

LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD

UPDATE: January 2017

Outreach & Press

Press:

- October 25, 2017: [LLLT working group advises against implementing program](#) by Joe Menden, State Bar of Montana
- December 1, 2017: [How to Leverage Technology to Democratize \(And Simplify\) Access to Legal Protection](#) by Jeff Bell. Forbes
- December 8, 2017: [The limited license legal technician is the way of the future of law](#) by Mary Juetten. ABA Journal
- December 8, 2017: [Will More States Adopt Limited License Legal Technician Programs?](#) By Teresa Lo. JDJournal
- December 11, 2017: [Law Society to Widen scope of Family Law](#) by Mallory Hendry and Alex Robinson. Law Times
- January 1, 2018: [Vancouver woman is first Limited License Legal Technician in Clark County](#) by Jessica Prokop. The Columbian
- January 12, 2018: [When UPL accusations against lawyer paraprofessionals are just protectionism](#) by Mary Juetten. ABA Journal

Recent Events:

- December 13, 2018: Webinar for the National Organization of Bar Counsel. Steve Crossland, Doug Ende, and Paula Littlewood.
- December 20, 2017: Call with Utah representative regarding the development of their Paralegal Practitioner license. Steve Crossland, Jean McElroy and Renata Garcia.

Upcoming Events:

- TBD: KCBA LLLT Clinic Training
- February 7, 2018: NALs presentation. Christy Carpenter

Statistics & Other Events

- Number of current LLLTs: 27
- 2 LLLTs are inactive
- LLLT Exam: February 26, 2018

Meetings

Recent:



- December 6, 2017: Professional Responsibility Committee Meeting
- December 14, 2017: New Practice Area Committee Meeting
- December 14, 2017: LLLT Board Meeting
- January 5, 2018: LLLT Family Law Exam Workgroup Meeting
- January 17, 2018: LLLT Family Law Exam Workgroup Meeting
- January 18, 2018: New Practice Area Committee Meeting

Upcoming:

- January 25, 2018: MentorLink Mixer
- February 15, 2018: New Practice Area Committee Meeting
- February 15, 2018: LLLT Board Meeting



LIMITED LICENSE LEGAL TECHNICIAN (LLLT) BOARD
Meeting Minutes for December 14, 2017

Washington State Bar Association
1325 Fourth Avenue – Suite 600
Seattle, Washington 98101
1:30 p.m. to 4:30 p.m.

Attending in person: Sarah Bove (LLLT 124), Brenda Cothary, Steve Crossland (LLLT Board Chair), Greg Dallaire, Nancy Ivarinen, Genevieve Mann, and Jennifer Petersen.

Attending remotely: Laura Genoves (LLLT 122), Kendra Hodgson (Ex Officio Member), Geoff Revelle (ATJ Board Liaison), and Amy Riedel.

WSBA Liaison and Staff in Attendance: Renata de Carvalho Garcia (Innovative Licensing Programs Manager), Jean McElroy (Chief Regulatory Counsel), and Joe Terrenzio (LLLT Program Lead).

Call to Order/Preliminary Matters

The meeting was called to order at 1:35 pm.

Starting in January LLLT Board meetings will be scheduled from 1:00-4:00 pm.

- **Outreach Update**

Outreach updates were provided. Board Member Greg Dallaire shared that he has heard interest in the LLLT program from people he spoke with while in Chicago. Board Member Jen Petersen shared that the National Federation of Paralegal Associations will have their 2018 meeting in Seattle; Board Member Brenda Cothary is the CLE coordinator for the event and has asked Steve Crossland and Paula Littlewood to speak. Sarah Bove shared that she is investigating getting LLLTs listed on the federal ONET. Renata Garcia shared an opportunity to interact with the MentorLink program on January 25, 2018. Board Chair Steve Crossland shared an update on a recent meeting of the National Organization of Bar Counsel.

- **Approval of Meeting Minutes**

The November 2017 meeting minutes were approved.

New Practice Area – Immigration Subcommittee Report



New Practice Area Committee Chair Greg Dallaire provided a summary of the December 14, 2017 immigration discussion. The subcommittee focused on family based petitions and discussed whether LLLTs can do all of the necessary processes without law school education or the supervision of or access to an attorney. The subcommittee did not reach a conclusion on family based petitions but is open to further discussion on the subject area.

The Board discussed the challenges with immigration as a possible practice area and how to get accurate unbiased information and cultivate support in the immigration services community.

New Practice Area - Personal Services Subcommittee Report

Subcommittee Chair Nancy Ivarinen provided a report on the December 14, 2017 Consumer Money and Debt practice area meeting. The subcommittee reviewed the potential parts of the practice area and discussed scope limitations including jurisdictional limits of \$100,000 and only providing services to the original creditor in debt collection matters. The subcommittee decided to add wage claims and is considering adding helping clients with administrative licenses. The subcommittee plans to provide a written recommendation to the LLLT Board in January 2018.

The subcommittee also started brainstorming what the next practice area could be including guardianships, SHIBA issues, and landlord-tenant matters.

Nominations Committee Report

The Board discussed the need to fill the vacant public member spot. Brenda Cothary and Nancy Ivarinen shared that they are working to recruit a public member. The Board also discussed Board terms and when the next openings will come up for future recruitment planning. Renata Garcia shared an email drafted by Joe Terrenzio for outreach to potential public Board members. The email will be sent out.

The Board also discussed the appointment status of Stephanie Delaney and Sarah Bove, both of whom are still pending Court approval.

LLLT RPC Discussion

Greg Dallaire moved to approve the proposed amendments to the LLLT RPC. The proposed amendments were unanimously approved.

Adjournment and Next Meeting

The meeting was adjourned 3:15 pm. The next meeting will be held on January 18 at 1:00 pm.



MEMORANDUM

TO: CPE Committee

FROM: Trust Account Signatory Subcommittee
Colin Folawn and Anne Seidel

RE: RPC 1.15A(h)(9)

DATE: December 11, 2017

Because there are new members on the CPE who have not received our subcommittee's prior reports, we thought it would be helpful if we explained the background and provided copies of the previous materials.

This subcommittee was formed at the July 6, 2016 meeting based on a question from Charity Anastasio, who at that time was the Practice Management Advisor for WSBA's Law Office Management Assistance Program. She asked whether a lawyer who has retired can keep a trust account open solely for the purpose of receiving periodic payments on behalf of clients. According to the LOMAP Practice Advisor, this issue arises frequently with lawyers who handle social security disability and workers compensation cases. She was concerned that interpreting the RPCs to require a lawyer be on active status to maintain a trust account would either reduce the fees the retiring lawyer would be able to receive or would delay, sometimes inappropriately, the lawyer's retirement. Her emails are included as the first attachment.

The answer to this question depends on the interpretation of RPC 1.15A(h)(9), which states as follows:

(9) Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account. If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

The subcommittee reviewed related RPCs as well as the Rules for Enforcement of Lawyer Conduct (ELC) and determined that the phrase "admitted to practice law" in RPC 1.15A(h)(9) did not have a clear meaning. RPC 1.15A(h)(9) was added to the RPC with the 2006 revisions. Prior to that, nonlawyers were permitted to sign trust account checks. The Trust Account Subcommittee report for Ethics 2003 explained this section as follows:

This is from the ABA Model Rule on Financial Recordkeeping B(1), broadened to allow any lawyer to be an authorized signatory even if the lawyer is not admitted to practice law in Washington. The Subcommittee moved it to this rule from the recordkeeping rule as it is not about recordkeeping.

The change was proposed to provide greater protection against nonlawyers stealing from trust accounts. If a nonlawyer was a signatory on a trust account and stole from the account by writing a check, the lawyer would have no recourse against a bank that cashed the check.

The second attachment is our August 18, 2016 memo with our analysis of the meaning of “a lawyer admitted to practice law”.¹ Among other rules, we noted that ELC 14.2 (Lawyer to Discontinue Practice) states that a suspended or disbarred lawyer is not precluded “from distributing assets held by the lawyer to clients or other persons.” We reasoned that because such assets are typically trust account funds, interpreting RPC 1.15A(h)(9) as permitting only active lawyers to sign trust account checks would be inconsistent with ELC 14.2.

The subcommittee concluded that because the phrase “a lawyer admitted to practice law” was not clear, its meaning should be clarified either by changing the rule itself or through a comment. The subcommittee recommended that the phrase be clarified consistent with ELC 14.2 and permit lawyers who are not on active status to sign trust account checks as that does not constitute the practice of law.

Based on feedback from the CPE at the August 2016 meeting, the subcommittee or individual members spoke with the WSBA auditor, an L&I practitioner, and Elijah Forde, who was the former BOG liaison to the CPE and who had purchased an L&I practice from a retiring lawyer. In April 2017, the subcommittee proposed that the phrase “admitted to practice law” be removed from RPC 1.15A(h)(9). The subcommittee also addressed the last sentence of RPC 1.15A(h)(9), which states, “If a lawyer is associated in a practice with one or more LLLT’s, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.” The subcommittee questioned why the rule permitted a LLLT who was not a member of the firm to sign a trust account check when LLLTs who are members of the firm can only co-sign. Doug Ende informed us that was not the intent of this sentence.

The subcommittee therefore considered possible changes to the last sentence, including whether to clarify the rule so it applied regardless of whether the LLLT was associated in a practice with the lawyer and whether to limit the LLLT’s authority to sign trust account checks to cases within the LLLT’s license. We concluded that the last sentence of RPC 1.15A(h)(9) should be eliminated for several reasons. First, the two-signature requirement would not be enforced by a bank, so it would do nothing to prevent theft by a LLLT who was a signatory on the account. Second, unlike a nonlawyer, a LLLT has a limited license so could be disciplined for any irregularities in issuing checks from a lawyer’s trust account (although we believed the current LLLT RPCs could be improved as far as a LLLT’s duty of recordkeeping). Third, we believed that permitting a LLLT to be a signatory on a trust account would make LLLTs more attractive to law firms and thereby help integrate them into the profession. We noted that permitting them to issue trust account checks on any firm case would be consistent with RPC 5.9(a)(1), which allows LLLTs to share fees from cases outside their limited licenses. We did not see why LLLTs should be permitted to share fees from cases outside their limited area of practice but not be

¹ This Memo also addresses the related issue of the duties of a lawyer who takes over a practice from a retired attorney and receives checks on behalf of that attorney and/or that attorney’s clients. We eventually determined that we could not issue an advisory opinion on this issue because it was dependent on the primary issue of the meaning of “a lawyer authorized to practice law” in RPC 1.15A(h)(9).

trusted with disbursing funds from those cases. The April 14, 2017 Memo is the third attachment.

These issues were discussed at the April 2017 CPE meeting and the subcommittee was asked to confer with ODC about its approach to clarifying whether a lawyer must be on active status to sign a trust account check. The CPE also decided to get feedback from the LLLT Board about the LLLT issue.

Our subcommittee received a draft rule from ODC in August and discussed it by conference call with Doug and two auditors. The subcommittee members described concerns with several aspects of the draft rule. The auditors indicated that this issue came up only rarely. The subcommittee provided ODC's draft to the CPE at the August 2017 meeting, along with Doug's comments that ODC was not advocating for its adoption or even arguing that a rule change is needed. Our August 21, 2017 memo to the subcommittee with ODC's draft rule is the fourth attachment.

At the August meeting, the draft memo to the LLLT Board was approved but no action was taken on whether to clarify the meaning of "lawyer admitted to practice" in RPC 1.15A(h)(9).

The LLLT Board informed Don that it was not going to add anything about the LLLT issue and agreed with Doug Ende's approach. The fifth attachment contains emails from Don Curran, including the email from Doug that the LLLT Board was referencing. Don recommended we consider Advisory Opinion 2156, which addressed whether LPOs could sign trust account checks. The subcommittee looked at that opinion in its initial work, but determined that it would not apply to LLLTs because the opinion hinged in part on LPOs being escrow officers licensed by the Department of Finance. We believe that absent a specific authorization in RPC 1.15A(h)(9), a LLLT cannot sign a trust account check. Don's email containing Advisory Opinion 2156 is also attached.

Our subcommittee, now reduced to two, discussed this additional information. We both continue to believe that the best solution would be to revise RPC 1.15A(h)(9) to remove the phrase "admitted to practice" and eliminate the last sentence for the reasons we have previously noted.

We considered the additional information about whether an inactive lawyer should be permitted to sign trust account checks. We continue to recommend that they be permitted to do so. Signing a trust account check is not the practice of law and we do not wish to forbid or discourage lawyers who are not on active status from disbursing trust funds that belong to others. We understand that there is a concern that our proposal will lead to trust accounts that are not subject to random audits, but that is almost certainly already the case now. Given that nonlawyers used to be allowed to sign trust account checks, we do not believe there would be harm from permitting inactive lawyers to do so. As a practical matter, from the information we obtained from L&I lawyers, we do not believe a lawyer could be on inactive status and continue to receive L&I payments on her former clients' behalf unless the lawyer is associated with an active lawyer. This is because there are continuing obligations to these clients that an inactive lawyer would be unable to fulfill and if the client becomes dissatisfied, the client can ask L&I to change the address to which the check is mailed.

As far as the LLLT issue, in light of the LLLT Board's apparent view that LLLTs should not be permitted to be signatories on lawyer trust accounts, we support either eliminating the last sentence of RPC 1.15A(h)(9), which would allow LLLTs to be signatories on lawyer trust accounts to the same extent as a lawyer, or alternatively, removing all references to LLLTs from RPC 1.15A(h)(9). In our view, no purpose is served by allowing LLLTs to be signatories but not allowing them to sign a check alone. This is confusing and will undoubtedly lead to lawyers unwittingly violating the rule because they do not understand that the LLLT is not a signatory on the account as that term is generally understood. The probability that a firm would want a LLLT to be a signatory on a trust account simply to provide a second signature appears to be extremely remote, and there would be little harm to such a firm if the rule did not permit it to do so. This alternative would entail deleting the reference to LLLT from RPC 1.15A(h)(9) and eliminating comment [22].

Removing LLLTs from RPC 1.15A would not change how LLLTs handle client funds. LLLTs who are not associated in a firm with lawyers would still be able to have a trust account under LLLT RPC 1.15A. Similarly, a law firm that employs one or more LLLTs would still be able to hold funds relating to the LLLTs' clients in its trust account. As is now the case, a lawyer would have to sign any check disbursing those funds.

Attachments

From: Charity Anastasio
Sent: Wednesday, June 15, 2016 3:58 PM
To: Jeanne Marie Clavere
Subject: Trust Account Retired Lawyer issue

Hi Jeanne Marie,

I don't know where the CPE is with the issue of trust account ownership for retired lawyers that want to go inactive, but I wanted to let you know that I had another call today of a Workers Comp lawyer who retired and had that same issue. If he goes inactive can he continue to have a trust account for the sole purpose of receiving L&I payments, then distributed a portion to client and a portion to him for the work he's already done? I don't know, but it seems unfair to me to require them to have to contract with another active lawyer to get paid for work already completed.

Thank you!

Best,

Charity Anastasio
Practice Management Advisor
Law Office Management Assistance Program
Washington State Bar Association
206-733-5949 • charitya@wsba.org

From: [Jeanne Marie Clavere](#)
To: [Charity Anastasio](#); mark@frllp.com
Cc: [Darlene Neumann](#)
Subject: RE: Retiring Lawyer Trust Account Issue - CPE consideration appeal
Date: Wednesday, November 25, 2015 4:42:20 PM

Thanks for this Charity. As you know, the Committee on Professional Ethics is currently paused in their work and will receive an update on this after the first of the year. In the meantime, however, I am sending your communication to chair Mark Fucile so that this request can be considered for the Advisory Opinion queue.

Have a great holiday weekend, j



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From: Charity Anastasio
Sent: Monday, November 16, 2015 12:20 PM
To: Jeanne Marie Clavere
Subject: Retiring Lawyer Trust Account Issue - CPE consideration appeal

Hello Jeanne Marie,

Below is my question for the **Committee on Professional Ethics:**

Members often call the Law Office Management Assistance Program (LOMAP) because they are wrapping up their solo law office and have questions about how to do so properly. A recurring question has come up for retiring lawyers who do workers compensation or social security benefits work. In these practice areas (and possibly in others that I am unaware of) a lawyer works on a contingent basis and is paid in small amounts from the regular payments the client wins after judgement. The payor agency will only permit one payment be made (not split it into the lawyer's portion and the client's portion) so most lawyers in these practice areas have the payment made to their trust account and then distribute to their clients the portion the client is entitled to every month for years, sometimes for the client's lifetime. When a lawyer retires from the practice of law she is often still entitled to a portion of these payments. **Can the lawyer keep the trust account open for this sole purpose of receiving these funds**

even though she is no longer a practicing lawyer?

The RPCs say that only a lawyer can be on a trust account (IOLTA), but does not appear to speak to whether that lawyer must be in active status. The way the Practice Management Advisor in LOMAP have interrupted the Rules of Professional Conduct (RPC) so far is that the lawyer cannot, and that she must either contract with another lawyer with a similar practice area to receive those funds and make the dispersal to client and lawyer, stay in active practice, or give up the fees and have the client receive payments directly from the agency. The first option usually means that the lawyer must split the fee with the new receiving lawyer, and enter into a contract, creating new issues. The second option delays retirement, sometimes inappropriately. The third option arguably results in an injury to the lawyer who is entitled to a fee she is no longer able to collect.

The question is being asked at this time because 50% of the WSBA membership is at age or retirement or will reach it within the next seven years. This issue is expected to come up more frequently and it would be extremely helpful to have an Advisory Opinion to guide members in correct action on this point.

Thank you for your time and consideration of this matter.

