

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF SUGGESTED)
AMENDMENTS TO APR 28—LIMITED)
PRACTICE RULE FOR LIMITED LICENSE)
LEGAL TECHNICIANS; APR 28 APPENDIX—)
REGULATION 2 PRACTICE AREAS—SCOPE OF)
PRACTICE AUTHORIZED BY LIMITED LICENSE)
LEGAL TECHNICIAN RULE; APR 28 APPENDIX)
REGULATION 3—EDUCATION REQUIREMENTS)
FOR LLLT APPLICANTS AND APPROVAL OF)
EDUCATION PROGRAMS; RULES OF)
PROFESSIONAL CONDUCT (RPC) 1.0B—)
ADDITIONAL WASHINGTON TERMINOLOGY;)
RPC 1.17—SALE OF LAW PRACTICE; RPC 4.3—)
DEALING WITH A PERSON NOT REPRESENTED)
BY A LAWYER; RPC 5.8—MISCONDUCT)
INVOLVING LAWYERS AND LLLTs NOT)
ACTIVELY LICENSED TO PRACTICE LAW; RPC)
8.1—BAR ADMISSION AND DISCIPLINARY)
MATTERS; AND LLLT RULES OF)
PROFESSIONAL CONDUCT (LLLT RPCs) LLLT)
RPC 1.0B—ADDITIONAL TERMINOLOGY; LLLT)
RPC 1.2—SCOPE OF REPRESENTATION AND)
ALLOCATION OF AUTHORITY BETWEEN)
CLIENT AND LLLT; LLLT RPC 1.5—FEES; LLLT)
RPC 1.8 CONFLICT OF INTEREST: CURRENT)
CLIENTS: SPECIFIC RULES; LLLT RPC 1.15A—)
SAFEGUARDING POLICY; LLLT RPC 1.16—)
DECLINING OR TERMINATING)
REPRESENTATION; LLLT RPC 1.7 SALE OF A)
LAW PRACTICE; LLLT RPC 2.1—ADVISOR;)
LLLT RPC 2.3 [RESERVED]; LLLT RPC 3.1—)
ADVISING AND ASSISTING CLIENTS IN)
PROCEEDINGS BEFORE A TRIBUNAL; LLLT)
RPC 3.6-3.9 [RESERVED]; LLLT RPC 4.1—)
TRUTHFULNESS IN STATEMENTS TO OTHERS;)
LLLT RPC 4.2—COMMUNICATION WITH)
PERSON REPRESENTED BY LAWYER; LLLT RPC)
4.3—DEALING WITH PERSON NOT)
REPRESENTED BY LAWYER; LLLT RPC 5.4—)
PROFESSIONAL INDEPENDENCE OF A LLLT;)
LLLT RPC 5.5 UNAUTHORIZED PRACTICE OF)
LAW; LLLT RPC 8.1—LICENSING, ADMISSION,)
AND DISCIPLINARY MATTERS; LLLT RPC 8.4—)
MISCONDUCT)
_____)

**ORDER RESCINDING
ORDER NO. 25700-A-1246
AND REPUBLISHING
SUGGESTED
AMENDMENTS TO APR 28
FOR COMMENT**

NO. 25700-A- 1249

FILED
NOV 21 2018
WASHINGTON STATE
SUPREME COURT

The Washington State Bar Association Limited License Legal Technician Board

recommended suggested amendments to APR 28—Limited Practice Rule for Limited License

ORDER RESCINDING ORDER NO. 25700-A-1246 AND REPUBLISHING SUGGESTED AMENDMENTS TO APR 28 FOR COMMENT

Legal Technicians. The amendments were considered by the Court on October 31, 2018, and adopted by a majority vote with the filing of Order No. 25700-A-1246 on November 1, 2018. Subsequently, on November 15, 2018, the Court determined by a majority vote that, due to significant formatting errors in the publication of the rule amendments, the rule should be rescinded and republished as a proposed rule for comments.

Now, therefore, it is hereby

ORDERED:

(a) The adoption of amendments to APR 28 in Supreme Court Order No. 25700-A-1246 is hereby rescinded effective immediately.

(b) Pursuant to the provisions of GR 9(g), the correctly formatted suggested amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites on December 18, 2018.

(c) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(d) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than February 1, 2019. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 21st day of November, 2018.

For the Court

Fairhurst, CJ.
CHIEF JUSTICE

GR 9 COVER SHEET

Regarding Amendments to ADMISSION AND PRACTICE RULES (APR) 28, APR 28 APPENDIX REGULATIONS OF THE APR 28 LIMITED LICENSE LEGAL TECHNICIAN BOARD, RULES OF PROFESSIONAL CONDUCT (RPC), AND LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROFESSIONAL CONDUCT (LLLT RPC)

Purpose: The court originally ordered amendments to these rules, with original GR 9 cover sheets, published for comment at the June 2018 en banc administrative conference. Original proposed amendments were published in 190 Wn.2d Proposed 21-57. Following notice and comment, a majority of the Court adopted those proposed amendments in Supreme Court Order No. 25700-A-1246. On November 21, 2018, a majority of the court voted to rescind Supreme Court Order No. 25700-A-1246 due to errors in the version that was published and determined that the corrected suggested amendments would be published for comment with a description of the substantive corrections only. The proposed amendments have been reformatted to include necessary corrections. This Cover Sheet is prepared by the court and contains a description of the substantive differences between the proposed amendments published at 190 Wn.2d Proposed 21-57, and the proposed amendments published today.

APR 28(B)(4)

The omitted last sentence ~~"The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client"~~ is included and stricken through.

APR 28(F)

Corrected strike through and underlines to reflect correct proposed additions and deletions according to existing language.

APR 28(F)(5)

Corrected the word "side" to "party".

APR 28(G)(2)

The unchanged language of subsection (2) is included because subsection (2)(a) is modified.

APPENDIX APR 28(G)(3)

Omitted subsection (G)(3) is included but unchanged.

APPENDIX APR 28 REGULATION 2(B)(1)(c)

The addition of “parentage or paternity” is underlined.

APPENDIX APR 28 REGULATION 2(B)(2)(d)

Qualified Domestic Relations Order replaces “QDRO” the first time the acronym is used.

APPENDIX APR 28 REGULATION 2(B)(3)

Corrected the errant strike through to APR(H)†.

APPENDIX APR 28 REGULATION 2(B)(3)(b)(viii)

Changed the replacement of ~~domestic~~ with committed.

RPC 1.0B Washington Comments

Removed underline and incorporated existing language “(1-3)”.

RPC 1.17 Comment

Removed underline from the title “Comment”.

RPC 1.17 Comment 19

Removed underline from the word “sale” as it is existing language.

RPC 4.3 Comment

Removed underline from the title “Comment”. Changed references to the section to reflect “Comment” and “Additional Washington Comment” sections.

RPC 5.8 Comment

Replaced underlined “Washington Comment” with “Comment” as existing language.

RPC 8.1 Comment

Removed underline from the title “Comment”.

LLLT RPC PREAMBLE

Added back the words “AND SCOPE” as existing language.

LLLT RPC 1.16 Comment 1

Corrected strike through and underlines to reflect correct proposed additions and deletions according to existing language.

LLLT RPC 1.17

The unchanged language prior to subsection (a) is included.

GR 9 COVER SHEET

Suggested Amendments
ADMISSION AND PRACTICE RULES (APR) 28
Limited Practice Rule for Limited License Legal Technicians
Submitted by the Limited License Legal Technician Board

A. Name of Proponent:

Limited License Legal Technician (LLLT) Board

Staff Liaison/Contact:

Jean McElroy, Chief Regulatory Counsel
Washington State Bar Association (WSBA)
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539 (Phone: 206-727-8277)

B. Spokesperson:

Stephen R. Crossland
Chair of LLLT Board
P.O. Box 566
Cashmere, WA 98815 (Phone: 509-782-4418)

C. Purpose:

The primary purpose of the suggested amendments is to enhance the scope of the Limited License Legal Technician (LLLT) domestic relations practice area in order to improve the LLLT's ability to render efficient and effective legal services to pro se clients.

These suggested amendments will enable LLLTs to better serve their clients by allowing LLLTs to provide a wider range of services and more support in the courtroom. This more cohesive set of services will help LLLTs provide much needed access to legal services, guidance, and advice to low and moderate income pro se clients. The suggested amendments have been discussed and reviewed at length and are designed

to enhance the existing domestic relations practice area consistent with client needs and the intended role of LLLTs as legal practitioners.

The LLLT Board began discussing possible enhancements to the domestic relations practice area in late 2014 in response to questions and concerns from law school professors who were teaching the LLLT practice area classes. Students in the LLLT classes, practicing LLLTs, and lawyers who work with LLLTs also raised several issues and offered ideas for ways in which the domestic relations scope could be improved to allow LLLTs to provide a more cohesive set of services to their clients.

The Family Law Advisory Workgroup of the LLLT Board was charged with discussing these questions and offering recommendations to the LLLT Board regarding the possible ways in which the scope of practice could be adjusted. The Family Law Advisory Workgroup includes members of the Board (including family law lawyers), other family law practitioners, lawyers who practice in other legal areas, and a practicing LLLT. The Family Law Advisory Workgroup worked collaboratively with several of the law professors teaching the family law practice area classes as well as solicited further information from practicing LLLTs. Throughout 2016 and the beginning of 2017, the workgroup studied the issues and provided recommendations to the LLLT Board. The LLLT Board approved the suggested amendments in early 2017 and presented information generally describing the intended enhancements to the domestic relations scope of practice to the Supreme Court on March 8, 2017, and to the Board of Governors on May 19, 2017.

The LLLT Board posted the suggested amendments on the Washington State Bar Association (WSBA) website and solicited comments between May and July 2017.

Over 30 comments were received from lawyers, LLLTs, at least one client of a LLLT, a firm employing a LLLT, a member of the Board of Bar Examiners, the King County Bar Association Family Law Section, a member of the WSBA Family Law Section Executive Committee, the Northwest Justice Project, and members of the public. On August 16, 2017, the Family Law Advisory Workgroup reviewed the comments submitted, discussed all comments that posed specific drafting questions or suggestions in detail, and modified and refined the suggested amendments where it deemed necessary. The modifications were also responsive to the informal feedback received from the Access to Justice Board's Rules Committee. At its August 17, 2017, meeting, the LLLT Board approved the suggested amendments as modified by the Family Law Advisory Workgroup.

The following describes each suggested amendment and the amendment's purpose and intended effect:

APR 28(B)

The Board suggests an administrative amendment to APR 28(B)(1) to correct the reference to the "Admission to Practice Rules" to the "Admission and Practice Rules." The Board's suggested amendment to APR 28(B)(4) strikes a phrase relating to the current prohibition on LLLTs attending court proceedings, which would be modified by these suggested amendments. The nature of a LLLT's client being "pro se" is preserved in APR 28(F), Scope of Practice Authorized by Limited Practice Rule, rather than including it in the definition of an LLLT.

APR 28(F)

The Board has suggested several administrative amendments to the first

paragraph of APR 28(F). The amendments are designed to unify the terminology used in the introduction to APR 28, repeating phrases such as “render legal assistance” and reinforcing that the LLLT is providing limited legal assistance to a pro se client. The amendments would also clarify that LLLTs have an affirmative duty to inform clients to seek the services of a lawyer when an issue outside of their scope of practice has been identified. In APR 28(F)(3), a further clarification of the LLLT’s duties to clients with respect to filing and service of documents was added, stating specifically that the LLLT may both advise and assist clients in correctly filing and serving documents.

