Email: gmorean@izglaw.com
Website: www.izglaw.com

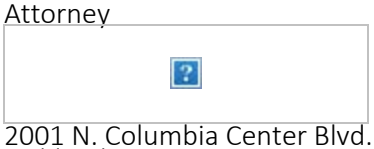
From: Matt Purcell
To: Limited License Legal Technician
Subject: Against expanding the LLLT program
Date: Tuesday, May 29, 2018 10:57:31 AM
Attachments: image001.png

The program has ZERO data that it has remotely met the original goals under family law. It is asinine to expand at this time and seriously calls into question the sanity of those running the program. The way this is being run is so offensive it's not even funny at this point…

Happy to talk about how to make the program better but no one asks (certainly not anyone from the eastside of the state where all these LLLTs were allegedly going to help low income and rural communities…).

Truly,

MATHEW M. PURCELL
Attorney



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Please be aware that Domestic Court is held Monday morning, Tuesday all day and Wednesday morning each week; my ability to respond to email is limited during those days/times.

Heather Martinez: HM@PurcellFamilyLaw.com
Maria Diaz: MD@PurcellFamilyLaw.com
Mark Von Weber: MV@PurcellFamilyLaw.com

Office Hours: Monday-Thursday from 9:00 a.m. to 5:00 p.m. Friday from 9:00 a.m. to 4:00 p.m.
Closed for lunch from 12:00 p.m. – 1:00 p.m.

From:	Bonnie Sterken
To:	Limited License Legal Technician
Cc:	Paula Littlewood; Diana Singleton; geoff.revelle@FisherBroyles.com; steve@crosslandlaw.net
Subject:	ATJ Board Comments for LLLT Board
Date:	Monday, July 16, 2018 11:17:51 AM
Attachments:	ATJ Board letter to LLLT Board 7.16.2018.pdf image001.png

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Good morning,

Attached, please find the ATJ Board's letter in response to the new proposed practice area.

Thank you!

Bonnie Middleton Sterken | Justice Programs Specialist
Washington State Bar Association | 206.727.8293 | bonnies@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
Pronouns: She/Her

The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact bonnies@wsba.org.

July 16, 2018

Steve Crossland
Limited License Legal Technician Board
1325 4th Ave, #600
Seattle, Washington 98101
Sent by email: LLLT@wsba.org

RE: LLLT Proposed New Practice Area

Dear Steve:

The ATJ Board has reviewed the "Draft for Discussion and Comment: Consumer, Money, and Debt Law Proposed New Practice Areas for Limited License Legal Technicians." We understand that this is just that – a draft proposal and this appears to be a broad outline of a proposal to us where the specifics are still being considered.

We understand that 36 people have graduated from the LLLT program since it began and of those 36, 33 are in practice. We also understand that three LLLTs are practicing in Eastern Washington while the rest practice in Western Washington.

It is our understanding that none of the 33 LLLTs are employed by a civil legal aid provider. (To our understanding one LLLT has a contract with the Chelan-Douglas County Volunteer Attorney Services – how much of her time is involved with that contract is unknown.)

It is also our understanding that the LLLT Board does not know the amount LLLT's are charging for their services. Without that basic information it is difficult to conclude how much of the population would gain access to the justice system if this newest proposal were to be adopted. For purposes of this letter the ATJ Board is assuming that the proposed expansion would provide greater access to the segment of the population that can pay some amount for legal services.

We are aware that your Board is looking for feedback before July 16, 2018, so we will provide some general comments at this point in time.

In order to further access to the justice system, the expansion into the scope of practice that the LLLT Board is recommending should be limited. Your proposal should not allow LLLTs to represent any corporate entity, partnership, or person in connection with the business of debt collection, debt buying, or money lending. Without this restriction your proposal would not expand access to the justice system for those who need it but instead only allow another avenue for those who already have the means to access the justice system.

As an overarching concern, the ATJ Board will want to see how this new proposal would promote access to the justice system. If the overwhelming majority of LLLTs are charging for their services then this proposal will not promote access to the justice system for those who have no ability to pay. It may, however, promote access to the justice system for those who have the ability to pay some amount, i.e., those of moderate means. At this point in time the ATJ Board does not have sufficient information to make that determination.

As I stated throughout this letter our comments are general in nature. The ATJ Board may have concerns about specifics of the proposal as they become clarified.

We look forward to receiving the information that we requested.

Sincerely,

Geoffrey Revelle, Chair
Access to Justice Board

From: Kylie Purves
To: Limited License Legal Technician
Subject: Comment on Proposed Consumer, Money, and Debt Law LLLT Practice Area
Date: Tuesday, May 15, 2018 12:39:28 PM

I think there is a weak nexus between the evidence of unmet need and some of the proposed practice areas.

For example, I do not believe these two areas are appropriately under the heading of Consumer, Money, and Debt Law:

> Small Claims Proposed Permitted Actions: Assistance preparing the Notice of Small Claim, Certificate of Service, Response to Small Claim, Small Claims Orders, Small Claims Judgment, and counterclaims Preparation for mediation and trial Obtaining and organizing exhibits.
>
> Protection Orders Proposed Actions: Selecting and completing pleadings for Protection Orders for domestic violence, stalking, sexual assault, extreme risk, adult protection, harassment, and no contact orders in criminal cases.

Small claims is broad and could include matters outside of the consumer, bankruptcy, and credit related issues cited in the section entitled Evidence of Unmet Need. The inclusion of protection orders is not supported at all by the evidence provided.

Inclusion of extra practice areas in a call for comments on Consumer, Money, and Debt Law is also potentially misleading because people who have an interest in commenting on something like no contact orders in criminal cases might disregard a call for comments on a seemingly unrelated topic.

Kylie J. Purves
Assistant City Attorney
City of Bremerton
345 6th Street, Suite 100
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(360) 473-2336
kylie.purves@ci.bremerton.wa.us

From: Ryan Santini
To: Limited License Legal Technician
Subject: Comment re New Practice Area
Date: Wednesday, June 20, 2018 10:18:56 AM

Hello,

I am writing you today to voice support for the addition of the practice area Consumer, Money, and Debt. When it comes to access to justice, it should come as no surprise that those who are priced out would have need of legal services related to debt. This proposed practice area is of great interest to me personally as someone with a background in working for a local credit union. Everyday I worked with the under-served members of my community; I am thrilled to think I might be able to continue doing this and draw on some of my financial industry knowledge. I am currently studying for my Associates in Paralegal Studies at Whatcom Community College.

Thank you for your time,

--
Ryan Santini
(808) 457-6063
237 W. Kellogg Rd
Bellingham, WA
98226

From: Edgar Hall
To: Limited License Legal Technician
Subject: Commentary on LLLT including money, debt, and consumer law
Date: Monday, May 07, 2018 8:33:27 PM

My name is Edgar Hall. My practice, Washington Debt Law, is entirely focused on all three areas to includes resolution of debt issues via settlement, litigation, and bankruptcy. I have practiced in this area for the last ten years as both debtor and creditor attorney. I believe that I am well situated to discuss these issues.

I will break down my analysis by the anticipated scope of services as presented on pages 4-6.

1. Assisting with LFOs & reducing interest on them

-simple motion, well within LLLT ability

-very supportive of all proposed activities

2. Small Claims

-limited amount in controversy, opposing party likely not represented behind the scenes by serious legal rep, fast and efficient forum

-very supportive of all proposed activities

3. Student Loans

-Often times huge sums, up to 35% mark up under the higher education act, requires deep level understanding of accounting and review of accounting over life of loan, understanding of securitization and how loans are originated, stored, sold and transferred necessary, understanding of state law and federal remedies, understanding of bankruptcy, etc

-Absolutely, 100% against all proposed activities. There are no statute of limitations on federal loans generally, large attorney fees on the other side could be racked up by inarticulate litigation, LLLT licensed in WA cannot practice bankruptcy (often a necessary component to successful defense), LLLT would need to be able to give advice on federal statutes and federal law, LLLT would need to be able to argue administrative law before ALJ's potentially to appeal federal garnishments, etc. If poor advice is given regarding consolidation, it can impact access to income based repayment and other programs. Settling without understanding the threat of bankruptcy, hardship discharge, and deeper level accounting and consumer protection errors would be weak. I could go on and on but essentially LLLT's likely could not obtain proper licenses to give the necessary advice to productively assist clients.

4. Debt Collection Defense and Assistance

-I am mixed on this one. Generally there are three ways to handle a debt: settlement, counterclaims, and bankruptcy. LLLT's cannot practice or advise on bankruptcy matters and that threat is a huge part of the defense and necessary leverage proper settlements. FDCPA is federal law, along with FCRA, TCPA, TILA, etc. Can LLLT advise on federal law and the

strategy of the collection indusry would be to just remove every case to escape the free help and magnify fees at the same time, relying on attorney fee clauses and fee shifting statutes to force debtors to pay even more for this trouble. Frivolous, unsuccessful, or missed counterclaims would likely be a problem. The only reason I am mixed is purely based on need and some combination of form discovery and help could be useful. Some matters are straighforward enough that some small portion could be helped.

-I would HESITATINGLY say that these activities would be allowed with the reservations below
a) negotiation of debt
b) filling out answers but NOT counter claims unless they associate with someone licensed in federal court as the claim will just get removed and additional attorney fees added
c) reporting statutory violations to regulatory agencies

-Given the very close interaction of debt defense with bankruptcy, it is very hard to consider anyone not familiar with bankruptcy laws as being competent to render debt defense advice on a gestalt level
-I believe allowing LLLT's to file counterclaims will lead to an increase in additional attorney fees and likely against the debtor

If I had an ideal world, there would be some sort of mandatory BK screen, counter claim screen, and either of those being flagged and a referral given to the client. LLLT's can help with basic notices of appearance, limited discovery, perhaps a review of the accounting with proper background/training, and basic negotiation.

5. Garnishment

To short cut, I support everything stated and would only add that a referral to a BK attorney or a screen would be useful and should be mandatory.

6. Identity Theft

I support as drafted

7. Wage Complaints & Defense

Essentially I will reiterate my objections as listed in section 4 above. I do not know much about the employment side of things, but there are state and federal laws to consider and only being able to handle half the book is problematic at best. Likewise, in fee shifting perspective, this is opening up the employee to some pretty large counterclaims that will mandate their bankruptcy should they fail. But if they are not working, at least they qualify.

8. Loan Modification & Foreclosure Defense

I have worked as a creditor attorney on this side of things at a mortgage default servicing firm and as a consumer atty defending against judicial and non-judicial foreclosures.

Loan modification is fine. The bank is going to do a net present value, determine if its more profitable to foreclose or not, and will basically act accordingly. The only problem here is the

LLLT could mistakenly take away standing arguments by shooting for modification when it should be litigated. That can be the difference between a valid defense and/or a free house. The malpractice the LLLT might have in this market could not cover the amount lost. I would recommend requiring a much higher policy as a minimum to practice here.

As far as foreclosure defense, I am absolutely against it. Defense generally (aside from modification) consists of litigation, possible class action, understanding of numerous federal laws in addition to state laws, understanding of securitization, understanding of how mortgage accounting works and loan processing. I cannot begin to describe the harm that I have seen licensed attorneys without foreclosure experience have harmed files, I shudder to think of what someone with limited licensure and experience could do. Keep in mind, there are fee shifting statutes in all of the contracts, deeds of trust, promissory notes, and most consumer protection statutes that are relevant.

Making a distinction between judicial and non-judicial foreclosures seems like a true distinction, it is not. Here is why. To stop a non-judicial sale, you file a TRO and claims and then essentially you have turned it into a judicial FC because you are alleging all the same issues, just with an additional bond required by RCW 61.24. Do you know what they are going to do? Just start everything as a judicial, ramping up costs and not waiving deficiency. This will compel more bankruptcies. What makes the non-judicial nice is the deficiency is waived, if a slew of LLLTs pop onto the market and the defense knows they are not allowed to work judicial cases, what do you think will happen from a game theory perspective? More judicial foreclosures, more fees, fewer waivers of deficiencies, more bankruptcies, and more bad outcomes.

This is not family law where each side bears their own fees unless they are in contempt, violate a parenting plan, or do something to compel that outcome. These are banks which are always represented by experienced firms and in many instances national/multinational white shoe firms.

I support loan mod assistance, I do not support foreclosure defense other than perhaps through the foreclosure mediation program, RCW 61.24.163.

9. Protection Orders

Not sure how this is debt related but I like it as written

10. Bankruptcy awareness and advice

Support as written

ADDITIONAL OBSERVATIONS

If you really want to help with all of these debt issues. Require more precision of process servers. 90% of my clients claim they are not served. White, black, old, young, religious, non-religious, educated, uneducated, etc- the only pattern is consistency of claims of not being served and legitimate surprise and anger. It is so easy for a process server to sewer serve it is beyond ridiculous. Drive by, see the lights on, and say it happened. A statute should be added making statutory punishments for servers and process serving companies for

fibbing about service as well as higher bonds or insurance.

I actually advise my clients to install drop cams and in several instances the process server can be seen tossing the papers at the door or nothing at all. I do so many motions to vacate it makes me dizzy. A constant stream of false service. I had one recently claim to serve someone at a youth hostel they had not been to in over 10 years because likely it came up on the skip trace at some point.

Further, we need more protective garnishment laws. We need less than 25% of wages to be garnished and more exemptions. Throwing gobs of LLLT's is not the solution, the solution is systemic protections and better process. Imagine how many fewer attorneys and LLLT's would be necessary if only 10% of your income were taken, inline with many other states.

We should reintroduce the old fraud provision of the deed of trust act instead of this victim blaming RCW 61.24.127 that we have instead.

We can require more in the initial complaint than some vague statement that money is owed two or three paragraphs long. Most of my clients actually think its a scam when combined with no case number its so vague. We can make stronger case law that sets judgment interest as the measure rather than hit and miss case law that allows a higher contract rate without necessary TILA disclosures. We can make stronger prove up that service was made.

In any case, this is a topic near and dear to my heart and I would be happy to give more input upon request. I hope this assists.

-Edgar Hall

Edgar I. Hall, Attorney
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www.wadebtlaw.com

From: Paula Plumer
To: Limited License Legal Technician
Subject: Comments - new practice area
Date: Tuesday, July 03, 2018 10:38:25 AM

I don't think this expansion is useful and I disagree with watering down the law license to add this or the other practice areas.
/paula plumer

From: Minh Tran
To: Limited License Legal Technician
Subject: Comments on "Consumer, Money and Debt Law"
Date: Tuesday, May 15, 2018 3:58:58 PM

Hello,

I have been practicing since 2009. When I started practicing, my focus was on consumer bankruptcy law (Ch 7 and Ch 13). I worked at one of those firms that filed thousands of cases per year. We often charged around $800-1,200 attorney's fee to file a simple case. I believe the going rate still hasn't changed. What was mind boggling to me back then, and now, is that some people will pay $500 to an unlicensed bankruptcy document preparer to draft their *pro se* bankruptcy petition. Sure, the cost savings is huge for someone who is completely out of cash, but most of my Ch 7 clients were all in the same boat. We found a way to make it work. After leaving the firm, I started my own practice where I expanded my practice to alternative means of debt resolution--which sometimes include litigation. I have litigated against insurance companies on subrogation claims, against big banks for wrongful foreclosure tactics, and I have also negotiated settlements with creditors and then pursued contribution claims against ex-spouses. I don't find what I do in my practice as "simple", and I wouldn't trust any of my paralegals to advise clients or work on cases without my supervision (for the sake of the client). I find it troubling that the workgroup would trust LLLTs with this role.

I read over the proposed practice area and for the most part, I think the proposal creates a situation where some desperate debtors will end up being more harmed than helped due to advice from untrained "litigators". It should be noted that debt collection is a very broad area, and it could involve other areas such a debtor being sued for an automobile subrogation claim, car accident without insurance, breach of lease agreement, a breach of credit card contract, or even for a tortious action. These are all ordinary lawsuits where the end results is a judgment and garnishment if the defendant loses. To simplify it down to simply a debt collection matter ignores all the complexities of litigation.

The proposal goes beyond simply helping debtors understand their rights and completing forms; it would allow LLLT to draft motions, directly negotiate with opposing parties, coming up with counter claims and affirmative defenses, "accompanying and assisting in court", and advising on bankruptcy matters. All of these actions require both experience and knowledge in litigation strategies. And what's the worst thing that can happen to a desperate debtor who was sold on using a LLLT due to cost savings? Well, the debtor could lose his/her home, waive a statute of limitations defense or other waivable defenses, or be liable for massive amount of attorney's fee due to fee shifting clause in a contract.

I also want to remind the workgroup of United States v. Tally, Western District of Washington CR18-0082-RJB, where a lady ran a business called "Driving Dirty" to help people get their drivers license back. One thing she did was she assisted folks in filing frivolous bankruptcy petitions *pro se* to get their license back. The U.S. Trustee got an injunction against her and eventually she was prosecuted for a felony for lying at a 2004 examination (where she was asked if she ever advised people to file bankruptcy). Although her intentions were good, helping folks who can't afford attorneys get relief, her advice and strategy harmed creditors and wasted public resources. She obviously did not have all the tools to fulfill her goal with her limited knowledge.

While I think LLLT can provide valuable service to family law practice, where the court has developed forms and advice for filers, "debt collection" is too broad of an area. A simple motion to vacate a default judgment so that a summary judgment can later be entered could mean additional attorney's fee assessed against the debtor. Defending and prosecuting "debt collection" requires some litigation experience because every case requires strategy.

While some debtors may benefit from having LLLTs in this area, the risk to others is not worth it. I hope that the workgroup will reconsider LLLT's role in consumer, money, and debt law.

--

MINH T. TRAN
Attorney | Admitted to practice law in Washington and Oregon

Arrow Law Group, PLLC | 12826 SE 40th Ln, Ste A11 · Bellevue, WA 98006 | Ph. (425) 531-7946
Clients can now schedule an appointment online by clicking here.

Link: Business Card

From: vlaparker@aol.com
To: Limited License Legal Technician
Subject: comments
Date: Tuesday, May 15, 2018 2:04:35 PM

Dear Steve,

I think a true analysis of this "program" needs to be performed BEFORE expansion. It needs to be analyzed in terms of whether or not it is meeting the original purpose and evaluation of the unforeseen consequences.

No one evaluated the actual billings of an attorney throughout the state in the areas "served" before implementing this. Has anyone checked the billings of these fake attorneys? Probably not.

Has anyone checked the numbers of these non-attorneys who have violated the rules and the numbers who epart from their practice?