Best regards,

Charity Anastasio

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Next presenting at:

**Seattle University Low Bono Incubator Program (Seattle – November 17) Google-icious:
Harnessing Google Services for the Law Office**
Snohomish County Family Law Section (Everett – December 14) Succession Planning 101
Washington State Bar Association (Seattle/Webcast – December 18) Metadata 101

From: [Charity Anastasio](#)
To: [Jeanne Marie Clavere](#)
Cc: [Darlene Neumann](#)
Subject: RE: YCPE submission "supplemental materials"
Date: Friday, January 22, 2016 4:58:04 PM

Hi Jeanne Marie,

A bit ago you asked if I had talked with ODC about the IOLTA and retiring lawyers from practice areas that have trickling in payments issue. I did and the full sort or back and forth we had about it is below, with who I talked to. Would you like me to write this more formally, or is this sufficient for your purposes?

If more formally, I'd probably just say that I talked with the auditor and counsel in ODC and that they expressed there is no clear guidance and recommended conservative advice of "no" unless an advisory opinion indicated otherwise. Is that what you are looking for?

Best regards,

Charity Anastasio

Practice Management Advisor

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Next presenting at:

Hang Your Shingle (Seattle University – January 29) Office Systems and Procedures

Eastside Legal Assistance Program (Bellevue – February 12) Creating a Winning Website

From: Charity Anastasio
Sent: Tuesday, August 25, 2015 11:01 AM
To: Jeanne Marie Clavere
Subject: RE: Your Recent Inquiry

Yes, I agree that it is a bit forced. The thing I like about it though is that it doesn't give her clients a transition to someone who can help them if they do have a legal issue come up with it later, or take into account if she retires and declines quickly. It stays in line with that "please plan your succession" position that we reiterate regularly.

The thing I don't love about it is that she only has a handful of clients and she is right that the finding of a lawyer to take over route is cumbersome and requires work. She should have a solid agreement, not just a handshake. What if she doesn't have anyone she trusts in her small town? I have sympathy. As Randy pointed out, it's really L&I creating this difficulty by refusing to issue two checks like the Social Security Administration does.

I'd love to talk about that!

Best regards,

Charity Anastasio

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Next presenting at:

Leaving the Law without Losing (Seattle & Webcast September 1) Compensation Plans and Frank Conversations

From: Jeanne Marie Clavere
Sent: Tuesday, August 25, 2015 10:51 AM
To: Charity Anastasio
Subject: RE: Your Recent Inquiry

Thanks and interesting! The interpretation of “admitted to practice” is nebulous based on the different allowances of attorney status’s as IOLTA signatories. I like the more conservative approach but still think that Randy’s analysis is “forced”.

Let’s talk about this as a possible CPE opinion! j



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From: Charity Anastasio
Sent: Tuesday, August 25, 2015 10:45 AM
To: Jeanne Marie Clavere
Subject: RE: Your Recent Inquiry

Hi Jeanne Marie,

I called Rita who said her gut said they should be active status, and that she thought Randy Beitel would be a good resource. I called Randy and we meandered through some of the ELCs and RPC 1.15A until we concluded that yes, she must be active status. This is how I summed it up for the member:

On your question about the trust account, I've done some digging and consulted some who know the rules very well. There is no advisory opinion or rule specifically stating what status is required to maintain an IOLTA excepting RPC 1.15(h)(9) which says "Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account." I think admitted to practice implies active status. Emeritus status can practice, but only pro bono work at qualified agencies and therefore would not be able to have her own trust account. Suspended lawyers are permitted to continue to be a signer on an IOLTA, but they cannot take any new funds into the account during the suspension. So, unfortunately I think the answer is no, there is no status besides active where you can keep the trust account.

I think this would be an interesting issue for the CPE to take up, if there was any energy behind it. Seems like one that will be on many peoples' minds as they prepare to retire.

Best regards,

Charity Anastasio

Practice Management Advisor

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Next presenting at:

Leaving the Law without Losing (Seattle & Webcast September 1) Compensation Plans and Frank Conversations

From: Jeanne Marie Clavere
Sent: Monday, August 24, 2015 3:22 PM
To: Charity Anastasio
Subject: Your Recent Inquiry

About pension payments into/payouts from a retiring attorney's IOLTA. Let me know what Rita and RSD have to say when you get a chance to vet this. thanks! j



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attachments. If you received this e-mail in error, please notify me and delete this message. Thank you.

FROM Trust Account Signatory Subcommittee (Colin Folawn, Anne Seidel, Ted Stiles)
TO: CPE
RE: Inquiry about retired lawyer signing trust account checks
DATE: August 18, 2016

We recommend that the CPE propose a rule change that addresses whether a lawyer who is not on active status can sign a trust account check. We seek the full committee's guidance on whether the subcommittee should draft an opinion on the related question of a lawyer who has taken over a retired lawyer's practice and is receiving checks on behalf of the retired lawyer and that lawyer's former clients.

1. Lawyer not on an active status signing trust account check

RPC 1.15A(h)(9) states, "Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the [trust] account."

The rules are simply not clear enough about what is meant by "a lawyer admitted to practice." Comment 7 to RPC 5.5 states, "The word "admitted" in paragraphs (c), (d), and (e) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status." The fact that this appears as a comment to a single rule could be interpreted to mean that this definition of "authorized to practice" applies only to RPC 5.5. Or alternatively, it may provide the definition for all the RPCs.

On the other hand, the Rules for Enforcement of Lawyer Conduct (ELC) distinguish between being "admitted" and "authorized" to practice. Under ELC 1.2,

Except as provided in RPC 8.5(c), any lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction and these Rules for Enforcement of Lawyer Conduct, regardless of where the lawyer's conduct occurs. . . . Disciplinary authority exists regardless of the lawyer's residency or authority to practice law in this state.

In addition, ELC 14.2 (Lawyer to Discontinue Practice) explicitly states that it does not preclude a suspended or disbarred lawyer "from disbursing assets held by the lawyer to clients or other persons."¹ Typically the only "assets" a lawyer holds are funds in the trust account. There would be no point for ELC 14.2 to explicitly permit the suspended or disbarred lawyer to disburse these funds if doing so were prohibited by RPC 1.15A.

Because there is no clear answer to what is meant by "admitted to practice" in RPC 1.15A(h)(9), the Committee believes a rule change would be the best solution. If the Committee agrees with the subcommittee's recommendation, the subcommittee will make a recommendation at the next meeting about the proposed change (including whether it will be by comment or change to the

¹ The rule also applies to lawyers who have resigned in lieu of discipline or have been transferred to disability inactive status.

rule). Our proposal will be consistent with ELC 14.2 and permit lawyers who are not on active status to sign trust account checks as that does not constitute the practice of law.

2. Duties of lawyer who has taken over a retired lawyer's practice and is receiving checks on behalf of the retired lawyer and that lawyer's clients

The inquiry was based on a question to LOMAP from a retiring L&I lawyer. At the last CPE meeting, we discussed the related issues that are presented to lawyers who have purchased L&I practices from a lawyer who then resigns. The purchasing lawyer has agreed to receive pension checks on behalf of the retiring lawyer and distribute them to the retiring lawyer and that lawyer's former clients (often for a small fee per check). This presents the following possible issues for the purchasing lawyer.

First, RPC 1.15A applies to property of clients and third parties in a lawyer's possession "in connection with a representation." Since the purchasing lawyer does not have an attorney-client relationship with the former clients of the seller, are these checks "in connection with a representation"? If not, is the purchasing lawyer permitted to deposit them in her trust account? Second, by assisting a resigned lawyer in receiving these checks, is the purchasing lawyer assisting a resigned lawyer in holding herself out as authorized to practice?

The subcommittee would need to speak to an L&I lawyer to obtain additional background information. At this point, we would like feedback from the full committee as to whether an advisory opinion on this topic is warranted.

FROM Trust Account Signatory Subcommittee (Colin Folawn, Anne Seidel, Ted Stiles)
TO: CPE
RE: Retired lawyer signing trust account checks (proposed rule change)
DATE: April 14, 2017

As discussed in our August 18, 2016 memo, our subcommittee concluded that the RPCs are not clear about whether a lawyer who is not on active status can sign a trust account check. We are therefore proposing a rule change to clarify this. We are also proposing a rule change to address an incongruity in the second sentence of RPC 1.15A(h)(9) regarding LLLTs.

Background of RPC 1.15A(h)(9)

RPC 1.15A(h)(9) states:

- (h) A lawyer must comply with the following for all trust accounts:
...
 - (9) Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account. If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

Before the 2006 RPC amendments, anyone could be a signatory on a trust account and law firms frequently had bookkeepers or other nonlawyer staff as signatories. Ethics 2003 proposed that RPC 1.15A restrict signatories to lawyers to protect against theft by nonlawyers employed at a law firm. There is no discussion in the legislative history of what is meant by “lawyer admitted to practice.”

Proposed rule change regarding lawyers as signatories on trust accounts

The following proposal simply removes the requirement that a lawyer be “admitted to practice law” to be a signatory on a trust account. The proposal would make RPC 1.15A consistent with ELC 14.2. That rule prohibits suspended and disbarred lawyers, as well as those who have resigned in lieu or been transferred to disability inactive status, from continuing to practice law. However, ELC 14.2(b) states that the prohibition “does not preclude [such a lawyer] from disbursing assets held by the lawyer to clients.” If the ELC does not preclude a suspended or disbarred lawyer from disbursing trust account funds to clients, RPC 1.15A should similarly permit lawyers not on active status to sign trust account checks.

This change would mean that lawyers and LLLTs are treated the same as far as their ability to be signatories on a trust account. As currently written, an LLLT does not need to be “admitted” to be a signatory on a trust account.

The proposed change is as follows:

- (h) A lawyer must comply with the following for all trust accounts:
...

(9) Only a lawyer ~~admitted to practice law~~ or an LLLT may be an authorized signatory on the account. . . .

Additional comment:

Only a lawyer or LLLT on active status may open a trust account. A lawyer or LLLT may continue to be an authorized signatory on a trust account even if no longer on active status. However, a lawyer who is not on active status may not engage in the unauthorized practice of law and may not use the trust account if under the particular circumstances doing so would imply that the lawyer is authorized to practice law. *See* RPC 5.5(a), (b)(2).

Ted has the following concerns about the second sentence of the proposed comment, which he would like the full committee to discuss at the next meeting:

As drafted, the comment would appear to permit an inactive lawyer to maintain a trust account for an indefinite period of time. In the case of an L&I attorney who collects contingent fees from periodic payments, and who retires while the payment stream is running, the comment would allow the inactive lawyer to continue to maintain the account for years, if not a decade or more, considering that a pension award may run for the life of the pensioner, and in some circumstances for the life of the pensioner's spouse. The Association apparently is not set up to monitor or audit trust accounts after a lawyer becomes inactive. Should we endorse the type of situation in which an inactive lawyer is handling funds belonging to others, but is free from Association audit oversight? Also questions regarding the IOLTA requirements—applicable to inactive lawyers? Will banks agree to let inactive lawyers maintain IOLTA accounts?

Proposed rule change regarding LLLTs as signatories on trust accounts

The second sentence of RPC 1.15A(h)(9) reads, "If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm." This means that an LLLT who is not part of a law firm would be able to sign a check alone, while an LLLT who is part of that firm would not be permitted to do so. According to Doug Ende, this was not the intent of that sentence.

Our subcommittee considered whether to propose rewording this provision to prevent all LLLTs from signing trust account checks without a lawyer's additional signature. We do not believe that is necessary. LLLTs are licensed law professionals, so an LLLT who stole from a trust account would be subject to discipline. We therefore do not believe permitting LLLTs to sign trust account checks presents the same risk as permitting nonlawyers to do so.

In addition, banks process checks electronically, so it is extremely unlikely that a bank would be able to enforce a two-signature requirement. So if an LLLT is listed as a signatory, the bank would process a check signed by the LLLT alone. The two signature requirement is only an internal control. As such, it would not prevent an LLLT from stealing from the trust account.

Our subcommittee considered whether to limit an LLLT's authority to sign trust account checks to those relating to cases within the LLLT's license. We do not believe such a limitation would be helpful. First, as mentioned above, a bank would not be able to enforce such a restriction so it would not prevent theft from the account. Second, if the LLLT did not handle the trust account appropriately, the LLLT could be subject to discipline (although the current LLLT RPCs could be clearer in that regard if the misconduct is merely recordkeeping). Third, permitting LLLTs to be signatories on lawyer trust accounts will make LLLTs more attractive to law firms and help integrate them into the profession. Finally, allowing LLLTs to issue trust account checks for all matters is consistent with RPC 5.9(a)(1), which permits LLLTs to share fees from cases that are outside their limited licenses.

We recommend that the second sentence of RPC 1.15A(h)(9) be struck. With the two proposed changes, that subsection would read as follows:

(9) Only a lawyer ~~admitted to practice law~~ or an LLLT may be an authorized signatory on the account. ~~If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.~~

FROM Trust Account Signatory Subcommittee (Colin Folawn, Anne Seidel, Ted Stiles)
TO: CPE
RE: Retired lawyer signing trust account checks
DATE: August 21, 2017

Doug Ende sent the subcommittee the attached proposed rule change to address the ambiguity in RPC 1.15A(h)(9) over the meaning of “a lawyer admitted to practice law.” The subcommittee had several concerns about this proposal, including the effect it would have on firms if one signer on the trust account became inactive. We discussed these concerns with Doug and auditors Rita Swanson and Cheryl Heuett on August 18th. At the end of the call, ODC suggested that the subcommittee continue to work on a proposal.

Doug will not be at our meeting on August 25th. He agreed that we could circulate ODC’s draft, but wanted “it to be clear that ODC is not advocating its adoption or even arguing that a rule change is needed; it more represents our regulatory thinking about the infirmities of allowing non-active practitioners to use trust accounts and some rule-based ideas to address those concerns.”

The subcommittee continues to recommend the rule change in our April 14, 2017 memo (attached). Ted no longer has the concern reflected on the second page of that memo.

Attachments

DISCUSSION DRAFT OF POSSIBLE AMENDMENTS TO RPC 1.15A(h)

(9) Only a lawyer or LLLT currently eligible ~~admitted~~ to practice law ~~or an LLLT~~ may be an authorized signer on the account, except as provided in Paragraph 1.15A(h)(10).

(10) A lawyer or LLLT who becomes ineligible to practice law for non-disciplinary reasons may be an authorized signer on a trust account only if:

- (i) the only funds deposited to and disbursed from the trust account are the result of services provided to a client by the lawyer or LLLT while still eligible to practice; and
- (ii) within thirty days of loss of eligibility, the lawyer or LLLT gives written notice to the client on whose behalf payments will be received that the lawyer or LLLT is no longer eligible to practice law, no longer represents the client, and is receiving the payments on behalf of the client for the limited purpose of disbursing those funds according to a pre-existing agreement between the lawyer and the client; and
- (iii) within thirty days of loss of eligibility, the lawyer or LLLT notifies the Association of intent to be an authorized signer on a trust account and agrees to provide the Association with such written declaration or other information as the Association determines is needed to assure that the lawyer or LLLT is complying with RPC 1.15A and 1.15B, including the name of the institution where the funds are deposited, the account number of the trust account, and the lawyer's or LLLT's acknowledgment of compliance with RPC 1.15A and 1.15B.

Comment

[23] For purposes of this rule, the term "eligible to practice law" refers to a lawyer or LLLT who is actively licensed and currently authorized to practice law. A lawyer or LLLT is "ineligible to practice law" if the lawyer or LLLT was admitted to practice law but resigns or becomes administratively suspended or if the lawyer's or LLLT's license status is inactive or otherwise ineligible to practice. Paragraph (10) of this rule does not apply to lawyers or LLLTs who are ineligible to practice for disciplinary reasons, i.e., disbarment, suspension, resignation in lieu of disbarment, transfer to disability inactive status, and the equivalent. For obligations arising from a lawyer's or LLLT's disciplinary suspension, disbarment, resignation in lieu of discipline, or transfer to disability inactive status, see Rules 14.1, 14.2, and 14.3 of the Rules for Enforcement of Lawyer Conduct and the Rules for Enforcement of Limited License Legal Technician Conduct.

FROM Trust Account Signatory Subcommittee (Colin Folawn, Anne Seidel, Ted Stiles)
TO: CPE
RE: Retired lawyer signing trust account checks (proposed rule change)
DATE: April 14, 2017

As discussed in our August 18, 2016 memo, our subcommittee concluded that the RPCs are not clear about whether a lawyer who is not on active status can sign a trust account check. We are therefore proposing a rule change to clarify this. We are also proposing a rule change to address an incongruity in the second sentence of RPC 1.15A(h)(9) regarding LLLTs.

Background of RPC 1.15A(h)(9)

RPC 1.15A(h)(9) states:

(h) A lawyer must comply with the following for all trust accounts:

...

(9) Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account. If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

Before the 2006 RPC amendments, anyone could be a signatory on a trust account and law firms frequently had bookkeepers or other nonlawyer staff as signatories. Ethics 2003 proposed that RPC 1.15A restrict signatories to lawyers to protect against theft by nonlawyers employed at a law firm. There is no discussion in the legislative history of what is meant by “lawyer admitted to practice.”

Proposed rule change regarding lawyers as signatories on trust accounts

The following proposal simply removes the requirement that a lawyer be “admitted to practice law” to be a signatory on a trust account. The proposal would make RPC 1.15A consistent with ELC 14.2. That rule prohibits suspended and disbarred lawyers, as well as those who have resigned in lieu or been transferred to disability inactive status, from continuing to practice law. However, ELC 14.2(b) states that the prohibition “does not preclude [such a lawyer] from disbursing assets held by the lawyer to clients.” If the ELC does not preclude a suspended or disbarred lawyer from disbursing trust account funds to clients, RPC 1.15A should similarly permit lawyers not on active status to sign trust account checks.