The suggested amendments would delete the words “from the opposing side” from APR 28(F)(5) in order to delineate that LLLTs may review documents or exhibits provided to the client from any source, not only from the opposing side. The suggested amendment to what will be APR 28(F)(10) is grammatical, changing “a client” to “the client” in order to create consistency with the other paragraphs in the subsection. The suggested change to what will be APR 28(F)(11) is semantic, changing “documents” to “records” in order to better describe the list of records that follows.

APR 28(F)(12) and (13) are new suggested subsections that relate to the enhancements to the LLLT scope of practice. New APR 28(F)(12) suggests that LLLTs be permitted to communicate or negotiate with the opposing party or the party’s representative regarding procedural matters. New APR 28(F)(13) suggests that LLLTs be permitted to negotiate the client’s legal rights or responsibilities provided that the client has given written consent defining the parameters of the negotiation. LLLTs and lawyers for the opposing party have reported that significant barriers to efficient case administration are imposed by the current restriction that LLLTs must not communicate

with anyone other than the client regarding the subject matter of the representation. LLLTs have encountered difficulties instructing their clients about how to independently accomplish various ministerial activities such as rescheduling hearing dates, confirming service addresses, and informing opposing parties when an issue with their pleadings has been identified. The LLLT Board believes that communication regarding procedural matters should be allowed in order to increase efficiency of the services LLLTs provide to their clients.

The new subsection APR 28(F)(14) would provide that additional types of legal assistance not otherwise prohibited generally by APR 28 could be authorized by regulations relating to the scope of practice permitted within a specific practice area. This would allow LLLTs to provide certain legal assistance necessary for a particular approved practice area but that may not be needed, justified, or wise to include within the scope of all approved practice areas.

APR 28(G)

Three amendments to APR 28(G) have been suggested. The first would delete the words "appear or" from APR 28(G)(2)(a) in order to coordinate this subsection with suggested amendments to the domestic relations scope of practice in Regulation 2(B). The second suggested amendment in the same paragraph would reinforce that LLLTs must look to the specific regulation regarding their practice area to fully comprehend their scope of practice.

The third suggested amendment in APR 28(G)(4) would preserve the LLLT's obligation to sign documents and pleadings they prepare while allowing an exception for LLLTs assisting a client or a third party in preparing a declaration or sworn statement.

Requiring LLLTs to sign the sworn statement of another person deviates from common practice among lawyers when preparing declarations for signature by a client or third party.

APR 28(H)

The suggested amendments to APR 28(H) would unify the amendments to the domestic relations scope in Regulation 2 with the permitted actions under the LLLT license. The suggested amendment to APR 28(H)(5) would reinforce that to understand the entirety of the scope of practice for a licensed LLLT, one must look to the specific practice area regulation.

The suggested amendments to APR 28(H)(6) would allow LLLTs to negotiate with the opposing party or their representative when the client has defined the scope of the negotiation prior to its onset. The current prohibition against LLLTs negotiating for their clients has frequently resulted in situations where the LLLT must schedule hearings regarding issues that could likely be negotiated, thereby using substantially more of the parties' and the court's time and unnecessarily increasing the cost of the representation. Additionally, LLLT clients who are in the midst of a difficult dissolution, custody battle, or domestic violence dispute may find themselves in the position of being contacted by their spouse or abuser when it would be in their best interest to have a third party act as the mediator or contact person. Also significantly, a number of lawyers for opposing parties have reported that they would prefer to negotiate with a legal professional rather than a pro se layperson who is emotionally involved in the outcome of the issue. For LLLTs who are multilingual, being able to negotiate with opposing parties would also allow them to maximize essential services to clients who

may not speak English but do speak the same language(s) as the LLLT.

The suggested additions of what would be APR 28(H)(8) and (9) would move prohibitions that previously existed in the LLLT domestic relations scope regulation to this subsection because these restrictions should apply to all LLLTs, regardless of approved practice area.

APR 28 Regulation 2(A)

In APR 28 Regulation 2(A), the suggested amendments are purely administrative and would align the style with other portions of APR 28.

APR 28 Regulation 2(B)

APR 28 Regulation 2(B) provides a detailed treatment of the scope of the LLLT domestic relations practice. The suggested amendments to APR 28 Regulation 2(B)(1) would modify the permitted scope of practice by including all parenting plan modifications and nonparental custody actions. For protection orders, the LLLT family law scope of practice is currently limited to domestic violence actions only. The suggested amendments would add other protection or restraining orders arising from a domestic relations case in addition to the current domestic violence protection orders. Additionally, the suggested amendments reorganized the listing of the permitted actions to be roughly sequential from primary actions through modifications and other related actions.

Currently, LLLTs are permitted to help clients with uncontested parenting plan modifications but may not advise or assist clients regarding contested major parenting plan modifications unless the terms have been agreed to by the parties before the onset of the representation. Because of the existing prohibition in APR 28 Regulation 2(B),

clients have not been able to obtain advice from the LLLT on the relevant issues that will be before the court for determination at an adequate cause hearing. Under the current provisions, therefore, the client must attempt to negotiate the terms of major parenting plan modifications without receiving advice from the LLLT as the client prepares to argue the issues. The LLLT Board recommends that LLLTs be permitted to assist with all major modification cases up to the point of the adequate cause hearing, and thus, suggests removing the phrase “when the terms are agreed to by the parties.”

The LLLT Board also suggests that LLLTs be permitted to assist with nonparental custody cases up to the point of the adequate cause hearing. Tens of thousands of children in Washington live with a guardian other than a parent. Very few of these guardians have legal custody, which causes complex problems with access to medical, educational, and housing services. Child in Need of Services cases and dependencies are commonly resolved through nonparental custody with relatives and family friends, who often cannot afford to hire an attorney. Additionally, nonparental custody matters are accomplished through the use of pattern forms which LLLTs can be trained to use competently. Permitting LLLTs to assist with these matters would promote judicial efficiency by helping pro se parties navigate this aspect of the legal system.

The first paragraph of APR 28 Regulation 2(B)(2) contains suggested stylistic amendments. It also would clarify that a domestic relations LLLT may provide legal services specified by the Regulation. The suggested amendments to APR 28 Regulation 2(B)(2)(a) are grammatical.

In APR 28 Regulation 2(B)(2)(b), the suggested substantive amendments would

permit an LLLT to provide services related to the division of real property. In the current text of APR 28, there is an absolute prohibition in Regulation 2(B)(3)(i) against dividing real property. This restriction was originally called into question by the professors and students participating in the LLLT family law practice area classes. Practicing LLLTs reported that clients experienced significant barriers because of the LLLTs' inability to divide the family home as part of the legal process.

In response to these issues, the LLLT Board suggests that LLLTs be allowed to assist with gathering information on the value and potential encumbrances on a home, as clients are often unable to independently find the information necessary for the court to evaluate the value of their real property assets. The LLLT Board also suggests that LLLTs be allowed to advise and assist with division of single family residential real property in which the parties have equity of up to twice the homestead exemption (currently \$125,000; see RCW 6.13.030). This would allow two parties who own a home together to potentially divide the equity in the home and preserve their maximum exemption if either party files for bankruptcy at a later date. The homestead exemption is set by the legislature and adjusted periodically according to economic factors.

Real property division was prohibited by the LLLT Board when initially contemplated because there were concerns about being able to adequately address the topic in the practice area curriculum. The family law professors and the Family Law Advisory Workgroup of the LLLT Board worked together to address this issue. The professors and Workgroup believe that it would be possible to teach LLLTs how to divide single family residential real property using the current family law forms because the mandatory forms were designed, in large part, to be able to be completed by pro se

litigants. The LLLT Board has developed a checklist for LLLTs to use when dividing property; a sample is enclosed. The checklist collects important information about the disposition of the property, liens, encumbrances, and remedies in the case of default. The family law professors plan to revise the existing LLLT family law education curriculum to allow LLLTs to capably perform this limited scope of real estate division.

APR 28 Regulation 2(B)(3)(c)(i) currently prohibits LLLTs from advising clients about or dividing retirement assets using a supplemental order, including all defined benefit plans and defined contribution plans. The family law professors and the Family Law Advisory Workgroup believe this prohibition is too restrictive. Under suggested APR 28 Regulation B(2)(c) and (d), LLLTs would be permitted to advise as to retirement asset allocation for specified retirement plans and include language in a decree describing how QDROs (qualified domestic relations orders) or supplemental orders are to be prepared. LLLTs would continue to be prohibited from preparing the actual QDRO or supplemental order dividing retirement assets.

Suggested APR 28 Regulation 2(B)(2)(e) addresses LLLT participation in alternative dispute resolution proceedings and suggested subsection 2(B)(2)(f) would specifically allow LLLTs to accompany, assist, and confer with their pro se clients at depositions. Alternative dispute resolution (such as mediation, arbitration, or settlement conferences) is mandated in contested family law cases in Washington State; it would be a significant help to clients and to the court system to permit LLLTs to assist with mediations in family law cases. Professors and practitioners on the Family Law Advisory Workgroup noted that sending a client into the mediation without support—when that person may or may not understand the nature of the process or the finer details of the

case—would likely set up the client for failure. The current prohibition was initially designed to align with the prohibition on negotiation. If the suggested amendment removing the prohibition against negotiation in APR 28(H)(6) is adopted, the Board believes there would be no reason to restrict LLLT participation in alternative dispute resolution proceedings.

Similarly, suggested subsection 2(B)(2)(f) would allow an LLLT to accompany the pro se client at a deposition. The LLLT would not take or defend the deposition and would not make objections. The LLLT could provide advice and explain questions and their impact to the client during breaks.

Suggested subsection 2(B)(2)(g) would allow LLLTs to present agreed orders, uncontested orders, default orders, and accompanying documents. Today, paralegals and legal assistants without a license to practice law are permitted to appear at ex parte calendars to present orders for entry in most counties in Washington. When a court denies entry of ex parte orders there is no record (transcript, clerk's notes, or recording) for an LLLT to rely upon to determine why the orders were not entered if the client does not understand or cannot properly convey a court's reasoning. The LLLT risks sending a client back to court without fully resolving the issue(s) that caused the initial denial. Permitting an LLLT to present orders for ex parte entry on behalf of the client would ensure that the client's case will be properly finalized and provides assurance for the LLLT that documents bearing their signature have been properly handled.

Suggested subsection 2(B)(2)(h) would allow LLLTs to accompany and assist their pro se clients at certain hearings and respond to direct questions from the court or tribunal regarding factual and procedural issues only. The LLLT could not represent the

client like a lawyer would. The permitted hearings would be primarily motion hearings, as well as administrative child support hearings. Subsection (h)(i) would allow LLLTs to accompany and assist clients at hearings related to domestic violence protection orders and other protection or restraining orders arising from a domestic relations case. The current prohibition against participating in court proceedings has presented significant barriers to the LLLTs' ability to provide efficient services to clients. LLLTs report that mistakes made by clients at hearings, such as incorrectly answering questions from the judge due to a lack of understanding of legal terminology, handing the court the wrong suggested order, and not understanding orders from the court or court procedures, are negatively impacting the cases by causing unnecessary confusion, repetition, and delays.