There are so many questions and NO answers.

Call this what it is -- another "feel good" program -- not a solution.

As you look to expand, consider the reality of the need to go beyond approved forms. Review the problems associated with LPO involved in real estate. I have had to correct many problems created by LPOs.

As an attorney who works with Wills and Probates, I can tell you that there is no such thing as a simple Will or Probate. Not only that but the broadly touted living trusts in which an attorney was a front man for a business in which trusts were churned out by non-attorneys using forms for all sorts of situations. One huge problem was the conflict created as the bits and pieces were selected.

I hate that attorneys are being dismissed by the claim that a person with a little training can adequately do out jobs. The ones who suffer are the clients. This is truly shameful.

I know this will probably circular file but I speak again because someone MUST voice the truth.

Thank you,

Vicki Lee Anne Parker,
Attorney at Law

PARKER by telephone at 360-491-2757 to arrange for disposition of the original documents.

From: antimony9@gmail.com on behalf of Vanessa Shaughnessy
To: Limited License Legal Technician
Subject: Consumer Money and Debt Law
Date: Sunday, July 08, 2018 3:57:09 PM

I'm writing you to strongly support the addition of the new LLLT practice area. I'm intending to become a LLLT and am currently volunteering at an organization that provides legal aid for tenants and those who have past financial issues that are keeping them from getting housing. From that vantage point, I can say that our state absolutely needs more accessible legal resources to help people with their financial issues.

I do hope the scope of the practice area will include settling judgments, as this a crucial need for people trying to get their lives back on track. My family needed this kind of legal help when we purchased our home, and it cost us $8,000 on top of the existing financial burden of the old judgement. It nearly cost us our chance at homeownership, and we would have jumped at the opportunity to use a moderately priced alternative.

I hope that the new practice area will go forward with a wide enough scope to provide meaningful, coherent help for people.

All the best,
Vanessa Shaughnessy

From: d hein
To: Limited License Legal Technician
Subject: Consumer, Money and Debt law- proposal
Date: Tuesday, May 15, 2018 2:16:23 PM

Dear Ms. Ivarinen and LLLT Board:

Thank you for allowing bar members to comment upon this proposed area of practice.

In short, there are currently plenty of providers for the services that were listed as being considered possibly appropriate as LLLT practice areas. Consumer counseling services are readily available at various price points. In addition, identity theft is usually handled more than adequately with one's Bank and the three major reporting credit bureaus.

A recent LLLT experience:
My husband and I, both lawyers in the state of Washington, sold a house in Washington last month and dealt with a licensed LLT as the closing officer. Her employer claimed she had been a real estate closing officer for more than 15 years. She was unable to answer questions of any sort including the most basic type, gave unasked-for advice which I believed was unnecessary in the circumstances, and claimed that she had no authority to modify any of the forms she utilized. One form in question was defective on its face, requiring modifications in order to be accurate. When she informed me she could not change the form I had to ask to speak to house counsel. No one knew the name of her supervising attorney. Her service was unsatisfactory, to say the least. Our closing was completed only because I ensured that it was. I cannot imagine what non-lawyers must endure in order to effect a real estate transaction.

This anecdote is not a stand alone, unfortunately. Instead of expanding the powers and authority of LLLTs in the name of serving the public, my recommendation is that we clean up the standards and the competencies of the current group of LLLTs. It is a disservice to the public for us to do anything else.

I believe that LLLTs can and do serve the public. I am a former paralegal educator and am aware of the good that can be done for clients in terms of simple, repetitive tasks. This would not include, for example, much in the areas of debt or loan counselling. But in our hurry to put LLLTs to work quality and standards should not be compromised.

Thank you for this opportunity to raise a red flag.

Dana Hein

From:	Crawford, Sarah (DOL)
To:	Limited License Legal Technician
Subject:	Consumer, Money, and Debt Law
Date:	Friday, July 13, 2018 3:21:03 PM
Attachments:	image2018-07-13-145625.pdf

Good Afternoon,

Please find attached comments submitted on behalf of the Washington State Collection Agency Board.

Thank you,

Sarah Crawford
Washington State Department of Licensing
Board Support Supervisor
Regulatory Boards Section
Mailing: P.O. Box 9012, Olympia WA 98507
State Mailstop: 48049
WC: 360.819.0620 | ☎ 360.664.1567 | scrawford@dol.wa.gov

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9020 • Olympia, Washington 98507-9020

July 13, 2018

Washington State Bar Association
LLLT Board
LLLT@wsba.org

Re: Consumer, Money, and Debt Law
Public Comment from the Washington State, Collection Agency Board

Mr. Chairman Crossland and Members of the Board:

Please accept these comments of the Washington State, Collection Agency Board concerning the proposed new practice area for LLLTs in Consumer, Money and Debt Law.

The Washington State Collection Agency Board ("CAB") is a state regulatory board created by statute, RCW 19.16.280, to advise and assist the Department of Licensing (Department) with enforcement of the Washington State Collection Agency Act, RCW 91.16. *et. seq.*, and with the power to adopt rules and regulations, investigate collection agency complaints, impose discipline and grant or deny collection agency licenses. *See* RCW 18.235.030. The board is comprised of five members, two public and two industry representatives appointed by the Governor, and one member of the Department of Licensing appointed by its director.

The purpose of this letter is to neither support nor oppose the Consumer, Money, and Debt Law LLLT proposal (LLLT Proposal), but rather to request that the CAB be included and consulted as a stakeholder with respect to certain portions of the proposal which may overlap or interfere with the DOL's current regulatory function. The CAB would like to avoid any unintended consequences created by the interplay and potential conflict between the Consumer LLLT proposal and CAB's regulatory duties.

Currently, CAB is concerned by the following services listed in the LLLT proposal, which potentially fit within the definition of a "collection agency activities" under RCW 19.16.100(4)(b):

- Small Claims: "Assistance preparing the Notice of Small Claim ... Small Claims Judgment, and counterclaims."

- Debt Collection Defense and Assistance: "Assistance filling out complaints"; and

- Garnishment: "Assistance filling out forms (Application for Writ of Garnishment, Continuing Lien of Earnings, Return of Service, Notice of Exemption Claim, Release of Writ of Garnishment, Motion and Cert. for Default Answer to Writ of Garnishment, Application for Judgment, Motion/Order Discharging Garnishee, and Satisfaction of Judgment)."

CAB is concerned that by including the activities listed above, LLLTs who perform them could be required to be licensed as collection agencies, or conversely, that their inclusion could cause those activities to fall under the purview of the practice of law, requiring collection agencies to be licensed by the WSBA.

It is the hope of the Board that any LLLT Proposal adopted will account for the Departments function or avoid the potential licensing conflicts identified above. In any case, the CAB would appreciate being included as a stakeholder going forward.

The CAB would like to request that the Washington State Bar Association conduct additional outreach to various stakeholders of the industry and the CAB would like to propose the deadline for comment on this topic be extended past the original July 16, 2018 deadline, to allow for various stakeholders to provide comment that were not included in the original outreach from the Washington State Bar Association and the LLLT Board.

Tami Dohrman, Chair

7/13/2018
Date

From: Matt Crane
To: Limited License Legal Technician
Subject: Consumer, Money, and Debt Law proposal
Date: Monday, May 21, 2018 6:32:52 AM
Attachments: image001.png

Dear Mr. Crossland–

I am in favor of the proposed LLLT practice area for consumer, money and debt law. It makes sense to me that trained LLLT practitioners be allowed to provide limited legal services in this area to help fill an unmet need.

Matthew C. Crane, WSBA 18003
Direct | 206.905.3223
Email | mccrane@bmjlaw.com

From: Cameron Fleury
To: Limited License Legal Technician
Subject: Do not expand (or keep) the LLLT program
Date: Tuesday, May 15, 2018 4:34:30 PM

To Whom it May Concern:

Thank you for requesting input from Members.

First, by way of full disclosure, let me say that I am opposed to the entire LLLT program. While it may have been well-intentioned to start, the reality is that the LLLT's are not providing a stop-gap for low income persons to avoid being Pro Se. They are competing directly with, and at the same rates, as attorneys and we are being forced to subsidize them with our Dues. The entire program was "sold" as providing low income assistance, which was almost immediately dropped. Then it was "sold" as being a test that once substantial data had been collected and analyzed, if the program was a "success" then it would be considered to be expanded. The truth is that there has not been anything near enough data to support any conclusions (even whether they are harmful) at this time.

Barreling forward at breakneck speed to expand into as many areas of practice as possible is helping Community Colleges and the WSBA Staff dedicated to the LLLT program. It is not assisting the target market (low income persons with access to justice issues), it is in direct competition with those of us who paid our dues in schooling, testing, CLE requirements and disciplinary supervision if/when needed.

That said, I strongly believe that before even considering whether to expand the LLLT program, it should at least be in existence long enough to support a reliable conclusion it is 1) a benefit to the public, 2) does not financially harm attorneys, and 3) does not harm the public (failure to properly distribute retirements, calculate support deviations, address various consequences of different distributions of a marital estate, etc. etc. etc.).

I do not practice debtor/creditor law, but I can envision many issues with allowing under-trained LLLT's into the area and the potential harm to the public.

Regards,
Cameron J. Fleury
WSBA #23422

From: Kathy Rall
To: Limited License Legal Technician
Subject: expansion of LLLT program
Date: Tuesday, May 15, 2018 1:05:07 PM

Why don't you just open every area to the practice by LLLT's and all the lawyers can quit their jobs and go do something fun with their time? How to solve problems such as these? Earn more if possible, but more importantly, SPEND LESS and SPEND WISELY. This is an educational process, but my parents taught me that I was entitled to something when I could afford to pay for it. No one is entitled to have expensive TVs, new cars, expensive toys, new closthes every season etc. Each of us is entitled, to have that for which we can pay. As Mom and Dad used to say....."you don't get what you want until you can afford to pay for it" and "you need to decide to purchase that which you need, not what you want". If more people would keep Mr. Visa or Mr. Debit Card, or Mr. contract" etc. in his or her pocket then some of these issues would go away. Call me old fashioned, but if we started here, then perhaps not all of these services would be necessary

--
Kathy J Rall
kjrall8@gmail.com
C: 206-604-4193

From: N. Smith (Smitty) Hagopian
To: Limited License Legal Technician
Subject: full speed ahead
Date: Tuesday, May 15, 2018 1:55:45 PM

Hi Board/Steve: This is an area that needs to be filled and an LLLT is the right move for our times. I trust you/your Board will be cautious in drafting the parameters and wish you well.

My two cents.

Thanks,

Smitty Hagopian

DUNKIN, HAGOPIAN PC
ATTORNEYS
330 King St., Suite 6
Wenatchee, WA 98801
509-888-0750 - ph
509-888-0751 - fax

'Sinner' and 'saint' are waves of differing size and magnitude on the surface of the same sea. Each is a natural outcome of forces in the universe; each is governed by time and causation. Nobody is utterly lost, and nobody need despair.

From: Bar Leaders
To: Limited License Legal Technician
Subject: FW: LLLT in creditor/debtor practice
Date: Tuesday, July 17, 2018 10:58:04 AM

-----Original Message-----
From: Mark Kaiman [mailto:mark@lustick.com]
Sent: Tuesday, July 17, 2018 8:31 AM
To: Bar Leaders
Subject: LLLT in creditor/debtor practice

Why did I bother going to law school? Why did I even bother getting a Bachelor's degree? The WSBA seems determined to allow community college graduates with a few hours of supplemental training to practice law. What practice area is next on your agenda? Which group of lawyers who have worked hard for years to build successful practices are you going to undermine by allowing LLLT's to move in and steal their business? Maybe the WSBA is going to start recommending that LLLT's sit as judges. Why not? You can pay them less than judges who are actually qualified. It sounds absurd, but it is no more absurd than allowing unqualified people to practice family law or creditor/debtor law.

The Bar Association does not represent my interests. Instead of helping hard working attorneys and clearing a path for us to serve our clients and build our practices, the WSBA continually thinks of ways to place roadblocks and obstacles in front of us. LLLT's have should not even be practicing family law. I am extremely disappointed that the Bar Association would even consider allowing LLLT's to move beyond the family law area.

Mark A. Kaiman
Lustick Kaiman & Madrone PLLC
222 Grand Ave. Suite A
Bellingham WA 98225
Telephone 360.685.4221
Fax 360.734.4222

From:	Bar Leaders
To:	Limited License Legal Technician
Subject:	FW: Opposition to Allowing LLLTs to Practice Debtor/Creditor Law
Date:	Tuesday, July 17, 2018 10:58:25 AM

-----Original Message-----
From: jwchessell@rockisland.com [mailto:jwchessell@rockisland.com]
Sent: Monday, July 16, 2018 3:17 PM
To: Bar Leaders
Subject: Opposition to Allowing LLLTs to Practice Debtor/Creditor Law

Monday July 16, 2018

To: Washington State Bar Assn
Seattle, WA 98101

RE: Opposition to Allowing Limited License Legal Technicians to practice Debtor/Creditor law

Dear WSBA:

I am opposed to allowing Limited License Legal Technicians to practice Debtor/Creditor law. This is a complicated field that embraces many other areas of law, such as contracts, agency, residency, standing, bankruptcy, criminal law, constitutional law, equity, remedies, commercial paper, evidence, and on-and-on.

The proposal does not well-serve the community, but rather allows persons with a limited knowledge of law and a limited experience in practicing law to represent clients who may make their choice of representation based solely on price.

The proposal is a mistake and should be shelved.

Very Truly Yours,

John Chessell Bar # 19370
San Juan Island, WA
jwchessell@rockisland.com

From: Irwin Law Firm
To: Limited License Legal Technician
Subject: General comment on LLLT
Date: Thursday, June 21, 2018 9:38:21 AM

My general feedback on LLLT's is that LLLTs are a band-aid on the cancer of the current legal practice/service delivery model. There is a huge need that lawyers are not addressing because they are busy making money, in part because it costs so much to become and stay a lawyer. LLLT's have been developed in part so that "real" lawyers don't ever have to become affordable, yet under the best of conditions poor/moderate income people assisted by an LLLT will not be represented or assisted as well, or as holistically. Whereas at least to some degree a little less qualified help is better than nothing, it can also be problematic because their knowledge base is not as broad. Furthermore, it only postpones the ultimate outcome – LLLT practice areas will/must continue to expand to cover all legal areas (or it will not address the disparities we see). IMO, the WSBA should stop bifurcating the problem and start figuring out alternate models that make becoming and staying a full-fledged attorney affordable and accessible. I imagine the biggest push back against it are those attorneys that charge good money just for being well-dressed and breathing, and forgive me for saying that paradigm needs to die. As officers of the courts there should be better regulation of not only our conduct but gender and other equity in terms of fees. If these things happened, we wouldn't need an LLLT program.

Thanks for your attention.

C. Olivia Irwin, J.D.

Irwin Law Firm, Inc.
358 E. Birch Ave., Ste. 202
Colville, WA 99114
(509) 684-9250
FAX: (509) 684-9252

From: Rick Bartholomew
To: Limited License Legal Technician
Subject: Input regarding LLLT program
Date: Wednesday, May 16, 2018 12:13:44 PM

I am a retired family law attorney, although I still do GAL work and mediation.

I do not believe the LLLT program should be expanded. I was involved when the original proposal came up years ago. The first (and primary) justification for the program was that there was an unmet need for legal services for those who could not afford attorneys. LLLT's now charge rates comparable to those of attorneys, and indicate that they cannot afford to provide services for less. In addition, there are very few LLLT's. We do not have enough information to know how this program will work.

LLLT's have smaller bar dues than do attorneys. I assume the justification for that is that they were expected to charge lower fees, which they do not do. In other words, attorneys are subsidizing direct competitors.

So LLLT's were supposed to help low income folks, which they do not do. We were told that they would not be allowed to represent clients in court, which they are now asking to be able to do. If the program is to be expanded, it should go back to its original purpose (providing low income clients with legal help), and we should have more information on how well they are doing.

In the past, I had clients come to me to fix problems created by non-attorneys who helped them with their legal work. Sometimes I could do so, although the cost was higher than it would have been for me to represent them in the first place. Sometimes it was too late to do anything. This is why we need time to gather information regarding the effectiveness, and, frankly, competence, of LLLT's, before we expand the program.

Rick Bartholomew
WSBA #3107
Guardian ad Litem and Mediator
1800 Cooper Pt. Rd. SW, Bldg. 14
Olympia, WA 98502

Kinickinic50@gmail.com
360-701-5257

I HANDLE GUARDIAN AD LITEM CASES AND MEDIATIONS, BUT I HAVE RETIRED FROM THE PRIVATE PRACTICE OF LAW, MEANING I NO LONGER ACCEPT PRIVATE CLIENTS. I DO MEDIATIONS IN CASES IN WHICH BOTH PARTIES ARE REPRESENTED BY COUNSEL.

From: Steven Palmer
To: Limited License Legal Technician
Subject: Letter in opposition to the formation of a Consumer, Money and Debt Law LLLT
Date: Friday, May 25, 2018 3:23:55 PM
Attachments: image001.jpg
image002.jpg

Dear WSBA,

The practice of law surrounding debt can be extremely complex, impacting practically every substantive area of the law. It is also one of the most impactful areas of the law on individuals. If someone misses a deadline, a house can be in jeopardy, a bank account can be attached or wages can be garnished. There are enough qualified unemployed members of the bar to pick up the slack in this area of the law. Perhaps the WSBA could act as an advocate for these unemployed attorneys and train them to help the people that this LLLT group would serve.

The average student debt of a newly graduated attorney in Washington state was $140,616 in 2012. Between 31 and 51% of law school grads do not have long term employment requiring a law license after graduation from Washington law schools. Source – American Bar Association. There are still law school grads that do not have jobs and the subject matter here is too sensitive to leave to non-lawyers to try to figure out.

I can imagine situation after situation where an LLLT would end up inadvertently or purposefully advising clients on the merits of bankruptcy as an alternative. This single scenario would run the LLLT in violation of the bankruptcy code. Further, it would potentially put the assisted person's vulnerable assets at risk.

We do not need another LLLT practice area.

Sincerely,

Steven M. Palmer
ATTORNEY

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CURTIS, CASTEEL & PALMER
3400 188TH ST SW, SUITE 565
LYNNWOOD, WA 98037

From: Eric Theile
To: Limited License Legal Technician
Subject: LLLT - Consumer, Money, and Debt Law
Date: Tuesday, May 15, 2018 1:19:25 PM
Attachments: image003.jpg

Dear Mr. Crossland and Ms. De Carvalho Garcia,

I was formerly a collection attorney in Washington and Arizona, and ran my firm's Washington office. I have filed thousands of collection lawsuits. I now very often represent debtors against those same types of claims.