This change would mean that lawyers and LLLTs are treated the same as far as their ability to be signatories on a trust account. As currently written, an LLLT does not need to be “admitted” to be a signatory on a trust account.

The proposed change is as follows:

(h) A lawyer must comply with the following for all trust accounts:

...

(9) Only a lawyer ~~admitted to practice law~~ or an LLLT may be an authorized signatory on the account. . . .

Additional comment:

Only a lawyer or LLLT on active status may open a trust account. A lawyer or LLLT may continue to be an authorized signatory on a trust account even if no longer on active status. However, a lawyer who is not on active status may not engage in the unauthorized practice of law and may not use the trust account if under the particular circumstances doing so would imply that the lawyer is authorized to practice law. *See* RPC 5.5(a), (b)(2).

Ted has the following concerns about the second sentence of the proposed comment, which he would like the full committee to discuss at the next meeting:

As drafted, the comment would appear to permit an inactive lawyer to maintain a trust account for an indefinite period of time. In the case of an L&I attorney who collects contingent fees from periodic payments, and who retires while the payment stream is running, the comment would allow the inactive lawyer to continue to maintain the account for years, if not a decade or more, considering that a pension award may run for the life of the pensioner, and in some circumstances for the life of the pensioner's spouse. The Association apparently is not set up to monitor or audit trust accounts after a lawyer becomes inactive. Should we endorse the type of situation in which an inactive lawyer is handling funds belonging to others, but is free from Association audit oversight? Also questions regarding the IOLTA requirements—applicable to inactive lawyers? Will banks agree to let inactive lawyers maintain IOLTA accounts?

Proposed rule change regarding LLLTs as signatories on trust accounts

The second sentence of RPC 1.15A(h)(9) reads, "If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm." This means that an LLLT who is not part of a law firm would be able to sign a check alone, while an LLLT who is part of that firm would not be permitted to do so. According to Doug Ende, this was not the intent of that sentence.

Our subcommittee considered whether to propose rewording this provision to prevent all LLLTs from signing trust account checks without a lawyer's additional signature. We do not believe that is necessary. LLLTs are licensed law professionals, so an LLLT who stole from a trust account would be subject to discipline. We therefore do not believe permitting LLLTs to sign trust account checks presents the same risk as permitting nonlawyers to do so.

In addition, banks process checks electronically, so it is extremely unlikely that a bank would be able to enforce a two-signature requirement. So if an LLLT is listed as a signatory, the bank would process a check signed by the LLLT alone. The two signature requirement is only an internal control. As such, it would not prevent an LLLT from stealing from the trust account.

Our subcommittee considered whether to limit an LLLT's authority to sign trust account checks to those relating to cases within the LLLT's license. We do not believe such a limitation would be helpful. First, as mentioned above, a bank would not be able to enforce such a restriction so it would not prevent theft from the account. Second, if the LLLT did not handle the trust account appropriately, the LLLT could be subject to discipline (although the current LLLT RPCs could be clearer in that regard if the misconduct is merely recordkeeping). Third, permitting LLLTs to be signatories on lawyer trust accounts will make LLLTs more attractive to law firms and help integrate them into the profession. Finally, allowing LLLTs to issue trust account checks for all matters is consistent with RPC 5.9(a)(1), which permits LLLTs to share fees from cases that are outside their limited licenses.

We recommend that the second sentence of RPC 1.15A(h)(9) be struck. With the two proposed changes, that subsection would read as follows:

(9) Only a lawyer ~~admitted to practice law~~ or an LLLT may be an authorized signatory on the account. ~~If a lawyer is associated in a practice with one or more LLLT's, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.~~

Anne Seidel

From: J D. Curran <jdcvlc@dctpw.com>
Sent: Monday, November 6, 2017 1:51 PM
To: anne@anneseidel.com
Cc: cfolawn@schwabe.com; Jeanne Marie Clavere (jeannec@wsba.org); Carlene Neumann (darlenen@wsba.org)
Subject: FW: LLLT - trust accounts
Attachments: RE: Inactive Lawyers (22.7 KB)

Anne and Colin: Below are a string of emails from Steve Crossland and Jean Marie (summarizing the analysis of Doug Ende) regarding the LLLT trust account issue.

Attached is a copy of my email to Doug dated 10-31-17 and his response of 10-31-17 regarding the use of trust accounts by lawyers on inactive status (an issue raised by Ted Stiles in your subcommittee's memo of 4-14-17.)

Please advise whether (1) you intend to suspend issues regarding the LLLTs and (2) if so, whether you can analyze Doug's position in proceeding to finalize your recommendations for presentation to the CPE at its Dec 20th meeting.

Thank you for your cooperation and assistance.

Best,

DON CURRAN
601 West Main Avenue #1212
Spokane, Wa. 99201
509-455-9500

From: Jeanne Marie Clavere [mailto:jeannec@wsba.org]
Sent: Wednesday, November 01, 2017 10:24 AM
To: J D. Curran <jdcvlc@dctpw.com>
Subject: RE: LLLT - trust accounts

Good morning Don! In the below response to you, I see that Steve Crossland referenced an analysis he received from Doug Ende. It is my understanding that at the end of August Steve reached out to Doug after receiving the communication on this issue from Mark Fucile on August 28th, and asked Doug for his impression. (I was not aware of this when you and I chatted last week.)

Doug has shared his email response to Steve and suggested you be included as an "FYI". The substance of Doug's August 29th email to Steve is as follows:

Steve:

The provision at issue was drafted by the LLLT Board's RPC Drafting Committee to address particular concerns in the context of lawyers and LLLTs practicing at the same firm. One concern was that a LLLT should not be the sole signatory on a trust account at such a firm because the LLLT could become responsible for disposition of funds in situations requiring the delivery of legal services beyond the scope of the LLLT license. Additionally, there was a concern that it could put the LLLT in the position of being assigned to administer the trust account in order for the ethical risk of trust account errors to be borne by the LLLT alone rather than lawyers at a firm.

So I would say there is not a "mistake" in that sentence, rather it was drafted advertently to prevent a LLLT from being a sole signatory in combined LLLT-lawyer firms.

True, it was not the intent of the sentence to anomalously permit a non-firm LLLT to be a signatory on an otherwise lawyer-only trust account, and to the extent that the language would permit this, there may be a drafting gap.

The solution, however, would not be to strike the sentence. That would achieve the opposite of the LLLT Board's intent in order to address a rare anomaly. The fix would be to make it clear that a LLLT, whether associated in practice with a lawyer or not, cannot be the sole signatory on a trust account for a firm that includes lawyers.

On the other hand, if the LLLT Board wants to revisit its position and is OK with the idea of LLLTs being sole signatories for firms that include lawyers, then there is not a problem with striking the sentence. (In that case, LLLT RPC 1.15A(h)(9) would also have to be amended accordingly.)

I hope this makes sense. Let me know if you need additional information.

Please let me know if you have any questions or comments about this. I really appreciate your letter below and I am pleased that the CPE has received a definitive answer from the LLLT Board. best, j

Jeanne Marie Clavere | Professional Responsibility Counsel | Office of General Counsel
Washington State Bar Association | ☎ 206.727-8298 | F 206.727.8314 | jeannec@wsba.org
1325 Fourth Avenue #600 | Seattle, WA 98101-2539 | www.wsba.org

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From: Steve Crossland [<mailto:steve@crosslandlaw.net>]
Sent: Wednesday, November 01, 2017 4:12 AM
To: Laura Erhart
Cc: J D. Curran; Anne Seidel; Jeanne Marie Clavere; Darlene Neumann; Mark J. Fucile (mark@frllp.com)
Subject: RE: LLLT - trust accounts

The LLLT Board decided to not add anything. They felt that Doug Ende's analysis was appropriate for our position.

Thanks,

Steve

From: Laura Erhart [<mailto:LWE@dctpw.com>]
Sent: Monday, October 30, 2017 3:10 PM
To: Steve Crossland <steve@crosslandlaw.net>
Cc: J D. Curran <jdcvlc@dctpw.com>; Anne Seidel <anne@anneseidel.com>; Jeanne Marie Clavere (jeannec@wsba.org) <jeannec@wsba.org>; Darlene Neumann (darlenen@wsba.org) <darlenen@wsba.org>; Mark J. Fucile (mark@frllp.com) <mark@frllp.com>
Subject: LLLT - trust accounts

This email is being sent by my assistant, Laura.
Please direct your response to me at jdcvlc@dctpw.com.

Hi, Steve,

As the new Chair of the Committee on Professional Ethics, I am seeking information from you regarding Mark Fucile's email to you dated August 28, 2017 and the memo dated July 31, 2017 described therein. Copies of both documents are attached.

The CPE meets on December 20th. I would like to finalize the proposal regarding the authority of a lawyer not in active practice to sign trust account checks. As noted in the attachments, this has the potential to impact LLLTs. If I don't get a reply, I will assume the LLLTs have nothing to offer at this time.

Your cooperation and assistance is very much appreciated.

*J. Donald Curran
Delay, Curran, Thompson, Pontarolo & Walker, P.S.
601 West Main Ave., Ste. 1212
Spokane, WA 99201
(509) 455-9500
(509) 623-1446 (fax)
jdcvlc@dctp.wa.gov*

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Anne Seidel

From: Doug Ende <douge@wsba.org>
Sent: Tuesday, October 31, 2017 3:07 PM
To: J D. Curran
Subject: RE: Inactive Lawyers

Don:

As of 10/2/2017, there are 5,223 inactive WSBA attorney members; 2,203 of them are in Washington State.

As Rita mentioned, inactive lawyers are not eligible to practice law; accordingly there should be no trust account transactions in an inactive lawyer's trust account except possibly for obligatory disbursements of funds belonging to clients that were deposited when the lawyer was actively licensed. This is why the random examination rule, ELC 15.1, limits the selection of lawyers for random examinations to those who are actively licensed. Accordingly, ODC does not currently have authority to randomly examine inactive lawyer trust accounts.

For the reasons you have identified, ODC is concerned about any proposal that authorizes inactive lawyers (or any non-actively-licensed members or resigned members) from holding client funds in a trust account, unless there are guarantees in place to provide better assurance that the client funds are being handled ethically and properly.



Douglas J. Ende | Chief Disciplinary Counsel | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.733.5917 | douge@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

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From: J D. Curran [<mailto:jdcvlc@dctpw.com>]
Sent: Tuesday, October 31, 2017 1:28 PM
To: Doug Ende
Subject: Inactive Lawyers

I have been studying the Trust Account Signatory Subcommittee's memo of 4-14-17 whether a lawyer not on active status can open and operate a trust account. In the memo Ted Stiles is quoted as arguing that the proposal to clarify that an inactive can do so means the trust account can go on indefinitely without any supervision. Ted is quoted as saying "The Association apparently is not set up to monitor or audit trust accounts after a lawyer becomes inactive....." In talking to Rita Swanson today she said WSBA does not audit inactive lawyer trust accounts because inactives should not have trust accounts. Rita suggested I contact you for more information. The proposal of the subcommittee would allow inactives to have trust accounts. Inactives are subject to the RPCs. I'm concerned with the impact of allowing inactives to have trust accounts would have on the Audit Department. Is there a source within the WSBA that could advise the number of inactives presently? Your assistance is much appreciated. No rush to respond. I'm giving a CLE on Thursday in your building.

DON CURRAN

601 West Main Avenue #1212
Spokane, Wa. 99201
509-455-9500

Anne Seidel

From: J D. Curran <jdcvlc@dctpw.com>
Sent: Tuesday, November 7, 2017 12:29 PM
To: Anne Seidel; cfolawn@schwabe.com
Cc: Jeanne Marie Clavere (jeannec@wsba.org); Darlene Neumann (darlenen@wsba.org)
Subject: RE: LLLT - trust accounts

WSBA Ethics advisory opinion #2156 is reproduced below. Its still valid. I stumbled across it while doing other research. I thought it might have some relevance to the LLLT you are dealing with.

Best,

2156 2007 RPC 1.15A(h)(9), APR 12(h) & 12.1 whether a Licensed Practice Officer (LPO) may be an authorized signatory on trust accounts under RPC 1.15A(h)(9) 1. Question: May a Limited Practice Officer ("LPO") sign a check drawn on a trust account given the language of RPC 1.15A(h)(9)?

Answer: Yes. Under limited circumstances, an LPO may sign trust account checks.

2. Question: How does the answer to the question in 1.1 relate to the rule's statement that "only a lawyer admitted to practice law may be an authorized signatory on the account?"

Answer: When the state Supreme Court considered the adoption in 1995 of Admission to Practice Rule (APR) 12(h) and APR 12.1 stating how LPOs are to treat funds received related to closing real property transactions and preserving the identity of funds in transactions by LPOs, they considered putting the IOLTA requirement on LPOs. They explicitly considered that escrow officers are licensed by the Department of Financial Institutions and title officers are licensed by the Insurance Commissioners and both officers are authorized to handle funds. The statement of purpose set forth in advance sheet 7 of 125 Washington 2d, Proposed 69-75, quotes a November 8, 1994 letter from the Chief Justice asking the Bar Association to modify the proposed rule "to clarify that it is applied only to those funds held in escrow that are related to transactions in which the certified closing officer engaged in the practice of law."

Given this history, it is reasonable for RPC 1.15A(h)(9) to be interpreted as including LPOs, as they have a limited authorization to practice law. However, while an LPO may be a signatory on checks drawn on a lawyer's trust account, the LPO may only sign checks related to a transaction for which they are licensed. Their authority does not go beyond that. Because the inquirer does run a risk if an LPO signs checks on the trust account, it may be prudent to establish two different trust accounts, with one specific to transactions in which the LPO is involved.

DON CURRAN
601 West Main Avenue #1212
Spokane, Wa. 99201
509-455-9500

From: Anne Seidel [mailto:anne@anneseidel.com]
Sent: Monday, November 06, 2017 3:36 PM
To: J D. Curran <jdcvlc@dctpw.com>
Cc: cfolawn@schwabe.com
Subject: RE: LLLT - trust accounts

Jean McElroy

From: Doug Ende
Sent: Tuesday, August 29, 2017 5:23 PM
To: 'Steve Crossland'
Cc: Paula Littlewood; Jean McElroy; Renata Garcia
Subject: RE: LLLT Signing Authority on Trust Accounts

Steve:

The provision at issue was drafted by the LLLT Board's RPC Drafting Committee to address particular concerns in the context of lawyers and LLLTs practicing at the same firm. One concern was that a LLLT should not be the sole signatory on a trust account at such a firm because the LLLT could become responsible for disposition of funds in situations requiring the delivery of legal services beyond the scope of the LLLT license. Additionally, there was a concern that it could put the LLLT in the position of being assigned to administer the trust account in order for the ethical risk of trust account errors to be borne by the LLLT alone rather than lawyers at a firm.

So I would say there is not a "mistake" in that sentence, rather it was drafted advertently to prevent a LLLT from being a sole signatory in combined LLLT-lawyer firms.

True, it was not the intent of the sentence to anomalously permit a non-firm LLLT to be a signatory on an otherwise lawyer-only trust account, and to the extent that the language would permit this, there may be a drafting gap.

The solution, however, would not be to strike the sentence. That would achieve the opposite of the LLLT Board's intent in order to address a rare anomaly. The fix would be to make it clear that a LLLT, whether associated in practice with a lawyer or not, cannot be the sole signatory on a trust account for a firm that includes lawyers.

On the other hand, if the LLLT Board wants to revisit its position and is OK with the idea of LLLTs being sole signatories for firms that include lawyers, then there is not a problem with striking the sentence. (In that case, LLLT RPC 1.15A(h)(9) would also have to be amended accordingly.)

I hope this makes sense. Let me know if you need additional information.



Douglas J. Ende | Chief Disciplinary Counsel | Office of Disciplinary Counsel

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From: Steve Crossland [<mailto:steve@crosslandlaw.net>]
Sent: Monday, August 28, 2017 2:39 PM
To: Doug Ende; Paula Littlewood; Jean McElroy; Renata Garcia
Subject: FW: LLLT Signing Authority on Trust Accounts

Thought I would get the impression of those of you before I forward on to the LLLT Board.

From: Mark Fucile [<mailto:mark@frllp.com>]

Sent: Monday, August 28, 2017 9:28 AM

To: Steve Crossland <steve@crosslandlaw.net>

Cc: J. Curran <jdcvlc@dctp.com>; Anne Seidel <anne@anneseidel.com>; Jeanne Clavere <jeannec@wsba.org>; Darlene Neumann <darlenen@wsba.org>

Subject: LLLT Signing Authority on Trust Accounts

Steve,

Hope all is well!

The Committee on Professional Ethics received a question about the signing authority of retired lawyers on trust accounts (when, for example, the retired lawyer is continuing to receive a stream of income from an L&I settlement).

In the course of our review of that issue, we discovered an anomaly in the wording of the trust account rule as it applies to LLLTs that we wanted to bring to the attention of the LLLT Board. I have attached a memo approved by the CPE at its meeting last Friday outlining this issue. In brief, it appears that under the wording of the current rule, a LLLT who is a member of a law firm cannot sign a trust account check, but, at least in theory, a LLLT who is not a member of a law firm could nonetheless be a signatory on the firm's trust account. This might occur, for example, if a solo practitioner wanted to have an independent LLLT be a signatory on the lawyer's trust account as a "back-up" in the event the lawyer became disabled or died.

Anne Seidel is heading the CPE Subcommittee working on the general issue of signing authority and I have copied her.

I have also copied Don Curran, who is our incoming CPE chair.