The amendments to the main paragraph of APR 28 Regulation 2(B)(3) and subsections (a) and (b)(i) and (b)(ii) are grammatical. Substantive amendments regarding the division of real estate and retirement assets can be found in (b)(iii). This amendment would clarify that division or conveyance of formal business entities, commercial property, or residential property would be prohibited except as permitted in Regulation 2(B)(2)(b).

Regulation 2(B)(3)(b)(iv) is a new subsection containing the current prohibition on LLLTs preparing QDROs and supplemental orders dividing retirement assets.

The LLLT Board suggests removing what is currently Regulation 2(B)(3)(b)(iv) because criminal no contact orders are entered by prosecutors and therefore LLLTs would not be able to enter them even if permitted to do so. Other protection orders currently prohibited in Regulation 2(B)(3)(b)(iv) would also be removed by this

amendment because other amendments would permit LLLTs to render these forms of legal assistance if they arise from a domestic relations case.

The new suggested subsection (ix) would permit LLLTs to render legal assistance with nonparental custody matters and major parenting plan modifications through the adequate cause hearing, unless the terms are agreed to by the parties or one party defaults, in which case there is no prohibition.

The new suggested subsection (b)(xi) would prohibit LLLTs from providing legal assistance with objections or responses in contested relocation actions.

The suggested deletions of subsections (d) and (e) relating to the taking of a deposition and responding to or initiating an appeal have been moved to general prohibitions under APR 28(H).

APR 28 Regulation 3(C)

If the suggested amendments are adopted, changes to the domestic relations scope of practice will require currently licensed LLLTs receive additional training about the enhancements outlined in the suggested amendments. The LLLT Board intends to create and offer mandatory continuing legal education to accomplish this. The LLLT Board will provide notice of the supplemental education requirement and the deadline for completion of the requirement to LLLT candidates and currently licensed LLLTs.

Conclusion

The Court adopted the LLLT license in order to provide greater public access to trained and licensed legal professionals within an approved area of law and proscribed scope of practice. This new and innovative model has drawn notice throughout the country and the world. Educators, Board members, and newly practicing LLLTs have

had the opportunity to critically examine the LLLT service model and to observe how the initial formulation of the domestic relations scope of practice impacted clients. Based on those observations and an examination of the license to date, the LLLT Board believes these suggested amendments will serve to enhance public access to the legal system in Washington and will allow LLLTs to provide more comprehensive services to pro se clients in need of legal assistance in family law. These suggested amendments are presented along with corresponding suggested amendments to the LLLT Rules of Professional Conduct and the Rules of Professional Conduct for lawyers that are necessary to implement the suggested amendments to APR 28. The LLLT Board requests the Court adopt all the suggested amendments together.

D. Hearing: Because of the outreach conducted and input previously received by the LLLT Board, a hearing is not requested.

E. Expedited Consideration: Expedited consideration is requested in order to promote the effective practice of licensed LLLTs and align the curriculum of the next cohort of LLLT students.

F. Supporting Material: In addition to the submission of the suggested amendments to APR 28, a copy of the suggested amendments to the LLLT RPC and the Lawyer RPC are included. The LLLT Board is also providing a sample of a Real Property Disposition Form and the April 3, 2017 letter from the Court to the LLLT Board, which stated, "A majority of the Court voted yes to expanding the family law area."

SUGGESTED AMENDMENTS TO APR 28

1 **TITLE**

2 **ADMISSION AND PRACTICE RULES (APR)**

3 **RULE 28. LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL**
4 **TECHNICIANS**

5 **A. Purpose.**

6 [NO CHANGES]

7 **B. Definitions.** For purposes of this rule, the following definitions will apply:

8 (1)-(3) [NO CHANGES]

9 (4) "Limited License Legal Technician" (LLLT) means a person qualified by education, training
10 and work experience who is authorized to engage in the limited practice of law in approved
11 practice areas of law as specified by this rule and related regulations. ~~The legal technician does~~
12 ~~not represent the client in court proceedings or negotiations, but provides limited legal assistance~~
13 ~~as set forth in this rule to a pro se client.~~

14 (5)-(10) [NO CHANGES]

15 **C. Limited License Legal Technician Board**

16 [NO CHANGES]

17 **D. [Reserved.]**

18 **E. [Reserved.]**

19 **F. Scope of Practice Authorized by Limited Practice Rule.** The Limited License Legal

20 Technician shall ascertain whether the issue is within the defined practice area for which the

21 LLLT is licensed. It if is not, the LLLT shall not render any legal assistance ~~provide the services~~
22 ~~required~~ on this issue and shall advise ~~inform~~ the client to ~~that the client should~~ seek the services
23 of a lawyer. If the issue is within the defined practice area, the LLLT may render the following
24 limited legal assistance to a pro se client ~~undertake the following:~~

25 (1)-(2) [NO CHANGES]

26 (3) Inform the client of and assist with applicable procedures for proper service of process and

SUGGESTED AMENDMENTS TO APR 28

1 filing of legal documents;

2 (4) [NO CHANGES]

3 (5) Review documents or exhibits that the client has received ~~from the opposing party~~, and
4 explain them to the client;

5 (6)-(7) [NO CHANGES]

6 (8) Draft letters setting forth legal opinions that are intended to be read by persons other than the
7 client; ~~and~~

8 (9) Draft documents beyond what is permitted in paragraph (6), if the work is reviewed and
9 approved by a Washington lawyer;

10 (10) Advise the client as to other documents that may be necessary to the client's case, and
11 explain how such additional documents or pleadings may affect the client's case;

12 (11) Assist the client in obtaining necessary ~~documents or records~~, such as birth, death, or
13 marriage certificates.

14 (12) Communicate and negotiate with the opposing party or the party's representative regarding
15 procedural matters, such as setting court hearings or other ministerial or civil procedure matters;

16 (13) Negotiate the client's legal rights or responsibilities provided that the client has given
17 written consent defining the parameters of the negotiation prior to the onset of the negotiation;
18 and

19 (14) Render other types of legal assistance when specifically authorized by the scope of practice
20 regulations for the approved practice area in which the LLLT is licensed.

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

22 (1) [NO CHANGES]

23 (2) Prior to the performance of the services for a fee, the Limited License Legal Technician shall
24 enter into a written contract with the client, signed by both the client and the Limited License
25 Legal Technician, that includes the following provisions:

26 (a) An explanation of the services to be performed, including a conspicuous statement that the

SUGGESTED AMENDMENTS TO APR 28

1 Limited License Legal Technician may not ~~appear or~~ represent the client in court, formal
2 administrative adjudicative proceedings, or other formal dispute resolution process or negotiate
3 the client's legal rights or responsibilities, unless permitted under GR 24(b) or specifically
4 authorized by the scope of practice regulations for the approved practice area in which the LLLT
5 is licensed;

6 (3) [Unchanged.]

7 (b)-(g) [NO CHANGES]

8 (4) A document prepared by an LLLT shall include the LLLT's name, signature, and license
9 number beneath the signature of the client. LLLTs do not need to sign sworn statements or
10 declarations of the client or a third party, and do not need to sign documents that do not require a
11 signature by the client, such as information sheets.

12 **H. Prohibited Acts.**

13 In the course of dealing with clients or prospective clients, a Limited License Legal Technician
14 shall not:

15 (1)-(4) [NO CHANGES]

16 (5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or
17 other formal dispute resolution process, unless permitted by GR 24 or specifically authorized by
18 the scope of practice regulations for the approved practice area in which the LLLT is licensed;

19 ~~(6) Negotiate the client's legal rights or responsibilities, or communicate with another person the~~
20 ~~client's position or convey to the client the position of another party, unless permitted by GR~~
21 ~~24(b);~~

22 ~~(67)~~ Provide services to a client in connection with a legal matter in another state, unless
23 permitted by the laws of that state to perform such services for the client;

24 ~~(78)~~ Represent or otherwise provide legal or law related services to a client, except as permitted
25 by law, this rule, or associated rules and regulations;

26 (8) Conduct or defend a deposition;

SUGGESTED AMENDMENTS TO APR 28

1 (9) Initiate or respond to an appeal to an appellate court; and

2 (109) Otherwise violate the Limited License Legal Technician Rules of Professional Conduct.

3 **I. – O.**

4 [NO CHANGES]

5

6 **APPENDIX APR 28. REGULATIONS OF THE APR 28 LIMITED LICENSE LEGAL** 7 **TECHNICIAN BOARD**

8 **REGULATION 1. [RESERVED.]**

9 **REGULATION 2. APPROVED PRACTICE AREAS--SCOPE OF PRACTICE**

10 **AUTHORIZED BY LIMITED LICENSE LEGAL TECHNICIAN RULE**

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

13 **A. Issues Beyond the Scope of Authorized Practice.**

14 (1)-(4) [NO CHANGES]

15 After an issue beyond the LLLT's scope of practice has been identified, if the client engages a
16 lawyer with respect to the issue, then an LLLT may prepare a document related to the issue only
17 if a lawyer acting on behalf of the client has provided appropriate documents and written
18 instructions for the LLLT as to whether and how to proceed with respect to the issue. If the client
19 does not engage a lawyer with respect to the issue, then the LLLT may prepare documents that
20 relate to the issue if:

21 ~~(1).~~ tThe client informs the LLLT how the issue is to be determined and instructs the LLLT how
22 to complete the relevant portions of the document, and

23 ~~(2).~~ aAbove the LLLT's signature at the end of the document, the LLLT inserts a statement to
24 the effect that the LLLT did not advise the client with respect to any issue outside of the LLLT's
25 scope of practice and completed any portions of the document with respect to any such issues at
26 the direction of the client.

SUGGESTED AMENDMENTS TO APR 28

1 The LLLT may proceed in the manner described above only if no other defined prohibitions
2 apply.

3 **B. Domestic Relations.**

4 1. *Domestic Relations, Defined.* For the purposes of these regulations, domestic relations shall
5 include only the following actions: (a) divorce and dissolution~~child support modification actions,~~
6 (b) parenting and support~~dissolution actions,~~ (c) parentage or paternity~~domestic violence actions,~~
7 except as prohibited by Regulation 2(B)(3), (d) child support modification~~committed intimate~~
8 relationship actions only as they pertain to parenting and support issues, (e) parenting plan
9 modification~~legal separation actions,~~ (f) domestic violence protection orders~~major parenting plan~~
10 modifications when the terms are agreed to by the parties before the onset of the representation
11 by the LLLT, (g) committed intimate relationships only as they pertain to parenting and support
12 issues~~minor parenting plan modifications,~~ (h) legal separation~~parenting and support actions,~~ (i)
13 nonparental and third party custody~~paternity actions,~~ and (j) other protection or restraining orders
14 arising from a domestic relations case, and (k) relocation actions, except as prohibited by
15 Regulation 2B(3).

16 2. *Scope of Practice for LLLTs--Domestic Relations.* LLLTs licensed in domestic relations may
17 render~~provide~~ legal services to clients as provided in APR 28(F) and this regulation, except as
18 prohibited by APR 28(H) and Regulation 2(B)(3).

19 (a) Unless an issue beyond the scope arises or a prohibited act would be required, LLLTs may
20 advise and assist clients with (1) to initiating and responding to actions and related(2) regarding
21 motions, discovery, trial preparation, temporary and final orders, and modifications of orders.

22 (b) LLLT legal services regarding the division of real property shall be limited to matters where
23 the real property is a single family residential dwelling with owner equity less than or equal to
24 twice the homestead exemption (see RCW 6.13.030). LLLTs shall use the form for real property
25 division as approved by the LLLT Board.

