

WASHINGTON STATE BAR ASSOCIATION

LIMITED LICENSE LEGAL TECHNICIAN PROFESSIONAL RESPONSIBILITY EXAM SUGGESTED STUDY TOPICS

The following suggested study topics have been prepared by the Limited License Legal Technician (LLLT) Board.

Introduction: The LLLT Professional Responsibility Exam tests on LLLT ethical duties as set forth in Admission and Practice Rule (APR) 28, the LLLT Rules of Professional Conduct (LLLT RPC), and LLLT scope of practice as set forth in APR 28F, G, and H. Study and review of these objectives should enable you to fully prepare for the examination.

The LLLT Professional Responsibility Exam is a 90 minute, multiple choice exam with 40 questions. It will be administered in one session following the practice area exam. The questions are a mix of simple short answer questions and longer analytical questions that will present a fact pattern and require you to use your legal knowledge to select the **BEST** answer. You should plan to spend no more than one minute on each simple question and no more than three minutes on each analytical question. A passing grade is 75%.

Study Materials: APR 28; LLLT RPC; Comments to the Lawyer RPC; General Rule (GR) 24; *Washington Legal Ethics Deskbook*; *Managing Client Trust Accounts: Rules, Regulations, and Common Sense*, WSBA publication; Tom Andrews & Rob Aronson, et al, *The Law of Lawyering in Washington* (2014); and Charles W. Wolfram, *Restatement (3d) The Law Governing Lawyers* (ALI 1998).

EXAM TOPICS

I. REGULATION OF THE PROFESSION

Scope of permitted practice, including no representation in court proceedings and no negotiation or representation of positions, *APR 28(F), (G)(4), (H)(5)-(6); GR 24*

No delegation of services to unlicensed persons, *APR 28(G)(1)*

Standard of care of a lawyer, *APR 28(K)(1)*

LLLT-client contracts (duplicate under LLLT-Client Relationship), *APR 28(G)(2); See also LLLT RPC 1.5(f)*

Must sign and include other data on all prepared documents, except 3rd party declarations and documents not requiring to be signed by the client, *APR 28(G)(4)*

Attorney/client privilege and law of fiduciary responsibility apply, *APR 28(K)(3)*

Dividing fees with other LLLTs and/or lawyers, *LLLT RPC 1.5(e), 5.4*

Forms of practice: LLLT firms, law firms, *LLLT RPC 5.1, 5.4, 5.9*

Supervision of other LLLTs in a firm, *LLLT RPC 5.1, 5.2, 5.3*

Voluntary Pro Bono Service, *LLLT RPC 6.1, 6.5*

Reporting misconduct, *LLLT RPC 8.3*

II. THE LLLT-CLIENT RELATIONSHIP

Scope, objective, means of representation, including decision making authority, *LLLT RPC 1.1, 1.2, 1.3, 1.4*

Counsel and assistance within the bounds of law, *LLLT RPC 1.4(a)(5), 1.16, 8.4*

Communications with the client – disclosures; required consultation, *APR 28(G), RPC 1.4*

Fees must be reasonable, written communication describing scope and basis for fees required before representation commences, no contingent fees, *LLLT RPC 1.5(a), 1.5(b), 1.5(d), 1.8(b), 1.8(h)*

Declining or terminating representation, *LLLT RPC 1.16*

Duties to a prospective client, *LLLT RPC 1.18*

LLLT as advisor, *LLLT RPC 2.1, 1.4*

Professional independence of an LLLT, *LLLT RPC 5.4*

III. CLIENT CONFIDENTIALITY

Formation of the relationship, *APR 28(G)(2)*

Attorney-client privilege distinguished from, *LLLT RPC 1.6*

Work-product doctrine, *Restatement of the Law Governing Lawyers*

Professional obligation of confidentiality, *LLLT RPC 1.6(a), 1.8(b)*

Disclosures expressly or impliedly authorized by client, *LLLT RPC 1.6*

Other exceptions to confidentiality rule, *LLLT RPC 1.6*

IV. CONFLICTS OF INTEREST

Current conflicts – multiple clients; when waiver of conflict can be used, *LLLT RPC 1.7(a), 1.7(b)*