I think the expansion of the LLLT program to this area is a fantastic idea. I would strongly caution that LLLT's be thoroughly trained on how to provide value and assistance to consumers.

99.9% of debtors owe the accounts and balances being sought by their creditors. And unfortunately, most of those debts provide for default interest rates and attorney's fees. Debtors certainly should not roll over when they don't believe they owe an alleged debt, but any collection attorney will tell you stories of $2,000 turning into $5,000 after contested hearings, interest and judgment enforcement.

My point is: as attorneys we are counselors. And while the LLLT program may not mirror all of the duties and obligations of an attorney, their role inevitably will be (and should be) to counsel their clients. Understanding when to fight a debt, and when to seek favorable settlement terms is crucial to providing value to the debtor. Availing oneself of an LLLT in order to file answers or objections is wonderful for people who are intimidated or unable to act on their own. The flip side is that very often, the best result is achieved by picking up the phone and seeing what can be agreed to outside of court.

I welcome the opportunity to speak further with anyone on this issue. Godspeed.

Kind regards,

Eric M. Theile - WSBA 44397

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B+G-HOR-Logo-3C-grey

From: Malena Pinkham
To: Limited License Legal Technician
Subject: LLLT - New Practice Area
Date: Tuesday, May 15, 2018 2:45:58 PM

Expanding the LLLT program to additional practice areas is a terrible idea. The entire LLLT program is bad for the citizens of Washington. The answer to limited legal services is not to provide people with sub-standard advice from non-lawyers. Why do the less fortunate deserve lesser quality services? I continue to be amazed and embarrassed that this program was ever started. Expanding it is naïve, dangerous and unfair to the vulnerable people receiving, and making major life decisions based on, the advice and issue-spotting ability of these "technicians."

Absurd.

Malena F. Pinkham
Staff Attorney
The Confederated Tribes of the Umatilla Indian Reservation
46411 Timi'ne Way
Pendleton, OR 97801
Phone & Fax: (541)429-7408
Work Cell: (541)215-2004
MalenaPinkham@ctuir.org

From:	Kirk Davis
To:	Limited License Legal Technician
Subject:	LLLT
Date:	Tuesday, May 15, 2018 2:01:41 PM
Attachments:	LOGO for email.jpg

My concern is the continued expansion of the LLLT and licensing of same by the Bar. I think the continued pushing of LLLT into other areas is a bad idea for the bar and for the public. The public will think they are getting the same service from an LLLT that they would be from an attorney as this activity is sanctioned by the Bar. Of course, this assumption is incorrect.

Kind regards,

Kirk C. Davis
Attorney

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Seattle, WA 98101
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Cell: (206) 999-8677
Fax: (206) 260-3685
www.kirkdavislaw.com

From: Mark McClain
To: Limited License Legal Technician
Subject: LLLT
Date: Tuesday, May 15, 2018 1:25:32 PM

This is really disappointing. While I appreciate there are needs for many, we continue to fund them through things like NWJP, yet fail to demand they actually serve these needs. If you are going to take away opportunity from your members with this area of law, you should first reduce the cost for your membership.

From: Chris Van Vechten
To: Limited License Legal Technician
Subject: LLLT Consumer & Debt Law
Date: Tuesday, May 15, 2018 7:24:56 PM

Greetings,

While the idea of the LLLT is well meaning, in practice, it strikes me as ineffective and ignorant of the realities on the ground people living in poverty face. I'm primarily a criminal defense attorney (hopefully the Constitution will, in 10 years, still be interpreted to entitle defendants to an attorney and not a LLLT) and the vast majority of people I represent are the sort of people who these programs are targeted to address.

I have often worked for people at rates that work out to less than $40 an hour, but poverty tends to be the result of compounding problems that often exceed the financial bandwidth of the client. I do not believe that an LLLT could realistically assume the multiple roles an attorney does for less than $40 an hour, without sacrificing significant quality.

I understand pro ses are frustrating for judges, but I suspect they are also inevitable. I have yet to find a member of my profession who supports this program and other than some super law firms who turn their paralegals into LLLTs to charge additional fees, I rarely confront them in my practice. The program should be scrapped.

--
Chris Van Vechten
Attorney at Law
The Law Office of Chris Van Vechten
253-666-8987
www.soundlawyering.com
705 S 9th St #206,
Tacoma, WA, 98405-4622

From: Donna Person Smith
To: Limited License Legal Technician
Subject: LLLT Expansion
Date: Friday, May 25, 2018 2:14:17 PM

Good Afternoon:

I understand the board is working on a new LLLT practice area — consumer, money and debt law. I am opposed to any expansion of the LLLT program. I am also opposed to any expansion of the role of LLLTs in family law matters. I am appalled that there is now a push for them to be able to appear in court. There are plenty of attorneys willing to work with low income clients by offering their services pro bono or on a reduced fee schedule.

Donna Person-Smith
Managing Attorney
Law Office of Donna Person Smith, PLLC
3708 14th Street Place Southwest
Puyallup, Washington 98373
(253) 840-0288- office
(253) 465-5929-fax

From: stewart law
To: Limited License Legal Technician
Subject: LLLT expansion
Date: Friday, May 25, 2018 4:37:07 PM

This letter is intended to respond to the call for input on the expansion of LLT's area of practice.

LLLTs were not, are not and will not be a good thing for the WSBA, its members or the public they ostensibly were intended to serve.

Hurting the current and future dues-paying, licensed, educated Attorney members of the WSBA by allowing LLLTs to compete with us, at our expense is an affront. The idea is so obviously contrary to the core function of any professional organization, it remains a mystery how it was initially approved.

No expansion of the areas of practice and allowed functions of LLTs should be made. A complete review of the program and the funding spent by WSBA should be undertaken.

William J. Stewart, Attorney at Law

From: Carter Hick
To: Limited License Legal Technician
Subject: LLLT Feedback
Date: Friday, May 25, 2018 1:18:00 PM
Attachments: image001.png

Hello,

Per your 5/25 e-newsletter, I want to provide feedback on the LLLT program and its possible expansion.

The entire program is a waste. If the WSBA, law schools and state government want lawyers to provide affordable legal services, then efforts should be made at making law school affordable. Tuition at 30k a year, 40k a year . . . and higher for law school? How can you expect a recent grad to work in public service, provide affordable services, or engage in pro bono work if she is saddled with 100k plus in student loan debt?

The solution is to great a LLLT program? Really?

Sad for us and any other person that is not independently wealthy and chooses to go to law school, but I guess it is good for the law schools – they can start collecting LLLT tuition on top of the law school tuition. Oh yeah, lenders will benefit, too. The public? You tell me. How is the LLLT program working so far? How many do we have now in the state?

Carter Hick

HICK LOGO color-no logo-logo

From:	Anita Redline
To:	Limited License Legal Technician
Subject:	LLLT new fields of law REALLY?
Date:	Sunday, May 20, 2018 11:32:20 PM
Attachments:	image001.gif image004.jpg

Hello, Just my 0.2

Has there been a study as to whether the needs were actually unmet in these additional legal fields of law?

If the needs of the majority were met but there exists a minority whose needs were unmet, why? Only financial? Many attorneys offer a payment plan, a discount upon an initial sizeable payment, or the attorney's paralegal can handle the matter under supervision of the attorney.

Were the individuals unable to understand how to use the WSBA Directory, unable to find the law group, unable to use various websites like AVVO, etc.?

Many attorneys are not charging the high rates anymore and not charging for every email or phone call. But if LLLTs enter into some of these legal fields filled with new attorneys trying to make a living, those attorneys will leave for other legal fields but those other fields are already filled to the brim with attorneys too. LLLTs are becoming like balloons: you squeeze one end and the other end pops out. We have just too many legal representatives, three law schools, numerous students graduating into the legal fields, we're over capacity to maintain financial supports of these various levels of legal expertise.

Once LLLTs are in another legal field, attorneys struggle to meet their bottom line because attorneys are far more in debt than LLLTs for their education.

LLLTs are undercutting paralegals who work already under supervision by their attorneys. Attorneys graduating in the last 5 years are still struggling.

The real motive for LLLTs is not to help the common person but to help law

schools that are suffering from decreasing students.

The real challenges in the world of law: A law education is so expensive, complexities of law have greatly increased, law schools inadequately prepare potential attorney, rules and regulations continually change, too many experienced attorneys, too many newly graduated law students - how can LLLTs make it?

How are new attorneys suppose to get any experience when LLLTs jump in? These legal fields listed in the report are the types of fields new attorneys use to get their experience. It's like taking away the wetlands from baby salmon. Leave the environment alone so that new attorneys can grow and become great attorneys. (notice I didn't say expensive)

I am so glad that I am not a new attorney!

Very truly yours, Anita Redline

The "secret" to caring *for* the client is caring *about* the client.

Anita Redline, Attorney at Law
A Professional Limited Liability Company
Waterfront Park Building
Edmonds Law Center
144 Railroad Avenue, Suite 308
Edmonds, WA 98020
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Anita@RedlineLaw.net

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From: Rich Davis
To: Limited License Legal Technician
Subject: LLLT Qusestion
Date: Friday, May 18, 2018 4:35:54 PM

Is the proposal likely to be an expansion of existing licensing authority, or a separate license in the area of consumer debt? I think the former is a good idea, the latter a mistake. I can expand my comment depending on your answer.

This area of practice is full of land mines. The big creditors have a lot of influence in the law, the credit reporting bureaus seem to require a deposition order to begin communicating, and some of the federally required credit resolution processes for credit card companies are not working. I have found a good solution; I use very little credit. However, even the three credit cards I use and pay fully each month cause me trepidation. I also order on-line from very few vendors: Amazon, Southwest Airlines, and two antique car providers is almost a complete list. It is a fright out there.

Thank you,

Richard J. Davis
WSBA 12481

From:	Donald Ferrell
To:	Limited License Legal Technician
Subject:	lllt was conjured up by the incompetent idiots at WSBA and so called "supreme court". Family law was first and proved to be a bust. Why keep repeating your errors?
Date:	Wednesday, June 20, 2018 10:29:07 AM

Donald W. Ferrell Honorary WSBA 1973
Sent from Mail for Windows 10

From: Jennifer R. Smith
To: Limited License Legal Technician
Subject: LLLT
Date: Tuesday, May 15, 2018 9:52:51 PM

I hate to be so frank but this program is a complete disaster! I practice family law in Thurston County. The documents I have received from LLLTs are not done correctly. Parties will use LLLT to draft and give legal advice but the use the LLLT as a bar to negotiations because they cannot negotiate on the client's behalf. Then what I find absolutely shocking is the amount of money the LLLTs are charging. It is the same amount as many attorneys. This program was to reduce costs. It has done quite the opposite after an attorney has to come in and do clean up.

This program should be discontinued. Complete insult to the legal profession.

Very truly yours,

Jennifer R. Smith

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1800 Cooper Point Road, S.W., Bldg. 12
Olympia, Washington 98502

(360) 339-7488 Tel.
(877) 669-8509 Fax

jennifersmith@thurstonmasonlaw.com

From:	MICHAEL GOLDENKRANZ
To:	Limited License Legal Technician
Subject:	LLT expansion into consumer debt
Date:	Tuesday, May 15, 2018 1:46:00 PM

Great idea- keep expanding into more areas and providing the education venues and programs to train LLT's.

Why not have them help with actual bankruptcy filing?

And, while I think the protection order help is essential, confusing that it got folded into consumer debt expansion.

Kudos

Michael Goldenkranz (pro bono attorney)

From: Steve Lovekin
To: Limited License Legal Technician
Subject: LLT New Practice Area
Date: Tuesday, May 15, 2018 2:50:03 PM

I strongly object to the addition of new practice areas for the LLT's. It was inevitable when the LLT system started that, like all good bureaucracies it was seek to expand its reach. From what I've seen LLT's often charge a fairly high hourly rate, taking business away from lawyers who are just starting out and who want to charge less than the big established firms in order to gain business. LLT's are also appearing in court in family law cases, which they should not be doing. Court appearances are a quintessentially legal activity that should be reserved for lawyers who have spent the time, energy, and money to attend three years of law school, usually with at least one trial practice course under their belt. If one can essentially practice law without going to law school, why would one even bother going? This expansion of non-lawyers into the practice of law demeans the profession and should be eliminated.

Osgood S. Lovekin

Law Office of Osgood S. Lovekin
705 Second Avenue, Suite 1050
Seattle, WA 98104
Phone: 206-447-1560
Fax: 206-447-1523

From: David Mott
To: Limited License Legal Technician
Subject: Lt to WSBA -LLLT
Date: Friday, July 06, 2018 4:59:09 PM
Attachments: Lt to WSBA -LLLT.doc

The MOTT LawFirm

David C. Mott *also admitted in Ohio and Illinois*

July 17, 2018

TO: LLLT Board via email to LLLT@wsba.org

RE: Proposed Consumer, Money, and Debt Law LLLT Practice Area
Scope Proposed Permitted Actions & Proposed Limitations

LLLTs should be licensed to assist clients with issues related to legal financial obligations, debt collection and garnishment defense, identity theft, preparing for small claims court, and filing protection orders.

I strongly support the expansion of LLLT's service into this area of practice based on (1) my 49 years of law practice during which I have provided defense services to my clients in this practice area and (2) a successful history of collaborating with an LLLT to provide family law services to mutual clients. In addition, I have extensive experience in the foreclosure defense and mediation practice area.

This debt-collection area of the law is fraught with traps often initiated against unsuspecting consumers. In the consumer debt-collecting defense area, I typically begin my representation of a client by having my client fill out an extensive questionnaire that is designed to establish creditor-collector violations of the debt collection statutes. In almost every case, there is a violation. More recently, there are a lot of statute of limitation violations by collectors. In some cases, the collector does not have a Washington state license to engage in collection services. In almost every case, I conclude such services with a very satisfied client.

If the matter is in litigation, sending an extensive subpoena duces tecum and scheduling a deposition often results in favorable results for my client.

Most often, I do this work at a very minimal fee but it often concludes with most of my services being provided pro bono. I do this because I was raised in a very poor, large family wherein I experienced the devastating adverse effects perpetrated against my parents by bill collectors.

Based on my experience of working collaboratively with an LLLT in the family law area, I can envision an equally successful collaborative practice with LLLTs in this expanded practice area.

MAIL ONLY TO: 16821 Smokey Point Blvd, # 811, ARLINGTON, WA 98223
OFFICE AT: **Professional Services Center, Smokey Point Dr., Arlington, WA 98223**
PHONE/VOICE MAIL: 360-435-5656 ♦ FAX: 360-435-4742 ♦ EMAIL: mott@mottlaw.net

I would strongly support the proposed scope of Permitted Actions & Proposed Limitations with one recommendation: that is, that the LLLT be permitted to review with prospective client the requirements for qualifying for Chapter 7 & Chapter 13 relief under the Bankruptcy statues.

Very truly yours,

The MOTT LawFirm

By /s/ David C. Mott
David C. Mott

DCM/jem

MAIL ONLY TO: 16821 Smokey Point Blvd, # 811, ARLINGTON, WA 98223
OFFICE AT: Professional Services Center, Smokey Point Dr., Arlington, WA 98223
PHONE/VOICE MAIL: 360-435-5656 ♦ FAX: 360-435-4742 ♦ EMAIL: mott@mottlaw.net

From:	Inez "Ine" Petersen
To:	Limited License Legal Technician
Cc:	Bill Pickett
Subject:	My comment: The LLLT Board is developing a new practice area and wants to hear from you
Date:	Tuesday, May 15, 2018 1:22:08 PM

Dear LLLT Board:

I recommend that your Board be disbanded immediately.

Is the WSBA undermining its members or representing them? It looks like the former to me.

This is the most absurd idea since mandatory professional liability insurance. And it shows that the Bar has just too much money laying around and must seek ways to spend it no matter how it hurts the attorneys they allegedly represent.

I don't want the WSBA taking action that reduces my chances of making a living. I want the WSBA to facilitate my career, not undermine it!

WHAT ARE YOU THINKING? WHO IS REALLY BEHIND THIS?

This shows that there is a real need for voting to occur at the member level on everything with a greatly reduced staff. All the committees, boards, and huge number of in-house employees seem to be working on projects that are not in the best interest of the attorneys. This is just another one.

A voluntary bar association would nip this problem in the bud or would it? The Titantic needs a new captain, one with eyes to see the icebergs. I look at the WSBA as a professional union; I want that union to plug the holes in the life boats, not create more holes.

Sincerely,
Inez Petersen
WSBA #46213

---------- Forwarded message ----------
From: **Washington State Bar Association** <noreply@wsba.org>
Date: Tue, May 15, 2018 at 11:46 AM
Subject: The LLLT Board is developing a new practice area and wants to hear from you
To: inezpetersenjd@gmail.com

Washington State Bar Association

The LLLT Board is working on developing a new LLLT licensed practice area—**Consumer, Money, and Debt Law**—and would like your feedback. A draft outline of the proposed practice area is under development. The LLLT Board is seeking comments through July 16.

There are several ways you can help shape and be involved in the process, and we hope you will be. Please consider reviewing the draft and being involved in the next steps by:

- Providing feedback on the initial draft and subsequent versions,
- Attending the LLLT Board meetings, which are open to the public, and
- If the new practice area is approved by the Washington Supreme Court, assisting the LLLT Board with writing the rule, regulations, and exam for this practice area.

Please submit comments, questions, or concerns to lllt@wsba.org.

The LLLT Board looks forward to hearing from you.

Sincerely,

Stephen R. Crossland

Chair, LLLT Board

Renata de Carvalho Garcia

WSBA Staff Liaison to the LLLT Board

WSBA seal

Washington State Bar Association

1325 Fourth Ave., Suite 600

Seattle, WA 98101-2539 | Map

Toll-free: 800-945-9722

Local: 206-443-9722

From: Lynn Clare
To: Limited License Legal Technician
Subject: New licensing area
Date: Tuesday, May 15, 2018 2:23:19 PM

Reader:

Originally when the reason for the existence of the LLLT was given as "a way for low income folks to receive legal help", I supported the idea of a limited license. Now however, I hear that is no longer the justification. In my opinion, it was the only reason that justified the existence of this class of license to practice law.