26 (c) LLLTs may advise as to the allocation of retirement assets for defined contribution plans with

SUGGESTED AMENDMENTS TO APR 28

1 a value less than the homestead exemption, and as provided in United States Internal Revenue
2 Code (IRC) sections 401a, 401k, 403b, and 457; and Individual Retirement Accounts as set forth
3 in IRC section 408.

4 (d) LLLTs may include language in a decree of dissolution awarding retirement assets as
5 described in APR 28 Regulation 2(B)(2)(c) when the respondent defaults, when the parties agree
6 on the award or when the court awards the assets following trial. The award language in the
7 decree shall identify (1) the party responsible for having the qualified domestic relations order
8 (QDRO) or supplemental order prepared and by whom, (2) how the cost of the QDRO or
9 supplemental order preparation is to be paid, (3) by what date the QDRO or supplemental order
10 must be prepared, and (4) the remedy for failure to follow through with preparation of the QDRO
11 or supplemental order.

12 (e) LLLTs may prepare paperwork and accompany and assist clients in dispute resolution
13 proceedings including mediation, arbitration, and settlement conferences where not prohibited by
14 the rules and procedures of the forum.

15 (f) LLLTs, when accompanying their client, may assist and confer with their pro se clients at
16 depositions.

17 (g) LLLTs may present to a court agreed orders, uncontested orders, default orders, and
18 accompanying documents;

19 (h) LLLTs, when accompanying their client, may assist and confer with their pro se clients and
20 respond to direct questions from the court or tribunal regarding factual and procedural issues at
21 the hearings listed below:

22 i. domestic violence protection orders and other protection or restraining orders arising from a
23 domestic relations case;

24 ii. motions for temporary orders, including but not limited to temporary parenting plans, child
25 support, maintenance, and orders to show cause;

26 iii. enforcement of domestic relations orders;

SUGGESTED AMENDMENTS TO APR 28

1 iv. administrative child support;

2 v. modification of child support;

3 vi. adequate cause hearings for nonparental custody or parenting plan modifications;

4 vii. reconsiderations or revisions;

5 viii. trial setting calendar proceedings with or without the client when the LLLT has confirmed
6 the available dates of the client in writing in advance of the proceeding.

7 3. *Prohibited Acts.* In addition to the prohibitions set forth in APR 28(H), in the course of
8 rendering legal services to~~dealing with~~ clients or prospective clients, LLLTs licensed to practice
9 in domestic relations:

10 a. shall not render legal services to~~represent~~ more than one party in any domestic relations
11 matter;

12 b. shall not render~~provide~~ legal services in:

13 i. ~~in-de facto parentage or nonparental custody actions; and~~

14 ii. actions that involve~~if~~ 25 U.S.C. chapter 21, the Indian Child Welfare Act of 1978, or chapter
15 13.38 RCW, the Washington State Indian Child Welfare Act, ~~applies to the matter;~~

16 ~~e. shall not advise or assist clients regarding:~~

17 iii. division or conveyance of owned real estate, formal business entities, commercial property,
18 or residential real property except as permitted by Regulation 2(B) or retirement assets that
19 require a supplemental order to divide and award, which includes division of all defined benefit
20 plans and defined contribution plans;

21 iv. preparation of QDROs and supplemental orders dividing retirement assets beyond what is
22 prescribed in Regulation 2(B)(2)(d);

23 v. any retirement assets whereby the decree effectuates the division or the implementation of the
24 division of the asset;

25 viii. bankruptcy, including obtaining a stay from bankruptcy;

26 viii. disposition of debts and assets, if one party is in bankruptcy or files a bankruptcy during the

SUGGESTED AMENDMENTS TO APR 28

1 pendency of the proceeding, unless: (a) the LLLT's client has retained a lawyer to represent
2 him/her in the bankruptcy, (b) the client has consulted with a lawyer and the lawyer has provided
3 written instructions for the LLLT as to whether and how to proceed regarding the division of
4 debts and assets in the domestic relations proceeding, or (c) the bankruptcy has been discharged;
5 ~~iv. antiharassment orders, criminal no contact orders, anti-stalking orders, and sexual assault~~
6 ~~protection orders in domestic violence actions;~~
7 ~~viii. jointly acquired committed intimate relationship property issues in committed domestic~~
8 ~~intimate relationship actions;~~
9 ~~vix. major parenting plan modifications and nonparental custody actions beyond the adequate~~
10 ~~cause hearing unless the terms are were agreed to by the parties or one party defaults before the~~
11 ~~onset of the representation by the LLLT;~~
12 ~~xvii. the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues under~~
13 ~~chapter 26.27 RCW or Uniform Interstate Family Support Act issues under chapter 26.21A~~
14 ~~RCW unless and until jurisdiction has been resolved;~~
15 ~~viixi. objections or responses in contested relocation actions objections to relocation petitions,~~
16 ~~responses to objections to relocation petitions, or temporary orders in relocation actions; and~~
17 ~~ixii. final revised parenting plans in relocation actions except in the event of default or where the~~
18 ~~terms have been agreed to by the parties.~~

19 ~~d. shall not appear or participate at the taking of a deposition; and~~

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

21 **REGULATION 3: EDUCATION REQUIREMENTS FOR LLLT APPLICANTS AND** 22 **APPROVAL OF EDUCATIONAL PROGRAMS**

23 An applicant for admission as an LLLT shall satisfy the following education requirements:

24 **A. Core Curriculum.**

25 [NO CHANGES]

26 **B. Practice Area Curriculum**

SUGGESTED AMENDMENTS TO APR 28

1 [NO CHANGES]

2 **C. Required Supplemental Education.** The LLLT Board has discretion to require all LLLTs to
3 complete supplemental education in order to maintain their licenses due to changes in the
4 permitted scope of practice for LLLTs. The LLLT Board shall provide notice to LLLTs of the
5 supplemental education requirement and the deadline for completion of the requirement,
6 allowing at least 12 months to complete the required supplemental education. LLLTs may be
7 administratively suspended pursuant to the procedures set forth in APR 17 if they fail to comply
8 with the supplemental education requirements by the stated deadline.

9 [NO CHANGES]

10 **REGULATION 4- 20**

11 [NO CHANGES]

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GR 9 COVER SHEET

Suggested Amendments to RULES OF PROFESSIONAL CONDUCT (RPC)

Submitted by the Limited License Legal Technician Board

A. Name of Proponent:

Limited License Legal Technician (LLLT) Board

Staff Liaison/Contact:

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B. Spokesperson:

Stephen R. Crossland
Chair of LLLT Board
P.O. Box 566
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C. Purpose:

These suggested amendments are presented in conjunction with suggested amendments to Admission and Practice Rule (APR) 28 and related regulations and the Limited License Legal Technician (LLLT) Rules of Professional Conduct (LLLT RPC). The suggested amendments to APR 28 enhance the scope of the LLLT Family Law practice area. The LLLT Board began discussing possible enhancements to the domestic relations practice area in late 2014 in response to questions and concerns from law school professors who were teaching the LLLT practice area classes. Students in the LLLT classes, practicing LLLTs, and lawyers who work with LLLTs also raised several issues and offered ideas for ways in which the domestic relations scope could

be improved to allow LLLTs to provide a more cohesive set of services to their clients. The suggested amendments to the LLLT RPC make necessary changes to align with the suggested amendments to APR 28. Therefore, the primary purpose of these suggested amendments to the Rules of Professional Conduct (Lawyer RPC) is to align the Lawyer RPC with the suggested amendments to APR 28 and the corresponding suggested amendments to the LLLT RPC to ensure consistency and accuracy across all three sets of rules.

As with the suggested amendments to the LLLT RPC, the LLLT Board requested that Washington State Bar Association (WSBA) staff draft and recommend necessary amendments to the Lawyer RPC in order to align the Lawyer RPC with the suggested amendments to the LLLT RPC. In addition, WSBA staff presented the suggested amendments to the WSBA's Committee on Professional Ethics (CPE) in December 2017. The CPE approved of the suggested amendments and the LLLT Board subsequently approved these suggested amendments at its January 2018 meeting. The LLLT Board also presented these changes to the Board of Governors in January 2018. The following describes the LLLT Board's suggested amendments to the Lawyer RPC.

Lawyer RPC 1.0B

In 1.0B(b), definition of legal practitioner, the suggested amendments would remove "licensed under APR 28" to be consistent with the definition in the suggested amendments to APR 28 and the LLLT RPC.

In 1.0B(c), definition of limited license legal technician, the suggested amendments would remove the final sentence because it is no longer accurate under

the suggested amendments to APR 28. The removed sentence relates to the LLLT scope of practice (found in APR 28(F)) rather than a definition of an LLLT.

Lawyer RPC 1.17

The suggested amendments to comment 19 would remove the description of when an LLLT cannot purchase a law practice because the current language is not correct in all circumstances. The substance of that sentence would be rewritten and included in the suggested amendments to the LLLT RPC as a new comment 2 to LLLT RPC 1.17. A new reference to that comment would be added to this comment 19.

Lawyer RPC 4.3

The suggested amendments to comment 6 would remove language saying that LLLTs shall not negotiate because it will be permitted under certain conditions if the suggested amendments to APR 28 are adopted.

Lawyer RPC 5.8

The suggested amendments to comment 2 would correct the reference to the Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC).

Lawyer RPC 8.1

The suggested amendments to RPC 8.1 would better reflect the unified admissions, licensing, and disciplinary processes for all license types in Washington now that LLLTs and limited practice officers (LPOs) are members of the WSBA.

Throughout

References to specific subparts of APR 28 would be removed and replaced with a general reference to APR 28 or a reference to APR 28 and related regulations. This

allows the Lawyer RPC to remain accurate even if specific provisions of APR 28 change.

Conclusion

The LLLT Board believes it is important that these suggested amendments to the Lawyer RPC be adopted and effective together with the suggested amendments to APR 28 and the LLLT RPC as soon as possible. If adopted, the suggested amendments to the Lawyer RPC, LLLT RPC, and APR 28 will be incorporated into the LLLT family law practice area curriculum and will be tested on the LLLT family law practice area and professional responsibility exams. A mandatory continuing legal education program will be developed to educate LLLT candidates and currently licensed LLLTs about these changes and the impact on their practices. The first LLLT family law practice area and professional responsibility exams to test on these amendments could be held in July 2019.

D. Hearing: Because of the outreach conducted and input previously received by the LLLT Board, a hearing is not requested.

E. Expedited Consideration: Expedited consideration is requested in order to prevent delaying implementation of the necessary changes to LLLT education, continuing legal education, and examinations. The goal of the LLLT license is to provide much needed access to justice. Therefore, delay of these amendments also causes continued delay in providing relief to those in need of LLLT services.

F. Supporting Materials: In addition to the submission of the suggested amendments to the Lawyer RPC, a copy of the suggested amendments to APR 28 and the LLLT RPC are also included. The LLLT Board is also providing a sample of a Real

Property Disposition Form and the April 3, 2017 letter from the Court to the LLLT Board, which stated, "A majority of the Court voted yes to expanding the family law area."