Current client conflicts – LLLT's personal interest or duties, *LLLT RPC 1.8*

Former client conflicts, *LLLT RPC 1.9*

Prospective client conflicts, *LLLT RPC 1.18*

Imputed conflicts, *LLLT RPC 1.8(k), 1.10*

Acquiring an interest in litigation prohibited, *LLLT RPC 1.8(i)*

Business transactions with clients prohibited, *LLLT RPC 1.8(a)*

Third party compensation and influence, *LLLT RPC 1.8(f)*

LLLTs currently or formerly in government service, *LLLT RPC 1.11*

Former judge, arbitrator, mediator, other third party neutral, *LLLT RPC 1.12*

Voluntary pro bono services, *LLLT RPC 6.5*

Providing financial assistance/advancing certain costs, *LLLT RPC 1.8(e)*

Gifts from clients, *LLLT RPC 1.8(c)*

Media rights to client story, *LLLT RPC 1.8(d)*

Representation adverse to person represented by a person related to the LLLT, *LLLT RPC 1.8(l)*

Representation of an organization, *LLLT RPC 1.13 currently reserved*

Clients with diminished capacity, *LLLT RPC 1.14*

Sexual relations with clients, *LLLT RPC 1.8(j)*

V. COMPETENCE, MALPRACTICE, AND OTHER CIVIL LIABILITY

Maintaining competence, *LLLT RPC 1.1; APR 28*

Exercising diligence and care, *LLLT RPC 1.3*

Limiting liability for malpractice, *LLLT RPC 1.8(h)*

VI. ROLE IN ADVOCACY AND PROCEEDING

Counseling a client who is contemplating or engaged in a proceeding, *LLLT RPC 3.1*

VII. TRANSACTIONS AND COMMUNICATIONS WITH PERSONS OTHER THAN CLIENT

Truthfulness in statements to others, *LLLT RPC 4.1, 8.1(a), (b); 8.2*

Communications with represented persons prohibited, *LLLT RPC 4.2*

Communications with opposing party, *APR 28(F)(12)*

Negotiation, *APR 28(F)(13)*

Communications with unrepresented persons, *LLLT RPC 4.3* Respect for rights of third persons, *LLLT RPC 4.4*

VIII. SAFEKEEPING FUNDS AND OTHER PROPERTY

Establishing and maintaining client trust accounts, *LLLT RPC 1.15A, 1.15B*

Safekeeping funds and other property of clients, *LLLT RPC 1.15A*

Safekeeping funds and other property of third persons, *LLLT RPC 1.15A*

Disputed claims

Treatment of flat fees and advance deposits – when do client funds become the property of LLLT, *LLLT RPC 1.5(f); 1.15(A)*

IX. COMMUNICATIONS ABOUT LLLT SERVICES

Advertising and other public communication about LLLT services, including: advertising in various media, incl. website, signage, print ads, etc.; business cards; letterheads; other, *LLLT RPC Title 7*

Solicitation – direct contact with prospective clients, *LLLT RPC 7.3*

Group legal services, *LLLT RPC 7.3(d)*

Referrals, *LLLT RPC 7.2(b)*

Communications regarding fields of practice, *LLLT RPC 7.4*

X. OTHER

Sale of a law practice, *LLLT RPC 1.17*

Serving as a third-party neutral, *LLLT RPC 1.12, 2.4*

Professional misconduct, *LLLT RPC 8.4*

CONCEPTS FOR STUDY

I. REGULATION OF THE PROFESSION

1. Understand the general scope of permitted practice for LLLTs authorized in APR 28 in any practice area.
2. List the specific tasks that fall within the definition of the practice of law that LLLTs are permitted to undertake for clients.
3. List the specific tasks that fall within the definition of the practice of law that LLLTs are prohibited from undertaking for clients.
4. Know an LLLT's duty when a matter outside the scope of authorized practice arises.
5. Understand the limitations on an LLLT's practice with respect to assisting a client in court or before a tribunal
6. Understand what tasks and responsibilities an LLLT may delegate to unlicensed staff.
7. Understand what tasks and responsibilities an LLLT may **NOT** delegate to unlicensed staff.
8. List the provisions an LLLT-client contract must include to comply with APR 28 and LLLT RPC 1.5.
9. Know at what specific point in the representation an LLLT may begin to perform services on behalf of a client.
10. List the information an LLLT must include on certain documents prepared by the LLLT and where this information must appear.
11. Understand that the law of a lawyer's fiduciary responsibility applies to the LLLT-client relationship and scope of work.
12. Know the duties an LLLT owes to a client, e.g. confidentiality, undivided loyalty, fiduciary duty, competence, and diligence.
13. List under what circumstances an LLLT may divide fees with other LLLTs and/or lawyers.
14. List under what circumstances LLLTs are prohibited from dividing fees with other LLLTs and/or lawyers.
15. List the types of business arrangements, if any, an LLLT may enter into with other legal practitioners. Know the restrictions that apply to each type of business arrangement.
16. Know a supervisory LLLT's responsibilities with respect to subordinate LLLTs and non-LLLT assistants.
17. Know when a supervisory LLLT would be subject to discipline for a violation of the rules by a subordinate.
18. Know when an LLLT should report the misconduct of an LLLT, lawyer, and/or judge and whether the duty is mandatory.