Therefore, not only should this class of license to practice law NOT be extended to Consumer, Money, and Debt -- it's existence to practice any other area of law should be revoked. I am angry and appalled that the WSBA -- which should be defending my license that I worked so hard to obtain -- is, in fact ready and willing to extend this serious dilution of the quality of the legal profession in the state of Washington.

Lynn C. Clare
Clare Law Firm, PLLC
Office: 206-223-8591
Direct: 253-444-4058

From: Kyle Hills
To: Limited License Legal Technician
Cc: Mimi Wagner
Subject: New LLLT Licensed Practice Area - Consumer, Money, and Debt Law
Date: Monday, July 16, 2018 2:40:14 PM
Attachments: 18WSBA-LLLT0716.pdf

Dear Sir/Madam:

Enclosed is a letter from Attorney Mimi M. Wagner in regards to expanding the LLLT practice areas to include consumer, money, and debt law. Please let me know if you have any difficulty opening the attachment.

Sincerely,

Kyle Hills
Legal Assistant
Wagner Law Offices P.C.
kyle@sanjuanlaw.com
Phone (360) 378-6234
Fax (360) 378-6244
www.sanjuanlaw.com

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MIMI M. WAGNER
ALSO MEMBER OF COLORADO BAR
MIMI@SANJUANLAW.COM

July 16, 2018

Via email to: lllt@wsba.org
Washington State Bar Association
Limited License Legal Technician Board

Re: New LLLT Licensed Practice Area – Consumer, Money, and Debt Law

Dear LLLT Board Members:

I am opposed to the further expansion of the LLLT practice areas to "Consumer, Money, and Debt Law." In general, I believe the LLLT programs are expanding rapidly without adequate evidence that they are a benefit to the public, do not financially harm attorneys, and do not harm the public. I urge the Board to act with care and consideration in its administration of the program.

Consumer, money, and debt law is enormously complicated, with implications in other bodies of law, and allowing LLLTs to practice in this area is very concerning.

I am also opposed to allowing LLLTs appear in court in this practice area, and in any other practice area for that matter. Attorneys are required to undergo years of training to appear in court, and it is an enormous responsibility to appear in court on behalf of a client. LLLTs need not have a four-year college degree. I expect that LLLTs in general may lack the perspective and appreciation for legal complexities that are borne out of law school, studying for the Bar, and practicing law as a licensed attorney.

I am also opposed to the Bar's dramatic amounts of money being spent on this program for a limited number of LLLTs. The last information I received was $1.7 million has been spent on 36 LLLTs. That is over $47,200 per LLLT. The Bar's money comes entirely or almost entirely from its members, yet the Bar members are unfairly forced to subsidize the LLLTs.

Thank you for your consideration of my comments.

Very truly yours,

Mimi M. Wagner

Mimi M. Wagner

\Office\WSBA\18WSBA-LLLT0716.docx

From: Kelly.Boodell@faa.gov
To: Limited License Legal Technician
Subject: New practice areas
Date: Wednesday, May 16, 2018 5:02:57 PM

I am a huge fan of the LLLT program! I used an LLLT for a family law matter and now have renewed faith in our legal system as a result. While access to our legal system is critical to communities who are under represented and have limited economic means, there are many who may not met that criteria and still can't afford the prohibitive costs of attorneys.

Please continue to expand the LLLT program into all areas of practice that may touch individuals with legal needs.

Respectfully,

Kelly A. Boodell
Director, Civil Rights
Western Service Area

We have moved! Our new address is 2200 S. 216th Street, Des Moines, WA. 98198.

e-mail: Kelly.Boodell@faa.gov
office: (206) 231-2044
cell: (425) 495-4544

From:	Ashley Lauber
To:	Limited License Legal Technician
Subject:	Objection to Expansion into Debt Law
Date:	Thursday, July 05, 2018 4:47:16 PM

Pursuant to the request for comments, please see my statement as follows:

I've been a bankruptcy and debt settlement practitioner for five years. In the time I have been practicing, I have watched my filing rates and caseload diminish by 15-20% year over year and is now down to the bottom quarter of my overall revenue. Take this from a firm who had a presence in every conceivable advertising channel for debt issues including having run a television commercial for two years on Fox 13. We have done everything possible to sustain our business while providing exceptional services, using sliding scale fees even providing pro bono representation at certain points. We have had to make the decision two years ago to expand into family law, an area which is being undercut by the existing LLLT family law program, and if we hadn't chosen to make that expansion my firm would be out of business. I take great pride in having been a partner of a woman-owned firm this long that provides debt services, but we are far from thriving. It is personally insulting to me that the bar association who happily takes nearly $500 a year from its members promptly turns its backs on us and spends dues to encourage our competition in the marketplace. It is unconscionable.

There is NO SHORTAGE of affordable legal representation in this practice area. I voice my strong objection to its implementation.

--
Ashley Lauber
Partner, Attorney at Law
Lauber Dancey PLLC
2817 Wetmore Ave, Suite B
Everett, WA 98201
Phone (425) 312-7956
Fax (866) 497-7028
alauber@lauberdancey.com
www.lauberdancey.com
www.startfreshnw.com

From:	jwchessell@rockisland.com
To:	Limited License Legal Technician
Subject:	Opposition to Allowing LLLTs to Practice Debtor/Creditor Law
Date:	Monday, July 16, 2018 3:24:06 PM

Monday July 16, 2018

To: Washington State Bar Assn
Seattle, WA 98101

RE: Opposition to Allowing Limited License Legal Technicians to practice Debtor/Creditor law

Dear WSBA:

I am opposed to allowing Limited License Legal Technicians to practice Debtor/Creditor law. This is a complicated field that embraces many other areas of law, such as contracts, agency, residency, standing, bankruptcy, criminal law, constitutional law, equity, remedies, commercial paper, evidence, and on-and-on.

The proposal does not well-serve the community, but rather allows persons with a limited knowledge of law and a limited experience in practicing law to represent clients who may make their choice of representation based solely on price.

The proposal is a mistake and should be shelved.

Very Truly Yours,

John Chessell Bar # 19370
San Juan Island, WA
jwchessell@rockisland.com

From: Daggett, Teresa
To: Limited License Legal Technician
Subject: Opposition to proposed new LLLT practice area
Date: Friday, May 25, 2018 12:48:11 PM
Attachments: image001.png

Please register my opposition to expanding the LLLT program. With only 33 active participants, expanding the program is not reasonable.

Teresa Daggett
Attorney at Law
Gordon Thomas Honeywell LLP

One Union Square Building
600 University Street, Suite 2100
Seattle, Washington 98101
T 206 676 7584
F 206 676 7575
http://www.gth-law.com

From: Law Office of Reed Speir
To: Limited License Legal Technician
Subject: Please stop taking work from lawyers
Date: Wednesday, June 20, 2018 3:34:50 PM

It is bad enough that LLLTs are taking work away from lawyers in the areas of family law. Please do not take more work away from lawyers by invading another area where lawyers can earn a living. There are sliding scale and low-income options all over the State that have been available to low-income individuals for years. LLLTs undercut small firms and solo practitioners and put them out of business. Why am I paying dues to an organization that is actively working to decrease my client base? I see lots of concern for making sure that LLLTs can have a practice that thrives, but what about the lawyers who are losing clients and going out of business because of LLLTs? Seattle is an aberration. Lawyers all over the State are struggling to make ends meet and the WSBA is promoting a program to take away more clients from those struggling lawyers. The WSBA is not serving its membership at all by pushing LLLTs.

Reed Speir

From: Kerry Lawrence
To: Limited License Legal Technician
Subject: Proposed new LLLT for concumer, debt, etc.
Date: Friday, May 25, 2018 12:51:48 PM

I think this is a great area for LLLT's.

One question I have is whether the forms they are allowed to fill out would include mechanic's lien forms, RCW 60.04?

Individual workers and small businesses need help in this area, and there definitely is a demand for these services as demonstrated by the number of lien services that already offer these services.

The lien services are of varying quality, but overall I think they do better than the majority of the liens and related documents I see that lawyers have prepared and recorded. Having an LLLT course would help improve the quality of what those services provide, and benefit a lot of individual workers and very small businesses.

Kerry Lawrence
WSBA #8479

Kerry C. Lawrence
Pillar Law PLLC
1420 Fifth Avenue, Suite 3369
Seattle, WA 98101
Phone: 425-941-6887
kerry@pillar-law.com

From: REDACTED
To: Limited License Legal Technician
Cc: REDACTED
Subject: RE: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you
Date: Tuesday, May 15, 2018 1:07:12 PM

Abolish the LLLT board entirely. They hurt attorneys and hurt litigants who are not getting the best legal representation possible by people without law degrees.

Thank you,
REDACTED

From: Washington State Bar Association [mailto:noreply@wsba.org]
Sent: Tuesday, May 15, 2018 1:05 PM
To: REDACTED
Subject: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you

Washington State Bar Association

The LLLT Board is working on developing a new LLLT licensed practice area—**Consumer, Money, and Debt Law**—and would like your feedback. A draft outline of the proposed practice area is under development. The LLLT Board is seeking comments through July 16.

There are several ways you can help shape and be involved in the process, and we hope you will be. Please consider reviewing the draft and being involved in the next steps by:

- Providing feedback on the initial draft and subsequent versions,
- Attending the LLLT Board meetings, which are open to the public, and
- If the new practice area is approved by the Washington Supreme Court, assisting the LLLT Board with writing the rule, regulations, and exam for this practice area.

Please submit comments, questions, or concerns to lllt@wsba.org.

The LLLT Board looks forward to hearing from you.

Sincerely,

Stephen R. Crossland
Chair, LLLT Board

Renata de Carvalho Garcia

Name withheld upon request

WSBA Staff Liaison to the LLLT Board

Washington State Bar Association
1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | Map
Toll-free: 800-945-9722
Local: 206-443-9722

Official WSBA communication
All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

Name withheld upon request

From: REDACTED
To: Limited License Legal Technician
Subject: RE: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you
Date: Wednesday, May 23, 2018 2:45:39 PM

In light that you will consider all comments, please add the following to my additional comment:

I speak as a member of the WSBA since 2009, but also as a former low-income customer of paralegal services for a divorce with children in the early 2000's in Lakewood, Washington. These paralegals caused so many problems for me that I had to pay a real, licensed attorney several years later to undo all of the issues (major modification) that they could not foresee due to their limited training. Thus, these paralegals, specializing in family and equivalent to the LLLT program, caused nothing but heartache, frustration, and economic loss for the people they are allegedly serving. I will never refer anyone to a paralegal for legal services, regardless of the alleged training differences. They are simply not trained enough (as only law school gives this training) to handle the complex issues that lower income folks tend to present in family law cases. Period.

Thank you kindly,
REDACTED

From: Limited License Legal Technician [mailto:LLLT@wsba.org]
Sent: Wednesday, May 23, 2018 2:40 PM
To: REDACTED
Subject: RE: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you

REDACT

Thank you for your input regarding the new proposed Limited License Legal Technician (LLLT) practice area, Consumer, Money, and Debt Law.

WSBA staff members are compiling all comments, which will be provided to the LLLT Board for consideration in deciding next steps. In the meantime, we appreciate all feedback as we work toward fulfilling our mandate by the Washington Supreme Court under APR 28 to continue to recommend and develop practice areas of law for LLLTs.

At the end of the comment period in July, the LLLT Board will carefully review all comments and input. LLLT Board members may modify the proposed practice area based on the comments, issues discovered during the drafting of regulations, and issues that arise during the law schools' development of the curriculum.

From: REDACTED
Sent: Tuesday, May 15, 2018 1:07 PM
To: Limited License Legal Technician
Cc: REDACTED
Subject: RE: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you

Abolish the LLLT board entirely. They hurt attorneys and hurt litigants who are not getting the best legal

Name withheld upon request

representation possible by people without law degrees.

Thank you,
REDACTED

From: Washington State Bar Association [mailto:noreply@wsba.org]
Sent: Tuesday, May 15, 2018 1:05 PM
To: REDACTED
Subject: [EXTERNAL] The LLLT Board is developing a new practice area and wants to hear from you

Washington State Bar Association

The LLLT Board is working on developing a new LLLT licensed practice area—**Consumer, Money, and Debt Law**—and would like your feedback. A draft outline of the proposed practice area is under development. The LLLT Board is seeking comments through July 16.

There are several ways you can help shape and be involved in the process, and we hope you will be. Please consider reviewing the draft and being involved in the next steps by:

- Providing feedback on the initial draft and subsequent versions,
- Attending the LLLT Board meetings, which are open to the public, and
- If the new practice area is approved by the Washington Supreme Court, assisting the LLLT Board with writing the rule, regulations, and exam for this practice area.

Please submit comments, questions, or concerns to lllt@wsba.org.

The LLLT Board looks forward to hearing from you.

Sincerely,

Stephen R. Crossland
Chair, LLLT Board

Renata de Carvalho Garcia
WSBA Staff Liaison to the LLLT Board

Washington State Bar Association

Name withheld upon request

1325 Fourth Ave., Suite 600
Seattle, WA 98101-2539 | Map
Toll-free: 800-945-9722
Local: 206-443-9722

Official WSBA communication

All members will receive the following email, which is considered official:

- Licensing and licensing-related materials
- Information about the non-CLE work and activities of the sections to which the member belongs
- Mandatory Continuing Legal Education (MCLE) reporting-related notifications
- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

From:	Scott M. Kinkley
To:	Limited License Legal Technician
Cc:	César Torres
Subject:	RE: Consumer, Money, and Debt Law - comments from the Northwest Justice Project
Date:	Friday, June 29, 2018 1:20:49 PM
Attachments:	Reevised NJP Response to Proposed Exansion of LLLT Program To Consumer Law 6-29-18 smk.pdf

Mr. Chairman,

Please accept the revised Northwest Justice Project letter, concerning the LLLT Board's Consumer, Money and Debt Law proposal. The revision removes my bio reference to my position on the state Collection Agency Board. Please discard the prior proposal and substitute it for this. The content is otherwise the same. Thank you.

Scott M. Kinkley
Staff Attorney
Northwest Justice Project
1702 W. Broadway
Spokane, WA 99201
(509) 324-9128
scottk@nwjustice.org

From: Limited License Legal Technician [mailto:LLLT@wsba.org]
Sent: Thursday, June 14, 2018 8:34 AM
To: Scott M. Kinkley <ScottK@nwjustice.org>; Limited License Legal Technician <LLLT@wsba.org>
Cc: César Torres <Cesart@nwjustice.org>
Subject: RE: Consumer, Money, and Debt Law - comments from the Northwest Justice Project

Hi Scott,

Thank you for your input regarding the new proposed Limited License Legal Technician (LLLT) practice area, Consumer, Money, and Debt Law.

WSBA staff members are compiling all comments, which will be provided to the LLLT Board for consideration in deciding next steps. In the meantime, we appreciate all feedback as we work toward fulfilling our mandate by the Washington Supreme Court under APR 28 to continue to recommend and develop practice areas of law for LLLTs.

At the end of the comment period in July, the LLLT Board will carefully review all comments

and input. LLLT Board members may modify the proposed practice area based on the comments, issues discovered during the drafting of regulations, and issues that arise during the law schools' development of the curriculum.

From: Scott M. Kinkley [mailto:ScottK@nwjustice.org]
Sent: Wednesday, June 13, 2018 11:20 AM
To: Limited License Legal Technician
Cc: César Torres
Subject: Consumer, Money, and Debt Law - comments from the Northwest Justice Project

Mr. Chairman Crossland and Members of the Board,

Please accept the attached letter from the Northwest Justice Project, concerning the LLLT Board's Consumer, Money and Debt Law proposal. Thank you.

Scott M. Kinkley
Staff Attorney
Northwest Justice Project
1702 W. Broadway
Spokane, WA 99201
(509) 324-9128
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César E. Torres
Executive Director

Northwest Justice Project

June 29, 2018

Washington State Bar Association
LLLT Board
LLLT@wsba.org

Re: Consumer, Money, and Debt Law
Public Comment From The Northwest Justice Project

Mr. Chairman Crossland and Members of the Board:

Please accept these comments of the Northwest Justice Project concerning the proposed new practice area for LLLTs in Consumer, Money and Debt Law.

A. ABOUT THE NORTHWEST JUSTICE PROJECT

The Northwest Justice Project (NJP) is a dynamic statewide law firm providing low income legal advice and representation, community partnerships, and education to empower low income clients and combat injustice in all its forms.

NJP also maintains WashingtonLawHelp.org, the public website referenced in your proposal which contains an extensive library of legal resources and self-help materials including necessary court forms in areas of law needed most by low income people, the great majority of whom are forced to appear in court unrepresented. In addition, NJP is an integral member of, and provides support for, the Alliance for Equal Justice, Washington's coordinated statewide civil legal aid delivery system which brings together a network of volunteer attorney programs, specialty legal aid providers, and supporters working to ensure equal justice for all low-income communities in Washington. It was largely through this network, and through the work of NJP staff and attorneys, that the Civil Legal Needs Study was conducted.

In response to the Civil Legal Needs Study, NJP re-organized its Strategic Advocacy Focus (SAF) and dedicated roughly one third of its resources to addressing consumer debt, legal financial obligations and landlord tenant debt. There is without a doubt an expanding need for representation in these areas. However, NJP has significant concerns with aspects of the proposal but is in support of others. More specifically,

THE ALLIANCE for Equal Justice MEMBER

LSC

the proposal to permit LLLTs to negotiate consumer debt would likely revive the predatory debt settlement industry. In addition, the Board's proposal to permit LLLTs to engage in debt collection, including garnishments, supplements the competitive debt collection industry, a result directly averse to the Board's mandate and the findings of the Civil Legal Needs Study.

Ancillary to NJP's primary concerns, the Board's proposal does not recognize or address the various legislative statutes and executive enforcement bodies that already regulate the majority of privileges the Board proposes to grant to LLLTs. In other words, the Board's proposal creates a secondary licensing system over non-legal professionals already engaging in many of the activities the Board intends to license. This is a concern that was not relevant to the debate over granting LLLTs the right to practice of family law, which is an exclusive domain of attorneys. Consumer law, by contrast, is substantially intertwined with market participants, statutory regulation and for profit non-lawyer services; many of which are historically predatory. For example, permitting an LLLT to "negotiate" debts would immediately subject LLLTs to regulation as a "debt adjuster" under the Debt Adjustment Act. LLLTs permitted by the WSBA to commence garnishments or prepare a debt collection complaint, would fall squarely within federal regulation as "debt collectors" under the Fair Debt Collection Practices Act, 15 USC § 1692a(5) and as "collection agencies" under Washington Collection Agency Act, RCW 19.16.100(4)(a). Moreover, the Board has not addressed the significant question of what the impact would be of creating a secondary licensing system under Washington's judicial branch of government regulating and licensing existing businesses already subject to statutory regulation and executive agency oversight.

