

REPORT OF THE FAMILY LAW SUBCOMMITTEE OF THE PRACTICE OF LAW BOARD

Sub committee members: Rita L. Bender, Attorney, and Howard H. Marshack, Attorney, co-chairs; Commissioner Scott Collier; Casey Trupin, Attorney; Betty Gould, Thurston County Court Clerk; Gail Hammer, Gonzaga University Law School; Cheri Cosper, Paralegal; Michele Storms, Executive Director, William H. Gates Public Service Law Scholarship Program

The Family Law Subcommittee task was to examine whether a legal technician pilot project could effectively be undertaken in the area of family law. We examined the substantive areas of practice, recommended restrictions on such practice, the siting of a pilot project, and whether the project we would recommend would address unmet legal needs.

Accordingly, we looked first at the question of unmet need. The starting point was the Civil Legal Needs Study, which points to family law as one of the areas of severe unmet need. Furthermore, members of the subcommittee have first hand knowledge of the need, as the subcommittee includes a court commissioner, a Superior Court clerk, a legal services attorney and a legal services paralegal, two law school educators, and two family law attorneys in private practice. Each of the committee members is of the strong belief that trained persons, tested for their knowledge in the area of practice, and properly limited in the scope of such practice, will be able to provide significant relief to pro se litigants attempting to thread their way through the complex of laws, court rules and procedures which confront them.

We determined that a pilot project could be structured to permit practice in areas under RCW Title 26, including Non-Parental Custody, Dissolution, and Parentage. We are of the opinion that certain restrictions upon practice should be imposed. Where the following issues are present in a case, the legal technician would be required to refer the client to an attorney:

- Indian Child Welfare Act
- Disestablishment or rescission of parenting acknowledgement
- Interstate custody—UCCJEA unless neither of the parents continue to reside in the state issuing the prior order
- Transfer of real estate
- Retirement benefits and Qualified Domestic Relations Orders
- Division of business property
- Active service military respondents

We heard numerous comments from public forums and emails in which some practitioners felt that domestic violence was an area in which the client required the services of a specially trained paralegal or attorney, and therefore legal technicians should not serve such clients. On the other hand, we heard from others who felt that the need is very great, and that sensitivity to domestic violence issues could be part of the training for the legal technician. We opted not to restrict legal technician practice in this area, but we would expect that training and examination of the technicians would address domestic violence and abuse.

We have concern that a pilot program will be hard to establish and measure. For one thing, it may be difficult to find qualified people who are willing to direct their energies into starting a service which may not be authorized to continue beyond the pilot phase. For another, the costs of the training and testing, as well as establishing an office, may prove prohibitive.

To meet some of these concerns, we recommend that the individuals recruited to commence the program might be people who have graduated from a paralegal training program, and presently working in a legal services program or other entity serving low income clients. They would have the legal training as well as knowledge of the particular sensitivities necessary to work with clients who may lack educational background as well as financial means. We suggest that the pilot program be established in an existing non-profit agency which does not presently provide legal advice or assistance. Such an agency might benefit from having the ability to provide services to its clients, and the legal technicians would benefit from having existing clientele, rather than having to do their own community outreach. Such sites may also have the advantage of more directly targeting lower income people, most in need of legal technician assistance.

Arrangements might be made for reduced cost of office space, telephone reception, and other office amenities. Of course, the offices would need to provide for privacy, both for the clients and for any files or records. Since most non-profits are required to undertake detailed bookkeeping for their funding sources, the attribution of costs of office rent, phone, equipment usage to the pilot project should not be an insurmountable problem.

These costs could be compared to retail market costs for purposes of studying the cost effectiveness of the program.

At the end of the pilot project, it could be that the non-profit partnership model would continue, at least in some areas of practice, while others might be most amenable to “stand alone” offices as additional practice areas are considered for inclusion in the legal technician rule.