II. THE LLLT-CLIENT RELATIONSHIP

1. Understand an LLLT's responsibilities to a client with respect to the scope of representation and allocation of authority between the client and the LLLT.
2. Know what authority a client has to direct the objectives of the representation.
3. Know the limits on a client's authority to direct the objectives of the representation.
4. Know an LLLT's duties of communication to a client.
5. Know what circumstances require an LLLT to communicate with a client.

6. Know what counsel and assistance is prohibited by an LLLT on behalf of a client.
7. List what disclosures about the limitations on an LLLT's practice an LLLT must make to a prospective client and when the LLLT is required to or should do so.
8. Understand how an LLLT should consult with a client such that the client is reasonably informed and can make informed decisions.
9. Name the factors considered in determining the reasonableness of a fee.
10. Know how and when an LLLT should communicate the basis or rate of the fee and expenses.
11. Define "advance fee," "flat fee," "contingent fee," and "retainer" and be able to recognize examples of each.
12. Know whether an LLLT may charge a fee contingent on the outcome of a case and, if so, under what circumstances.
13. Know what needs to be included in a flat fee agreement and under what circumstances one may be used.
14. Know what must be included in every LLLT fee agreement.
15. Understand when an LLLT **must** withdraw from representing a client.
16. Understand when an LLLT *may* withdraw from representing of a client.
17. Upon termination of representation, understand how an LLLT must protect the client's interests.
18. Understand what duties an LLLT owes a prospective client.
19. Understand an LLLT's role as an advisor to a client.
20. Know what considerations in addition to the law an LLLT may consider in rendering professional and candid advice.
21. Identify when, if ever, an LLLT may share legal fees with a non-LLLT.
22. Know whether an LLLT may form a professional practice or partnership with a non-LLLT if the activities of the partnership consist of the practice of law.

III. CLIENT CONFIDENTIALITY

1. Know what the attorney-client privilege is and what is needed to preserve the privilege when working with a client.
2. Know what the work-product doctrine is and to what documents it applies.
3. Understand an LLLT's professional obligation of confidentiality to a client.
4. List under what circumstances an LLLT may reveal information protected by Rule 1.6 relating to the representation of a client.
5. Know when a disclosure of information protected by Rule 1.6 would be impliedly authorized by a client and be able to identify examples.
6. List under what circumstances an LLLT may reveal information protected by the attorney-client privilege.
7. Name each exception to the client confidentiality rules. Which exception is required? Which exceptions are at the LLLT's discretion?

IV. CONFLICTS OF INTEREST

1. Define "prospective client," "current client," and "former client" and be able to recognize examples of each.

2. Define a concurrent conflict of interest and be able to recognize examples.
3. List under what circumstances an LLLT may represent a client when a concurrent conflict of interest exists.
4. Name circumstances where an LLLT would have a conflict of interest with a client based on his or her personal interest.
5. Know what duties an LLLT owes a former client.
6. Know when an LLLT would be disqualified from representing someone based on his or her representation of a former client.
7. Know when an LLLT may obtain informed consent to represent someone with interests that are materially adverse to a former client.
8. Name examples of non-consentable conflicts of interest.
9. Know when an LLLT would be disqualified from representing someone based on information received from a prospective client.
10. Know when an LLLT may obtain informed consent to representing someone with interests that are materially adverse to a prospective client.
11. Explain the concept of imputation of conflicts.
12. Understand how imputation of conflicts applies when LLLTs and lawyers are associated in a firm.
13. Know when a firm may represent a person with interests materially adverse to those of a client of the firm who was represented by an LLLT who has left the firm.
14. When an LLLT in a firm has been disqualified due to the LLLT's association with a prior firm, know when another LLLT in the current firm may represent a person in the matter in which the LLLT was disqualified.
15. Know whether an LLLT may enter into a business transaction with a client, and if so, under what circumstances.
16. Know under what circumstances an LLLT may accept compensation for representing a client from a third party.
17. Understand how the conflicts rules apply to an LLLT who provides short-term limited legal services through a program sponsored by a nonprofit organization or court where there is no expectation of continuing representation or payment.
18. Know whether an LLLT may advance or guarantee financial assistance to a client, and if so, under what circumstances.
19. Know whether an LLLT may solicit a gift from a client and whether there is an exception to this rule.
20. Know when an LLLT may represent a person with interests adverse to a person represented by a person related to the LLLT.
21. Understand why Rule 1.13 is reserved.
22. Know an LLLT's obligations when faced with a client with diminished capacity.
23. Know when, if ever, an LLLT may have sexual relations with a client.