**SUGGESTED AMENDMENTS TO
RULES OF PROFESSIONAL CONDUCT**

TITLE

RULES OF PROFESSIONAL CONDUCT (RPC)

RULE 1.0B ADDITIONAL WASHINGTON TERMINOLOGY

(a) [NO CHANGES]

(b) “Legal practitioner” denotes a lawyer or a limited license legal technician ~~licensed under~~
~~APR 28.~~

(c) “Limited License Legal Technician” or “LLLT” denotes a person qualified by education,
training, and work experience who is authorized to engage in the limited practice of law in
approved practice areas of law as specified by APR 28 and related regulations. ~~The LLLT does~~
~~not represent the client in court proceedings or negotiations, but provides limited legal assistance~~
~~as set forth in APR 28 to a pro se client.~~

(d)-(e) [NO CHANGES]

Washington Comments (1-3)

[1]-[2] [NO CHANGES]

[3] LLLTs are authorized to engage in the limited practice of law in explicitly defined areas.

Unlike a lawyer, an LLLT may perform only limited services for a client. ~~See APR 28(F), (H).~~

A lawyer who interacts with an LLLT about the subject matter of that LLLT’s representation or

who interacts with an otherwise pro se client represented by an LLLT should be aware of the

scope of the LLLT’s license and the ethical obligations imposed on an LLLT by the LLLT RPC.

See ~~APR 28(F) (H); Appendix APR 28 Regulation 2~~ and related regulations; LLLT RPC 1.2, 1.5,

4.2, 4.3. See also RPC 5.10.

RULE 1.17 SALE OF LAW PRACTICE

(a)-(d) [NO CHANGES]

Comment

[1]-[18] [No Changes]

[19] ~~An LLLT is not authorized to purchase a law practice that requires provision of legal~~

**SUGGESTED AMENDMENTS TO
RULES OF PROFESSIONAL CONDUCT**

1 ~~services outside the scope of the LLLT's practice. See APR 28(F) (H); Appendix APR 28~~
2 ~~Regulation 2. Consequently, There are some restrictions on a lawyer's ability to sell a law~~
3 ~~practice to an LLLT when the legal services provided are outside the scope of the LLLT's~~
4 ~~practice. As such, a lawyer may not participate in or facilitate such a sale that is in violation of~~
5 ~~LLLT RPC 1.17. See LLLT RPC 1.17 cmt. [2]; RPC 8.4(f)(2).~~

6 **RULE 4.3 DEALING WITH PERSON NOT REPRESENTED BY A LAWYER**

7 [NO CHANGES]

8 Comment

9 [1]-[2] [Unchanged.]

10 Additional Washington Comments (3-6)

11 [3]-[4] [Unchanged.]

12 [5] For purposes of this Rule, a person who is assisted by an LLLT is not represented by a
13 lawyer and is an unrepresented person. See APR 28(B)(4).

14 [6] When a lawyer communicates with an LLLT who represents an opposing party about the
15 subject of the representation, the lawyer should be guided by an understanding of the limitations
16 imposed on the LLLT by APR 2, ~~related Regulations(H)(6) (an LLLT shall not “negotiate the~~
17 ~~client's legal rights or responsibilities, or communicate with another person the client's position~~
18 ~~or convey to the client the position of another party”)~~ and the LLLT RPC. The lawyer should
19 further take care not to overreach or intrude into privileged information. APR 28(K)(3) (“The
20 Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the
21 client shall apply to the Limited License Legal Technician-client relationship to the same extent
22 as it would apply to an attorney-client relationship”).

23 **RULE 5.8 MISCONDUCT INVOLVING LAWYERS AND LLLTS NOT ACTIVELY**
24 **LICENSED TO PRACTICE LAW**

25 (a)-(b) [NO CHANGES]

26 Comment

**SUGGESTED AMENDMENTS TO
RULES OF PROFESSIONAL CONDUCT**

1 [1] [NO CHANGES]

2
3 [2] The prohibitions in paragraph (b) of this Rule apply to suspensions, revocations, and
4 voluntary cancellations in lieu of discipline under the disciplinary procedural rules applicable to
5 LLLTs. See Rules for Enforcement of Limited License Legal Technician LLLT Rules for
6 Enforcement of Conduct (RECELLLTC).

7 **RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS**

8 An applicant for admission to the Bar, or a lawyer in connection with an application for
9 reinstatement or admission to the Bar or a disciplinary matter involving a legal practitioner~~bar~~
10 ~~admission, reinstatement application, or LLLT limited licensure, or in connection with a lawyer or~~
11 ~~LLLT disciplinary matter~~, shall not:

12 (a)-(b) [NO CHANGES]

13 Comment

14 [NO CHANGES]

GR 9 COVER SHEET

Suggested Amendments to LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROFESSIONAL CONDUCT (LLLT RPC)

Submitted by the Limited License Legal Technician Board

A. Name of Proponent:

Limited License Legal Technician (LLLT) Board

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B. Spokesperson:

Stephen R. Crossland
Chair of LLLT Board
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C. Purpose: These suggested amendments to the LLLT RPC are presented in conjunction with suggested amendments to Admission and Practice Rule (APR) 28 and related regulations and the Rules of Professional Conduct (Lawyer RPC). The suggested amendments to APR 28 and related regulations enhance the scope of the LLLT Family Law Practice Area. The LLLT Board began discussing possible enhancements to the domestic relations practice area in late 2014 in response to questions and concerns from law school professors who were teaching the LLLT practice area classes. Students in the LLLT classes, practicing LLLTs, and lawyers who work with LLLTs also raised several issues and offered ideas for ways in which the domestic relations scope could be improved to allow LLLTs to provide a more cohesive

set of services to their clients. Therefore, the primary purpose of these suggested amendments to the LLLT RPC is to make changes necessary to implement the suggested amendments to APR 28 and related regulations.

Drafting Process

The LLLT Board is composed of lawyers in private practice, practicing LLLTs, law school and paralegal educators, legal services providers, members of the public, and paralegal advocates. After developing the suggested amendments to APR 28 to enhance the family law practice area, the LLLT Board requested WSBA staff take the lead in drafting and recommending necessary amendments to the LLLT RPC in order to align the LLLT RPC with suggested amendments to APR 28 and related regulations.

WSBA staff involved were Douglas Ende (Chief Disciplinary Counsel), Jean McElroy (Chief Regulatory Counsel), Jeanne Marie Clavere (Professional Responsibility Counsel), Robert Henry (Associate Director for Regulatory Services), Renata de Carvalho Garcia (Innovative Licensing Programs Manager), and Joe Terrenzio (Limited License Legal Technician Program Lead). The issues that caused the most discussion were the following:

- The scope of an LLLT's enhanced role as an advocate and as a negotiator;
- The interactions between an LLLT's role in advising a *pro se* client and the rules governing communications with represented and unrepresented parties; and
- The limitations on an LLLT's communications with a tribunal under the enhanced scope of practice.

As in the original drafting of the LLLT RPC, the LLLT RPC mirror the Lawyer RPC with only slight modification. When a Lawyer RPC does not apply in the LLLT context, the rule is reserved. The LLLT Board reviewed successive drafts of the suggested amendments to the LLLT RPC and offered critiques and feedback throughout the process before approving the final suggested amendments to the LLLT RPC at the December 14, 2017, LLLT Board meeting. The LLLT Board also presented these changes to the Board of Governors in January 2018. The following describes the LLLT Board's suggested amendments to the LLLT RPC.

Throughout

In order to prevent ongoing or future changes to the LLLT RPCs, the suggested amendments would remove large blocks of text copied from APR 28 and replace them with specific or general references to APR 28 and related regulations.

Preamble and Scope

In paragraph 2, the suggested amendments would remove language stating that an LLLT is not authorized to act as advocate or negotiator. A new clause would be added, stating that to the extent an LLLT is allowed to act as an advocate or as a negotiator under APR 28, an LLLT acts in the best interest of the client.

LLLT RPC 1.0B Additional Terminology

In (c), the suggested amendments clarify the definition of a lawyer. The former definition stated only that a lawyer was a person who held a license to practice law in any United States jurisdiction. In Washington, LLLTs, limited practice officers, and lawyers hold licenses to practice law, therefore requiring further clarification in the definition of the term "lawyer" in the Washington LLLT RPC. The amended definition

matches the definition of lawyer in the suggested amendments to APR 28.

The suggested amendments to subsection (e) would remove the phrase “licensed under APR 28” from the definition of legal practitioner because the reference to APR 28 already exists in the definition of an LLLT.

The suggested amendments to subsection (f) would remove the final sentence stating that an LLLT does not represent a client in court proceedings or negotiations to match the definition in the suggested amendments to APR 28. The sentence that would be removed relates to scope rather than a definition of an LLLT.

The suggested amendments to subsection (g) would correct the name and acronym for the Rules for Enforcement of Limited License Legal Technician Conduct.

LLLT RPC 1.2 Scope of Representation and Allocation of Authority between Client and LLLT

The suggested amendments to 1.2(a) would add an additional sentence stating that a LLLT shall abide by a client’s decision whether to settle a matter. This addition helps clarify that the client, not the LLLT, has decision making authority in a settlement negotiation.

In comment 2, the suggested amendments would remove the first sentence stating that negotiation is prohibited. The second sentence would be rephrased to align with the suggested amendments to APR 28.

In comment 4, the suggested amendments would clarify an LLLT’s obligations when an issue is outside of the authorized scope of practice. In comment 5, a reference to APR 28(G)(2) would be corrected to APR 28(G)(1).

In comment 6, a reference to APR 28(G)(5) would be corrected to APR 28(G)(3).

The suggested amendments to comment 7 would remove and reserve it because the comment is inaccurate and duplicative of the APR 28(G)(4) signature requirement without discussing any professional responsibility matters.

LLLT RPC 1.5 Fees

In comment 4, a reference to APR 28(G)(3) would be corrected to APR28(G)(2). The final sentence referencing comment 2 to Rule 1.2 would be removed because it is unnecessary.

In comment 5, a reference to APR 28(G)(3) would be corrected to APR28(G)(2).

LLLT RPC 1.8 Conflict of Interest: Current Clients: Specific Rules

The suggested amendments to comment 3 would remove the first sentence stating that LLLTs may not advocate for or appear in court on behalf of a client because LLLTs will be permitted to accompany and assist clients at certain hearings if the suggested amendments to APR 28 are adopted.

The suggested amendments to comment 4 would clarify that an LLLT's scope of practice does not include aggregate settlements.

LLLT RPC 1.15A Safeguarding Property

Suggested amendments to subsection (i) would correct references to the ELLLTC or refer to the ELC when the referenced provision does not exist in the ELLLTC.

LLLT RPC 1.16 Declining or Termination Representation

Suggested amendments to comment 1 would match the suggested amendments to APR 28 allowing LLLTs to accompany and assist clients before tribunals. It also would clarify that LLLTs represent pro se clients and accordingly, LLLTs would not file a

notice of appearance.

LLLT RPC 1.17 Sale of a Law Practice

In subsection (d), the suggested amendments would change “legal and LLLT fees” to “fees.”

Suggested amendments to comment 2 would explain that a firm of only LLLTs cannot purchase a law practice that would require they provide services beyond their authorized scope of practice.

LLLT RPC 2.3 [Reserved]

Suggested amendments to comment 1 would match the suggested amendments to APR 28 allowing LLLTs to communicate a client's position to a third party. They would also clarify that an LLLT should refer to the Lawyer RPC for guidance if a third party evaluation comes up in the LLLT's scope of practice.

LLLT RPC 3.1 Advising and Assisting Clients in Proceedings Before a Tribunal

The suggested amendments in subsection (a) would add the word “engage” to clarify that the rule applies to the LLLT's own behavior before a tribunal because LLLTs will be permitted to accompany and assist clients at certain court hearings if the suggested amendments to APR 28 are adopted.