The CPE would greatly appreciate the LLLT Board's thoughts on the wording involved.

The CPE is happy to answer any questions or to provide any input that the LLLT would find helpful on this issue.

Best regards,

Mark

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Suggested Next Practice Area: Consumer, Money, and Debt Law

Introduction

The LLLT Board's New Practice Area Committee has explored two potential practice areas for the next expansion of the LLLT license: 1) Consumer, Money, and Debt Law, and 2) Immigration Law. Both potential practice areas are intended to help meet a significant unmet legal need while giving LLLTs additional practice area options to expand their businesses and provide services to the consuming public. The Practice Area Committee divided into two workgroups to more effectively explore these two potential practice areas. The workgroup considering Consumer, Money, and Debt Law is chaired by LLLT Board Member Nancy Ivarinen.

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

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

In order to appropriately vet the potential new practice areas, the workgroup reviewed statistics and reports discussing the legal need and invited subject matter experts to explain what the practice areas entail and what a LLLT potentially could do. The workgroup discussed whether LLLTs could be properly trained in a limited scope within the practice area, and whether their practice could be regulated appropriately so the needs of the clients can be met while also assuring that the clients will be protected.

Evidence of Unmet Need

The starting point of the workgroup's analysis was identifying the unmet need that can be addressed by LLLTs licensed in a consumer-related practice area. The 2003 (Statewide 0-400% FPL) and 2015 (Statewide, 0-200% FPL) Civil Legal Needs Studies identified Consumer, Financial Services, and Credit as one of the top three most prevalent problems people experience and that people most often seek legal help for. The change in legal need in this area from 2003 to 2014 was shown to be an increase from 27% to 37.6%. The Moderate Means Program (Statewide, 200-400% FPL) and Legal Services Corporation June 2017 Report: The Justice Gap (National, 0-125% FPL) both identified consumer issues as the second highest problem area.

In addition, data provided by the WSBA Moderate Means Program identified 233 requests for service in consumer law from October 26, 2016-October 27, 2017. This is 10% of the 2,321 requests for service during that period. Of those 233 requests, 74 were in bankruptcy or debtor relief and 71 were in collections, repossession, and garnishment. Data from the WSBA Moderate Means Program on requests for service from January 1, 2015 through May 1, 2017, show 523 of 3,062 requests for service in consumer law matters, about 17% of the total requests over that 28 month period.

Statistics maintained for various volunteer legal service providers further establish that this is an area of high unmet legal need. The King County Bar Association's Neighborhood Legal Clinics provided data on the services the clinics provided in 2016. This data showed that 1,298 of 8,259 legal issues were consumer law related, about 15% of the total issues addressed at the clinics. Data provided by the Northwest Consumer Law Center shows 2,499 requests for service over approximately 5 years from 2012-2017. Of those, 1,457 clients received information and a referral only or brief advice and services. The remaining 1,042 received more robust services. And data provided by Tacoma-Pierce County Bar Association Volunteer Legal Services from the last three years shows an average of about 160 clients per year in the Bankruptcy Clinic and an average of about 43 clients per year in the Foreclosure – Home Justice Clinic.

Based on all of this data, the subcommittee concluded there is a legal need in the area of consumer law.

Could Any of the Legal Need Be Met by LLLTs?

When reviewing the Civil Legal Needs Studies, the workgroup realized that although those studies address the number of legal problems the surveyed people were having, there was no mention of a follow-up analysis to see if legal assistance would actually make a difference for their situations, and if so, whether that assistance could be provided through some method other than direct representation exclusively by a lawyer. For example, many people reported legal problems with debt collection. A debt collection legal problem could be a situation such as a lawsuit for which there is no defense because the money is owed. It could also be a lawsuit to collect a debt but the statute of limitations has passed, so the debtor may not be obligated to pay even though the debt is owed. Even if a debtor does not have a defense, having affordable legal advice from a LLLT would be a benefit for the debtor who would better understand the legal issues. For those debtors who do have defenses or for whom collection agencies are attempting to collect a legitimate debt in an unfair or illegal manner, a LLLT could provide a valuable service. Additionally, the workgroup concluded that since this topic is covered on washingtonlawhelp.org, there must be a demonstrable legal need in the moderate and low income population that could be met in ways other than exclusively through representation by a lawyer.

The workgroup enlisted the advice of practitioners and other experts in the various areas of law to identify which legal tasks could be performed by LLLTs to assist clients' with these legal needs and provide a sustainable practice area for LLLTs. If the proposed area of practice is approved by the Court, it will likely be narrowed further when the workgroup reviews additional public comments and when the Admissions and Education Committee drafts proposed regulations and curriculum for providing the substantive law education courses. It is also vitally important for the LLLT Board to coordinate efforts

with the law schools in the creation of the curriculum as well as the availability of law school professors, which could also result in further refinement of the area.

Based on the workgroup’s meetings and discussions from August through December 2017, the following is an outline of a proposed Consumer, Money, and Debt practice area.

Outline of Consumer, Money, and Debt Law LLLT Practice Area	
Scope	Permitted Actions
Legal Financial Obligations (LFOs)	Motion for Order Waiving or Reducing Interest on OLF Order to Waive or Reduce Interest on LFO
Small Claims	Notice of Small Claim Certificate of Service Small Claims Orders Small Claims Judgment
Debt collection Defense and Assistance	Complaints Answers Statute of Limitations defenses Fair Debt Collection Act violations
Garnishment	Application for Writ of Garnishment Continuing Lien on Earnings Return of Service Notice Exemption Claim Release of Writ of Garnishment Motion and Cert. for Default Answer to Writ of Garnishment Application for Judgment Motion/Order Discharging Garnishee Satisfaction of Judgment
Loan Modification Foreclosure Defense and Assistance	Mandatory mediation process
Identity Theft	What to do if your identity is stolen Best practices Contacting credit bureaus FTC reporting

Non-judicial Foreclosure	RCW 61.24.040 Explain power of sale clauses Notice of Sale Right of Redemption
Protection Orders	Petitions, Responses, and Declarations Currently GR 24 reads: Exceptions and Exclusions Providing assistance to complete a form provided by the court for protection under RCW 10.14 (harassment) or 26.50 (domestic violence) when no fee is charged. GR 24 should be amended to allow in addition to DVPOs and Anti-harassment protection orders, and ADD as exceptions: RCW 7.90 (Sexual Assault) ² ; 7.92 (Stalking); 7.94 (Extreme Risk); 10.99 (No contact orders in criminal cases); and 74.34 (Adult Protection)
Wage Complaints	Minimum Wage Act Fair Labor Standards Act RCW 49.48 Wages-Payment-Collection RCW 49.52 Wages-Deductions-Contributions-Rebates
Bankruptcy Awareness and Advice	Explain the options, alternatives, and procedures Explain advantages and disadvantages Refer to budget & counseling agency Refer to bankruptcy attorney

Attachments:

- Legal Needs Data
 - 2003 WA Civil Legal Needs Study
 - 2015 Civil Legal Needs Study Summary
 - 2015 Civil Legal Needs Study Update
 - Civil Legal Needs Data Summary
 - Consolidated Civil Legal Needs Study Data re Consumer Law
 - WSBA Moderate Means Program Statistics Memo, Jan. 2015 to May 2017
 - WSBA Moderate Means Program – Consumer Law Requests for Service and Case Referrals Memo
 - KCBA Neighborhood Legal Clinic Stats 2016
 - NW Consumer Law Center - Types of Cases Since the Beginning 2017-09-15
 - Tacoma-Pierce County Bar Association Volunteer Legal Services Data
- New Practice Area Committee Consumer, Money, and Debt Subcommittee Meeting Minutes
 - 8.17.17 New Practice Area Committee Meeting Minutes – Approved
 - 9.21.17 NPA Personal Services Meeting Minutes – Approved
 - 10.19.17 NPA Personal Services Meeting Minutes – Approved
 - 11.9.17 NPA Personal Services Minutes – Approved

- 12-14-17 NPA Consumer, Money, and Debt Minutes – Draft

DRAFT

To: WSBA President, President-elect, and Board of Governors
From: Jean K. McElroy, Chief Regulatory Counsel
Date: January 4, 2018
Subject: Suggested Amendments to the WSBA Bylaws

First Reading – Review and discuss suggested amendments to the WSBA Bylaws that are intended to align the Bylaws with the recently amended Admission and Practice Rules (APR).

The primary purpose of the suggested amendments to the WSBA Bylaws is to align the WSBA Bylaws with the recent amendments to the Washington Supreme Court Admission and Practice Rules (APR) that were adopted effective September 1, 2017. The suggested amendments to the WSBA Bylaws align the Bylaws with the APR, correct references to the APR, align licensing and readmission processes that apply to all members of the Bar, and make terminology more consistent.

In addition, some substantive amendments are necessary in order to ensure that fees, procedures, requirements, etc., are the same for all members or are equitable in relation to the different member license types. In addition, the sections of the Bylaws that address license fee procedures and some reductions in fees (especially for new members) were divided into subsections; members have occasionally complained that it is too hard to understand these provisions written as one long section.

One substantive change if the amendments are adopted relates to Art. III Sec. D.1.a.2) and Art III Sec. K.4.d.2). The suggested amendments in these sections relate to a required reinstatement course for members returning to active status after six or more years on inactive, emeritus pro bono, or suspended status. This is an existing requirement for lawyers, and a new requirement for LLLTs and LPOs. The proposal is to require a course that is adjusted in length based on license type, primarily due to the differing numbers of topics that should be covered by such a course.

Attachments:

1. Suggested amendments to WSBA Bylaws – Blackline
2. Suggested Amendments to WSBA Bylaws – Clean

SUGGESTED AMENDMENTS TO ART. II AND III OF WSBA BYLAWS

II. DEFINITIONS AND GENERAL PROVISIONS

A. – D. (unchanged)

E. DEFINITIONS AND USE OF TERMS

1. – 9. (unchanged)

10. “ELLLTC” refers to the Rules for Enforcement of LLLT Conduct.

11. “ELPOC” refers to the Rules for Enforcement of LPO Conduct.

~~12~~0. “Member” means an individual in any of the groups of licensed legal professionals specified in Article III(A) of these Bylaws, unless otherwise specified.

~~13~~4. “May” means “has discretion to,” “has a right to,” or “is permitted to.”

~~14~~2. “Must” means “is required to.”

III. MEMBERSHIP

A. MEMBER LICENSE TYPES

1. (unchanged)

2. Lawyers licensed to practice law in Washington pursuant to APR 8 (~~except Emeritus Pro Bono members~~) and APR 14, or who are permitted to practice law pursuant to RPC 5.5 without being licensed in Washington are not members of the Bar.

3. (unchanged)

B. STATUS CLASSIFICATIONS

Membership status classifications have the qualifications, privileges, and restrictions specified.

1. Active (unchanged)

2. Inactive

(unchanged)

- a. (unchanged)
- b. Types of Inactive membership:
 - 1) Inactive Member: Inactive members must pay an annual license fee in an amount established by the BOG and approved by the Supreme Court. ~~Unless otherwise stated in the APR, t~~ They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.
 - 2) Disability: (unchanged)
 - 3) Honorary: (unchanged)
- 3. Judicial (unchanged)
- 4. Emeritus Pro Bono

A member may become an Emeritus Pro Bono member by complying with the requirements of APR ~~8(e)-3(g)~~, including payment of any required license fee and passing a character and fitness review.

Emeritus Pro Bono members must not engage in the practice of law except as permitted under APR ~~8(e)-3(g)~~, but may:

- a. (unchanged)
- b. Join Bar sections;
- c. (unchanged)
- d. (unchanged)
- 5. Suspended (unchanged)

C. REGISTER OF MEMBERS

- 1. (unchanged)
- 2. The Executive Director will keep records of all members of the Washington State Bar Association, including, but not limited to:
 - a. – g. (unchanged)
 - h. date and period of disciplinary actions or sanctions, if any, including suspension, ~~and~~ disbarment, and revocation;

- i. (unchanged)
- 3. (unchanged)
- 4. (unchanged)

D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

1. Members may change membership status as provided below. ~~In some situations, LLLTs and LPOs will need to refer to the APR for the appropriate procedure.~~

a. Transfer from Inactive to Active.

1) (unchanged)

2) If a member was Inactive or any combination of Suspended and Inactive in Washington for more than six consecutive years, the member must earn MCLE credits in a manner consistent with the requirement for one reporting period for an Active member of the same license type, and these credits must be earned and reported within the three years preceding the return to Active status. In addition, ~~lawyer~~ the members must complete a reinstatement/readmission course sponsored by the Bar ~~and accredited for a minimum of 15 live CLE credits, which must consist of education on law office management and professional responsibility (including the applicable RPC for the member's license type, proper handling of client funds and trust accounts, and client communications), legal research and writing, and changes in the law that apply to the member's license type, as follows~~ course must comply with the following minimum requirements:

(a) ~~For lawyer members, a minimum of 15 live CLE credits, consisting of A~~ at least four to six credit hours on regarding law office management and professional responsibility, and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust accounts, communications with clients, etc.; and

(b) ~~A~~ at least three credit hours regarding on legal research and writing, and

(c) ~~The remaining credit hours will cover on recent significant changes in the law~~ areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.;

(b) For LLLT members, a minimum of seven live CLE credits, consisting of at least two credit hours on law office management and professional responsibility, at least one credit hour on legal research and writing, and the remaining credit hours on recent significant changes in the law in approved LLLT practice or core education areas;

(c) For LPO members, a minimum of seven live CLE credits, consisting of at least two credit hours on professional responsibility, and the remaining credit hours on recent significant changes in the law covered by the approved LPO Study Topics.

The member is required to pay the cost of the course. Any member completing such course will be entitled to credit towards mandatory continuing legal education requirements for all CLE credits for which such reinstatement/readmission course is accredited. The member must comply with all registration, payment, attendance, and other requirements for such course, and will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

Periods of administrative and/or disciplinary suspension occurring immediately before or after a change to Inactive will be included when determining whether a member is required to take the readmission course. For purposes of determining whether a member has been Inactive and/or Suspended for more than six consecutive years, the period continues to run until the change to Active membership is completed, regardless of when the application is submitted to the Bar.

- 3) Any ~~lawyer~~-member seeking to change to Active who was Inactive or any combination of Suspended and Inactive in Washington and does not have active legal experience as defined in APR 31(e) in any jurisdiction for more than ten consecutive years, is required to complete the requirements in ~~paragraphs~~ Art. III. Sec.D.1.a.1)(a), (c) and (d) -1-a, above, and is also required to take and pass the ~~Uniform Bar Examination and the Multistate Professional Responsibility Examination~~ examinations required for admission to the Bar for the member's license type.
- 4) (unchanged)
- 5) A member of any type who has transferred to Inactive status during the pendency of a grievance or disciplinary proceedings may not be transferred to Active except as provided herein and may be subject to such discipline by reason of any grievance or complaint as may be imposed under the ELC,

ELPOC, or ELLLTTC Rules for Enforcement of Lawyer Conduct or other applicable disciplinary rules.

- b. Transfer from Judicial to Active (unchanged)
- c. Transfer from Emeritus Pro Bono to Active (unchanged)
- d. Referral to Character and Fitness Board

All applications for readmission, reinstatement or transfer to Active status will be reviewed by Bar staff and handled consistent with the provisions of APR 20-24.3. In all cases reviewed by it, the Character and Fitness Board has broad authority to recommend withholding a transfer to Active status or imposing conditions on readmission to Active status, which may include retaking and passing the licensing examination applicable to the member's license type. The member will be responsible for the costs of any investigation, examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE

1. ~~LLLT members and LPO members may change their membership status to Inactive as provided in the applicable APR.~~
2. Any lawyer member who is an Active, Judicial, or Emeritus Pro Bono member and who is not Suspended will become an Inactive member when the member files a request for Inactive membership with the Bar, in such form and manner as the Bar may require, and that request is approved.

Effective January 1, 2012, a Judicial member wishing to transfer to Inactive member status upon leaving service as a judicial officer, who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Inactive, be required to pay the Active license fee for lawyer members for any years the registry information was not provided or the Judicial fee was not paid.

23. Members are transferred to Disability Inactive pursuant to Title 8 of the ELC, ELPOC, or ELLLTTC. Rules for Enforcement of Lawyer Conduct or equivalent disciplinary rules applicable to the member's license type. Any member seeking to transfer from Disability Inactive to Inactive member status must first establish that the member has complied with the requirements of Title 8 of the ELC, ELPOC, or ELLLTTC or equivalent rules applicable to the member's license type, and then must

submit a written request to make the change and comply with all applicable licensing requirements for Inactive members.

4. (unchanged)

5. (unchanged)

F. CHANGE OF MEMBERSHIP STATUS TO JUDICIAL (unchanged)

G. CHANGE OF MEMBERSHIP STATUS TO EMERITUS PRO BONO

A member who is otherwise retired from the practice of law may become an Emeritus Pro Bono member by complying with the requirements of APR ~~8(e)~~ 3(g), including payment of any required license fee, and passing a character and fitness review.

Effective January 1, 2012, a Judicial member wishing to transfer to Emeritus Pro Bono status upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Emeritus Pro Bono, be required to pay the Active license fee for any years the registry information was not provided or the Judicial fee was not paid.

H. VOLUNTARY RESIGNATION

Voluntary resignation may apply in any situation in which a member does not want to continue practicing law in Washington for any reason (including retirement from practice) and for that reason does not want to continue membership in the Bar.