V. COMPETENCE, MALPRACTICE, AND OTHER CIVIL LIABILITY

1. Understand the differences between the duties of competence and diligence.
2. Understand the ways an LLLT may provide competent and diligent representation to a client.

3. Know whether an LLLT may make an agreement limiting the LLLT's liability to a client for malpractice, and if so, under what circumstances.
4. Know whether an LLLT may settle a claim for liability to a client for malpractice with an unrepresented client or former client, and if so, under what circumstances.

VI. ROLE IN ADVOCACY AND PROCEEDING

1. List what kind of conduct an LLLT should **NOT** counsel a client to engage in, or assist a client in, for a contemplated or current proceeding.
2. Understand an LLLT's duties with respect to seeking to influence the impartiality of a tribunal and any conduct that may disrupt a tribunal.
3. Know under what circumstances an LLLT may negotiate or seek to settle a case with an opposing party, or an LLLT or lawyer for the opposing party.

VII. TRANSACTIONS AND COMMUNICATIONS WITH PERSONS OTHER THAN CLIENT

1. Know an LLLT's duties with respect to a false statement of fact and a failure to disclose a material fact.
2. Know an LLLT's duties with respect to truthfulness in limited licensure applications and disciplinary matters.
3. Know an LLLT's duties with respect to statements made about a judge, public legal officer, or candidate for appointment to a judicial or legal office.
4. In representing a client, know whether an LLLT may communicate with a person known to be represented by a lawyer in the matter.
5. Know under what circumstances an LLLT may communicate with the opposing party or counsel
6. Know the ethical obligations surrounding an LLLT's communications with a person who is not represented by a lawyer.
7. In representing a client, know an LLLT's duties to a third person.
8. Know an LLLT's duties regarding inquiries into a third person's immigration status when the purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter.

VIII. SAFEKEEPING FUNDS AND OTHER PROPERTY

1. List the trust account records an LLLT must maintain and know for how long the records must be maintained.
2. List what a checkbook register must include.
3. List what an individual client ledger should include.
4. Know how often an LLLT should reconcile his or her trust account records.
5. Know when an LLLT should maintain funds in a pooled versus separate interest-bearing trust account.
6. Understand an LLLT's duties regarding safekeeping funds and other property of clients in a trust account.
7. Understand an LLLT's duties regarding safekeeping funds and other property of third persons in a trust account.

8. List under what circumstances an LLLT may maintain funds belonging to the LLLT in a trust account.
9. Know under what circumstances an LLLT may withdraw client trust funds.
10. Know who may be an authorized signatory on a firm trust account.
11. Know how flat fee funds should be treated by an LLLT and whether the funds should be deposited in the LLLT's trust account.
12. Know how legal fees and expenses paid in advance should be treated by an LLLT and whether the funds should be deposited in the LLLT's trust account.
13. Know how funds should be treated where there is an agreement to charge a lump sum fee in advance for the first so many hours, followed by hourly billing once the number of hours has been met.
14. Know when client funds deposited in the trust account become the property of the LLLT.

IX. COMMUNICATIONS ABOUT LLLT SERVICES

1. Be able to identify when a communication about an LLLT or LLLT's services is false or misleading.
2. Know whether an LLLT may give anything of value to a person for recommending the LLLT's services and list any exceptions to this rule.
3. List the specific information any LLLT advertisement must include.
4. Know the requirements of a firm name used an LLLT.
5. Know the limitations on an LLLT soliciting professional employment from a prospective client and list any exceptions to these limitations.
6. Know when an LLLT is prohibited from soliciting professional employment from a prospective client by any means.
7. Know under what circumstances an LLLT may participate in a group legal services plan.
8. List the types of referral agreements into which an LLLT may enter..
9. Know under what circumstances an LLLT may enter into a reciprocal referral agreement with another LLLT or lawyer.
10. List what an LLLT must communicate about his or her field of practice.
11. Know what an LLLT must **NOT** imply in any communication about his or her services.
12. List under what circumstances an LLLT may identify an additional legal title, credential, or certificate that the LLLT has received.

