

The Limited License Legal Technician

Making Justice More Accessible

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In recent weeks, a new board has begun meeting at the WSBA offices to craft details of a new legal position that will make Washington's the first justice system in the nation to admit another level of practitioner — the limited license legal technician. The Limited License Legal Technician (LLLT) Board expects to complete the first stage of its work by early 2014, and with approval by the state Supreme Court, the first LLLTs can begin to operate sometime next year.

We, the authors, believe this new position will help Washington provide another path for accessing justice to many thousands of limited-income persons who cannot afford attorneys, as well as help courts staggering under the weight of *pro se* litigants. Development of this new position has involved many years of study and heated debate, and is being watched closely around the country — it has been written about in law journals, on national legal websites, and recently in *The New York Times*. With the implementation of the rule nearing, we would like to provide answers for some of the frequently asked questions about the underpinnings of the rule and how LLLTs will function.

The LLLT Rule

The state Supreme Court voted 6-3 on June 15, 2012, to approve Admission to Practice Rule (APR) 28 — the Limited Practice Rule for Limited License Legal Technicians. APR 28 allows non-attorneys with certain levels of education, training, and certification to provide technical help on simple legal matters such as selecting and completing court forms, informing clients of procedures and timelines, explaining pleadings, and identifying additional documents that may be needed in a court proceeding.

The rule ordered creation of an LLLT Board, consisting mainly of attorneys, which will establish the parameters of the new position: education and exper-

ience requirements, testing, certification, fees, oversight, limitations, and discipline. The Board will also recommend to the Supreme Court the areas of legal practice to which legal technicians should be admitted. In March, the Court approved domestic relations as the first of these practice areas. LLLTs will not be allowed to represent clients in court or to contact and negotiate with an opposing party on a client's behalf.

The Supreme Court Order approving APR 28 with an in-depth discussion of the need for the position, the text of the rule, and a detailed dissent can be found at <http://1.usa.gov/1065Osd>. Approval of this rule was not given lightly, as evidenced by the number of years that went into drafting the proposed rule, presenting it statewide, accepting public input, debating its need and its impact, seeking other solutions, and witnessing *pro se* problems continue to grow.

The original rule was drafted in 2005, but the history actually begins with WSBA committees established in the late 1980s and early 1990s that addressed the unauthorized practice of law and domestic relations. These committees were formed, in part, because of the growing number of people unable to afford professional legal help. This was dramatically true in family law cases where courts in the 1970s began reporting large increases in family law cases involving at least one party not represented by an attorney. This trend led to a proliferation of non-attorneys offering help with legal documents, a problem which has only grown larger with the advent of the Internet.

To begin addressing the unauthorized practice of law, we first needed a specific definition, so in 1998 the WSBA formed the Committee to Define the Practice of Law. This committee's work led to General Court Rules (GR) 24 and 25, which define the practice of law and establish the Practice of Law Board (POLB). One of the POLB's mandates from the Supreme Court was to address access-to-justice issues for those who cannot afford attorneys, so in 2005, the

POLB crafted a rule to create a legal technician position.

Learning from the Medical Profession

While this proposal was controversial in the legal world — the WSBA Board of Governors overwhelmingly opposed it — the medical field had taken similar steps in the mid-1960s with the positions of physician assistant and nurse practitioner. Initially, both positions were highly controversial. However, with physicians becoming increasingly specialized and their education and services more costly, the affordable family doctor became increasingly scarce.

Concerned medical leaders began calling for “mid-level” health practitioners who could provide preventive care and less-complex medical services in under-served communities. Their initial proposals were rejected by medical schools and strongly criticized by members of the profession.

A turning point came in 1965 when Medicare and Medicaid programs began expanding care to the elderly, those with disabilities, and low-income families. Suddenly much more care was needed at affordable rates. The first physician assistant and nurse practitioner educational programs launched in 1965, and with refinement, the positions became effective resources. By 1977, Congress was mandating that 50 percent of health services in rural clinics be performed by nurse practitioners, certified midwives, and physician assistants. It was this model in the medical field that impressed some members of the Supreme Court and others in the judicial branch, and prompted thoughts of a mid-level legal practitioner.

Also of interest was the effectiveness of Washington's courthouse facilitator position. Courthouse facilitators provide basic information to *pro se* persons in family law cases, and have been helpful and highly sought. However, facilitators are court employees subject to budget reductions and are greatly restricted by the definition of practicing law. They do not have the latitude to provide the kind

of critical services needed.

As with the 1965 turning point in the medical field, the legal profession in Washington and across the U.S. is facing alarming trends indicating vast numbers of Americans are not accessing critical legal help, while large numbers of attorneys are struggling to make a living.

The events and trends that led the Supreme Court to adopt the LLLT Rule include:

The groundbreaking 2003 Civil Legal Needs Study, released by the Washington Supreme Court Task Force on Civil Legal Justice, found 85 percent of the state's low-income population had serious civil legal problems involving basic needs such as housing, employment, and family stability, but only 15 percent were receiving any kind of assistance.

Growth in the number of *pro se* litigants coming to court unprepared and bewildered. This slows court functions and, most critically, contributes to questionable justice outcomes, according to court surveys. As one judge commented, "We have many more middle-class persons who have been caught up in the recession and are unable to pay their rent or mortgage or bills. They come to court, embarrassed and distraught, and the only thing I can tell them is that I cannot do anything."

Significant increases in the cost of law school resulting in growing barriers

for many interested in the legal profession. The average cost of public law school has nearly tripled since 2001, and law school enrollment for 2013 is at its lowest level since 1977.

The proliferation of people or businesses engaging in the unauthorized practice of law is exploiting a huge public need that the legal profession is not addressing adequately.

The Need Is Too Great

It took seven years from first proposal of the LLLT Rule in 2005 to its adoption in 2012. We spent that time making presentations statewide to bar associations, access-to-justice organizations, and anyone who would be interested in or affected by the rule. We listened carefully to concerns and weighed options. We searched for programs or ideas in other states; there were none.

In this process we learned about, and deeply appreciate, the many WSBA programs that help provide access to justice and are humbled by the thousands upon thousands of volunteer and pro bono hours given by Washington attorneys to those in need. Part of our waiting was spent evaluating the impact of programs such as the WSBA's Moderate Means Program, but the need is too great. Pro bono clinics, court facilitators, and under-funded legal aid cannot handle all of the cases, and unlicensed persons are inappropriately filling that need.

If the law has become so complex that

legal training is required just to fill out a form, where is the space for the little person who needs a simple divorce? There's a huge need for elementary legal advice and we're not meeting it. By opening the door to limited practice, the way other professions have, badly needed assistance becomes available quickly.

Two of the primary concerns we heard regarding the LLLT Rule involve its possible financial impact on already struggling attorneys, and the quality of the work to be provided by legal technicians. First, our studies and interactions tell us the financial impact is not likely to be significant. With everything to lose, these people are still coming to court without legal help; they simply cannot afford to hire attorneys.

Second, it is the LLLT Board's job to craft a quality program with ongoing oversight that ensures the work of legal technicians will protect the people of Washington. Nearly 70 attorneys applied to serve on the Board, and its 13 members are a talented, dynamic group of people. We are very excited to be drafting the program's details, but we do so with a bit of trepidation — no one else in the world is doing this.

With legal technicians certified and offering services, the courts and limited-income residents of our state will be experiencing some relief within the next few years. Our goal with the legal technician rule is to open one more pathway to justice, a critical component of the type of society we dream of. With the help of legal technicians, our hope is that people will get the information necessary to make better decisions, resulting in just outcomes, so that people can move on with their lives. **NWL**

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