Notwithstanding these concerns, with appropriate training and oversight, permitting LLLTs to engage in limited form based practices and non-adversarial proceedings (such as preparing answers to civil lawsuits, exemption claims to bank garnishments, and assisting with driver's relicensing and legal financial obligation waivers, restoration of civil rights etc.), and with training to identify and appropriately refer cases of unfair and abusive conduct to consumer attorneys or regulatory bodies, might positively serve the public and meet the Board's mission.

B. DEBT ADJUSTING

The proposal permits Consumer LLLTs to provide "Debt Collection Defense and Assistance" through "negotiation of debt or payment plans, loan modifications, loan forgiveness and debt relief discharge." NJP has grave concerns that these activities will increase the number of people operating as "Debt Adjusters" in Washington.

Debt adjusting is a highly regulated profession in this state. The Debt Adjusting Act was enacted in 1978, in response to rampant abuse and victimization of low income people struggling with debt collectors. The profession is defined by statute, and

clearly includes the activities proposed for LLLTs.[1] The licensing proposal also overlaps and interferes with federal bankruptcy law permitting non-lawyers to engage in credit counseling. *See* 11 U.S. Code § 111.

With respect to debt adjusting, Washington's Supreme Court observed that the Debt Adjuster Act was passed in response to "deep-seated concern about the abuses inherent in the debt adjusting industry." The Court found, "the lack of industry regulation, and the frequently unsophisticated and/or desperate client seeking relief from bill collectors' harassment, gave rise to numerous unfair and deceptive practices." *Carles v. Global Client Solutions*, 171 Wn.2d 486, P.3d 321 (2011) quoting *Performance Audit: Debt Adjusting Licensing and Regulatory Activities*, Report no. 77-13, Jan. 20, 1978, at 7 (on file with the Wn. State Archives, H.B. 86 (1979) at 7).

"Debt Adjusting," or selling services to negotiate settlement of debt with creditors, is an existing private industry that does not require either a full of limited license to practice law. However, people licensed as LLLTs who engage in debt negotiation will also meet the statutory definition of a "Debt Adjusters" and be separately regulated by that Act. This fact produces at least two truths in opposition to the proposed rule. First, requiring licensing as a LLLT merely supplements the existing legislative and executive regulatory framework of the debt adjusting profession with a licensing requirement governed by the judicial branch of government (raising separation of power concerns). More importantly, the proposal fails to achieve the purpose of fulfilling an "unmet need" where it merely supplements an existing, often predatory, highly regulated, non-legal profession.

The Board's current proposal also ignores the hard-learned lessons of the past. For example, NJP attorneys know from their clients' experiences that operators in the debt settlement industry often take consumers' money and fail to provide meaningful service, leaving the consumer with no benefit, and depleted resources to offer creditors. In response, many debt collectors have adopted policies to accelerate collection efforts and immediately sue debtors when a debt adjuster appears on their behalf in a race to collect depleting resources since the consumer has demonstrated an ability to pay something by hiring the service. In these instances, consumers are often betrayed by a false sense of security and allowed default judgments to be entered on the assumption the debt adjuster they hired is providing meaningful relief. Debt adjusters, as well as the putative Consumer LLLTs, cannot provide meaningful representation; Northwest Justice Project attorneys repeatedly expend substantial effort to vacate, when possible, default judgments resulting from this practice. The

[1] "Debt Adjusting means the managing, counseling, settling, adjusting, prorating, or liquidating of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor." RCW 18.28.010(2).

proposal does not offer any protection or solution, and NJP anticipates this portion of the LLLT proposal will lead to similar harm to low income debtors.

Further, fully licensed attorneys are subject to regulation under the Debt Adjustment Act, and it is axiomatic that LLLTs will be as well. *See Bronzich v. Persels & Assocs., LLC, No. CV-10-0364-EFS, 2011 WL 2119372, at *6 (E.D. Wash. May 27, 2011)* ("Even if the Attorney Defendants are licensed to practice in Washington and therefore can seek reliance on the services-solely-incidental-to-legal-practice exemption, the Court determines this exemption does not apply to an attorney or law firm specializing in debt adjustment").

Permitting LLLTs to engage in a business already available to non-lawyers, but subject to existing regulation, creates a confusing overlap of WSBA licensing policies with pre-existing state industry regulations. Worse, the licensing of LLLTs to specifically engage in debt settlement encourages a false perception that existing regulation is inapplicable to LLLT licensees. This perception is likely to lead to temporary growth in a predatory industry; it will likely be up to NJP and private consumer attorneys to bring consumer protection litigation against LLLTs unfamiliar with Washington's extensive consumer protection regulations to counter regulatory transgressions and generally unfair and deceptive practices that are part and parcel with this industry.

NJP encourages the Board to strike the provisions of the proposal that authorizes Consumer LLLTs to engage in any activities classified as "Debt Adjusting", debt settlement, credit counseling, or the like.

C. WASHINGTON STATE COLLECTION AGENCY ACT AND THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT

By allowing LLLTs to provide debt collection services, such as garnishments or ghost writing collection complaints, the Board's current proposal also infringes on existing state and federal regulatory statutes and unnecessarily supplements a competitive industry in derogation of the LLLTs mandate to meet unmet civil legal needs.[2] Similarly, the proposed licensing requirement to allow certain debt collection activity places the putative LLLTs squarely within existing state and federal debt collection regulation.

The FDCPA prohibits debt collectors from engaging in various abusive and unfair practices. *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 947–48 (9th Cir. 2011) (internal citations omitted). "The statute was enacted to eliminate abusive debt collection practices; to ensure debt collectors who abstain from such

[2] On March 27, 2018, 1,524 entities had an active collection agency licensed issued by the Department of Licensing, representing a growth of 35 licensees since the fall of 2017.

practices are not competitively disadvantaged; and to promote consistent state action to protect consumers." *Id;* 15 U.S.C. § 1692(e). The statute defines a "debt collector" as one who "regularly collects ... debts owed or due or asserted to be owed or due another," 15 U.S.C. § 1692a(6), and covers lawyers who regularly collect debts through litigation, *Heintz*, 514 U.S. at 293–94, 115 S.Ct. 1489. Consumer LLLTs licensed to garnish, draft collection complaints or participate in collection cases in Small Claims Court meet this definition and will be regulated by the FDCPA.

Similarly, the Washington State Collection Agency Act, chapter 19.16 RCW, enacted in 1971, requires collection agencies to obtain a license, follow certain internal procedures, and adhere to a code of conduct. Washington has a strong public policy underlying the state and federal laws regulating the practice of debt collection. *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 54, 204 P.3d 885, 897 (2009) ("the business of debt collection affects the public interest, and collection agencies are subject to strict regulation to ensure they deal fairly and honestly with alleged debtors"). Consumer LLLTs licensed to garnish, draft collection complaints or participate in collection cases in small claims courts meet this definition, are regulated by the WCAA and must be separately licensed by the Department of Licensing.

What is confusing about the LLLT proposal, is these "services" are already widely available by regulated non-lawyer businesses (i.e. collection agencies) which also happen to be the antithesis of consumer protection law.

The Board must seriously consider whether licensing LLLTs to engage in these activities serves any unmet need identified in the Civil Legal Needs Study. It must also seriously give weight to the fact that the proposal will extend WSBA regulatory authority over thousands of non-lawyers legally performing the function the LLLT Board intends to license.

D. CONCLUSION

Finally, it is concerning that the initial Consumer LLLT proposal was developed without seeking input from Washington's consumer protection community or legal services organizations. Consumer lawyers in this state are highly self-organized both as a subgroup of the National Association of Consumer Advocates, via participation in Washington based restricted email listservs, in person CLEs and galvanized together by the common experience of difficult litigation against well organized and well-funded corporate opponents. When the proposal was revealed, it came as a complete surprise to this community of consumer attorneys. It is regrettable that this wealth of experience and knowledge was not consulted in the development of this proposal. There is real and ongoing harm to low income consumer and debtor's in this state; there are not enough consumer attorneys helping them to enforce their rights. But while the proposal has some promising features for our client base, our experience predicts it will, as currently drafted, be largely ineffective and in several ways harmful to consumers with unmet legal needs. Moreover, the licensing proposal cuts both

ways: LLLTs will be able to represent creditors as well as debtors thereby increasing access to justice for creditors – the unintended consequence of this rule. The unintended consequence is not theoretical given the financial resources available to hire LLLTs are greater for creditors than for debtors.

Consumer LLLTs may have a role in the quest to combat predatory practices and inform the public, but the proposed rule as drafted seems ineffective to serve that purpose. Significant modifications should be made. NJP would like to see the proposal revised to focus more on helping consumers with form based or non-adversarial proceedings, and not grant any authority to engage debt collection or to engage directly with debt collectors on a consumer's behalf.

Therefore, NJP recommends that the LLLT Board:

1. **Abandon** the proposed permitted actions of:
    a. Negotiation of debt;
    b. Assistance filling out complaints and counterclaims;
    c. All actions related to garnishment except assistance with exemption claims;
    d. All actions related to loan modification and foreclosure defense and assistance; and
    e. Representation in court and at depositions.
2. **Consider** revising the scope of the proposed permitted actions of:
    a. Activity involving student loan debt by permitting LLLTs to assist a debtor only with *federal* student loan repayment options;
    b. Reporting unfair acts, deceptive practices, and consumer statutory violations to consumer protection attorneys and/or a legal services agency in addition to regulatory authorities;
    c. Providing bankruptcy advice in a manner that conforms with and does not overlap with 11 U.S. Code § 111 (creating non-lawyer credit counseling) and fulfills an identified legal need or supplements a need not already met by "credit counselors"; and
    d. Reducing the level of participation permitted in Small Claims Court cases to not exceed the participation restrictions in place against fully licensed attorneys. In addition, a strict prohibition against LLLTs assisting creditors in small claims litigation or engaging in other conduct

meeting the definition of "debt collector" under the FDCPA or a "collection agency" under WCAA.

3. **Adopt** the proposed permitted actions of:

    a. Assistance with waiving legal financial obligations or interest on legal financial obligations;

    b. Preparing answers to debt collection lawsuits, including helping consumers apply for Charity Care from hospitals where appropriate;

    c. Providing advice regarding identity theft, including assistance with filing police reports and filling out necessary forms from government entities or private creditors;

    d. Educate consumers on identity theft issues, best practices and provide resources (i.e. www.washingtonlawhelp.org);

    e. Assisting consumers with wage complaints to Labor and Industries, assistance with negotiation and administrative hearing in wage complaints cases, advice and reporting under the Minimum Wage Act and Fair Labor Standards Act, and referral to private attorneys or legal services of claims and statutory rights enforcement that requires civil litigation; and

    f. Assisting consumer with billing disputes with original creditors that are not in litigation, which may include preparing complaints to local, state and/or federal agencies.

4. **Add** proposed permitted actions of:

    a. Assisting consumers in obtaining relief in abbreviated or form based procedures in addition to applying for legal financial obligation (LFOs) interest waivers such as:

        i. Waiver of LFOs (or a limited waiver of LFO interest);

        ii. Exemption claims in garnishment;

        iii. Relicensing programs;

        iv. Expungement or sealing of criminal records;

        v. Restoration of civil rights (voting);

vi. GR 34 waiver of Court fees;

vii. Other appropriate form based or non-adversarial proceedings.

b. Assisting and advising consumers with pre-unlawful detainer landlord tenant disputes, such as documenting the condition of the property, habitability rights, applications for subsidized housing, education and resources.

Sincerely,

NORTHWEST JUSTICE PROJECT

Scott M. Kinkley[3]
Attorney at Law

smk/np

cc Cesar E. Torres, NJP Executive Director

[3] Presenter at twenty-two WSBA accredited CLEs on debt collection defense and related issues, author of the WSAJ's Consumer Protection Handbook chapters on the Fair Debt Collection Practices Act and the Washington Collection Agency Act, , and 10-year member of the National Association of Consumer Advocates.

From: Inez "Ine" Petersen
To: Limited License Legal Technician
Subject: Re: My comment: The LLLT Board is developing a new practice area and wants to hear from you
Date: Wednesday, May 23, 2018 4:17:21 PM

Dear LLLT Board:

Did it ever occur to you that you should be lobbying the State Supreme Court to change APR 28 instead of undermining the very jobs of the attorneys to whom you owe a duty of loyalty of the first order?

Mission creep needs to stop with the goal to reduce dues by 40%. Now that is a goal I believe the majority of members of the Bar could support.

Perhaps you are too close to the problem to see that you have a problem.

Sincerely,
Inez Petersen, WSBA #46213

On Wed, May 23, 2018 at 3:08 PM, Limited License Legal Technician <LLLT@wsba.org> wrote:

> Inez,
>
> Thank you for your input regarding the new proposed Limited License Legal Technician (LLLT) practice area, Consumer, Money, and Debt Law.
>
> WSBA staff members are compiling all comments, which will be provided to the LLLT Board for consideration in deciding next steps. In the meantime, we appreciate all feedback as we work toward fulfilling our mandate by the Washington Supreme Court under APR 28 to continue to recommend and develop practice areas of law for LLLTs.
>
> At the end of the comment period in July, the LLLT Board will carefully review all comments and input. LLLT Board members may modify the proposed practice area based on the comments, issues discovered during the drafting of regulations, and issues that arise during the law schools' development of the curriculum.
>
> **From:** Inez "Ine" Petersen [mailto:inezpetersenjd@gmail.com]
> **Sent:** Tuesday, May 15, 2018 1:21 PM
> **To:** Limited License Legal Technician

Cc: Bill Pickett
Subject: My comment: The LLLT Board is developing a new practice area and wants to hear from you

Dear LLLT Board:

I recommend that your Board be disbanded immediately.

Is the WSBA undermining its members or representing them? It looks like the former to me.

This is the most absurd idea since mandatory professional liability insurance. And it shows that the Bar has just too much money laying around and must seek ways to spend it no matter how it hurts the attorneys they allegedly represent.

I don't want the WSBA taking action that reduces my chances of making a living. I want the WSBA to facilitate my career, not undermine it!

WHAT ARE YOU THINKING? WHO IS REALLY BEHIND THIS?

This shows that there is a real need for voting to occur at the member level on everything with a greatly reduced staff. All the committees, boards, and huge number of in-house employees seem to be working on projects that are not in the best interest of the attorneys. This is just another one.

A voluntary bar association would nip this problem in the bud or would it? The Titantic needs a new captain, one with eyes to see the icebergs. I look at the WSBA as a professional union; I want that union to plug the holes in the life boats, not create more holes.

Sincerely,

Inez Petersen

WSBA #46213

---------- Forwarded message ----------
From: **Washington State Bar Association** <noreply@wsba.org>
Date: Tue, May 15, 2018 at 11:46 AM
Subject: The LLLT Board is developing a new practice area and wants to hear from you
To: inezpetersenjd@gmail.com

Washington State Bar Association

The LLLT Board is working on developing a new LLLT licensed practice area —**Consumer, Money, and Debt Law**—and would like your feedback. A draft outline of the proposed practice area is under development. The LLLT Board is seeking comments through July 16.

There are several ways you can help shape and be involved in the process, and we hope you will be. Please consider reviewing the draft and being involved in the next steps by:

- Providing feedback on the initial draft and subsequent versions,
- Attending the LLLT Board meetings, which are open to the public, and
- If the new practice area is approved by the Washington Supreme Court, assisting the LLLT Board with writing the rule, regulations, and exam for this practice area.

Please submit comments, questions, or concerns to lllt@wsba.org.

The LLLT Board looks forward to hearing from you.

Sincerely,

Stephen R. Crossland
Chair, LLLT Board

Renata de Carvalho Garcia
WSBA Staff Liaison to the LLLT Board

WSBA seal

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- Information about the non-CLE work and activities of the sections to which the member belongs
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- Election materials (Board of Governors)
- Selected Executive Director and Board of Governors communications

From: susanne rodriguez
To: Limited License Legal Technician
Subject: Re: proposed consumer LLLT
Date: Wednesday, May 16, 2018 10:52:04 AM
Attachments: image001.png

Looks good. I'm a bankruptcy attorney and I think it's a great idea to have LLLTs available.

thx,
Susanne

On Wed, May 16, 2018 at 8:07 AM, Limited License Legal Technician <LLLT@wsba.org> wrote:

> Hi Susanne,
>
> You can read the draft here:
>
> https://www.wsba.org/docs/default-source/legal-community/committees/lllt-board/consumer-money-and-debt---draft-for-discussion-and-comment.pdf?sfvrsn=a86007f1_4
>
> 
>
> **Laura Sommer | Interim Limited License Legal Technician Program Lead**
>
> **Washington State Bar Association** | 206.727.8289 | laura.sommer@wsba.org
>
> 1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org
>
>

From: susanne rodriguez [mailto:lacamaslegal@gmail.com]
Sent: Tuesday, May 15, 2018 2:38 PM
To: Limited License Legal Technician
Subject: proposed consumer LLLT

Is there a link to the draft somewhere?

thanks,

Susanne

--

Susanne Ruiz Rodriguez, Esq., M.S.

Attorney & Counselor at Law

532 NE 3rd #101

Camas WA 98607

(360) 835-0457

--

Susanne Ruiz Rodriguez, Esq., M.S.
Attorney & Counselor at Law
532 NE 3rd #101
Camas WA 98607
(360) 835-0457

From: vlaparker@aol.com
To: Limited License Legal Technician
Subject: specific comment
Date: Wednesday, May 16, 2018 8:40:01 AM

As stated in the documents regarding the specific expansion, people do not know about existing services. So, why not advertise those existing services. They were designed to help.

Also, the research is biased. The groups used to gather information have incomplete information and are looking to reduce their load and not truly serve people (see first paragraph).

Vicki Lee Anne Parker,
Attorney at Law

Creditor/Debtor Section
Executive Committee
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, Washington 98101

August 13, 2018

LLLT Board
Attn: Stephen Crossland, Chair
LLLT@wsba.org

Re: Expansion of Services by LLLTs

Dear Stephen:

The undersigned are the Chair and the Chair-Elect of the Creditor-Debtor Section of the Washington State Bar Association ("CD"). We are writing with regards to concerns CD has with the proposed expansion of the Limited License Legal Technician ("LLLT") program into the area of Consumer, Money, and Debt law. The proposed expansion was a topic of conversation at a recent CD Executive Board meeting (the "Meeting") that you attended. This letter is to memorialize our concerns and suggested recommendations with respect to the proposal for expansion of the LLLT program into the creditor/debtor area, as well as several suggestions to better tailor any expansion of the LLLT program into this area from the perspective of practitioners already offering services in this area.