~~Unless otherwise provided in the APR, a~~ A member may voluntarily resign from the Bar by submitting a written request for voluntary resignation to the Bar in such form and manner as the Bar may require. If there is a disciplinary investigation or proceeding then pending against the member, or if at the time the member submits the written request the member has knowledge that the filing of a grievance of substance against such member is imminent, resignation is permitted only under the provisions of the ~~Rules for Enforcement of Lawyer Conduct~~ ELC, ELPOC, or ELLLTC. A member who resigns from the Bar cannot practice law in Washington in any manner. A member seeking ~~reinstatement~~ readmission after resignation must comply with these Bylaws.

I. ANNUAL LICENSE FEES AND ASSESSMENTS

1. License Fees

Unless established otherwise ~~pursuant to the APR or~~ by order of the Washington Supreme Court, the following provisions apply to member license fees.

a. Active Members

- 1) Effective 2010, and all subsequent years, the annual license fees for Active members will be as established by resolution of the BOG, subject to review by the Washington Supreme Court.
- 2) First time lawyer-admittees who are not admitted or licensed to practice law elsewhere, who take and pass the Washington Bar exam required examination for admission to practice law in Washington and are admitted in the first six months of the calendar year in which they took the exam, will pay 50% of the applicable full Active license fee for that year.
- 3) First time lawyer admittees who are not admitted or licensed to practice law elsewhere, who take and pass the Washington lawyer Bar required examination for admission to practice law in Washington and are admitted in the last six months of the calendar year in which they took the exam, will pay 25% of the applicable full Active license fee for that year.
- 4) ~~Persons~~ First time admittees who are not admitted elsewhere, who take and pass the required examination for admission to practice law in Washington ~~lawyer Bar exam~~ in one year but are not admitted until a subsequent year, shall pay 50% of the applicable full Active lawyer license fee for their first two license years after admission.
- 5) ~~Persons~~ First time admittees who are admitted as a lawyer in one calendar year in another state or territory of the United States or in the District of Columbia by taking and passing a bar examination ~~in~~ for that state, territory, or district, who become admitted as a lawyer in Washington in the same calendar year in which they took and passed the examination, will pay 50% of the full Active lawyer license fee if admitted in Washington in the first six months of that calendar year and 25% of the full active license fee if admitted in Washington in the last six months of that calendar year.
- 6) All members ~~persons~~ in their first two full licensing years after admission or licensure ~~as a lawyer~~ to practice law in any jurisdiction will pay 50% of the applicable full Active license fee.
- 7) An Active member of the Bar who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than 60 days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States will be exempt from the payment of license fees and assessments for the Client Protection Fund upon

submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Bar's offices on or before February 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member. Granting or denying an exemption under this provision is within the sole discretion of the Executive Director and is not appealable.

b. Inactive Members (unchanged)

c. Judicial Members [Effective January 1, 2012]

Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer must pay the annual license fee established by the Bar and as approved by the Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Judicial members; however, Judicial members are not subject to administrative suspension for nonpayment of license or late payment fees.

d. Emeritus Pro Bono Members

~~Emeritus~~ Pro Bono members must pay the annual license fee required of Inactive members with the same type of license. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Emeritus Pro Bono members.

2. Assessments (unchanged)

3. Deadline and Late Payment Fee

~~a.~~—License fees and mandatory assessments are due and payable on or before February 1st of each year, in such form and manner as required by the Bar, unless otherwise established by these Bylaws or the APR. Members who pay their license fees on or after February 2nd will be assessed a late payment fee of 30% of the total amount of the license fees required for that membership type and status. License fees for newly admitted members are due and payable at the time of admission and registration, and are not subject to the late payment fee.

~~b. Notices required for the collection of license fees, late payment fees, and/or assessments will be mailed one time by the Bar to the member's address of record with the Bar by registered or certified mail. In addition to the written notices, the Bar will make one attempt to contact the member at the telephone number(s) the member has made of record with the Bar and will speak to the member or leave a message, if possible. The Bar will also make one attempt to contact the member at the member's e-mail address of record with the Bar.~~

4. Rebates /Apportionments (unchanged)
5. License Fee and Assessment Exemptions Due to Hardship (unchanged)
6. License Fee Referendum (unchanged)

J. SUSPENSION

1. Interim Suspension

Interim suspensions may be ordered during the course of a disciplinary or disability investigation or proceeding, as provided in the ~~Rules for Enforcement of Lawyer Conduct or equivalent rules for LPOs and LLLTs~~ ELC, ELPOC, or ELLLTC, and are not considered disciplinary sanctions.

2. Disciplinary Suspension

Suspensions ordered as a disciplinary sanction pursuant to the ELC, ELPOC, or ELLLTC, ~~Rules for Enforcement of Lawyer Conduct or equivalent rules for LPOs and LLLTs~~ are considered disciplinary suspensions.

3. Administrative Suspension

a. (unchanged)

1) - 3) (unchanged)

4) Failure of a lawyer to file an professional liability insurance disclosure ~~form~~;

5) Failure of a LLLT or LPO to provide proof of financial responsibility;

~~6~~5) Failure to comply with mandatory continuing legal education requirements;

~~7~~6) Nonpayment of child support;

~~8~~7) Failure to designate a resident agent or notify the Bar of change in resident agent or the agent's address;

98) Failure to provide current information required by APR 13 or to notify the Bar of a change of information required by APR 13 within 10 days after the change; and

109) For such other reasons as may be approved by the BOG and the Washington Supreme Court.

b. Unless requirement for hearing and/or notice of suspension are otherwise stated in these Bylaws or the APR, ELC, ~~or other applicable rules~~ ELPOC, or ELLLTC, a member will be provided notice of the member's failure to comply with requirements and of the pendency of administrative suspension if the member does not cure the failure within 60 days of the date of the written notice, as follows:

1) & 2) (unchanged)

c. (unchanged)

d. ~~As directed by the Washington Supreme Court, any A~~ member failing to correct any deficiency after two months' written notice as provided above must be suspended from membership. The Executive Director must certify to the Clerk of the Supreme Court the name of any member who has failed to correct any deficiency, and when so ordered by the Supreme Court, the member will be suspended from membership in the Bar and from the practice of law in Washington. The list of suspended members may be provided to the relevant courts or otherwise published at the discretion of the BOG.

4. Multiple Suspensions (unchanged)

K. CHANGING STATUS AFTER SUSPENSION

1. -4. c. (unchanged)

d. In addition to the above requirements:

1) (unchanged)

2) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for six or more consecutive years must establish that within the three years prior to the return to Active status, the member has earned and reported approved MCLE credits in a manner consistent with the requirement for one reporting period for an Active member with the same license type. In addition, the member must have completed the applicable readmission/reinstatement course as set forth in

~~Art. III. Sec.D.1.a)(2).lawyer members must complete a reinstatement/readmission course sponsored by the Bar and accredited for a minimum of 15 live CLE credits, which course must comply with the following requirements:~~

~~(a) At least four to six credit hours regarding law office management and professional responsibility and Washington's Rules of Professional Conduct, to include proper handling of client funds and IOLTA and other trust accounts, communications with clients, law practice issues, etc., and~~

~~(b) At least three credit hours regarding legal research and writing.~~

~~(c) The remaining credit hours will cover areas of legal practice in which the law in Washington may be unique or may differ significantly from the law in other U.S. jurisdictions, or in which the law in Washington or elsewhere has changed significantly within the previous 10 years.~~

Any member completing such course will be entitled to credit towards mandatory continuing legal education requirement for all CLE credits for which such reinstatement/readmission course is accredited. It is the member's responsibility to pay the cost of attending the course. The member must comply with all registration, payment, attendance, and other requirements for such course, and will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

L. REINSTATEMENT AFTER DISBARMENT OR REVOCATION (unchanged)

M. REINSTATEMENT AFTER RESIGNATION IN LIEU OF DISCIPLINE, DISBARMENT, OR REVOCATION

No former member will be allowed to be readmitted to membership of any type after entering into a resignation in lieu of discipline, disbarment, or revocation pursuant to the ELC, ELPOC, or ELLLTC ~~or disciplinary rules applicable to the member's license type~~. Persons who were allowed to resign with discipline pending under former provisions of these Bylaws prior to October 1, 2002, may be readmitted on such terms and conditions as the BOG determines, provided that if the person resigned with discipline pending and a prior petition for reinstatement or readmission has been denied, no petition may be filed or accepted for a period of two years after an adverse decision on the prior petition for reinstatement or readmission.

N. READMISSION AFTER VOLUNTARY RESIGNATION

Any former member who has resigned and who seeks readmission to membership in the Bar must do so in one of two ways, ~~unless otherwise provided by the applicable APR for~~ the member's license type: by filing an application for readmission in the form and manner prescribed by the BarBOG, including a statement detailing the reasons the member resigned and the reasons the member is seeking readmission, or by seeking admission by motion pursuant to APR 3(c) (if the former member is licensed as a lawyer in another U.S. jurisdiction and would otherwise qualify for admission under that rule).

1. A former member filing an application for readmission after voluntary resignation must:
 - a. (unchanged)
 - b. establish that such person is morally, ethically and professionally qualified to be licensed ~~in~~ as the applicable member type and is of good moral character and has the requisite fitness to practice law consistent with the requirements for other applicants for admission to practice law ~~as in~~ the applicable ~~membership~~ type. An application for readmission will be subject to character and fitness investigation and review as described in APR 20-24.3, consistent with other applications for admission.
 - c. In addition to the above requirements, if an application for readmission is granted and:
 - 1i) it has been less than four consecutive years since the voluntary resignation, the applicant must establish:
 - (a)1) that within the three years prior to ~~the return to Active status~~ readmission the former member has earned and reported approved MCLE credits in a manner consistent with the requirement for one reporting period for an Active member of the same license type, without including the credits that might otherwise be available from the reinstatement/readmission course; and
 - 2(b) attend and complete the applicable BOG-approved Bar-sponsored reinstatement/readmission course as set forth in Art. III. Sec.D.1.a)(2).
 - 2ii) it has been four or more consecutive years since the voluntary resignation, the ~~petitioner~~ applicant must take and pass the applicable examination required for admission.
 - d. Upon successful completion of the above requirements, the former member must ~~pay the license fees and assessments and complete and submit all required~~

licensing forms for the applicable membership type for the year in which the member will be readmitted satisfy the preadmission requirements and be admitted by Supreme Court order as set forth in APR 5, except that:

- 1) a lawyer applicant who has been resigned for less than four consecutive years need not take and pass the Washington Law Component; and
- 2) a LLLT applicant who has been resigned less than four consecutive years need not demonstrate completion of substantive law-related work experience.

2. (unchanged)

O. EXAMINATION REQUIRED

All applications for reinstatement after disbarment or revocation will be subject to character and fitness review, and taking and passing the examination for admission for the applicable license type, pursuant to the provisions of APR 25-25.6. All applications for readmission after voluntary resignation will be subject to character and fitness review pursuant to the provisions of APR 20-24.3. All applications for ~~reinstatement admission~~ to Active status from Suspended status will be handled in a similar fashion to applications for a return to Active status ~~readmission~~ from Inactive status. The Character and Fitness Board, and (on review) the Washington Supreme Court, have broad authority to withhold a transfer to Active or to impose conditions on reinstatement or readmission to Active membership, which may include taking and passing the applicable examination for admission, in cases where the applicant fails to meet the burden of proof required by APR 20-24.3. The member/former member will be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

SUGGESTED AMENDMENTS TO ART. II AND III OF WSBA BYLAWS

II. DEFINITIONS AND GENERAL PROVISIONS

A. – D. (unchanged)

E. DEFINITIONS AND USE OF TERMS

Unless otherwise specifically stated herein,

1.- 9. (unchanged)

10. “ELLLTC” refers to the Rules for Enforcement of LLLT Conduct.

11. “ELPOC” refers to the Rules for Enforcement of LPO Conduct.

12. “Member” means an individual in any of the groups of licensed legal professionals specified in Article III(A) of these Bylaws, unless otherwise specified.

13. “May” means “has discretion to,” “has a right to,” or “is permitted to.”

14. “Must” means “is required to.”

III. MEMBERSHIP

A. MEMBER LICENSE TYPES

1. (unchanged)

2. Lawyers licensed to practice law in Washington pursuant to APR 8 and APR 14, or who are permitted to practice law pursuant to RPC 5.5 without being licensed in Washington, are not members of the Bar.

3. (unchanged)

B. STATUS CLASSIFICATIONS

Membership status classifications have the qualifications, privileges, and restrictions specified.

1. Active (unchanged)

2. Inactive

(unchanged)

a. (unchanged)

b. Types of Inactive membership:

1) Inactive Member: Inactive members must pay an annual license fee in an amount established by the BOG and approved by the Supreme Court. They are not required to earn or report MCLE credits while Inactive, but may choose to do so, and may be required to do so to return to Active membership.

2) Disability: (unchanged)

3) Honorary: (unchanged)

3. Judicial (unchanged)

4. Emeritus Pro Bono

A member may become an Emeritus Pro Bono member by complying with the requirements of APR3(g), including payment of any required license fee and passing a character and fitness review.

Emeritus Pro Bono members must not engage in the practice of law except as permitted under APR3(g), but may:

a. (unchanged)

b. Join Bar sections;

c. (unchanged)

d. (unchanged).

5. Suspended (unchanged)

C. REGISTER OF MEMBERS

1. (unchanged)

2. The Executive Director will keep records of all members of the Washington State Bar Association, including, but not limited to:

a. – g. (unchanged)

h. date and period of disciplinary actions or sanctions, if any, including suspension, disbarment, and revocation;

- i. (unchanged)
- 3. (unchanged)
- 4. (unchanged)

D. CHANGE OF MEMBERSHIP STATUS TO ACTIVE

1. Members may change membership status as provided below.

a. Transfer from Inactive to Active.

1) (unchanged)

2) If a member was Inactive or any combination of Suspended and Inactive in Washington for more than six consecutive years, the member must earn MCLE credits in a manner consistent with the requirement for one reporting period for an Active member of the same license type, and these credits must be earned and reported within the three years preceding the return to Active status. In addition, the member must complete a reinstatement/readmission course sponsored by the Bar which must consist of education on law office management and professional responsibility (including the applicable RPC for the member's license type, proper handling of client funds and trust accounts, and client communications), legal research and writing, and changes in the law that apply to the member's license type, as follows:

(a) For lawyer members, a minimum of 15 live CLE credits, consisting of at least four credit hours on law office management and professional responsibility, at least three credit hours on legal research and writing, and the remaining credit hours on recent significant changes in the law;

(b) For LLLT members, a minimum of seven live CLE credits, consisting of at least two credit hours on law office management and professional responsibility, at least one credit hour on legal research and writing, and the remaining credit hours on recent significant changes in the law in approved LLLT practice or core education areas;

(c) For LPO members, a minimum of seven live CLE credits, consisting of at least two credit hours on professional responsibility, and the remaining credit hours on recent significant changes in the law covered by the approved LPO Study Topics.

The member is required to pay the cost of the course. Any member completing such course will be entitled to credit towards mandatory continuing legal education requirements for all CLE credits for which such reinstatement/readmission course is accredited. The member must comply with all registration, payment, attendance, and other requirements for such course, and will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

Periods of administrative and/or disciplinary suspension occurring immediately before or after a change to Inactive will be included when determining whether a member is required to take the readmission course. For purposes of determining whether a member has been Inactive and/or Suspended for more than six consecutive years, the period continues to run until the change to Active membership is completed, regardless of when the application is submitted to the Bar.

- 3) Any member seeking to change to Active who was Inactive or any combination of Suspended and Inactive in Washington and does not have active legal experience as defined in APR 1(e) in any jurisdiction for more than ten consecutive years, is required to complete the requirements in Art.III Sec.D.1.a.1)(a), (c), and (d), above, and is also required to take and pass the examinations required for admission to the Bar for the member's license type.
 - 4) (unchanged)
 - 5) A member of any type who has transferred to Inactive status during the pendency of a grievance or disciplinary proceedings may not be transferred to Active except as provided herein and may be subject to such discipline by reason of any grievance or complaint as may be imposed under the ELC, ELPOC, or ELLLTC.
- b. Transfer from Judicial to Active (unchanged)
 - c. Transfer from Emeritus Pro Bono to Active (unchanged)
 - d. Referral to Character and Fitness Board

All applications for readmission, reinstatement or transfer to Active status will be reviewed by Bar staff and handled consistent with the provisions of APR 20-24.3. In all cases reviewed by it, the Character and Fitness Board has broad authority to recommend withholding a transfer to Active status or imposing conditions on readmission to Active status, which may include retaking and passing the

licensing examination applicable to the member's license type. The member will be responsible for the costs of any investigation, examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

E. CHANGE OF MEMBERSHIP STATUS TO INACTIVE

1. Any member who is an Active, Judicial, or Emeritus Pro Bono member and who is not Suspended will become an Inactive member when the member files a request for Inactive membership with the Bar, in such form and manner as the Bar may require, and that request is approved.

Effective January 1, 2012, a Judicial member wishing to transfer to Inactive member status upon leaving service as a judicial officer, who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Inactive, be required to pay the Active license fee for lawyer members for any years the registry information was not provided or the Judicial fee was not paid.

2. Members are transferred to Disability Inactive pursuant to Title 8 of the ELC, ELPOC, or ELLLTC. Any member seeking to transfer from Disability Inactive to Inactive member status must first establish that the member has complied with the requirements of Title 8 of the ELC, ELPOC, or ELLLTC, and then must submit a written request to make the change and comply with all applicable licensing requirements for Inactive members.

4. (unchanged)

5. (unchanged)

F. CHANGE OF MEMBERSHIP STATUS TO JUDICIAL (unchanged)

G. CHANGE OF MEMBERSHIP STATUS TO EMERITUS PRO BONO

A member who is otherwise retired from the practice of law may become an Emeritus Pro Bono member by complying with the requirements of APR 3(g), including payment of any required license fee, and passing a character and fitness review.