The suggested amendments to subsection (a)(6) would add the valid exception for disobeying an obligation under the rules of a tribunal to be consistent with the Lawyer RPC.

The suggested amendments to comment 1 are meant to address an LLLT's role as an advocate under the enhanced scope of practice in the suggested amendments to APR 28.

Comment 2 would be deleted because it will no longer apply under the enhanced scope of practice if the suggested amendments to APR 28 are adopted.

Comment 3 would be renumbered as comment 2, and the reference for Title 3 of the Lawyer RPC would be rephrased for clarity.

LLLT RPC 3.6-3.9 [Reserved]

The numbers in the comments would reflect the changes to the suggested amendments to the comments in LLLT RPC 3.1.

LLLT RPC 4.1 Truthfulness in Statements to Others

Comment 2 would be deleted because the comment repeating the signature requirement in APR 28(G) is unnecessary.

LLLT RPC 4.2 Communication with Person Represented by Lawyer

The suggested amendments to comment 1 would delete sentences 6 and 7 and the final clause of sentence 5 because they would no longer be accurate under the enhanced scope of practice in the suggested amendments to APR 28.

LLLT RPC 4.3 Dealing with Person Not Represented by Lawyer

Subsection (b) would be deleted because it would no longer be accurate under the enhanced scope of practice in the suggested amendments to APR 28.

Because (b) would be deleted, comment 2, which had discussed (b), would be deleted and reserved.

In comment 3, the final sentence would be deleted because it would no longer be accurate under the suggested amendments to APR 28.

In comment 4, the first sentence would be deleted because it would no longer be accurate under the suggested amendments to APR 28.

LLLT RPC 5.4 Professional Independence of an LLLT

In several places, “non-LLLT” would be rewritten to eliminate use of the exclusionary and awkward term “non-LLLT”.

Comment 2 would be rephrased to make it more active language.

LLLT RPC 5.5 Unauthorized Practice of Law

In comment 1, the reference to APR 28(H)(7) would be corrected to APR28(H)(6).

In comment 2, the word “programs” would be deleted for consistency with other language referring to limited licenses. “[N]onlawyers” would be replaced with “limited license practitioners” to eliminate use of the exclusionary and awkward term “nonlawyers.”

LLLT RPC 8.1 Licensing, Admission, and Disciplinary Matters

The rule’s name would be changed from “Limited Licensure and Disciplinary Matters” to “Licensing, Admission, and Disciplinary Matters” to reflect the unified licensing, admissions, and disciplinary processes for all licenses to practice law in Washington.

The rule would be rewritten because LLLTs are now members of the WSBA.

In comment 1, the language highlighting that LLLTs are not admitted to the Bar would be removed because it is no longer accurate. LLLTs are admitted to the practice of law and are members of the WSBA. See APR 5(l) and WSBA Bylaws Art. III sec. (1)(b).

LLLT RPC 8.4 Misconduct

In (l), the references to the LLLT Rules for Enforcement of Conduct would be

corrected to the ELLLTTC.

Conclusion

The LLLT Board voted unanimously to approve the suggested amendments to the LLLT RPC for submission to the Washington Supreme Court at its December 14, 2017 meeting. The LLLT Board believes it is important that these suggested amendments to the LLLT RPC be adopted and effective together with the suggested amendments to APR 28 and the Lawyer RPC as soon as possible. If adopted, the suggested amendments to the LLLT RPC and suggested amendments to APR 28 will be incorporated into the LLLT Family Law Practice Area Curriculum and will be tested on the LLLT Family Law Practice Area and Professional Responsibility Exams. A mandatory continuing legal education program will be developed to educate LLLT candidates and currently licensed LLLTs about these changes and the impact on their practices. The first LLLT Practice Area and Professional Responsibility Exams to test on these amendments could be held in July 2019.

D. Hearing: Because of the outreach conducted and input previously received by the LLLT Board, a hearing is not requested.

E. Expedited Consideration: Expedited consideration is requested in order to prevent delaying implementation of the necessary changes to LLLT education, continuing legal education, and examinations. The LLLT program's goal is to provide much needed access to justice. Therefore, delay of this program also causes continued delay in providing relief to those in need of LLLT services.

F. Supporting Materials: In addition to the submission of the suggested amendments to the LLLT RPC, a copy of the suggested amendments to APR 28 and

the Lawyer RPC are also included. The LLLT Board is also providing a sample of a Real Property Disposition Form and the April 3, 2017 letter from the Court to the LLLT Board, which stated, "A majority of the Court voted yes to expanding the family law area."

**SUGGESTED AMENDMENTS TO LIMITED LICENSE LEGAL
TECHNICIAN RULES OF PROFESSIONAL CONDUCT**

TITLE

LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROFESSIONAL CONDUCT (LLLT
RPC)

PREAMBLE

[1] [NO CHANGES]

[2] As a representative of clients within a limited scope, an LLLT performs various functions.

As advisor, an LLLT provides a client with an informed understanding of the client's legal rights

and obligations and explains their practical implications. As an evaluator, an LLLT acts by

examining a client's legal affairs and reporting about them to the client or to others. ~~While an~~

~~LLLT is not authorized to act as advocate or negotiator, an LLLT~~To the extent an LLLT is

allowed to act as an advocate or as a negotiator under APR 28, an LLLT conscientiously acts in

the best interest of the client, and seeks a result that is advantageous to the client but consistent

with the requirements of honest dealings with others.

[3]-[13] [NO CHANGES]

RULE 1.0B ADDITIONAL TERMINOLOGY

(a) "APR" denotes the Washington Supreme Court's Admission ~~to~~and Practice Rules.

(b) [NO CHANGES]

(c) "Lawyer" denotes a person licensed as a lawyer and eligible to practice law in any United
States jurisdiction.

(d) [NO CHANGES]

(e) "Legal practitioner" denotes a lawyer or a limited license legal technician ~~licensed under~~
APR 28.

(f) "Limited License Legal Technician" or "LLLT" denotes a person qualified by education,
training, and work experience who is authorized to engage in the limited practice of law in
approved practice areas of law as specified by APR 28 and related regulations. ~~The LLLT does~~

**SUGGESTED AMENDMENTS TO LIMITED LICENSE LEGAL
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1 ~~not represent the client in court proceedings or negotiations, but provides limited legal assistance~~
2 ~~as set forth in APR 28 to a pro se client.~~

3 (g) ~~"LLLT RECELLTC"~~ denotes the Washington Supreme Court's Rules for Enforcement
4 of Limited License Legal Technician Rules for Enforcement of Conduct.

5 (h) [NO CHANGES]

6 **Comment**

7 [NO CHANGES]

8 **RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY**
9 **BETWEEN CLIENT AND LLLT**

10 (a) Subject to paragraphs (c), (d), and (g), an LLLT shall abide by a client's decisions
11 concerning the objectives of representation and, as required by Rule 1.4, shall consult with the
12 client as to the means by which they are to be pursued. An LLLT may take such action on behalf
13 of the client as is impliedly authorized to carry out the representation. An LLLT shall abide by a
14 client's decision whether to settle a matter.

15 (b) [NO CHANGES]

16 (c) An LLLT must limit the scope of the representation and provide disclosures informing a
17 potential client as required by these Rules and APR 28.

18 (d)-(g) [NO CHANGES]

19 **Comment**

20 [1] [NO CHANGES]

21 [2] ~~Negotiation on behalf of a client and representation in court are beyond the authorized~~
22 ~~scope of an LLLT's practice. See APR 28(H). Accordingly, pParagraph (a) was modified from~~
23 ~~the Lawyer RPC to exclude references to settlements and criminal cases, and paragraph (d) was~~
24 ~~modified from the Lawyer RPC to exclude (and therefore prohibit) an LLLT from discussing with~~
25 ~~a client the legal consequences of any proposed criminal or fraudulent conduct and assisting a~~
26 ~~client in determining the validity, scope, meaning, or application of the law with respect to any~~

SUGGESTED AMENDMENTS TO LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROFESSIONAL CONDUCT

1 such conduct. In circumstances where a client has engaged or may engage in conduct that the
2 LLLT knows is criminal or fraudulent, the LLLT shall not provide services related to such
3 conduct and shall inform the client that the client should seek the services of a lawyer.

4 [3] Unlike a lawyer, an LLLT may perform only limited services for a client. ~~Under APR~~
5 ~~28(G)(3), b~~Before performing any services for a fee, an LLLT must enter into a written contract
6 with the client as required by APR 28(G)(2), ~~signed by both the client and the LLLT~~, that includes
7 ~~the following: (a) an explanation of the services to be performed, including a conspicuous~~
8 ~~statement that the LLLT may not appear or represent the client in court, formal administrative~~
9 ~~adjudicative proceedings, or other formal dispute resolution process, or negotiate the client's legal~~
10 ~~rights or responsibilities, unless permitted under GR 24(b); (b) identification of all fees and costs~~
11 ~~to be charged to the client for the services to be performed; (c) a statement that upon the client's~~
12 ~~request, the LLLT shall provide to the client any documents submitted by the client to the LLLT;~~
13 ~~(d) a statement that the LLLT is not a lawyer and may only perform limited legal services (this~~
14 ~~statement shall be on the first page of the contract in minimum twelve point bold type print); (e)~~
15 ~~a statement describing the LLLT's duty to protect the confidentiality of information provided by~~
16 ~~the client and the LLLT's work product associated with the services sought or provided by the~~
17 ~~LLLT; (f) a statement that the client has the right to rescind the contract at any time and receive~~
18 ~~a full refund of unearned fees (this statement shall be conspicuously set forth in the contract); and~~
19 ~~(g) any other conditions to the LLLT's services that are required by the rules and regulations of~~
20 ~~the Limited License Legal Technician Board.~~

21 [4] Additional requirements concerning the authorized scope of an LLLT's practice are
22 imposed by APR 28(F). An LLLT must ascertain whether the issue is within the defined
23 practice area for which the LLLT is licensed. If not, the LLLT shall not ~~provide the services~~
24 ~~required~~render any legal assistance on the issue and must ~~inform~~advise the client ~~to that the client~~
25 ~~should~~ seek the services of a lawyer. If the issue does lie within the defined practice area for
26 which the LLLT is licensed, then the LLLT is authorized to ~~undertake~~render the services that are

SUGGESTED AMENDMENTS TO LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROFESSIONAL CONDUCT

1 enumerated in APR 28(F). ~~Those services include only the following: (a) obtain relevant facts~~
2 ~~and explain the relevancy of such information to the client; (b) inform the client of applicable~~
3 ~~procedures, including deadlines, documents which must be filed, and the anticipated course of~~
4 ~~the legal proceeding; (c) inform the client of applicable procedures for proper service of process~~
5 ~~and filing of legal documents; (d) provide the client with self help materials prepared by a~~
6 ~~Washington lawyer or approved by the Limited License Legal Technician Board, which contain~~
7 ~~information about relevant legal requirements, case law basis for the client's claim, and venue~~
8 ~~and jurisdiction requirements; (e) review documents or exhibits that the client has received from~~
9 ~~the opposing side, and explain them to the client; (f) select, complete, file, and effect service of~~
10 ~~forms that have been approved by the State of Washington, either through a governmental~~
11 ~~agency or by the Administrative Office of the Courts or the content of which is specified by~~
12 ~~statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the~~
13 ~~Limited License Legal Technician Board; and advise the client of the significance of the selected~~
14 ~~forms to the client's case; (g) perform legal research; (h) draft legal letters and documents~~
15 ~~beyond what is permitted in (f) if the work is reviewed and approved by a Washington lawyer;~~
16 ~~(i) advise a client as to other documents that may be necessary to the client's case, and explain~~
17 ~~how such additional documents or pleadings may affect the client's case; and (j) assist the client~~
18 ~~in obtaining necessary documents, such as birth, death, or marriage certificates.~~

19 [5] An LLLT must personally perform the authorized services for the client and may not
20 delegate those services to a person who is not either an LLLT or a lawyer. This prohibition,
21 however, does not prevent a person who is neither an LLLT nor a lawyer from performing
22 translation services. APR 28(G)(~~2~~1).