Currently there are 1,045 Washington licensed attorneys who list Creditor-Debtor as an area of practice, 815 attorneys who list consumer law as an area of practice, and 1,094 attorneys who list bankruptcy as an area of practice. These practitioners are on the front line working with low income homes to address the issues that prompted the proposed expansion of the LLLT Program. As the number of attorneys indicates, there is already a substantial number of professionals who stand ready, willing, and able to render assistance the proposed expansion would include. While access for low income families is an important issue, the lack of access to justice does not appear to be an issue stemming from lack of sufficient assistance being available.

CD has formed a subcommittee tasked with responding to the proposed expansion in an effort to help the proposed expansion target the constituencies it purports to assist based on the practical knowledge the day to day practice in these areas entails. The subcommittee was comprised of attorneys who represent both creditors and debtors, a mix of attorneys handling large corporate Creditor-Debtor cases and attorneys handling smaller consumer related cases, from varying firms by both size and location, and a Federal Bankruptcy Judge. The subcommittee is still reviewing the empirical evidence the proposed expansion relies on, and we may be submitting additional comments after the review of the data is complete.

CD is supportive of actions to increase access to legal services for low income individuals. This response refers only to low income individuals as middle income is never defined in the studies relied upon, and that constituency is currently served by consumer creditor

or debtor practitioners in the State of Washington. CD believes the proposed expansion will not achieve increased access to legal services for low income individuals because:

1. The proposed expansion fails to address concerns that would arise from existing federal and state regulations of this area of law;
2. The proposed expansion is not tailored to address the identified need for legal services;
3. The proposed expansion fails to acknowledge alternative avenues to address the problems that already exist, or changes that could be made to the existing system to meet the need of the targeted constituency.

THE EXISTING REGULATORY STRUCTURE UNDER STATE AND FEDERAL LAW

Regulations at both the state and federal level make the proposed expansion difficult absent some legislative coordination with the expansion. For example, limitations imposed under federal law as it relates to bankruptcy filings are presumably the reason proposed allowed bankruptcy services from LLLTs are quite limited. However, the Bankruptcy Code is not the only federal law covering the areas the proposed expansion would cover. For example, the Credit Repair Organizations Act, 15 U.S.C. §§1679-1679 would apply to LLLTs practicing in the areas under the proposed expansion, and would prohibit LLLTs from certain actions, compel disclosures, and impose restrictions on a LLLT's ability to enter into contracts with potential clients. Under state law, Debt Adjusting, RCW 18.28.010-900, Collection Agencies, RCW 19.16.100-960, and Credit Services Organizations Act, RCW 19.134.010-900, would all be applicable to LLLTs. The above-referenced statutes would impose additional compliance overhead, and create the potential for exposure to personal liability for failure to comply with the various statutory regimes, for LLLTs working in the proposed expansion areas. This would increase the cost LLLTs would have to charge for their services because they would not have the benefit of the exemption for attorneys created in the various statutes. This is not necessarily an exhaustive list of statutes that are implicated in the proposed expansion, and there are additional federal and state regulations that are potentially implicated as well.

While the LLLT Board considered some regulator schemes, such as the Fair Debt Collection Practices Act, it does not appear to have addressed the impact of several of the various statutory regimes that would be applicable, absent a statutory exception similar to the exemption for attorneys. In order to address these issues, the LLLT Workgroup needs to consider further refinements to the authorized scope, and the need for legislative enactments before proceeding with the proposed expansion to avoid unintended consequences for LLLTs.

SCOPE OF PROPOSAL TOO BROAD

While the asserted aim of the proposed expansion embraces a goal all interested parties would like to accomplish (increasing access to justice for low income individuals), the proposal is unlikely to meet this need based on the potential problems identified in this letter. CD also believes the proposed expansion will have unintended consequences harming attorneys because of a lack of a system to pre-qualify individuals seeking to utilize these services, and the use of an inflated cap on the amount that can be in controversy for an LLLT to assist.

One concern that was addressed at the Meeting was the lack of any means testing to qualify individuals for representation by LLLTs in order to justify the proposed expansion of the LLLT practice areas. Without a means testing requirement, the stated goal of the proposed expansion rings hollow. LLLTs will simply be a lower cost alternative to lawyers for anyone seeking legal guidance, not just low income individuals who is supposed to be the targeted population.

Another concern raised at the Meeting was the proposed dollar limitation of $100,000.00. This amount is, in almost all situations, well over the dollar amount low income individuals have in a single obligation (student loans and mortgages notwithstanding). A more workable limitation would be to utilize the $5,000.00 jurisdiction amount of small claims courts or an amount that is at least close to that amount.

Furthermore, the method of determining what the "value" of a debt is should be clearly delineated. The proposed expansion does not indicate whether this amount is based on the principal, a combination of principal with accrued unpaid interest and fees, or the amount in controversy (which may include additional amounts for attorney's fees and costs) or for each debt or the total multiple debts for which assistance is being sought. Any finalized proposal must contain explicit instructions on calculating the dollar cap LLLTs can assist with. It is also important to note that on the creditors' side, debt collection is more complex than many would think. LLLTs acting to collect debt would, like lawyers, be subject to provisions of the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, and state consumer protections in these areas. Compliance with these legal requirements is fraught with perils even for seasoned lawyers.

ALTERNATIVES ALREADY EXIST TO MEET THE IDENTIFIED NEED

As described in the empirical evidence in the proposed expansion, and discussed at the Meeting, there are already services available to low income individuals for services in this area. For example, the Washington State Bar Association (Low Bono Section) and the King County Bar Association already provide moderate means programs for low income individuals. For example, the King County Bar Association already operates legal clinics to address the concerns used to justify the LLLT expansion. The Spokane County Bar Association has a volunteer lawyers program that can provide many of the services proposed to be provided by LLLTs, without cost. There are also several federal and state government agencies and approved non-profit agencies that will assist consumers in loan modifications and budgeting services at no charge. These services are in addition to the services the LLLT Board identifies in the proposed expansion, and the legal clinics at all three of the ABA approved law schools in Washington State. While there is no disputing the need for additional access to justice for low income individuals, there is no evidence or analysis to support the conclusion that expanding the LLLTs practice to include services that are already available would provide any meaningful additional relief for the issues the proposed expansion alleges to target. This conclusion is buttressed by the conclusion by the LLLT proposal identifying that one of the largest hurdles to individuals seeking legal assistance with consumer related issues are either not knowing services exist or lack of trust in the entities providing such services. Nothing in the proposed expansion adequately addresses why LLLTs would be any different than those services already available.

Additionally, the limitations on LLLTs ability to consult in various areas of law that may be related to the issues a client is facing raises the specter that LLLTs would be unwilling or unable to effectively refer matters to attorneys if the attorney could provide better assistance to the LLLT's client.

Furthermore, consumer creditor-debtor attorneys have the ability to serve the need the proposed expansion seeks to address. Most consumer bankruptcy attorneys, for example, provide free initial consultations of between 30 minutes and an hour for prospective clients, and all have relatively modest hourly rates, and reasonably priced flat fee products for more routine matters. These practitioners could also assist in achieving the goal of expanding access to justice for low income individuals if WSBA focused on revising the Rules of Professional Conduct ("RPC") regulations for advertising of services to bring costs down for practitioners and clients. The RPC limitations on advertising their services is nearly identical to LLLT Rules of Professional Conduct (LLLT RPC"), as noted in official comment [1] to LLLT RPB 7.1. These very limitations on advertising are part of the identified issue with low income individuals' ignorance of available assistance which call into doubt the efficacy of the proposed expansion.

Another change to the RPCs that would allow attorneys in this area the ability to more cost-effectively assist in this area is more leeway in "unbundling" services under the RPCs. While the LLLT RPCs explicitly limit the scope of representation to specific areas, the RPCs applicable to attorneys take a different approach by limiting what services an attorney can unbundle from representation. By affording additional latitude for attorneys to unbundle service, the identified need for low income individuals could better be met by decreasing the cost of services attorneys could offer for simple cases, while ensuring a client has the same quality of representation, without the interim step of retaining the LLLT.

With respect to the area of bankruptcy, the primary service proposed to be provided by LLLTs would be initial counseling and then referral to a bankruptcy attorney. Currently, the vast majority of debtors' attorneys provide the initial counseling free of charge. Thus, the LLLTs would be charging clients for services that the clients could receive free of charge. This is antithetical to the goals of the Board's proposal. More education of consumers regarding bankruptcy services that are already available would seem to be more effective. Furthermore, practice in the area of bankruptcy by non-lawyers is specifically addressed in the Bankruptcy Code, and would therefore preempt any authorization by the WSBA for LLLTs to practice in the bankruptcy area.

RECOMMENDED REVISIONS TO PROPOSAL

While CD has significant reservations about the expansion of the LLLT program into the Consumer, Money, and Debt Law, we recognize the need for additional access to justice for low income individuals. If LLLTs are going to be authorized to practice in this area of law, for the reasons set forth above, CD recommends the following be incorporated into any final rules permitting such practice:

1. Potential clients should be subject to some form of means testing to ensure the goal of the expansion is met. CD believes the appropriate amount is 200% of the poverty level.
2. LLLTs should only be authorized to assist with debts within the same dollar limitations applicable to claims in small claims court or an amount close to that.
3. LLLTs should only be authorized to represent natural persons, and not business entities.
4. LLLTs representation should be limited only to debtors.
5. Undertake a review of the RPC to consider changes that would allow more flexibility for attorneys to address the identified needs through the relaxation of rules on the unbundling of services and/or advertising to enact changes in concert with the potential expansion of the LLLT program.
6. Revision of the proposal, in consultation with CD, to address the various statutory and regulatory regimes applicable to the proposed expansion practice area.
7. Removal of the Bankruptcy Awareness and Advice area from proposal in any final proposed expansion.

In addition to the matters cited above, there are some practice areas included in the Board's proposal that do not neatly mesh with the money and debt areas proposed. For instance, the proposal includes personal restraint matters and the like. Most creditor debtor attorneys do not also practice in these areas, and thus, the Board's proposal would create LLLT practitioners engaged in incongruent practices. We have concerns about the breadth of practice by individuals who do not have formal law school training. It seems to us that the more focused the LLLTs can be, the more value they will have to their clients.

/s/ Thomas S. Linde
Thomas S. Linde; Chair
WSBA Creditor-Debtor Executive Committee

/s/ Kevin D. O'Rourke
Kevin D. O'Rourke; Chair-Elect
WSBA Creditor-Debtor Executive Committee

Cc: WSBA Board of Governors
c/o Margaret Shane
margarets@wsba.org

Draft for Discussion and Comment:

Consumer, Money, and Debt Law

Proposed New Practice Area for Limited License Legal Technicians

Summary
The Limited License Legal Technician (LLLT) Board invites comment on a proposed new practice area: Consumer, Money, and Debt Law. This new practice area is designed to provide economic protection for the public and to provide legal assistance for certain financial matters, with a focus on consumer debt issues and other problems which contribute to consumer credit problems. For example, LLLTs licensed in this practice area would be able to assist clients with issues related to legal financial obligations, debt collection and garnishment defense, identity theft, preparing for small claims court, and filing protection orders.

Introduction
The practice area was developed by a New Practice Area Committee of the LLLT Board in a workgroup chaired by LLLT Board member Nancy Ivarinen. The workgroup is requesting input from other interested parties prior to formalizing the request to the Supreme Court.

While researching new practice areas for LLLTs, the workgroup considered:

- whether the new practice area would increase access to justice for potential clients with moderate or low incomes;
- whether there is a demonstrable unmet legal need in that area;
- whether it's possible to include consumer/client protection for those who use LLLTs;
- whether the new area would provide a viable practice so LLLTs can afford to maintain a business;
- whether the substantive practice area classes can be developed and taught by the law schools in a three-class series, one per quarter, for five credits each; and
- whether there are experts available to help develop the curriculum and teach the classes.

In order to appropriately vet the potential new practice areas, the workgroup considered:

- statistics and reports discussing the legal need;
- comments by invited subject matter experts who explained what the practice areas entail;
- comments by these experts on what the LLLT could potentially do;
- committee discussion about the LLLT being properly trained in a limited scope within the practice area; and
- whether the practice area could be regulated appropriately so that the needs of the clients would be met, while also assuring that the clients would be protected.

The Better Business Bureau (BBB), the Attorney General's Consumer Protection Division, the Federal Trade Commission, and some organizations funded by United Way offer services related to consumer debt, such as debt management, debt renegotiation; and changing the behavior of businesses that prey upon low and moderate income consumers.

These services have been in existence for decades, and yet the demonstrated need in the Civil Legal Needs Study clearly shows that consumers with debt related legal issues are unaware of these services, do not believe these organizations can or will help them, have not been helped when using these services, or have needs that exceed the scope of the services these organizations can provide.

The proposed practice area is intended to help meet these significant unmet legal needs while giving LLLTs additional practice area options for expanding their businesses.

Evidence of Unmet Need

The starting point of the workgroup's analysis was identifying the unmet need that could be addressed by LLLTs licensed in a consumer law practice area. The workgroup found convincing evidence supporting the existing legal need for consumer law assistance in studies conducted at both the state and national levels. The workgroup also looked at statistics received from county-based volunteer legal services providers and the statewide Moderate Means Program, which demonstrated a consistent legal need in the consumer law area among low and moderate income people.

Statistics from State and Federal Studies

- The 2003 (Statewide 0-400% of Federal Poverty Level) and 2015 (Statewide, 0-200% of Federal Poverty Level) Civil Legal Needs Studies identified Consumer, Financial Services, and Credit among the three most prevalent problems that people experience and seek legal help to address. There was an increase in legal need in this area from 27% to 37.6% between 2003 and 2014.
- The Legal Services Corporation June 2017 Report: The Justice Gap (National, 0-125% of Federal Poverty Level) identified consumer issues as the second highest problem area for people at this income level.

Moderate Means Program Data

- The WSBA Moderate Means Program (Statewide, 200-400% of Federal Poverty Level) identified consumer issues as the second highest problem area. In addition, data provided by the program showed that consumer law represented 10% of the 2,321 requests for service from October 26, 2016 to October 27, 2017. Of the 233 consumer law requests, 74 related to bankruptcy or debtor relief and 71 were in collections, repossession, and garnishment.
- Data from the Moderate Means Program on requests for service from January 1, 2015 through May 1, 2017, show 523 of 3,062 requests for service in consumer law matters, about 17% of the total requests over that 28 month period.

Statistics from Volunteer Legal Service Providers

- The King County Bar Association's Neighborhood Legal Clinics 2016 data showed that 15% (1,298 of 8,259) of legal issues addressed at the clinic were consumer law related.
- From 2012-2017 the King County based Northwest Consumer Law Center received 2,499 requests for service, all directly related to consumer law needs.
- Over the last three years, the Tacoma-Pierce County Bar Association Volunteer Legal Services had an average of 160 clients per year visit their Bankruptcy Clinic and an average of about 43 clients per year attend the Foreclosure – Home Justice Clinic.

How LLLTs Can Meet the Legal Need

When reviewing the Civil Legal Needs Studies, the workgroup noted that it was unclear whether or not legal assistance would materially address the consumer law problems the subjects were reporting, and if so, whether that assistance could be provided through some method other than direct representation exclusively by a lawyer.

The workgroup discussed many examples of consumer legal problems that may not have a legal remedy, such as a debt collection lawsuit where the money is owed. While discussing each example, the workgroup saw advantages to providing the consumer with legal advice, even if there did not appear to be a legal resolution to the issue. For example, in a debt collection lawsuit, the statute of limitations on collection of the debt may have passed, so the debtor may not be obligated to pay even though the debt is owed. For those debtors who do have defenses or where collection agencies are attempting to collect a legitimate debt in an unfair or illegal manner, a LLLT could be a valuable consumer protection tool. Even for consumers who have no defense to a lawfully pursued debt collection lawsuit, having the assistance of a LLLT throughout the process of responding to a lawsuit would speed judicial efficiency, as the defendant would understand the procedures and be able to respond in an appropriate and strategic way.

The extensive collection of self-help resources offered on washingtonlawhelp.org regarding consumer debt confirms that many consumers already face this issue pro se, and would undoubtedly benefit from consulting with an affordable provider of legal services in this area.

The workgroup enlisted the advice of practitioners and other experts in the various areas of law to identify the legal work which could be effectively performed by LLLTs and provide an economically sustainable practice area. The workgroup identified that Consumer, Money and Debt Law LLLTs should be able to:

- offer advice regarding all identified topics
- fill out certain forms
- engage in limited negotiation in regard to particular issues
- attend specific hearings to advise the client and assist in answering procedural questions

- attend depositions
- prepare paperwork for mediation, and
- attend any administrative proceeding related to the practice area.

The workgroup carefully weighed the pros and cons of each of the above actions and determined that allowing this range of actions would greatly increase the quality of service that LLLTs could provide to their clients.

Target Clients and Scope

The target clients of this practice area are moderate and low income people with consumer debt or credit problems, or those to whom a small amount of debt is owed. The workgroup narrowly prescribed the focus of the recommended scope in order to provide a maximum benefit to these clients. The workgroup also identified limitations designed to ensure that LLLTs will provide service to consumers who currently do not have resources in this area.

The *2015 Civil Legal Needs Study* noted that the average number of legal problems per household has increased from 3.3 in 2003 to 9.3 in 2014. In addition, the legal problems that low-income people experience are interconnected in complex ways. Consumer debt, for example, can be exacerbated by landlord/tenant issues, divorce, identity theft, lack of access to benefits, problems with an employer, lack of exposure to options such as bankruptcy, and domestic violence and other protection orders.

The workgroup thought holistically about this range of issues which often go hand in hand with consumer debt and credit problems and identified a range of actions which could appropriately be performed by a LLLT in the areas of protection orders, bankruptcy education, wage theft, and identity theft. Including these areas as part of the consumer law relief a LLLT will be able to provide will allow LLLTs to proactively help their clients to break the cycle of debt creation.