Effective January 1, 2012, a Judicial member wishing to transfer to Emeritus Pro Bono status upon leaving service as a judicial officer who has failed in any year to provide the annual member registry information or to pay the annual licensing fee required of Judicial members to maintain eligibility to transfer to another membership status shall, prior to transfer to Emeritus Pro Bono, be required to pay the Active

license fee for any years the registry information was not provided or the Judicial fee was not paid.

H. VOLUNTARY RESIGNATION

Voluntary resignation may apply in any situation in which a member does not want to continue practicing law in Washington for any reason (including retirement from practice) and for that reason does not want to continue membership in the Bar.

A member may voluntarily resign from the Bar by submitting a written request for voluntary resignation to the Bar in such form and manner as the Bar may require. If there is a disciplinary investigation or proceeding then pending against the member, or if at the time the member submits the written request the member has knowledge that the filing of a grievance of substance against such member is imminent, resignation is permitted only under the provisions of the ELC, ELPOC, or ELLLTC. A member who resigns from the Bar cannot practice law in Washington in any manner. A member seeking readmission after resignation must comply with these Bylaws.

I. ANNUAL LICENSE FEES AND ASSESSMENTS

1. License Fees

Unless established otherwise by order of the Washington Supreme Court, the following provisions apply to member license fees.

a. Active Members

- 1) Effective 2010, and all subsequent years, the annual license fees for Active members will be as established by resolution of the BOG, subject to review by the Washington Supreme Court.
- 2) First time admittees who are not admitted or licensed to practice law elsewhere, who take and pass the required examination for admission to practice law in Washington and are admitted in the first six months of the calendar year in which they took the exam, will pay 50% of the applicable full Active license fee for that year.
- 3) First time admittees who are not admitted or licensed to practice law elsewhere, who take and pass the required examination for admission to practice law in Washington and are admitted in the last six months of the calendar year in which they took the exam, will pay 25% of the applicable full Active license fee for that year.
- 4) First time admittees who are not admitted elsewhere, who take and pass the required examination for admission to practice law in Washington in one year

but are not admitted until a subsequent year, shall pay 50% of the applicable full Active license fee for their first two license years after admission.

- 5) First time admittees who are admitted as a lawyer in one calendar year in another state or territory of the United States or in the District of Columbia by taking and passing a bar examination for that state, territory, or district, who become admitted as a lawyer in Washington in the same calendar year in which they took and passed the examination, will pay 50% of the full Active lawyer license fee if admitted in Washington in the first six months of that calendar year and 25% of the full active license fee if admitted in Washington in the last six months of that calendar year.
- 6) All members in their first two full licensing years after admission or licensure to practice law in any jurisdiction will pay 50% of the applicable full Active license fee.
- 7) An Active member of the Bar who is activated from reserve duty status to full-time active duty in the Armed Forces of the United States for more than 60 days in any calendar year, or who is deployed or stationed outside the United States for any period of time for full-time active military duty in the Armed Forces of the United States will be exempt from the payment of license fees and assessments for the Client Protection Fund upon submitting to the Executive Director satisfactory proof that he or she is so activated, deployed or stationed. All requests for exemption must be postmarked or delivered to the Bar's offices on or before February 1st of the year for which the exemption is requested. Eligible members must apply every year they wish to claim the exemption. Each exemption applies for only the calendar year in which it is granted, and exemptions may be granted for a maximum total of five years for any member. Granting or denying an exemption under this provision is within the sole discretion of the Executive Director and is not appealable.

b. Inactive Members (unchanged)

c. Judicial Members [Effective January 1, 2012]

Judicial members who wish to preserve eligibility to transfer to another membership status upon leaving service as a judicial officer must pay the annual license fee established by the Bar and as approved by the Supreme Court. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members

apply to Judicial members; however, Judicial members are not subject to administrative suspension for nonpayment of license or late payment fees.

d. Emeritus Pro Bono Members

Emeritus Pro Bono members must pay the annual license fee required of Inactive members with the same type of license. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members apply to Emeritus Pro Bono members.

2. Assessments (unchanged)

3. Deadline and Late Payment Fee

License fees and mandatory assessments are due and payable on or before February 1st of each year, in such form and manner as required by the Bar, unless otherwise established by these Bylaws or the APR. Members who pay their license fees on or after February 2nd will be assessed a late payment fee of 30% of the total amount of the license fees required for that membership type and status. License fees for newly admitted members are due and payable at the time of admission and registration, and are not subject to the late payment fee.

4. Rebates /Apportionments (unchanged)

5. License Fee and Assessment Exemptions Due to Hardship (unchanged)

6. License Fee Referendum (unchanged)

J. SUSPENSION

1. Interim Suspension

Interim suspensions may be ordered during the course of a disciplinary or disability investigation or proceeding, as provided in the ELC, ELPOC, or ELLLTC, and are not considered disciplinary sanctions.

2. Disciplinary Suspension

Suspensions ordered as a disciplinary sanction pursuant to the ELC, ELPOC, or ELLLTC, are considered disciplinary suspensions.

3. Administrative Suspension

a. 1) – 3) (unchanged)

- 4) Failure of a lawyer to file a professional liability insurance disclosure;
- 5) Failure of a LLLT or LPO to provide proof of financial responsibility;
- 6) Failure to comply with mandatory continuing legal education requirements;
- 7) Nonpayment of child support;
- 8) Failure to designate a resident agent or notify the Bar of change in resident agent or the agent's address;
- 9) Failure to provide current information required by APR 13 or to notify the Bar of a change of information required by APR 13 within 10 days after the change; and
- 10) For such other reasons as may be approved by the BOG and the Washington Supreme Court.

b. Unless requirement for hearing and/or notice of suspension are otherwise stated in these Bylaws or the APR, ELC, ELPOC, or ELLLTC, a member will be provided notice of the member's failure to comply with requirements and of the pendency of administrative suspension if the member does not cure the failure within 60 days of the date of the written notice, as follows:

1) & 2) (unchanged)

c. (unchanged)

d. A member failing to correct any deficiency after two months' written notice as provided above must be suspended from membership. The Executive Director must certify to the Clerk of the Supreme Court the name of any member who has failed to correct any deficiency, and when so ordered by the Supreme Court, the member will be suspended from membership in the Bar and from the practice of law in Washington. The list of suspended members may be provided to the relevant courts or otherwise published at the discretion of the BOG.

4. Multiple Suspensions (unchanged)

K. CHANGING STATUS AFTER SUSPENSION

1. - 4. c. (unchanged)

d. In addition to the above requirements:

- 1) (unchanged)
- 2) Any member seeking to change to Active who was Suspended, or any combination of Suspended and Inactive, for six or more consecutive years must establish that within the three years prior to the return to Active status, the member has earned and reported approved MCLE credits in a manner consistent with the requirement for one reporting period for an Active member with the same license type. In addition, the member must have completed the applicable readmission/reinstatement course as set forth in Art. III. Sec.D.1.a)(2).

Any member completing such course will be entitled to credit towards mandatory continuing legal education requirement for all CLE credits for which such reinstatement/readmission course is accredited. It is the member's responsibility to pay the cost of attending the course. The member must comply with all registration, payment, attendance, and other requirements for such course, and will be responsible for obtaining proof of attendance at the entire course and submitting or having such proof submitted to the Bar.

L. REINSTATEMENT AFTER DISBARMENT OR REVOCATION (unchanged)

M. REINSTATEMENT AFTER RESIGNATION IN LIEU OF DISCIPLINE, DISBARMENT, OR REVOCATION

No former member will be allowed to be readmitted to membership of any type after entering into a resignation in lieu of discipline, disbarment, or revocation pursuant to the ELC, ELPOC, or ELLLTC. Persons who were allowed to resign with discipline pending under former provisions of these Bylaws prior to October 1, 2002, may be readmitted on such terms and conditions as the BOG determines, provided that if the person resigned with discipline pending and a prior petition for reinstatement or readmission has been denied, no petition may be filed or accepted for a period of two years after an adverse decision on the prior petition for reinstatement or readmission.

N. READMISSION AFTER VOLUNTARY RESIGNATION

Any former member who has resigned and who seeks readmission to membership in the Bar must do so in one of two ways: by filing an application for readmission in the form and manner prescribed by the Bar, including a statement detailing the reasons the member resigned and the reasons the member is seeking readmission, or by seeking admission by motion pursuant to APR 3(c) (if the former member is licensed as a lawyer in another U.S. jurisdiction and would otherwise qualify for admission under that rule).

1. A former member filing an application for readmission after voluntary resignation must:
 - a. (unchanged)
 - b. establish that such person is morally, ethically and professionally qualified to be licensed as the applicable member type and is of good moral character and has the requisite fitness to practice law consistent with the requirements for other applicants for admission to practice law as the applicable member type. An application for readmission will be subject to character and fitness investigation and review as described in APR 20-24.3, consistent with other applications for admission.
 - c. In addition to the above requirements, if an application for readmission is granted and:
 - 1) it has been less than four consecutive years since the voluntary resignation, the applicant must establish:
 - (a) that within the three years prior to readmission the former member has earned and reported approved MCLE credits in a manner consistent with the requirement for one reporting period for an Active member of the same license type, without including the credits that might otherwise be available from the reinstatement/readmission course; and
 - (b) attend and complete the applicable Bar-sponsored reinstatement/readmission course as set forth in Art. III.D.1.a)(2).
 - 2) it has been four or more consecutive years since the voluntary resignation, the applicant must take and pass the applicable examination required for admission.
 - d. Upon successful completion of the above requirements, the former member must satisfy the preadmission requirements and be admitted by Supreme Court order as set forth in APR 5, except that:
 - 1) a lawyer applicant who has been resigned for less than four consecutive years need not take and pass the Washington Law Component; and
 - 2) a LLLT applicant who has been resigned less than four consecutive years need not demonstrate completion of substantive law-related work experience.
2. (unchanged)

O. EXAMINATION REQUIRED

All applications for reinstatement after disbarment or revocation will be subject to character and fitness review, and taking and passing the examination for admission for the applicable license type, pursuant to the provisions of APR 25-25.6. All applications for readmission after voluntary resignation will be subject to character and fitness review pursuant to the provisions of APR 20-24.3. All applications for reinstatement to Active status from Suspended status will be handled in a similar fashion to applications for a return to Active status from Inactive status. The Character and Fitness Board, and (on review) the Washington Supreme Court, have broad authority to withhold a transfer to Active or to impose conditions on reinstatement or readmission to Active membership, which may include taking and passing the applicable examination for admission, in cases where the applicant fails to meet the burden of proof required by APR 20-24.3. The member/former member will be responsible for the costs of any investigation, examination, or proceeding before the Character and Fitness Board and the Washington Supreme Court.

WASHINGTON STATE BAR ASSOCIATION

To: WSBA President, President-elect, and Board of Governors
From: Stephen R. Crossland, Chair, LLLT Board
Renata de Carvalho Garcia, Innovative Licensing Programs Manager/Staff Liaison to LLLT Board
Jean McElroy, Chief Regulatory Counsel
Date: January 4, 2018
Subject: Suggested Amendments to APR 28, Appendix APR 28 (Regulations of the APR 28 LLLT Board), LLLT RPC, and Lawyer RPC.

Information: Three sets of suggested rule amendments will be submitted to the Supreme Court by the LLLT Board. They are provided here for the BOG's information.

The Limited License Legal Technician (LLLT) Board will be submitting to the Supreme Court suggested rule amendments for Admission and Practice Rule (APR) 28 and its related Regulations in order to permit an enhanced scope of practice by LLLTs in the current area of domestic relations. In reviewing the enhancements, the LLLT Board realized that the Limited License Legal Technician Rules of Professional Conduct (LLLT RPC), and the Rules of Professional Conduct (Lawyer RPC) would also need to be amended in order to accommodate some of the enhancements. These three sets of suggested amendments are being submitted to the BOG for informational purposes only.

The LLLT Board began discussing possible enhancements to the current LLLT domestic relations practice area in late 2014 in response to questions and concerns from the 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 the domestic relations scope could be improved to allow LLLTs to provide a more helpful and cohesive set of services to their clients. The following suggested amendments were developed through extensive review and discussion, and after consideration of feedback that was received by the Board during this process.

Suggested amendments to APR 28 and Related Regulations

Broadly speaking, 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 a LLLT's ability to render efficient and effective legal services to pro se clients. The suggested amendments to APR 28 and its associated Regulations would enhance the scope of a LLLT's family law practice area to permit a LLLT to provide better and more effective assistance to pro se clients. The suggested amendments would allow a LLLT to attend court proceedings with a pro se client to answer factual and procedural questions from the bench, but without making legal arguments. The suggested amendments also would allow a LLLT to negotiate a client's legal rights and responsibilities pursuant to the client's written consent. In addition, a LLLT would be able to accompany, assist, and confer with their pro se clients at depositions.

As stated, the LLLT Board began its discussions 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. The Family Law Advisory Workgroup then was charged with discussing ways in which the domestic relations scope could be improved to allow LLLTs to provide a more cohesive set of services to their clients in order to better meet the clients' needs. Throughout 2016 and the beginning of 2017, the workgroup studied the issues and provided recommendations to the LLLT Board. The LLLT Board approved suggested amendments in early 2017, and notified the Board of Governors and the Supreme Court of the intended suggested enhancements to the domestic relations scope of practice. The Supreme Court expressed conceptual approval of these enhancements when the LLLT Board started drafting these suggested amendments. See April 3, 2017 letter from Chief Justice Fairhurst to LLLT Board Chair Steve Crossland, attached.

The LLLT Board posted the suggested amendments on the WSBA website and solicited comments. On August 16, 2017, the Family Law Advisory Workgroup reviewed the comments submitted, discussed in detail all comments that posed specific drafting questions or suggestions, and, in response, modified and refined the suggested amendments where it deemed necessary. The modifications were also responsive to informal feedback that the LLLT Board 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. These are the amendments being presented today.

The suggested amendments can be broken out into three rough categories: enhanced representation, permitted actions, and administrative rule cleanup.

The first area of suggested amendments, relating to enhanced representation, would allow LLLTs to provide more assistance to clients in negotiations, at court, in ex parte appearances, in alternative dispute resolution (ADR) proceedings, and at depositions. (The suggested amendments would not authorize LLLTs to enter a notice of appearance or represent a client in court, make legal arguments before a court or tribunal, or take or defend a deposition.) More specifically, the suggested amendments would:

- Allow LLLTs to negotiate a client's legal rights and responsibilities pursuant to the client's written consent;
- Allow LLLTs to attend specified court proceedings in family law matters with a pro se client to answer factual and procedural questions from the bench without making legal arguments;
- Allow LLLTs to prepare paperwork and accompany and assist clients in ADR proceedings;
- Allow LLLTs to present agreed orders, uncontested orders, default orders and accompanying documents to the court; and
- Allow LLLTs to accompany, assist, and confer with their pro se clients at depositions.

The suggested amendments authorizing these enhanced activities take two forms. First, sections of the APR and related Regulations that specifically prohibited any of these actions would be stricken by the amendments. Second, new descriptions of the authorized activities would be added by way of the amendments. These changes are located primarily in APR 28 (F)-(H) and Regulation 2(B)(2).

The second area of suggested amendments, relating to document preparation, would allow LLLTs to prepare additional types of documents within the domestic relations scope, and reorders the listing of permitted actions to be roughly sequential from initial actions through modifications and other related actions. The permitted actions as now reordered and listed in the suggested amendments to APR 28 Regulation 2(B)(1) are:

- Divorce and dissolution (this adds the word “divorce”);
- Parenting and support;
- Parentage or paternity (this adds the word “parentage”);
- Child support modification;
- Parenting plan modification;
- Domestic violence protection orders (this more clearly identifies the specific type of orders permitted, rather providing a list of prohibited orders);
- Committed intimate relationships only as they pertain to parenting and support issues;
- Legal separation;
- Nonparental and third party custody (this is an enhancement);
- Other protection or restraining orders arising from a domestic relations case (enhancement); and
- Relocation (enhancement).

Under the enhancements, LLLTs would be allowed to provide services related to the division of real property that is a single family residential dwelling with owner equity less than or equal to twice the homestead exemption. Additionally, LLLTs would be allowed to allocate retirement assets for defined contribution plans with value less than the homestead exemption. Again, the amendments allowing these enhanced legal services take two forms: first, sections of the APR and related Regulations that specifically prohibited any of these actions would be stricken, and second, new descriptions of these authorized activities would be added.

The third area of suggested amendments is mostly administrative, in the nature of rules cleanup. These suggested amendments are intended to clean up language to match current style and usage.

Suggested Amendments to the LLLT RPC

After the LLLT Board’s August 17, 2017 meeting, where the LLLT Board approved the suggested amendments to APR 28 and its related Regulations, the Board determined that in order to implement the suggested amendments to APR 28, amendments to the LLLT Rules of Professional Conduct would also be required. Failure to amend the LLLT RPC would result in situations where the LLLT RPC would not align with the enhanced scope of practice. For example, this could create a situation where APR 28 would authorize a LLLT to negotiate on behalf of his or her client, but the current LLLT RPC would prohibit LLLTs from negotiating on behalf of their clients. Therefore, the suggested amendments to the LLLT RPC follow

from the proposed amendments to APR 28 to allow LLLTs to work within the enhanced scope of family law practice.

In the suggested amendments to the LLLT RPC, the rules and comments would be modified to make clear that a LLLT could communicate a client's position and could negotiate on the client's behalf pursuant to a written agreement with the client. Rules regarding a LLLT's behavior before a tribunal and a LLLT's obligations to the tribunal and the client would be updated to permit the LLLT to engage in the authorized activities of presenting motions in ex parte proceedings and assisting clients and answering questions in alternative dispute resolution proceedings and in court.