23 [6] An LLLT may not provide services that exceed the scope of the LLLT's authority under
24 APR 28. If an issue arises for which the client needs services that exceed the scope of the LLLT's
25 authority, the LLLT must inform that client that the client should seek the services of a lawyer.
26 APR 28(G)(~~5~~3).

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1 [7] ~~A document that is prepared by an LLLT for the client's signature shall include the~~
2 ~~LLLT's name, signature, and license number beneath the signature of the client. APR~~
3 ~~28(G)(5). [Reserved.]~~

4 [8] ~~Certain conduct and services are specifically prohibited to an LLLT by APR 28(H). In~~
5 ~~the course of dealing with clients or prospective clients, an LLLT shall not: (a) make any~~
6 ~~statement that the LLLT can or will obtain special favors from or has special influence with any~~
7 ~~court or governmental agency; (b) retain any fees or costs for services not performed; (c) refuse~~
8 ~~to return documents supplied by, prepared by, or paid for by the client, upon the request of the~~
9 ~~client (the documents must be returned upon request even if there is a fee dispute between the~~
10 ~~LLLT and the client); (d) represent or advertise, in connection with the provision of services,~~
11 ~~other legal titles or credentials that could cause a client to believe that the LLLT possesses~~
12 ~~professional legal skills beyond those authorized by the license held by the LLLT; (e) represent a~~
13 ~~client in court proceedings, formal administrative adjudicative proceedings, or other formal~~
14 ~~dispute resolution process, unless permitted by GR 24; (f) negotiate a client's legal rights or~~
15 ~~responsibilities, or communicate with another person the client's position or convey to the client~~
16 ~~the position of another party; unless permitted by GR 24(b); (g) provide services to a client in~~
17 ~~connection with a legal matter in another state, unless permitted by the laws of that state to~~
18 ~~perform such services for the client; (h) represent or otherwise provide legal or law related~~
19 ~~services to a client, except as permitted by law, APR 28, or associated rules and regulations; or~~
20 ~~(i) otherwise violate these Rules.~~

21 **RULE 1.5 FEES**

22 [NO CHANGES]

23 **Comment**

24 [1]-[3] [NO CHANGES]

25 [4] Unlike a lawyer, an LLLT is required by APR 28(G)(32) to enter into a written contract
26 with the client before the LLLT begins to perform any services for a fee that includes, among

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1 other things, identification of all fees and costs to be charged to the client for the services to be
2 performed. The provisions concerning a flat fee described in (f)(2) of this Rule, if applicable,
3 should be included in that contract. The contract must be signed by both the client and the LLLT
4 before the LLLT begins to perform any services for a fee. ~~See Comment [2] to Rule 1.2 for other~~
5 ~~provisions that are to be included in the contract.~~

6 [5] [NO CHANGES]

7 **RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES**

8 [NO CHANGES]

9 **Comment**

10 [1]-[2] [NO CHANGES]

11 [3] ~~LLTs may not advocate for, or appear in court on behalf of, a client.~~ LLLTs will have
12 no role in class action litigation and Rule 1.8(e)(2) is accordingly reserved in this Rule.
13 LLLT RPC 1.8(e) does not authorize activities that are beyond the scope of the LLLT's
14 limited license. Nothing in Rule 1.8(e) is intended to prohibit lawyer members of a firm
15 with which an LLLT is associated from engaging in conduct permitted by Lawyer RPC
16 1.8(e)(2).

17 [4] Rule 1.8(g) is reserved. ~~LLTs are not permitted to do not~~ engage in the making of
18 aggregate settlements, or aggregated agreements as to guilty or nolo contendere pleas in
19 criminal cases. Nothing in Rule 1.8(g) is intended to prohibit lawyer members of a firm
20 with which an LLLT is associated from participating in such settlements if permitted by
21 the Lawyer RPC.

22 [5]-[9] [NO CHANGES]

23 **LLLT RPC 1.15A SAFEGUARDING PROPERTY**

24 (a)-(h) [NO CHANGES]

25 (i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any
26 delay other than notice periods that are required by law or regulation and meet the requirements

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1 of ~~LLLT RECEL~~C 15.7(d) and ~~LLLT REC 15.7~~(e). In the exercise of ordinary prudence, an
2 LLLT may select any financial institution authorized by the Legal Foundation of Washington
3 (Legal Foundation) under ~~LLLT RECEL~~C 15.7(c). In selecting the type of trust account for the
4 purpose of depositing and holding funds subject to this Rule, an LLLT shall apply the following
5 criteria:

6 (1) When client or third-person funds will not produce a positive net return to the
7 client or third person because the funds are nominal in amount or expected to be
8 held for a short period of time the funds must be placed in a pooled interest-bearing
9 trust account known as an Interest on Limited License Legal Technician's Trust
10 Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and
11 the IOLTA program shall be administered by, the Legal Foundation of
12 Washington in accordance with ~~LLLT RECEL~~LLTC 15.4 and ~~LLLT RECEL~~C
13 15.7(e).

14 (2)-(3) [NO CHANGES]

15 (4) The provisions of paragraph (i) do not relieve an LLLT or law firm from any
16 obligation imposed by these Rules or the ~~LLLT RECEL~~LLTC.

17 **Comment**

18 [NO CHANGES]

19 **LLLT RPC 1.16 DECLINING OR TERMINATING REPRESENTATION**

20 [NO CHANGES]

21 **Comment**

22 [1] This Rule was adapted from Lawyer RPC 1.16 with no substantive changes except to
23 reflect that LLLTs the limited scope of representation that an LLLT provides to pro se clients and
24 that a LLLT does not enter a notice of appearance. are not authorized to represent clients in court
25 or to advocate for clients. For this reason, paragraph (c) is reserved and references to litigation
26

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1 ~~or proceedings before a tribunal that appear in Lawyer RPC 1.16 do not apply and have been~~
2 ~~omitted from this Rule. Otherwise, this Rule~~ Lawyer RPC 1.16 applies to LLLTs analogously.

3 **RULE 1.17 SALE OF LAW PRACTICE**

4 An LLLT, firm of LLLTs, or a law firm with which one or more LLLTs are associated may
5 sell or purchase a law practice, or an area of law practice, including good will, if the
6 following conditions are satisfied:

7 (a)-(c) [NO CHANGES]

8 (d) ~~The legal fees and LLLT fees charged clients shall not be increased by reason of the sale.~~

9 **Comment**

10 [1] [NO CHANGES]

11 [2] A law firm consisting solely of LLLT owners is not authorized to purchase a law practice
12 that includes client matters requiring provision of legal services outside the authorized LLLT
13 scope of practice or defined practice area(s). See APR 28 and related Regulations.

14 **RULE 2.1 ADVISOR**

15 [NO CHANGES]

16 **Comment**

17 [1] [NO CHANGES]

18 [2] This Rule and its requirement regarding the exercise of independent professional
19 judgment do not expand the limitations on the authorized scope of an LLLT's practice under APR
20 ~~28(H)~~ and related regulations.

21 **RULE 2.3 [Reserved]**

22 **Comment**

23 [1] Lawyer RPC 2.3 pertains to a lawyer providing an evaluation of a matter affecting a client
24 for the use of someone other than the client. ~~Unlike lawyers, LLLTs are not authorized to~~
25 ~~communicate the client's position to third parties. Drafting an opinion letter for the purposes of~~
26 ~~its use with a third party is the same as communicating the client's position to a third party and is~~

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1 ~~prohibited by APR 28(H)(6). If the need for an evaluation arises in an LLLT's authorized scope~~
2 ~~of practice under APR 28, an LLLT should look to Lawyer RPC 2.3 for guidance. Accordingly,~~
3 ~~this Rule is reserved.~~

4 **RULE 3.1 ADVISING AND ASSISTING CLIENTS IN PROCEEDINGS BEFORE A**
5 **TRIBUNAL**

6 (a) In a matter reasonably related to a pending or potential proceeding before a tribunal, an
7 LLLT shall not engage, counsel a client to engage, or assist a client, in conduct involving:

8 (1)-(5) [NO CHANGES]

9 (6) knowingly disobeying an obligation under the rules of a tribunal except for an
10 open refusal based on an assertion that no valid obligation exists; or

11 (7) [NO CHANGES]

12 (b) [NO CHANGES]

13 **Comment**

14 [1] This Rule is substantially different from Lawyer RPC 3.1 because the role of the LLLTs
15 as an advocate is limited. ~~are not authorized to represent clients in the proceedings of a tribunal.~~
16 ~~Title 3 of the Lawyer RPC addresses a lawyer's duties as an advocate when representing a client~~
17 ~~in the proceedings of a tribunal. Because APR 28(H)(5) expressly prohibits an LLLT from~~
18 ~~representing a client in a court or administrative adjudicative proceeding (unless permitted by GR~~
19 ~~24), the Title 3 Rules do not apply directly to the conduct of LLLTs. Nevertheless, a number of~~
20 ~~the ethical principles located in Title 3 address conduct in connection with a proceeding that~~
21 ~~would be improper and repugnant whether engaged in by a lawyer or a party. In many instances,~~
22 ~~an LLLT will be providing assistance to a client who is a party to a court proceeding. In providing~~
23 ~~such assistance, an LLLT may be authorized within the scope of a specific practice area to~~
24 ~~accompany and assist a pro se client in certain proceedings. Assistance may include responding~~
25 ~~to factual and procedural questions from a tribunal. For this reason, as a member of the legal~~
26 ~~profession, an LLLT is ethically bound to avoid advising or assisting a client in conduct that~~

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1 undermines the integrity of the adjudicative process or threatens the fair and orderly
2 administration of justice. ~~As applied to the indirect conduct of LLLTs, the ethical proscriptions~~
3 ~~of Lawyer RPC 3.1, 3.2, 3.3, and 3.4 are less nuanced. Accordingly, they have been consolidated~~
4 ~~within Rule 3.1(a) as a prohibition on counseling or assisting the client in such activities. Conduct~~
5 ~~relating to the impartiality and decorum of a tribunal, Lawyer RPC 3.5, should be prohibited~~
6 ~~whether engaged in by an LLLT directly or indirectly, and is separately addressed in paragraph~~
7 ~~(b) of this Rule. Although less comprehensive than Title 3 of the Lawyer RPC, the core Title 3~~
8 ~~principles incorporated into Rule 3.1 address the issues likely to be encountered by an LLLT,~~
9 ~~with supplemental guidance available in the corresponding Title 3 of the Lawyer RPC and~~
10 ~~commentary thereto.~~

11 ~~[2] An LLLT acting as a "lay representative authorized by administrative agencies or~~
12 ~~tribunals" under GR 24(b)(3) would not be acting pursuant to the authority of his or her LLLT~~
13 ~~license in that context, since such representation would be beyond the scope of LLLT practice~~
14 ~~authorized by APR 28(F). Should an LLLT engage in conduct as a lay advocate that would~~
15 ~~otherwise directly violate a Title 3 obligation for example, by knowingly making a false~~
16 ~~statement of fact to an administrative tribunal such conduct may violate the requirements of~~
17 ~~other rules. See, e.g., Rule 8.4(e) (prohibiting conduct involving dishonesty, fraud, deceit, and~~
18 ~~misrepresentation) and Rule 8.4(d) (prohibiting conduct prejudicial to the administration of~~
19 ~~justice).~~

20 ~~[32] Certain provisions of Title 3 of the Lawyer RPC provisions, such as Lawyer as Witness~~
21 ~~in Rule 3.7 and the Special Responsibilities of a Prosecutor in Rule 3.8, do not apply to LLLTs.~~
22 ~~In these instances, the corresponding LLLT RPC has been reserved. Rules 3.6 and 3.9 represent~~
23 ~~ethical issues that would rarely if ever arise in the context of an LLLT's limited-scope~~
24 ~~representation. Accordingly, these provisions have been reserved as well, though guidance is~~
25 ~~available in the corresponding Lawyer RPC in the event that such an ethical dilemma does arise~~
26 ~~in an LLLT representation.~~

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1 **RULE 3.6**

2 [Reserved]

3 **Comment**

4 [1] See Comment [32] to Rule 3.1.