Proposed Consumer, Money, and Debt Law LLLT Practice Area

Scope	Proposed Permitted Actions & Proposed Limitations
Legal Financial Obligations (LFOs)	***Proposed Permitted Actions:*** Assistance filling out forms (e.g., Motion for Order Waiving or Reducing Interest on LFO, Order to Waive or Reduce Interest on LFO)
Small Claims	***Proposed Permitted Actions:*** Assistance preparing the Notice of Small Claim, Certificate of Service, Response to Small Claim, Small Claims Orders, Small Claims Judgment, and counterclaims Preparation for mediation and trial Obtaining and organizing exhibits

Student Loans	***Proposed Permitted Actions:*** Negotiation of debt or payment plans Modifications, loan forgiveness and debt relief Discharge
Debt Collection Defense and Assistance	***Proposed Permitted Actions****:* Negotiation of debt Assistance filling out Complaints, Answers and Counterclaims Affirmative Defenses including Statute of Limitations defenses Reporting Fair Debt Collection Act violations, including statute of limitations and state collection agency statute violations Reporting to Regulatory Agencies ***Proposed Limitations:*** LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court ($100,000)
Garnishment	***Proposed Permitted Actions****:* Negotiation Voluntary Wage Assignments Assistance filling out forms (Application for Writ of Garnishment, Continuing Lien on Earnings, Return of Service, Notice Exemption Claim, Release of Writ of Garnishment, Motion and Cert. for Default Answer to Writ of Garnishment, Application for Judgment, Motion/Order Discharging Garnishee, Satisfaction of Judgment) Exemption Claims, including assistance at court hearings ***Proposed Limitations:*** LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court (usually $100,000) LLLTs may render legal services for debt collection only when there is a direct relationship with the original creditor and may not act as or render legal services for collection agencies or debt buyers as defined under RCW 19.16. No prejudgment attachments No executions on judgments

Identity Theft	***Proposed Permitted Actions:*** Advise regarding identity theft Best practices for protecting information Contacting credit bureaus Reporting to law enforcement and other agencies such as Federal Trade Commission
Wage complaints and Defenses	***Proposed Permitted Actions*:** Representation in negotiations or hearings with Labor and Industries Accompany and assist in court Advice and reporting regarding Minimum Wage Act Advice and reporting regarding Fair Labor Standards Act Actions permitted under RCW 49.48 (Wages-Payment-Collection) Actions permitted under RCW 49.52 (Wages-Deductions-Contributions-Rebates) ***Proposed Limitations****:* LLLTs may not represent clients in wage claims which exceed the jurisdictional limit set by the District Court ($100,000)
Loan Modification & Foreclosure Defense and Assistance	***Proposed Permitted Actions:*** Accompany and advise in mandatory mediation process Assist with non-judicial foreclosure actions and defenses under RCW 61.24.040 Advise regarding power of sale clauses and the Notice of Sale Right of Redemption ***Proposed Limitations:*** LLLTs would be prohibited from assisting with non-judicial foreclosures if the LLLT does not meet the requirements of RCW 61.24.010. No judicial foreclosures
Protection Orders	***Proposed Actions:*** Selecting and completing pleadings for Protection Orders for domestic violence, stalking, sexual assault, extreme risk, adult protection, harassment, and no contact orders in criminal cases
Bankruptcy Awareness and Advice	***Proposed Actions:*** Explain the options, alternatives, and procedures as well as advantages and disadvantages Refer to budget & counseling agency Refer to bankruptcy attorney ***Proposed Limitation:*** No assistance with bankruptcy filing in court

The LLLT Board will coordinate with the Washington law schools in the development of the practice area curriculum and ensure that appropriate faculty is available to teach the curriculum. The LLLT Board may modify the proposed practice area based on:

1. consideration of public comments;
2. issues discovered during the drafting of new practice area regulations; and
3. issues that arise during the law schools' development of the practice area curriculum.

Please provide comments to the LLLT Board via email to LLLT@wsba.org by July 16, 2018.

STATE OF WASHINGTON
DEPARTMENT OF LICENSING
PO Box 9020 • Olympia, Washington 98507-9020

July 13, 2018

Washington State Bar Association
LLLT Board
LLLT@wsba.org

Re: Consumer, Money, and Debt Law
Public Comment from the Washington State, Collection Agency Board

Mr. Chairman Crossland and Members of the Board:

Please accept these comments of the Washington State, Collection Agency Board concerning the proposed new practice area for LLLTs in Consumer, Money and Debt Law.

The Washington State Collection Agency Board ("CAB") is a state regulatory board created by statute, RCW 19.16.280, to advise and assist the Department of Licensing (Department) with enforcement of the Washington State Collection Agency Act, RCW 91.16. *et. seq.*, and with the power to adopt rules and regulations, investigate collection agency complaints, impose discipline and grant or deny collection agency licenses. *See* RCW 18.235.030. The board is comprised of five members, two public and two industry representatives appointed by the Governor, and one member of the Department of Licensing appointed by its director.

The purpose of this letter is to neither support nor oppose the Consumer, Money, and Debt Law LLLT proposal (LLLT Proposal), but rather to request that the CAB be included and consulted as a stakeholder with respect to certain portions of the proposal which may overlap or interfere with the DOL's current regulatory function. The CAB would like to avoid any unintended consequences created by the interplay and potential conflict between the Consumer LLLT proposal and CAB's regulatory duties.

Currently, CAB is concerned by the following services listed in the LLLT proposal, which potentially fit within the definition of a "collection agency activities" under RCW 19.16.100(4)(b):

- Small Claims: "Assistance preparing the Notice of Small Claim ... Small Claims Judgment, and counterclaims."

- Debt Collection Defense and Assistance: "Assistance filling out complaints"; and

- Garnishment: "Assistance filling out forms (Application for Writ of Garnishment, Continuing Lien of Earnings, Return of Service, Notice of Exemption Claim, Release of Writ of Garnishment, Motion and Cert. for Default Answer to Writ of Garnishment, Application for Judgment, Motion/Order Discharging Garnishee, and Satisfaction of Judgment)."

CAB is concerned that by including the activities listed above, LLLTs who perform them could be required to be licensed as collection agencies, or conversely, that their inclusion could cause those activities to fall under the purview of the practice of law, requiring collection agencies to be licensed by the WSBA.

It is the hope of the Board that any LLLT Proposal adopted will account for the Departments function or avoid the potential licensing conflicts identified above. In any case, the CAB would appreciate being included as a stakeholder going forward.

The CAB would like to request that the Washington State Bar Association conduct additional outreach to various stakeholders of the industry and the CAB would like to propose the deadline for comment on this topic be extended past the original July 16, 2018 deadline, to allow for various stakeholders to provide comment that were not included in the original outreach from the Washington State Bar Association and the LLLT Board.

Tami Dohrman, Chair

7/13/2018
Date

Landlord-Tenant Practice Area

Authority

- Residential Landlord-Tenant Act – Chapter 59.18 RCW
- Changes effective July 28, 2019

Resources

- Housing Justice Project Report: Losing Home (September 2018)
- KCBA Renter's Rights Videos
- City of Seattle, Dept. of Planning and Development
- King County Law Library
- Washington LawHelp

Organizations

- Housing Justice Project
- Tenant Law Center
- Northwest Justice Project
- Solid Ground
- Tenants Union (also available in other languages)

Practice Area Evaluation

1. *Is there a civil legal need in this area?*

According to the 2003 Civil Legal Needs Study, the "greatest number of legal issues experienced by low-income people involve matters related to shelter or security, including personal or economic" with housing problems listed as the number one legal issue experienced by low-income people.[1]

[1] http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf

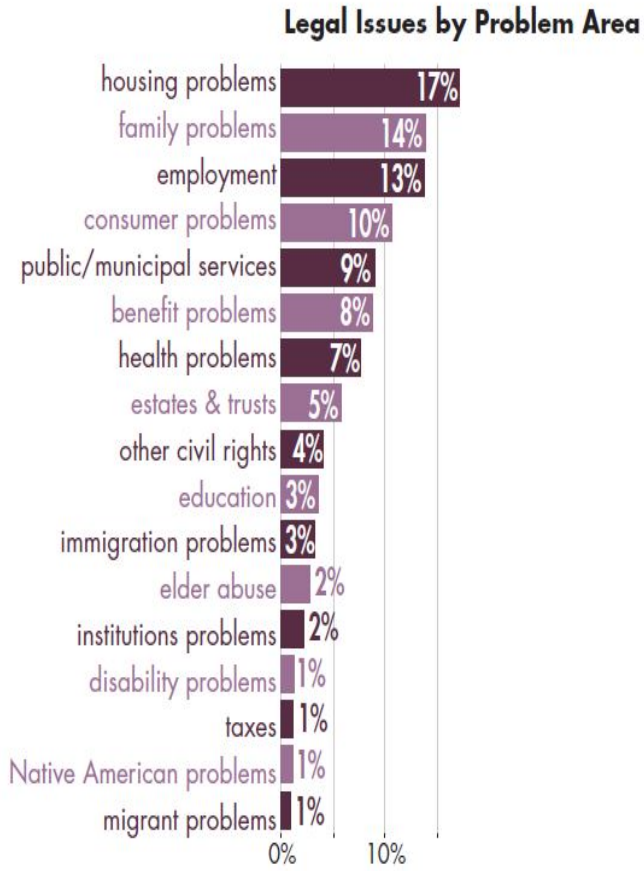


Fig. 10 Legal issues by problem area, shown in order of magnitude as a percentage of all legal issues

Housing, family, employment and consumer matters account for more than half of all legal issues affecting low-income households.

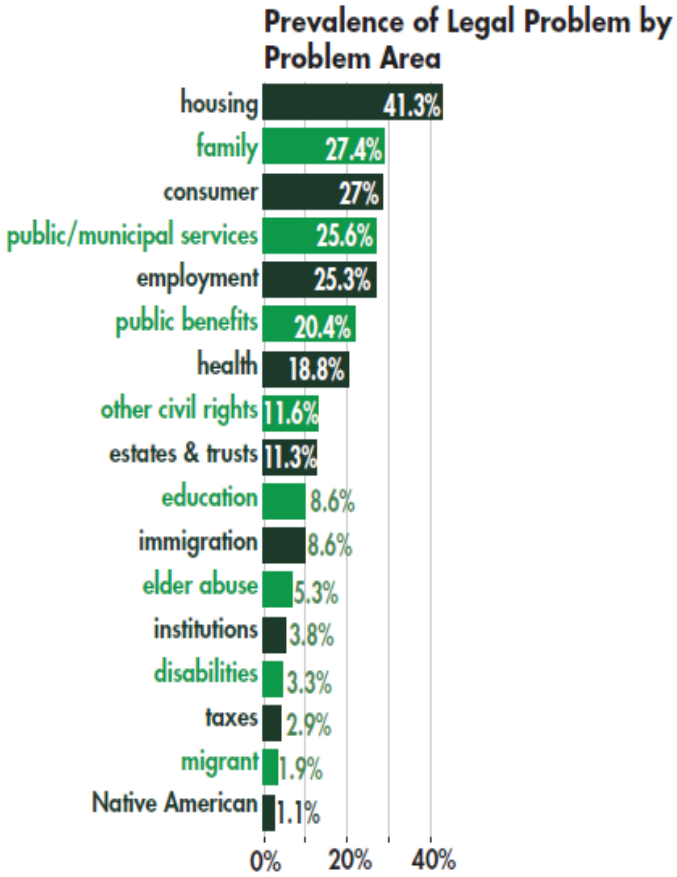
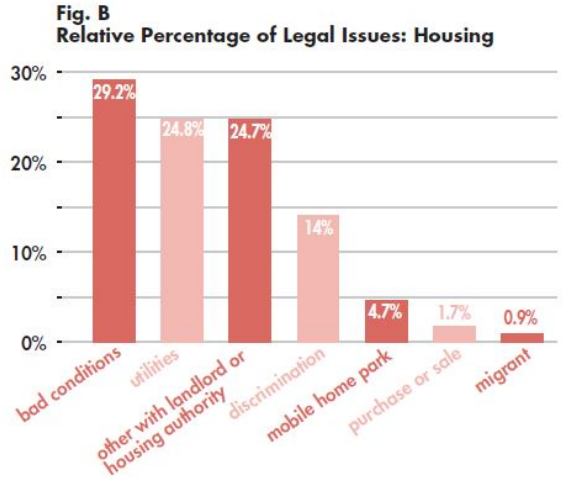


Fig. 11 Prevalence of legal problems experienced by households with at least one problem, by problem area

If a low-income household has a legal problem, it most likely involves housing, family or consumer matters.

Chart from Civil Legal Needs Study



Housing (17% of all issues): Bad housing conditions account for more than a quarter of housing issues, followed by issues relating to the provision of utilities and conflicts with a landlord or housing authority. Housing is the most reported issue for every demographic cluster group, with the exception of youth without an effective parent advocate. Migrants, the mentally disabled and families moving from welfare to work reported slightly higher-than-average rates of housing issues. Of households experiencing at least one legal problem, more than 41 percent (approx. 136,000) experience a problem related to housing.

The 2015 Civil Legal Needs Study revealed changes in the prevalence of legal problems, including housing problems, which dropped from 41.3% to 27.8%. Despite the drop, housing is the number one issue people most often seek legal help. The most common problems "include landlord disputes, unsafe housing conditions and problems related to eviction or termination of a lease."[2]

PROBLEMS PEOPLE MOST OFTEN SEEK LEGAL HELP Source: WSU-SESRC		
1	28%	Housing
2	22%	Family & Domestic Problems
3	20%	Consumer, Financial Services, Credit
4	19%	Healthcare
5	16%	Disability-Related Problems

[2] 2015 Civil Legal Needs Study

Refer to 2003 and 2015 civil legal needs study and HJP Report . Data from neighborhood clinics? King County Law Library

2. ***Can LLLTs solve the problem?***
   Legal assistance will help alleviate the problem . Find stats about how representation in eviction matters make a difference.

3. ***Complexity of the law***
   What would the curriculum look like? How many hours of education? Pattern forms available?

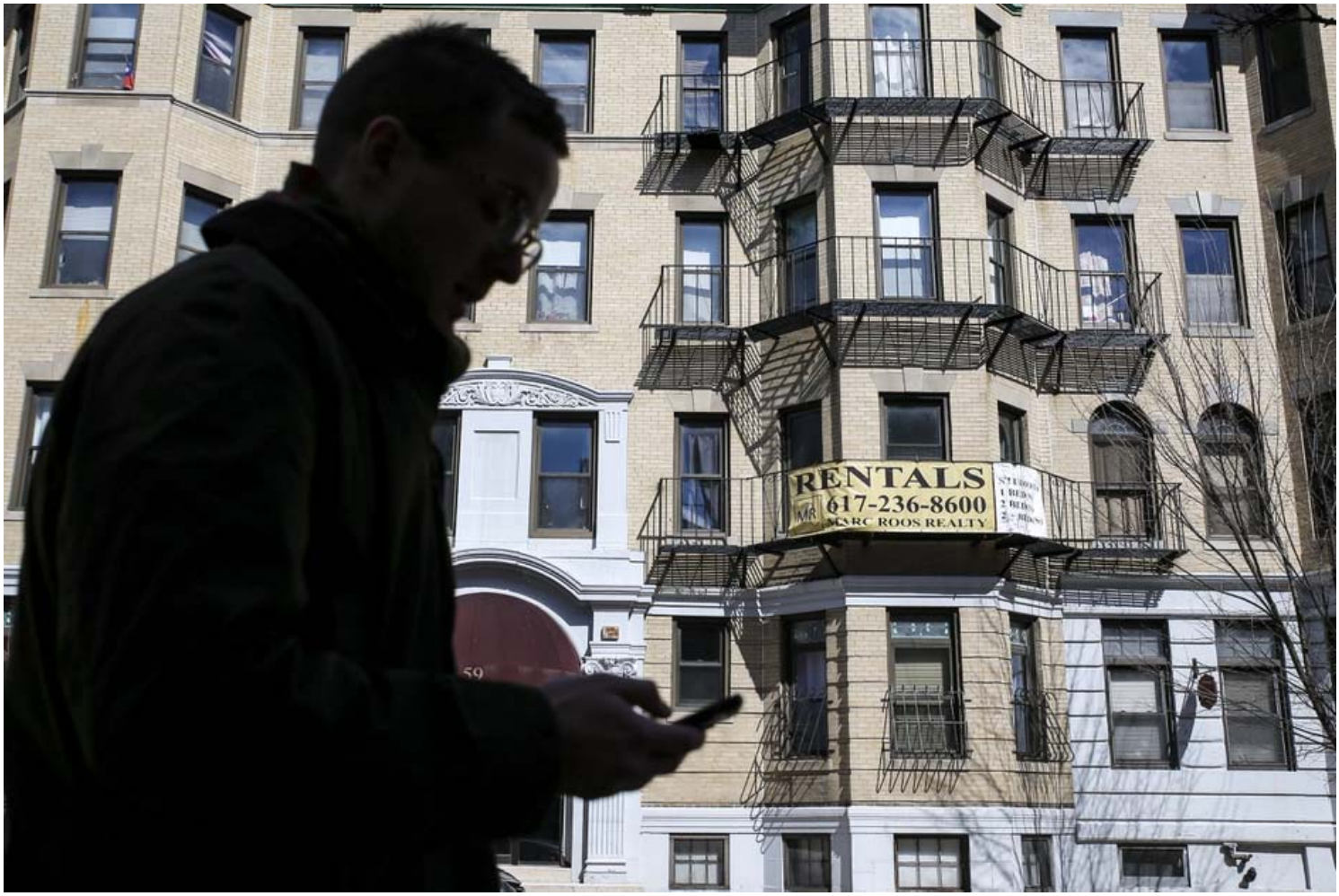
4. ***Sustainability***
   Can LLLTs attract clients who will be able to pay for services? Will sufficient number of LLLTs or potential LLLTs interested in this area? (refer to the questionnaire sent to LLLTs for the meeting with the court, any patterns?)

5. ***Implementation***
   Is there someone at UW who would be interested and able to teach in this area?