The suggested amendments to the LLLT RPC would remove references to prohibited conduct that would become allowed after adoption of the suggested amendments to APR 28. Where large sections of APR 28 were quoted in the LLLT RPC, the quoted sections would be removed and replaced with a reference to APR 28. This would simplify the LLLT RPC and enable the rules to stay current when there are future amendments to specific sections of APR 28. Also the suggested amendments to the LLLT RPC would correct grammar and update terminology (such as using the phrase "person who is not a LLLT" to replaced "non-LLLT").

Suggested Amendments to the Lawyer RPC

During the process of reviewing the LLLT RPC, it became apparent that the Lawyer RPC would need to be amended as well, but there are only a few required amendments to these rules. Throughout the Lawyer RPC, specific references to subparts of APR 28 would be replaced with general references to APR 28 and related Regulations, in order to allow the lawyer RPC to remain accurate even if specific provisions of APR 28 change. Language would be added to clarify restrictions on a lawyer's ability to sell a law practice to an LLLT when the legal services provided are outside the scope of the LLLT's practice area. Language containing a prohibition on a LLLT negotiating on behalf of a pro-se client would be removed, and terminology would be updated to correct rule names and align with the current WSBA admissions and disciplinary processes. The Committee on Professional Ethics has reviewed and approved of the suggested amendments to the Lawyer RPC.

ATTACHMENTS:

1. Suggested amendments to APR 28 and Appendix APR 28 (blackline version)
2. Suggested amendments to APR 28 and Appendix APR 28 (clean version)
3. Suggested amendments to the LLLT RPC (blackline version)
4. Suggested amendments to the LLLT RPC (clean version)
5. Suggested amendments to the Lawyer RPC (blackline version)
6. Suggested amendments to the Lawyer RPC (clean version)
7. April 3, 2017 letter from Chief Justice Fairhurst to LLLT Board Chair Steve Crossland.

From: RSD Staff
To: CPE
Date: December 8, 2017
Subject: Lawyer RPC Proposed Amendment

At its August meeting, the Limited License Legal Technician (LLLT) Board approved proposed amendments to APR 28. Before those proposed amendments can be sent to the Court for approval, necessary related changes must be made to the LLLT Rules of Professional Conduct. Failure to do so would result in situations where the LLLT RPC would not align with the enhancements to the LLLT's scope of practice under the proposed amendments. While making changes to the LLLT RPC, WSBA staff identified areas of the Lawyer RPC that should also be changed either to correct references that would become incorrect or to align with the proposed amendments to APR 28 and the LLLT RPC.

Since the LLLT Board's August meeting, WSBA staff – Douglas Ende (Chief Disciplinary Counsel), Jean McElroy (Chief Regulatory Counsel), Jeanne Marie Clavere (Professional Responsibility Counsel), Robert Henry (Associate Director RSD), Renata de Carvalho Garcia (Innovative Licensing Programs Manager), and Joe Terrenzio (Limited License Legal Technician Program Lead) – have held six meetings for in-depth review and discussion of the modifications necessary to the LLLT RPCs to successfully implement the proposed amendments to APR 28. Two additional meetings were held for review and discussion of the proposed amendments to the Lawyer RPC. The drafts provided in your meeting materials are the work product of those meetings. The LLLT Board will review the LLLT RPC draft at its December 14 meeting before making a final determination to recommend the proposed amendments to the Court.

As explained above, it is extremely important that the two sets of RPC and the APR are sent to the Court at the same time. However, the LLLT and Lawyer RPCs go through different approval processes. For the LLLT RPC, the LLLT Board makes the recommendation that proposed changes be sent to the Court for approval. The LLLT Board's recommendation is sent to the WSBA Board of Governors (BOG) for the BOG's information and any input. For the Lawyer RPC, the CPE reviews proposed changes and makes a recommendation to the BOG. The BOG then makes the final recommendation that the proposed changes to the Lawyer RPC be sent to the Court. It is our hope that the CPE will be able to review and recommend the suggested amendments to the Lawyer RPC at its December 15 meeting.

The proposed amendments to the Lawyer RPC are:

1.0B definition of Legal Practitioner – removed “licensed under APR 28” to be consistent with the definition in APR 28 and the LLLT RPC.

1.0B definition of Limited License Legal Technician – removed the final sentence because it is no longer accurate under the proposed amendments to APR 28. For reference, the LLLT scope of practice is in APR 28(F).

WASHINGTON STATE BAR ASSOCIATION

1.17 - Comment 19 was significantly revised to remove the description of when a LLLT cannot purchase a law practice. The current language is not correct in all circumstances. A comment was added to LLLT RPC 1.17 as comment 2 and a new reference to that comment was added to the Lawyer RPC.

8.1 – The language of 8.1 was re-written to better reflect the unified application and disciplinary processes in effect now that LLLTs and LPOs are members of the Bar.

Throughout – removed references to specific subparts of APR 28 and left 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.

Throughout – references to the Rules of Enforcement of Limited LLLT Conduct (ELLLTC) were corrected.

The Supreme Court
State of Washington

MARY E. FAIRHURST
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



(360) 357-2053
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April 3, 2017

Mr. Stephen Crossland
Chair, Limited License Legal Technician Board
c/o Crossland Law Offices
P.O. Box 566
Cashmere, WA 98815-0566

Re: Limited License Legal Technician Board Annual Meeting with Supreme Court

Dear Steve:

At the Supreme Court's annual meeting with the Limited License Legal Technician (LLLT) Board, you asked the justices for direction regarding two recommendations: 1) adding enhancements to the family law area and 2) adopting a new practice area of elder care and health law. The justices had the opportunity to discuss your requests at the March 29, 2017 administrative en banc conference.

A majority of the court voted yes to expanding the family law area. A majority of the court voted no to having the new practice area be elder care and health law; however, a majority of the court would like the LLLT Board to explore other areas.

In addition to relaying to you the results of our discussions, I was asked to make the following inquiries. When choosing and recommending a new area, does the Board consider its financial attractiveness to the LLLT or unmet legal needs? If there are no additional subject matter areas, can the program continue?

Thank you for all the hard work that you and the LLLT Board members do on our behalf. I look forward to further discussions.

Very truly yours,

MARY E. FAIRHURST
Chief Justice

cc: Justices
Paula Littlewood, Executive Dir., WSBA

SUGGESTED AMENDMENTS TO APR 28

TITLE

ADMISSION AND PRACTICE RULES (APR)

RULE 28. LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. Purpose.

[NO CHANGES]

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

(1)-(3) [NO CHANGES]

(4) “Limited License Legal Technician” (LLLT) means 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 this rule and related regulations.

(5)-(10) [NO CHANGES]

C. Limited License Legal Technician Board

[NO CHANGES]

D. [Reserved.]

E. [Reserved.]

F. Scope of Practice Authorized by Limited Practice Rule. The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not render any legal assistance on this issue and shall advise the client to seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may render the following limited legal assistance to a pro se client:

(1)-(2) [NO CHANGES]

(3) Inform the client of and assist with applicable procedures for proper service of process and filing of legal documents;

(4) [NO CHANGES]

(5) Review documents or exhibits that the client has received ~~from the opposing side,~~ and

SUGGESTED AMENDMENTS TO APR 28

explain them to the client;

(6)-(7) [NO CHANGES]

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

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

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

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

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

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

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

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

(1)-(2) [NO CHANGES]

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not ~~appear or~~ represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b) or specifically authorized by the scope of practice regulations for the approved practice area in which the LLLT is licensed;

(b)-(g) [NO CHANGES]

SUGGESTED AMENDMENTS TO APR 28

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

H. Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(1)-(4) [NO CHANGES]

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

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

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

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

(8) Conduct or defend a deposition;

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

(109) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

I. – O.

[NO CHANGES]

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

REGULATION 1: [RESERVED.]

SUGGESTED AMENDMENTS TO APR 28

REGULATION 2: APPROVED PRACTICE AREAS--SCOPE OF PRACTICE

AUTHORIZED BY LIMITED LICENSE LEGAL TECHNICIAN RULE

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

A. Issues Beyond the Scope of Authorized Practice.

(1)-(4) [NO CHANGES]

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

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

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

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

B. Domestic Relations.

1. *Domestic Relations, Defined.* For the purposes of these Regulations, domestic relations shall include only the following actions: (a) divorce and dissolution~~child support modification actions~~, (b) parenting and support~~dissolution actions~~, (c) parentage or paternity~~domestic violence actions~~, ~~except as prohibited by Regulation 2B(3)~~, (d) child support modification~~committed intimate relationship actions only as they pertain to parenting and support issues~~, (e) parenting plan

SUGGESTED AMENDMENTS TO APR 28

modification legal separation actions, (f) domestic violence protection orders major parenting plan modifications when the terms are agreed to by the parties before the onset of the representation by the LLLT, (g) committed intimate relationships only as they pertain to parenting and support issues minor parenting plan modifications, (h) legal separation parenting and support actions, (i) nonparental and third party custody paternity actions, and (j) other protection or restraining orders arising from a domestic relations case, and (k) relocation actions, except as prohibited by Regulation 2B(3).

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

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

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

(c) LLLTs may advise as to the allocation of retirement assets for defined contribution plans with a value less than the homestead exemption, and as provided in U.S. Internal Revenue Code (IRC) Sections 401 a; 401 k; 403 b; 457; and Individual Retirement Accounts as set forth in IRC section 408.

(d) LLLTs may include language in a decree of dissolution awarding retirement assets as described in APR 28 Regulation 2 B (2) (c) when the respondent defaults, when the parties agree upon the award or when the court awards the assets following trial. The award language in the decree shall identify (1) the party responsible for having the QDRO or supplemental order prepared and by whom, (2) how the cost of the QDRO or supplemental order preparation is to be

SUGGESTED AMENDMENTS TO APR 28

paid, (3) by what date the QDRO or supplemental order must be prepared, and (4) the remedy for failure to follow through with preparation of the QDRO or supplemental order.

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

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

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

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

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

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

iii. enforcement of domestic relations orders;

iv. administrative child support;

v. modification of child support;

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

vii. reconsiderations or revisions;

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

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

SUGGESTED AMENDMENTS TO APR 28

- a. shall not ~~render legal services to~~represent more than one party in any domestic relations matter;
- b. shall not ~~render~~provide legal services in:
- i. ~~in~~-defacto parentage or ~~nonparental~~ custody actions; and
 - ii. actions that involve~~if~~ 25 U.S.C. Chapter 21, the Indian Child Welfare Act, or RCW 13.38, the Washington State Indian Child Welfare Act, ~~applies to the matter~~;
- c. ~~shall not advise or assist clients regarding~~:
- iii. division or conveyance of ~~owned real estate~~, formal business entities, commercial property, or residential real property except as permitted by Regulation 2B ~~or retirement assets that require a supplemental order to divide and award, which includes division of all defined benefit plans and defined contribution plans~~;
 - iv. preparation of QDROs and supplemental orders dividing retirement assets beyond what is prescribed in Regulation 2(B)(2)(d);
 - v. any retirement assets whereby the decree effectuates the division or the implementation of the division of the asset;
 - vi. bankruptcy, including obtaining a stay from bankruptcy;
 - vii. disposition of debts and assets, if one party is in bankruptcy or files a bankruptcy during the pendency of the proceeding, unless: (a) the LLLT's client has retained a lawyer to represent him/her in the bankruptcy, (b) the client has consulted with a lawyer and the lawyer has provided written instructions for the LLLT as to whether and how to proceed regarding the division of debts and assets in the domestic relations proceeding, or (c) the bankruptcy has been discharged;
 - iv. ~~anti harassment orders, criminal no contact orders, anti stalking orders, and sexual assault protection orders in domestic violence actions~~;
 - viii. ~~jointly acquired committed intimate relationship~~ property issues in committed intimate relationship actions;
 - ix. major parenting plan modifications and nonparental custody actions beyond the adequate

SUGGESTED AMENDMENTS TO APR 28

~~cause hearing unless the terms are were agreed to by the parties or one party defaults before the onset of the representation by the LLLT;~~

~~xvii.~~ the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues under RCW 26.27 or Uniform Interstate Family Support Act issues under RCW 26.21A unless and until jurisdiction has been resolved;

~~viii.~~ objections or responses in contested relocation actions~~objections to relocation petitions, responses to objections to relocation petitions, or temporary orders in relocation actions;~~ and

~~ix.~~ final revised parenting plans in relocation actions except in the event of default or where the terms have been agreed to by the parties.

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

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

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

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

A. Core Curriculum.

[NO CHANGES]

B. Practice Area Curriculum

[NO CHANGES]

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

1. *Domestic Relations.*

SUGGESTED AMENDMENTS TO APR 28

[NO CHANGES]

REGULATION 4- 20

[NO CHANGES]

SUGGESTED AMENDMENTS TO APR 28

TITLE

ADMISSION AND PRACTICE RULES (APR)

RULE 28. LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. Purpose.

[NO CHANGES]

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

(1)-(3) [NO CHANGES]

(4) “Limited License Legal Technician” (LLLT) means 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 this rule and related regulations.

(5)-(10) [NO CHANGES]

C. Limited License Legal Technician Board

[NO CHANGES]

D. [Reserved.]

E. [Reserved.]

F. Scope of Practice Authorized by Limited Practice Rule. The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not render any legal assistance on this issue and shall advise the client to seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may render the following limited legal assistance to a pro se client:

(1)-(2) [NO CHANGES]

(3) Inform the client of and assist with applicable procedures for proper service of process and filing of legal documents;

(4) [NO CHANGES]

(5) Review documents or exhibits that the client has received and explain them to the client;

SUGGESTED AMENDMENTS TO APR 28

(6)-(7) [NO CHANGES]

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

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

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

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

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

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

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

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

(1)-(2) [NO CHANGES]

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not represent the client in court, formal administrative adjudicative proceedings, or other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b) or specifically authorized by the scope of practice regulations for the approved practice area in which the LLLT is licensed;

(b)-(g) [NO CHANGES]

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

SUGGESTED AMENDMENTS TO APR 28

signature by the client, such as information sheets.

H. Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

(1)-(4) [NO CHANGES]

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

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

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

(8) Conduct or defend a deposition;

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

(10) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

I. – O.

[NO CHANGES]

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

REGULATION 1: [RESERVED.]

REGULATION 2: APPROVED PRACTICE AREAS--SCOPE OF PRACTICE

AUTHORIZED BY LIMITED LICENSE LEGAL TECHNICIAN RULE

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

A. Issues Beyond the Scope of Authorized Practice.

(1)-(4) [NO CHANGES]

SUGGESTED AMENDMENTS TO APR 28

After an issue beyond the LLLT's scope of practice has been identified, if the client engages a lawyer with respect to the issue, then an LLLT may prepare a document related to the issue only if a lawyer acting on behalf of the client has provided appropriate documents and written instructions for the LLLT as to whether and how to proceed with respect to the issue. If the client does not engage a lawyer with respect to the issue, then the LLLT may prepare documents that relate to the issue if the client informs the LLLT how the issue is to be determined and instructs the LLLT how to complete the relevant portions of the document, and above the LLLT's signature at the end of the document, the LLLT inserts a statement to the effect that the LLLT did not advise the client with respect to any issue outside of the LLLT's scope of practice and completed any portions of the document with respect to any such issues at the direction of the client.

B. Domestic Relations.

1. *Domestic Relations, Defined.* For the purposes of these Regulations, domestic relations shall include only the following actions: (a) divorce and dissolution, (b) parenting and support, (c) parentage or paternity, (d) child support modification, (e) parenting plan modification, (f) domestic violence protection orders, (g) committed intimate relationships only as they pertain to parenting and support issues, (h) legal separation, (i) nonparental and third party custody, (j) other protection or restraining orders arising from a domestic relations case, and (k) relocation.

2. *Scope of Practice for Limited License Legal Technicians -- Domestic Relations.* LLLTs licensed in domestic relations may render legal services to clients as provided in APR 28F and this regulation, except as prohibited by APR 28H and Regulation 2B.

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

(b) LLLT legal services regarding the division of real property shall be limited to matters where the real property is a single family residential dwelling with owner equity less than or equal to

SUGGESTED AMENDMENTS TO APR 28

twice the homestead exemption (see RCW 6.13.030). LLLTs shall use the form for real property division as approved by the LLLT Board.

(c) LLLTs may advise as to the allocation of retirement assets for defined contribution plans with a value less than the homestead exemption, and as provided in U.S. Internal Revenue Code (IRC) Sections 401 a; 401 k; 403 b; 457; and Individual Retirement Accounts as set forth in IRC section 408.

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

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

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

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

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

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

ii. motions for temporary orders, including but not limited to temporary parenting plans, child

SUGGESTED AMENDMENTS TO APR 28

support, maintenance, and orders to show cause;

iii. enforcement of domestic relations orders;

iv. administrative child support;

v. modification of child support;

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

vii. reconsiderations or revisions;

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

3. *Prohibited Acts*. In addition to the prohibitions set forth in APR 28H, in the course of rendering legal services to clients or prospective clients, LLLTs licensed to practice in domestic relations:

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

b. shall not render legal services in:

i. defacto parentage actions;

ii. actions that involve 25 U.S.C. Chapter 21, the Indian Child Welfare Act, or RCW 13.38, the Washington State Indian Child Welfare Act;

iii. division or conveyance of formal business entities, commercial property, or residential real property except as permitted by Regulation 2B;

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

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

vi. bankruptcy, including obtaining a stay from bankruptcy;

vii. disposition of debts and assets, if one party is in bankruptcy or files a bankruptcy during the pendency of the proceeding, unless: (a) the LLLT's client has retained a lawyer to represent

him/her in the bankruptcy, (b) the client has consulted with a lawyer and the lawyer has provided

SUGGESTED AMENDMENTS TO APR 28

written instructions for the LLLT as to whether and how to proceed regarding the division of debts and assets in the domestic relations proceeding, or (c) the bankruptcy has been discharged;

viii. property issues in committed intimate relationship actions;

ix. major parenting plan modifications and nonparental custody actions beyond the adequate cause hearing unless the terms are agreed to by the parties or one party defaults;

x. the determination of Uniform Child Custody Jurisdiction and Enforcement Act issues under RCW 26.27 or Uniform Interstate Family Support Act issues under RCW 26.21A unless and until jurisdiction has been resolved;

xi. objections or responses in contested relocation actions; and

xii. final revised parenting plans in relocation actions except in the event of default or where the terms have been agreed to by the parties.