5 **RULE 3.7**

6 [Reserved]

7 **Comment**

8 [1] See Comment [32] to Rule 3.1.

9 **LLLT RPC 3.8**

10 [Reserved]

11 **Comment**

12 [1] See Comment [32] to Rule 3.1.

13 **LLLT RPC 3.9**

14 [Reserved]

15 **Comment**

16 [1] See Comment [32] to Rule 3.1.

17 **RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS**

18 [NO CHANGES]

19 **Comment**

20 [1] [NO CHANGES]

21 ~~[2] — LLLTs are required by APR 28(G)(5) to include the LLLT's name, signature, and license~~
22 ~~number beneath the signature of the client on all documents that the LLLT prepares. This will~~
23 ~~assure that judges and other court personnel, other parties to a matter, and lawyers representing~~
24 ~~those parties, are informed of the LLLT's role in the matter.~~

25 **RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY LAWYER**

26 [NO CHANGES]

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1 **Comment**

2 [1] A person who has chosen to be represented by a lawyer should be protected against
3 possible overreaching by another lawyer. *See* Lawyer RPC 4.2 and Comments to that rule. Rule
4 4.2 extends to LLLTs the prohibition on communicating with a person represented by a lawyer.
5 This Rule differs from Lawyer RPC 4.2 in that the prohibition is absolute. While a lawyer may
6 be permitted to communicate directly with a person who is represented by another lawyer with
7 the other lawyer's consent, or if authorized to do so by law or court order, there are no exceptions
8 to the prohibition as it applies to LLLTs, ~~because any such communication would put an LLLT~~
9 ~~in a position of exceeding the authorized scope of the LLLT's practice under APR 28(H).~~
10 ~~Specifically, APR 28(H)(6) prohibits negotiating a client's legal rights or responsibilities or~~
11 ~~communicating with another person the client's position, and APR 28(H)(5) prohibits an LLLT~~
12 ~~from representing a client in court proceedings. In light of these limitations, there is no~~
13 ~~circumstance in which an LLLT could communicate with a person represented by a lawyer about~~
14 ~~the subject matter of the representation without transgressing the APR.~~

15 **RULE 4.3 DEALING WITH PERSON NOT REPRESENTED BY LAWYER**

16 **(a)** In dealing on behalf of a client with a person who is not represented by a lawyer, an LLLT
17 shall not state or imply that the LLLT is disinterested. When the LLLT knows or reasonably
18 should know that the unrepresented person misunderstands the LLLT's role in the matter, the
19 LLLT shall make reasonable efforts to correct the misunderstanding. The LLLT shall not give
20 legal advice to an unrepresented person, other than the advice to secure the services of another
21 legal practitioner, if the LLLT knows or reasonably should know that the interests of such a person
22 are or have a reasonable possibility of being in conflict with the interests of the client.

23 ~~**(b)** An LLLT shall not communicate about the subject of the representation with another party~~
24 ~~in the matter.~~

25 **Comment**

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1 [1] ~~Paragraph (a) of this Rule was adapted from Lawyer RPC 4.3 with no substantive~~
2 changes and applies to LLLTs analogously.

3 [2] [Reserved.] ~~Paragraph (b) of this Rule does not appear in the Lawyer RPC. It derives~~
4 ~~from the limitations on the authorized scope of an LLLT's practice under APR 28(H)(6). See~~
5 ~~Comment [1] to Rule 4.2 for a discussion of the implications of APR 28(H)(6).~~

6 [3] The client of an LLLT is an unrepresented person for purposes of Lawyer RPC 4.2 and
7 4.3. ~~The definition of an LLLT in APR 28(B)(4) clarifies that an LLLT does not represent a client~~
8 ~~in court proceedings or negotiations, but provides limited legal assistance to a pro se client.~~

9 [4] ~~Although an LLLT is strictly prohibited by paragraph (b) from communicating with a~~
10 ~~party about the subject matter of the LLLT's representation, an~~ An LLLT may have occasion to
11 communicate directly with a nonparty who is assisted by another LLLT. A risk of unwarranted
12 intrusion into a privileged relationship may arise when an LLLT deals with a person who is
13 assisted by another LLLT. Client-LLLT communications, however, are privileged to the same
14 extent as client-lawyer communications. *See* APR 28(K)(3). An LLLT's ethical duty of
15 confidentiality further protects the LLLT client's right to confidentiality in that professional
16 relationship. *See* LLLT RPC 1.6(a). When dealing with a person who is assisted by another LLLT,
17 an LLLT must respect these legal rights that protect the client-LLLT relationship.

18 **RULE 5.4 PROFESSIONAL INDEPENDENCE OF AN LLLT**

19 **(a)** An LLLT or LLLT firm shall not share legal fees with anyone who is not an ~~non~~-LLLT,
20 except that:

21 (1)-(2) [NO CHANGES]

22 (3) an LLLT or LLLT firm may include ~~non-LLLT~~ employees who are not LLLTs in
23 a compensation or retirement plan, even though the plan is based in whole or in
24 part on a profit-sharing arrangement; and

25 (4)-(5) [NO CHANGES]

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1 (b) An LLLT shall not form a partnership with ~~a non-LLLT~~ anyone who is not an LLLT if any
2 of the activities of the partnership consist of the practice of law.

3 (c) [NO CHANGES]

4 (d) An LLLT shall not practice with or in the form of a professional corporation or association
5 authorized to practice law for a profit, if:

6 (1) ~~a non-LLLT~~ person who is not an LLLT owns any interest therein, except that a
7 fiduciary representative of the estate of an LLLT may hold the stock or interest of
8 the LLLT for a reasonable time during administration;

9 (2) a person who is not an LLLT ~~non-LLLT~~ is a corporate director or officer (other
10 than as secretary or treasurer) thereof or occupies the position of similar
11 responsibility in any form of association other than a corporation; or

12 (3) a person who is not an LLLT ~~non-LLLT~~ has the right to direct or control the
13 professional judgment of an LLLT.

14 **Comment**

15 [1] This Rule was adapted from Lawyer RPC 5.4 with no substantive changes except to
16 change references to a “nonlawyer” to “person who is not an LLLT ~~non-LLLT~~” to avoid
17 confusion. It applies to LLLTs analogously.

18 [2] ~~Notwithstanding Rule 5.4 does not prohibit,~~ lawyers and LLLTs may from sharing fees
19 and forming business structures to the extent permitted by Rule 5.9.

20 **RULE 5.5 UNAUTHORIZED PRACTICE OF LAW**

21 [NO CHANGES]

22 **Comment**

23 [1] Lawyer RPC 5.5(a) expresses the basic prohibition on a legal practitioner practicing law
24 in a jurisdiction where that individual is not specifically licensed or otherwise authorized to
25 practice law. It reflects the general notion (enforced through criminal-legal prohibitions and
26 other law) that legal services may only be provided by those licensed to do so. This limitation on

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1 the ability to practice law is designed to protect the public against the rendition of legal services
2 by unqualified persons. *See* Comment [2] to Lawyer RPC 5.5.

3 As applied to LLLTs, this principle should apply with equal force. An actively licensed
4 LLLT should practice law as an LLLT only in a jurisdiction where he or she is licensed to do so,
5 i.e., Washington State. An LLLT must not practice law in a jurisdiction where he or she is not
6 authorized to do so. Unless and until other jurisdictions authorize Washington-licensed LLLTs
7 to practice law, it will be unethical under this Rule for the LLLT to provide or attempt to provide
8 legal services extraterritorially. Relatedly, it is unethical to assist anyone in activities that
9 constitute the unauthorized practice of law in any jurisdiction. *See also* APR 28(H)(76)
10 (prohibiting an LLLT from providing services to a client in connection with a legal matter in
11 another state unless permitted by the laws of that state to perform the services for the client).

12 [2] Lawyer RPC 5.5(b) through (d) define the circumstances in which lawyers can practice in
13 Washington despite being unlicensed here. For example, lawyers actively licensed elsewhere
14 may provide services on a temporary basis in Washington in association with a lawyer admitted
15 to practice here or when the lawyer's activities "arise out of or are reasonably related to the
16 lawyer's practice in his or her home jurisdiction." These provisions also recognize that certain
17 non-Washington-licensed lawyers may practice here on more than a temporary basis (e.g.,
18 lawyers providing services authorized by federal law), and otherwise prohibit non-Washington-
19 licensed lawyers from establishing a systematic and continuous presence in Washington for the
20 practice of law.

21 These provisions are, at this time, unnecessary in the LLLT RPC because there are no
22 limited licenses ~~programs~~ in other jurisdictions tantamount to Washington's LLLT rules and no
23 need to authorize ~~nonlawyers~~ limited license practitioners in other jurisdictions to practice law in
24 Washington, either temporarily or on an ongoing basis. For this reason, paragraphs (b) through
25 (d) are reserved.

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**RULE 8.1 ~~LIMITED LICENSE~~ LICENSING, ADMISSION, AND DISCIPLINARY
MATTERS**

An applicant for an LLLT license~~limited licensure~~, or an LLLT in connection with an application for limited licensure or reinstatement application or , or admission to the Bar~~lawyer's bar admission~~, or a disciplinary matter involving a legal practitioner in connection with a lawyer~~or LLLT disciplinary matter~~, shall not:

(a)-(b) [NO CHANGES]

Comment

[1] This Rule was adapted from Lawyer RPC 8.1 with no substantive changes, ~~except to reflect the difference between admission to the Bar (for a lawyer) and limited licensure (for an LLLT).~~ This Rule applies to LLLTs analogously.

RULE 8.4 MISCONDUCT

It is professional misconduct for an LLLT to:

(a)-(k) [NO CHANGES]

(l) violate a duty or sanction imposed by or under the ~~LLLTC~~ RECELLTC in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ~~LLLTC~~ RECELLTC 1.5;

(m)-(o) [NO CHANGES]

Comment

[NO CHANGES]