Outline

Subtopics	**Scope**	**Forms**	**Negotiation?**	**Court Appearances?**
Evictions (Defendant)	Respond to summons and complaint Show cause hearing Stay/Vacate writ of restitution	Available	Yes	Yes, unless solely form preparation
Evictions (Plaintiff)	**Limited to single family home?** Summons and complaint Show cause hearing Writ of restitution	Available	Yes	Yes, unless solely form preparation
Public/Subsidized Housing Grievances		No; LLLT would need to be able to "ghost-write" for clients	Yes	LLLT may appear for client at hearing; hearing is not held in a court
Reviewing Leases		No	Possibly	No
Tenants' Rights	Security deposit, 14-day notice to pay	No	Possibly	No

	(previously 3-day), right to withhold rent, fair housing rules, domestic violence laws..			
Landlord Rights	Right to access,	No	Possibly	No
Disputes with neighbors		No	Yes	Possibly
Property Management		No	Possibly	Possibly
Lease termination		No	Yes	Possibly
Small Claims Court Preparation, Plaintiff & Defendant (i.e. return of security deposit, any damages under 5K)		Available	Possibly	No
Advice & Ghostwriting re Requesting Repairs		No; LLLT would need to be able to "ghost-write" for clients	Possibly	No
Advice & Ghostwriting re Reporting Habitability		No; LLLT would need to be able to "ghost-write" for clients	Possibly	No
Advice & Ghostwriting re Violation of Housing Rights		No; LLLT would need to be able to "ghost-write" for clients	Possibly	No
Advice & Ghostwriting re Effects of Eviction/Tenant Screening		No; LLLT would need to be able to "ghost-write" for clients	Possibly	No



As tenant protections get stronger, corporate landlords use software to manage delinquent renters. But housing advocates see a tool for quicker evictions.

In the ever-evolving cat-and-mouse game between landlords and renters, the latter have been getting the upper hand in several cities. Laws that guarantee a lawyer to people facing eviction have found traction in Philadelphia, San Francisco, New York, and other cities. Last year, New York State passed a suite of bills that one lawmaker in Albany called “the strongest tenant protections in history.”

In response, landlords are shifting their priorities from booting tenants to squeezing them for the rent as efficiently as possible. And landlords with large portfolios of hundreds or thousands of units are turning to technology to give them an edge. ClickNotices — a dashboard for tracking rents, from receipt through delinquency and all the way to eviction — is part of a new generation of online "delinquency management platforms" that can automate some of the unhappier chores of landlording.

Through a shared dashboard, property owners and their agents are able to prepare and deliver notices for late rents; corporate landlords can generate hundreds of late notices at once. With a few keystrokes, their lawyers can spit out all the necessary legal boilerplate language for a lawsuit. In some jurisdictions, the landlords can even bring the suits themselves.

Bringing such frictionlessness to the fraught world of landlord-tenant transactions has a number of positive effects, the company says: Namely, it facilitates more communication between landlords and tenants, which means more opportunities to settle a dispute before lawyers get involved. But some tenant advocates worry that this kind of software accelerates disagreements to the legal arena, where landlords — especially large or institutional landlords — enjoy a huge advantage.

For landlords, one-click-eviction software might be a novel response to new tenant protections. In New York City, for example, evictions have fallen 41% since 2013, in large part thanks to the city's first-in-the-nation law guaranteeing tenants the right to eviction counsel.

"Right now, because of the laws, eviction is not something that benefits anybody," says Craig P. Gambardella, a partner with Kucker Marino Winiarsky & Bittens, a firm that focuses on real estate law in New York. "It used to be, pursuant to the old law, that if you got an eviction from a tenant or a vacancy from a tenant in a rent-stabilized apartment, you were able to increase the rent 20% off the bat."

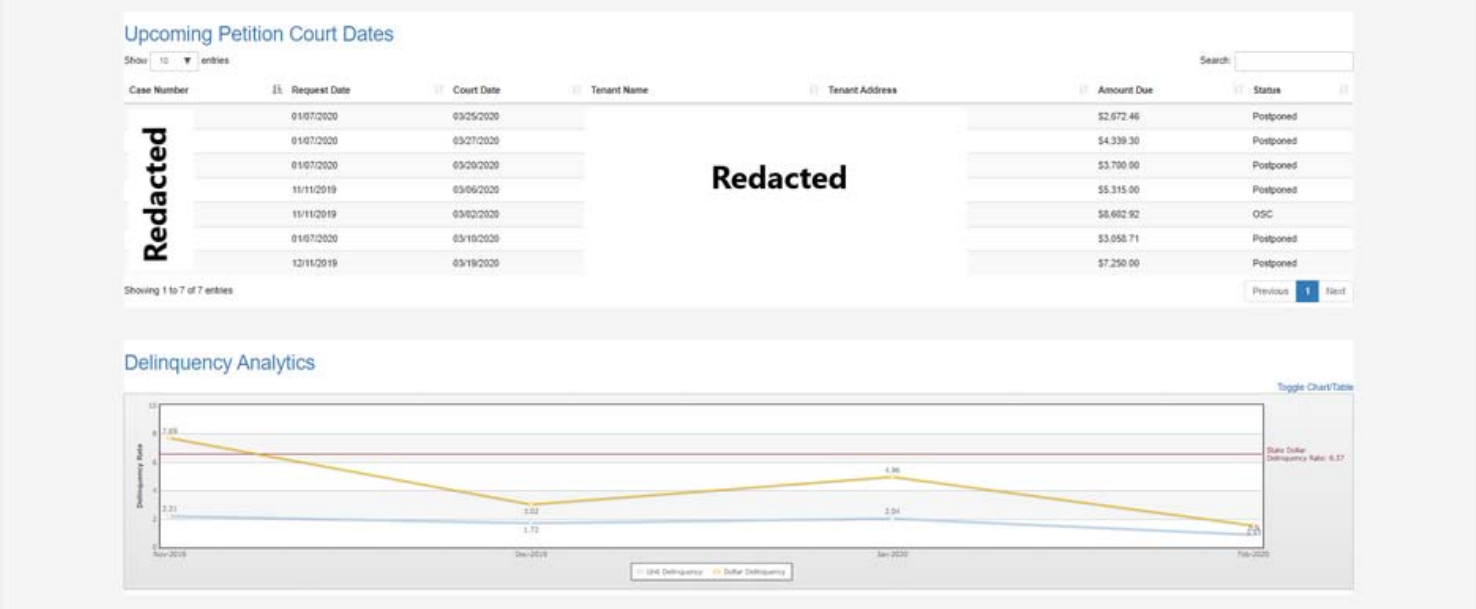
That's no longer possible in New York, where the so-called vacancy bonus was abolished, among other incentives, by the landmark package of protections passed by the state last year. "A lot of those increases have gone by the wayside," Gambardella says. "In New York, the name of the game is streamlining your rent efficiency."

Landlords with hundreds or thousands of properties under their charge are facing a wave of new regulations in progressive states. In New York, the period of time before a landlord can likely take a tenant to court over delinquent rent has jumped from about two weeks to roughly six weeks. Renters get more time between notices, too, and more time to settle up.

What distinguishes the program is its ability to generate pre- and post-eviction litigation paperwork.

Investors have taken notice, too. *Bloomberg* reported in January that apartment building sales fell 40% in New York City. Building owners are convinced that it's now too difficult to raise rents, even to recoup the costs of maintenance or improvements. So investors are steering clear of rent-regulated units, instead pursuing market-rate buildings at higher prices, analysts say. These changes — above all the repeal of vacancy decontrol and the vacancy bonus — are even prompting some landlords to hold units vacant.

Programs such as ClickNotices represent an alternative to holding out for Albany to reverse course. "Our goal is not to get tenants into court," says the company's CEO, Matt Barbieri. "That's the last resort in terms of collecting rent."



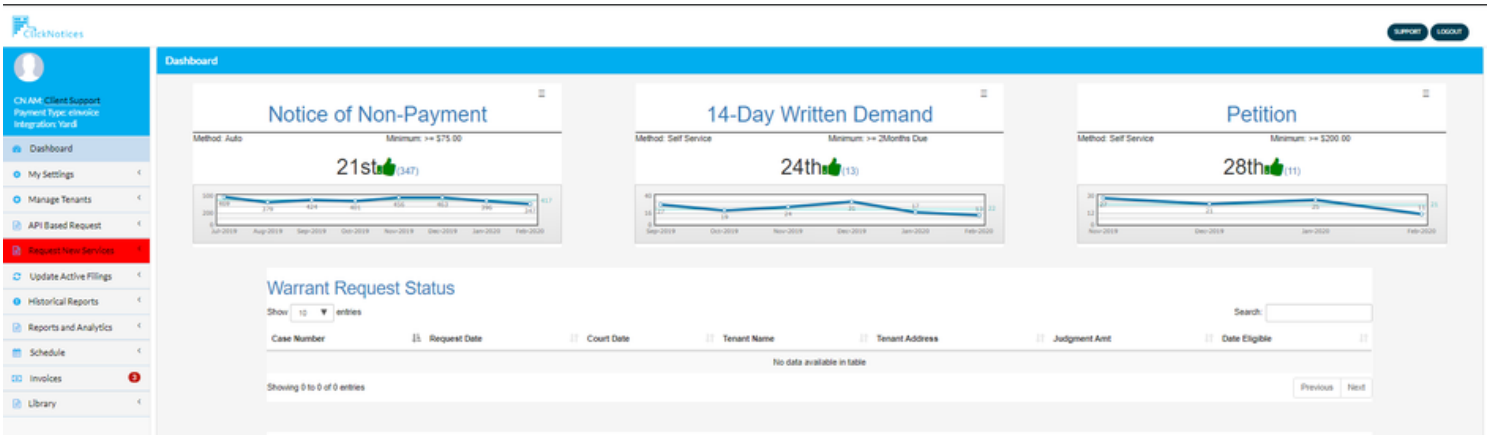
A ClickNotices dashboard for managing delinquent rental properties. (ClickNotices)

ClickNotices got its start in 2010 as a paper-processing company for failure-to-pay-rent actions in Maryland. Founder Toyin Bello launched ClickNotices as an answer to his own frustrations managing rental properties in Baltimore. As the company grew, its leaders came to realize that small and large landlords alike struggle with transparency and compliance. ClickNotices plugs into all the accounting programs used by big landlords — Entrata, MRI, Yardi, RealPage, and others. But what distinguishes the program is its ability to generate pre- and post-eviction litigation paperwork.

Since 2016, when the founders sought Series A funding, the company has expanded: ClickNotices now operates in 13 states, mostly on the East Coast. Lawmakers in coastal states are taking up tenant protections rapidly, which is one reason that ClickNotices has repositioned itself as a tenant-engagement platform, as Barbiari says.

Tenant advocates say that programs such as ClickNotices or eWrit Filings, another delinquency management software company, are essentially helping landlords funnel tenants into rent court, regardless of the merits of the case. Large or institutional landlords might file thousands of late-rent notices per month, and when they go to court, it's largely on the landlord's say-so, according to Matthew Vocci, a founding member of Santoni, Vocci & Ortega, a firm that represents tenants and consumers.

"The reality is that when you file thousands of these, most of them are going to go through by default," Vocci says. "The court is used as an arm of the landlord to collect. This is mass filing on just whatever information was plugged into the spreadsheet."



ClickNotices allows landlords and their lawyers to generate pre- and post-eviction litigation paperwork from a single dashboard. (ClickNotices)

In Maryland, state law doesn't require a landlord to hire a lawyer to represent a claim before rent court, so a filing company (such as ClickNotices) can send an agent instead. They're rarely lawyers, Vocci says. In certain jurisdictions, they might appear before rent court three or four times a week on behalf of their clients. Vocci calls filing agents "super users" in Baltimore rent court; they sit where the police usually sit in traffic court. "Typically what they have is spreadsheets with names and how much they purportedly owe, and that's about it," Vocci says.

Mass filings shift the burden of proof onto tenants, who do not have access to a courthouse regular to represent them. Lawmakers are working to tilt the scales. New York City is expanding its successful eviction counsel pilot program, and Detroit, Minneapolis, San Antonio, Los Angeles and several other cities plan to follow suit.

Barbieri says that communicating with tenants, not hauling them to court, is the goal at ClickNotices. There's hardly any communication between large property managers and tenants between the first of the month and the sixth, mostly because corporate landlords don't go banging on doors and shouting about the rent. In Maryland, where ClickNotices is headquartered, there's no notice requirement at all: The first time a tenant finds out there's a problem might be when the sheriff tacks up a notice.

This is the old way of doing things, Barbieri says. ClickNotices offers different "baskets" of options for engaging tenants: automated texts, emails, and the like. Barbieri says that his company has worked to educate his clients about the value proposition in asking tenants why the rent is late. "We are all for, from a communication aspect, additional notice requirements," Barbieri says. "We were on the early edge of those tenant-friendly laws."

More states are setting stricter requirements for serving notices for appearances before rent court, such as first-class or certified mail or private servicers. That's just one front in the new class of tenant protections coming online. As the company expands, ClickNotices is adding attorneys to provide more guarantee compliance. The goal is still to get people to pay the rent.

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But when notifications don't work, delinquency management programs help landlords pivot to court action with the click of a mouse. Even if eviction is no longer the explicit goal as jurisdictions make evictions more difficult, the threat still does the same job.

"I went back and pulled some articles in the '70s about how rent court is being used as a collection arm for the landlords. It's certainly easier to file these things when you have software on the backend," Vocci says. "The more things change, the more they stay the same."

About the Author

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Kriston Capps is a staff writer for CityLab covering housing, architecture, and politics. He previously worked as a senior editor for *Architect* magazine.

WASHINGTON STATE
BAR ASSOCIATION
Regulatory Services Department

TO: Washington State Bar Foundation Board of Trustees

FROM: Steve Crossland, LLLT Board Chair

RE: Request for Creation of a LLLT Designated Fund

DATE: March 13, 2020

REQUEST

The Limited License Legal Technician (LLLT) Board requests that the Washington State Bar Foundation (WSBF) create a LLLT fund to enable the LLLT Board to seek contributions from potential donors and grantors and securely manage funds obtained. Access to funds received through grants or donations would assist the LLLT Board in growing and further developing the profession while reducing the fiscal impact to the Washington State Bar Association.

The LLLT Board would like the support of WSBF to solicit, process, and administer gifts, grants, bequests and similar types of financial support. The LLLT Board requests that all LLLT designated funds be used to support LLLT outreach, scholarships, and to help cover costs associated with administration of the program.

BACKGROUND OF THE LLLT LICENSE

Imagine facing an eviction, dealing with a divorce, or fighting for custody of your children. Now imagine doing that without the assistance of a lawyer. For millions of consumers every year in the United States that is reality. Studies show that 80-85% of low- and moderate-income people navigate civil matters that can affect their safety, financial security and the very roofs over their heads without assistance from a lawyer.

In 2012, the Washington Supreme Court took a bold step passing an Admission to Practice Rule that created the LLLT license. LLLTs are the first independent legal paraprofessionals in the United States who are licensed to give legal advice in a defined scope and practice area. Analogous to a nurse practitioner in the medical profession in many states, LLLT is the first step in the legal profession to expanding the number of qualified and regulated practitioners able to provide legal advice and other assistance to consumers.

The introduction of this new licensed legal professional is a departure from the traditional concept of the practice of law. This new license exemplifies that just like every medical problem does not require a doctor, not every legal problem requires a lawyer. LLLTs receive extensive education in the particular area of law in which they are licensed. According to a preliminary evaluation of the license by the Public Welfare Foundation – a foundation that supports efforts to advance justice and opportunity for people in need - this model “offers an innovative way to extend affordable legal services to a potentially large segment of the public that cannot afford traditional lawyers…. [It] should be replicated in other states to

improve access to justice." Preliminary Evaluation of the Washington State Limited License Legal Technician Program, March 2017.

This new licensure holds great promise for reshaping the practice of law to better serve the public. Creating a new profession out of whole cloth takes a sustained investment until enough licensed LLLTs exist to make the regulation and support of the new profession self-sustaining.

ALIGNMENT WITH THE FOUNDATION'S MISSION

The mission of the foundation is to "provide financial support for programs of the Washington State Bar Association that promote diversity within the legal profession and enhance the public's access to, and understanding of, the justice system." The LLLT Board believes that the LLLT license already does and has the increased potential to continue to do both: promote diversity within the legal profession and enhance access to legal services.

Promote diversity within the legal profession

The LLLT license, with reduced educational cost and time commitment, offers an affordable and accessible career path to residents of Washington who want to serve their communities in the legal system. The estimate cost to obtain the required LLLT education is approximately $15,000 – a fraction of the cost of attending law school. In Washington, nearly 2/3 of adults do not have a Bachelor's Degree a requirement for admission to law school or the law clerk program. Furthermore, because the LLLT practice area education can be obtained via synchronous instruction, LLLT candidates have the ability to learn the law within their own communities. The flexibility of synchronous instruction allows students to work full-time while pursuing the required LLLT practice area education, making the license accessible to students of low and moderate means income levels.

Enhance access to legal services

The Washington State Bar Foundation exists to support the Public Service and Diversity & Inclusion programs of the Washington State Bar Foundation. Public Service Programs include Call to Duty, a program that provides training to legal professionals, preparing them to provide free legal assistance to veterans. The Moderate Means Program is the other Public Service program the Foundation supports. This program matches moderate income individuals and families (those falling within 200-400% of the Federal Poverty Level), with legal professionals willing to work for reduced fees.

Not only do LLLTs participate in the program as licensed legal professionals willing to reduce their fees to accommodate moderate means clients (at least 11 LLLTs have signed up for the program), but the LLLT license itself also seeks to accomplish similar results: provide legal services options to people of moderate means who cannot afford to hire an attorney but do not qualify for legal aid. Based on a survey conducted in December 2019, to which 20 LLLTs responded, we know that thus far LLLTs have served at least 1,527 paid clients. Most of the LLLT respondents serve clients in the 0-300% of the federal poverty level. LLLTs also provide pro bono services: 34% of the active LLLTs reported a total of 929 hours of pro bono services in 2019.

PURPOSE OF THE LLLT DESIGNATED FUND

Creating an entirely new profession required the development of a new body of rules, regulations, ethical rules, educational curriculum, and processes for licensing and discipline, including creating a new

licensing exam. The education and licensing requirements to become a LLLT are rigorous and can take several years to complete. The WSBA was able to license and welcome the first class of LLLT professionals only as recently as 2015. With only 43 LLLTs in the state, the LLLT license is still firmly in the development phase.

Our priorities for the next couple of years are to consider and recommend new practice area(s) for approval by the Supreme Court, expand accessibility of the LLLT core curriculum across the state, expand outreach to a diverse pool of LLLT candidates including college and high school students, and open the "pipeline" to more LLLT candidates. The LLLT Board also hopes to advance its efforts to provide access to financial aid for LLLT students.

If granted the request for the creation of a LLLT designated fund, the LLLT Board expects the funds would be used first for outreach to underserved and underrepresented communities and scholarships for eligible students, and then to help offset WSBA's costs for administering the program. The LLLT Board understands the cost of administering the program is subsidized by license fees and hopes to reduce this strain on license fee revenues.