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

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

A. Core Curriculum.

[NO CHANGES]

B. Practice Area Curriculum

[NO CHANGES]

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

1. Domestic Relations.

SUGGESTED AMENDMENTS TO APR 28

[NO CHANGES]

REGULATION 4- 20

[NO CHANGES]

DRAFT

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 TECHNICIAN RULES OF PROFESSIONAL CONDUCT

~~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.~~

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

(h) [NO CHANGES]

Comment

[NO CHANGES]

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LLLT

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

(b) [NO CHANGES]

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

(d)-(g) [NO CHANGES]

Comment

[1] [NO CHANGES]

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

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

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

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

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

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

[6] An LLLT may not provide services that exceed the scope of the LLLT's authority under APR 28. If an issue arises for which the client needs services that exceed the scope of the

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LLLT's authority, the LLLT must inform that client that the client should seek the services of a lawyer. APR 28(G)(~~5~~3).

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

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

RULE 1.5 FEES

[NO CHANGES]

Comment

[1]-[3] [NO CHANGES]

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[4] Unlike a lawyer, an LLLT is required by APR 28(G)(~~3~~2) to enter into a written contract with the client before the LLLT begins to perform any services for a fee that includes, among other things, identification of all fees and costs to be charged to the client for the services to be performed. The provisions concerning a flat fee described in (f)(2) of this Rule, if applicable, should be included in that contract. The contract must be signed by both the client and the LLLT before the LLLT begins to perform any services for a fee. ~~See Comment [2] to Rule 1.2 for other provisions that are to be included in the contract.~~

[5] [NO CHANGES]

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

[NO CHANGES]

Comment

[1]-[2] [NO CHANGES]

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

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

[5]-[9] [NO CHANGES]

LLLT RPC 1.15A SAFEGUARDING PROPERTY

(a)-(h) [NO CHANGES]

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(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ~~LLLT RECEL~~C 15.7(d) and ~~LLLT REC~~ 15.7(e). In the exercise of ordinary prudence, an LLLT may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ~~LLLT RECEL~~C 15.7(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, an LLLT shall apply the following criteria:

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

(2)-(3) [NO CHANGES]

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

Comment

[NO CHANGES]

LLLT RPC 1.16 DECLINING OR TERMINATING REPRESENTATION

[NO CHANGES]

Comment

[1] This Rule was adapted from Lawyer RPC 1.16 with no substantive changes except to reflect the limited scope of representation that a LLLT provides to pro se clients and that a LLLT does not enter a notice of appearance. ~~are not authorized to represent clients in court or to~~

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~~advocate for clients. For this reason, paragraph (c) is reserved and references to litigation or proceedings before a tribunal that appear in Lawyer RPC 1.16 do not apply and have been omitted from this Rule. Otherwise, this Rule~~ Lawyer RPC 1.16 applies to LLLTs analogously.

RULE 1.17 SALE OF LAW PRACTICE

(a)-(c) [NO CHANGES]

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

Comment

[1] [NO CHANGES]

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

RULE 2.1 ADVISOR

[NO CHANGES]

Comment

[1] [NO CHANGES]

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

RULE 2.3 [Reserved]

Comment

[1] Lawyer RPC 2.3 pertains to a lawyer providing an evaluation of a matter affecting a client for the use of someone other than the client. ~~Unlike lawyers, LLLTs are not authorized to communicate the client's position to third parties. Drafting an opinion letter for the purposes of its use with a third party is the same as communicating the client's position to a third party and is prohibited by APR 28(H)(6).~~ If the need for an evaluation arises in a LLLT's authorized

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scope of practice under APR 28, a LLLT should look to lawyer RPC 2.3 for guidance.

~~Accordingly, this Rule is reserved.~~

RULE 3.1 ADVISING AND ASSISTING CLIENTS IN PROCEEDINGS BEFORE A TRIBUNAL

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

(1)-(5) [NO CHANGES]

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

(7) [NO CHANGES]

(b) [NO CHNAGES]

Comment

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

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

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

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

RULE 3.6

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[Reserved]

Comment

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

RULE 3.7

[Reserved]

Comment

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

LLLT RPC 3.8

[Reserved]

Comment

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

LLLT RPC 3.9

[Reserved]

Comment

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

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

[NO CHANGES]

Comment

[1] [NO CHANGES]

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

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY LAWYER

[NO CHANGES]

Comment

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

RULE 4.3 DEALING WITH PERSON NOT REPRESENTED BY LAWYER

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

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

Comment

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

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

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

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

RULE 5.4 PROFESSIONAL INDEPENDENCE OF AN LLLT

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

(1)-(2) [NO CHANGES]

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

(4)-(5) [NO CHANGES]

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

(c) [NO CHANGES]

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

- (1) a ~~non-LLLT~~ person who is not a LLLT owns any interest therein, except that a fiduciary representative of the estate of an LLLT may hold the stock or interest of the LLLT for a reasonable time during administration;
- (2) a person who is not a LLLT ~~non-LLLT~~ is a corporate director or officer (other than as secretary or treasurer) thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
- (3) a person who is not a LLLT ~~non-LLLT~~ has the right to direct or control the professional judgment of an LLLT.

Comment

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

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

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW

[NO CHANGES]

Comment

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

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

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

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

These provisions are, at this time, unnecessary in the LLLT RPC because there are no limited licenses ~~programs~~ in other jurisdictions tantamount to Washington's LLLT rules and no need to authorize ~~nonlawyers~~ limited license practitioners in other jurisdictions to practice law in Washington, either temporarily or on an ongoing basis. For this reason, paragraphs (b) through (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 LLLT RECELLLTC in connection with a disciplinary matter; including, but not limited to, the duties catalogued at LLLT RECELLLTC 1.5;

(m)-(o) [NO CHANGES]

Comment

[NO CHANGES]

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. 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 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.

(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.

(g) "ELLLTC" denotes the Washington Supreme Court's Rules for Enforcement of Limited License Legal Technician Conduct.

(h) [NO CHANGES]

SUGGESTED AMENDMENTS TO LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROFESSIONAL CONDUCT

Comment

[NO CHANGES]

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LLLT

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

(b) [NO CHANGES]

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

(d)-(g) [NO CHANGES]

Comment

[1] [NO CHANGES]

[2] Paragraph (a) was modified from the Lawyer RPC to exclude references to criminal cases, and paragraph (d) was modified from the Lawyer RPC to exclude (and therefore prohibit) an LLLT from discussing with a client the legal consequences of any proposed criminal or fraudulent conduct and assisting a client in determining the validity, scope, meaning, or application of the law with respect to any such conduct. In circumstances where a client has engaged or may engage in conduct that the LLLT knows is criminal or fraudulent, the LLLT shall not provide services related to such conduct and shall inform the client that the client should seek the services of a lawyer.

[3] Unlike a lawyer, an LLLT may perform only limited services for a client. Before performing any services for a fee, an LLLT must enter into a written contract with the client as required by APR 28(G)(2).

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[4] Additional requirements concerning the authorized scope of an LLLT's practice are imposed by APR 28. An LLLT must ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If not, the LLLT shall not render any legal assistance on the issue and must advise the client to seek the services of a lawyer. If the issue does lie within the defined practice area for which the LLLT is licensed, then the LLLT is authorized to render the services that are enumerated in APR 28.

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

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

[7] [Reserved]

[8] Certain conduct and services are specifically prohibited to an LLLT by APR 28(H).

RULE 1.5 FEES

[NO CHANGES]

Comment

[1]-[3] [NO CHANGES]

[4] Unlike a lawyer, an LLLT is required by APR 28(G)(2) to enter into a written contract with the client before the LLLT begins to perform any services for a fee that includes, among other things, identification of all fees and costs to be charged to the client for the services to be performed. The provisions concerning a flat fee described in (f)(2) of this Rule, if applicable, should be included in that contract. The contract must be signed by both the client and the LLLT before the LLLT begins to perform any services for a fee.

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[5] [NO CHANGES]

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

[NO CHANGES]

Comment

[1]-[2] [NO CHANGES]

[3] LLLTs will have no role in class action litigation and Rule 1.8(e)(2) is accordingly reserved in this Rule. LLLT RPC 1.8(e) does not authorize activities that are beyond the scope of the LLLT's limited license. Nothing in Rule 1.8(e) is intended to prohibit lawyer members of a firm with which an LLLT is associated from engaging in conduct permitted by Lawyer RPC 1.8(e)(2).

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

[5]-[9] [NO CHANGES]

LLLT RPC 1.15A SAFEGUARDING PROPERTY

(a)-(h) [NO CHANGES]

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation and meet the requirements of ELC 15.7(d) and (e). In the exercise of ordinary prudence, an LLLT may select any financial institution authorized by the Legal Foundation of Washington (Legal Foundation) under ELC 15.7(c). In selecting the type of trust account for the purpose of depositing and holding funds subject to this Rule, an LLLT shall apply the following criteria:

- (1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held for a short period of time the funds must be placed in a pooled interest-

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bearing trust account known as an Interest on Limited License Legal Technician's Trust Account or IOLTA. The interest earned on IOLTA accounts shall be paid to, and the IOLTA program shall be administered by, the Legal Foundation of Washington in accordance with ELLLTC 15.4 and ELC 15.7(e).

(2)-(3) [NO CHANGES]

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

Comment

[NO CHANGES]

LLLT RPC 1.16 DECLINING OR TERMINATING REPRESENTATION

[NO CHANGES]

Comment

[1] This Rule was adapted from Lawyer RPC 1.16 with no substantive changes except to reflect the limited scope of representation that a LLLT provides to pro se clients and that a LLLT does not enter a notice of appearance. For this reason, paragraph (c) is reserved. Otherwise, Lawyer RPC 1.16 applies to LLLTs analogously.

RULE 1.17 SALE OF LAW PRACTICE

(a)-(c) [NO CHANGES]

(d) The fees charged clients shall not be increased by reason of the sale.

Comment

[1] [NO CHANGES]

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

RULE 2.1 ADVISOR

[NO CHANGES]

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Comment

[1] [NO CHANGES]

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

RULE 2.3 [Reserved]

Comment

[1] Lawyer RPC 2.3 pertains to a lawyer providing an evaluation of a matter affecting a client for the use of someone other than the client. If the need for an evaluation arises in a LLLT's authorized scope of practice under APR 28, a LLLT should look to lawyer RPC 2.3 for guidance.

RULE 3.1 ADVISING AND ASSISTING CLIENTS IN PROCEEDINGS BEFORE A TRIBUNAL

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

(1)-(5) [NO CHANGES]

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

(7) [NO CHANGES]

(b) [NO CHNAGES]

Comment

[1] This Rule is substantially different from Lawyer RPC 3.1 because the role of the LLLTs as an advocate is limited. In many instances, an LLLT will be providing assistance to a client who is a party to a court proceeding. In providing such assistance, an LLLT may be authorized within the scope of a specific practice area to accompany and assist a pro se client in certain proceedings. Assistance may include responding to factual and procedural questions from a

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tribunal. As a member of the legal profession, an LLLT is ethically bound to avoid conduct that undermines the integrity of the adjudicative process or threatens the fair and orderly administration of justice. Although less comprehensive than Title 3 of the Lawyer RPC, the core Title 3 principles incorporated into Rule 3.1 address the issues likely to be encountered by an LLLT, with supplemental guidance available in Title 3 of the Lawyer RPC and commentary thereto.

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

RULE 3.6

[Reserved]

Comment

[1] See Comment [2] to Rule 3.1.

RULE 3.7

[Reserved]

Comment

[1] See Comment [2] to Rule 3.1.

LLLT RPC 3.8

[Reserved]

Comment

[1] See Comment [2] to Rule 3.1.

LLLT RPC 3.9

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[Reserved]

Comment

[1] See Comment [2] to Rule 3.1.

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

[NO CHANGES]

Comment

[1] [NO CHANGES]

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY LAWYER

[NO CHANGES]

Comment

[1] A person who has chosen to be represented by a lawyer should be protected against possible overreaching by another lawyer. *See* Lawyer RPC 4.2 and Comments to that rule. Rule 4.2 extends to LLLTs the prohibition on communicating with a person represented by a lawyer. This Rule differs from Lawyer RPC 4.2 in that the prohibition is absolute. While a lawyer may be permitted to communicate directly with a person who is represented by another lawyer with the other lawyer's consent, or if authorized to do so by law or court order, there are no exceptions to the prohibition as it applies to LLLTs.

RULE 4.3 DEALING WITH PERSON NOT REPRESENTED BY LAWYER

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

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Comment

[1] This Rule was adapted from Lawyer RPC 4.3 with no substantive changes and applies to LLLTs analogously.

[2] [Reserved]

[3] The client of an LLLT is an unrepresented person for purposes of Lawyer RPC 4.2 and 4.3.

[4] An LLLT may have occasion to communicate directly with a nonparty who is assisted by another LLLT. A risk of unwarranted intrusion into a privileged relationship may arise when an LLLT deals with a person who is assisted by another LLLT. Client-LLLT communications, however, are privileged to the same extent as client-lawyer communications. *See* APR 28(K)(3). An LLLT's ethical duty of confidentiality further protects the LLLT client's right to confidentiality in that professional relationship. *See* LLLT RPC 1.6(a). When dealing with a person who is assisted by another LLLT, an LLLT must respect these legal rights that protect the client-LLLT relationship.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF AN LLLT

(a) An LLLT or LLLT firm shall not share legal fees with anyone who is not a LLLT, except that:

(1)-(2) [NO CHANGES]

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

(4)-(5) [NO CHANGES]

(b) An LLLT shall not form a partnership with anyone who is not a LLLT if any of the activities of the partnership consist of the practice of law.

(c) [NO CHANGES]

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

- (1) a person who is not a LLLT_owns any interest therein, except that a fiduciary representative of the estate of an LLLT may hold the stock or interest of the LLLT for a reasonable time during administration;
- (2) a person who is not a LLLT is a corporate director or officer (other than as secretary or treasurer) thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
- (3) a person who is not a LLLT has the right to direct or control the professional judgment of an LLLT.

Comment

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

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

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW

[NO CHANGES]

Comment

[1] Lawyer RPC 5.5(a) expresses the basic prohibition on a legal practitioner practicing law in a jurisdiction where that individual is not specifically licensed or otherwise authorized to practice law. It reflects the general notion (enforced through criminal-legal prohibitions and other law) that legal services may only be provided by those licensed to do so. This limitation on the ability to practice law is designed to protect the public against the rendition of legal services by unqualified persons. *See* Comment [2] to Lawyer RPC 5.5.

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

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

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

RULE 8.1 LICENSING, ADMISSION, AND DISCIPLINARY MATTERS

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An applicant for an LLLT license, or an LLLT in connection with an application for reinstatement or admission to the Bar or a disciplinary matter involving a legal practitioner, shall not:

(a)-(b) [NO CHANGES]

Comment

[1] This Rule was adapted from Lawyer RPC 8.1 with no substantive changes. 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 ELLLTC in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELLLTC 1.5;

(m)-(o) [NO CHANGES]

Comment

[NO CHANGES]

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]-[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 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~~

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

RULE 4.3 DEALING WITH PERSON NOT REPRESENTED BY A LAWYER

[NO CHANGES]

Comment

[1]-[4] [NO CHANGES]

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

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

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

[NO CHANGES]

Washington Comment

[1] [NO CHANGES]

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

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

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

(a)-(b) [NO CHANGES]

Comment

[NO CHANGES]

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.

(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.

(d)-(e) [NO CHANGES]

Washington Comments

[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. 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 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] There are some restrictions on a lawyer’s ability to sell a law practice to an LLLT when the legal services provided are outside the scope of the LLLT’s practice. As such, a lawyer may not participate in or facilitate a sale that is in violation of LLLT RPC 1.17. See LLLT RPC 1.17 cmt [2]; RPC 8.4(f)(2).

SUGGESTED AMENDMENTS TO RULES OF PROFESSIONAL CONDUCT

RULE 4.3 DEALING WITH PERSON NOT REPRESENTED BY A LAWYER

[NO CHANGES]

Comment

[1]-[4] [NO CHANGES]

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

[6] When a lawyer communicates with an LLLT who represents an opposing party about the subject of the representation, the lawyer should be guided by an understanding of the limitations imposed on the LLLT by APR 28 and related Regulations and the LLLT RPC. The lawyer should further take care not to overreach or intrude into privileged information. APR 28K(3) (“The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship”).

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

[NO CHANGES]

Washington Comment

[1] [NO CHANGES]

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

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the Bar, or a lawyer in connection with an application for reinstatement or admission to the Bar or a disciplinary matter involving a legal practitioner, shall not:

(a)-(b) [NO CHANGES]

**SUGGESTED AMENDMENTS TO
RULES OF PROFESSIONAL CONDUCT**

Comment

[NO CHANGES]