X. OTHER

1. List what conditions must be satisfied for an LLLT to sell or purchase a law practice.
2. Know what an LLLT serving as a third-party neutral must inform unrepresented parties.
3. Know when an LLLT acting as a third-party neutral should explain the difference between the LLLT's role as a third-party neutral and an LLLT who represents a client.
4. List the types of professional misconduct in LLLT RPC 8.4 that may subject an LLLT to discipline.

SAMPLE QUESTIONS

Answer key on last page.

SIMPLE

1. Any document, other than 3rd party declarations or documents not required to be signed by the client, prepared by an LLLT must include the LLLT's:
(A) Name, signature, and license number.
(B) Name, signature, license number, and social security number.
(C) Name, address, and phone number.
(D) Name, signature, and address.
2. An LLLT volunteers at a pro bono clinic sponsored by a local nonprofit organization to provide brief service to low-income people. What client conflict rules apply?
(A) None. Client conflict rules are waived at pro bono clinics because the volunteers are only providing brief service.
(B) The rules regarding current, former and prospective client conflicts apply only if the LLLT knows about a conflict with a current, former or prospective client.
(C) The client conflict rules apply in the same manner in pro bono clinics as they do in private practice.
(D) The client conflict rules only apply to conflicts with current clients.
3. Is it permissible for an LLLT to craft a standard fee agreement that prospectively limits the LLLT's liability to a client for malpractice?
(A) Yes, as long as it is written in bold, 12-point font in the agreement and this provision is specifically acknowledged by the client.
(B) Yes, as long as the client is advised to consult with an independent attorney about the consequences of such a provision prior to signing the fee agreement.
(C) No, but such a provision may be included in a customized fee agreement if certain facts are present.
(D) No, an LLLT shall not make an agreement prospectively limiting the LLLT's liability to a client for malpractice.
4. An LLLT who receives what appears to be an inadvertently sent document relating to the representation of the LLLT's client should:
(A) Do nothing, unless the sender asks for it back.
(B) File a copy of the document with the court.
(C) Promptly notify the sender.
(D) Destroy it immediately.

ANALYTICAL

5. An LLLT has received a subpoena duces tecum from the opposing party to produce all the letters that she has written to her client. Assuming she responds to the discovery request correctly, does she have to produce the letters?
(A) No, because the letters are work product and are protected by LLLT RPC 1.6.
(B) No, because a subpoena duces tecum only applies to a client's materials.
(C) Yes, because LLLT RPC 1.6 allows an LLLT to reveal information to comply with a court order.
(D) Yes, if the letters are not opinion letters.

6. An LLLT represents Mike in an action against Brittany. Mike had several restraining orders and domestic violence protection orders against him by others. Brittany 's pleadings allege several previously unreported violent incidents, including one in which Mike pushed Brittany off the porch and she broke her ankle. Mike told the LLLT he is going to "get his revenge soon." When the LLLT asks Mike what he means by that comment, Mike tells the LLLT it would be unfortunate if Brittany's house caught fire while she was sleeping. The LLLT believes Mike's threat is credible. The LLLT should:
- (A) Delay entering the action until Brittany can get out of town.
 - (B) Do nothing because Mike's communications are privileged and confidential.
 - (C) Call the authorities right away.
 - (D) Refer the case to an attorney.
7. LLLT Manny is preparing a newspaper advertisement for his family law practice. Manny received an advanced paralegal certificate in discovery through a national paralegal organization. Manny would like to include the certificate among his credentials in the advertisement. Assuming there are appropriate disclaimers, which of the following descriptions of the certification would be permissible to include in the advertisement?
- (A) That he specializes in discovery as evidenced by his advanced paralegal certification in discovery.
 - (B) That he is an expert in discovery as evidenced by his advanced paralegal certification in discovery.
 - (C) That he is certified in discovery with the name of the certifying organization.
 - (D) That he has an advanced paralegal certificate in discovery with the name of the awarding organization.

ANSWER KEY

- 1. (A)
- 2. (B)
- 3. (D)
- 4. (C)
- 5. (A)
- 6. (C)
- 7. (D)