

Draft for Discussion and Comment:

Consumer, Money, and Debt Law
Proposed New Practice Area for Limited License Legal Technicians

Summary

The Limited License Legal Technician (LLLT) Board invites comment on a proposed new practice area: Consumer, Money, and Debt Law. This new practice area is designed to provide economic protection for the public and to provide legal assistance for certain financial matters, with a focus on consumer debt issues and other problems which contribute to consumer credit problems. For example, LLLTs licensed in this practice area would be able to assist clients with issues related to legal financial obligations, debt collection and garnishment defense, identity theft, preparing for small claims court, and filing protection orders.

Introduction

The practice area was developed by a New Practice Area Committee of the LLLT Board in a workgroup chaired by LLLT Board member Nancy Ivarinen. The workgroup is requesting input from other interested parties prior to formalizing the request to the Supreme Court.

While 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 who use LLLTs;
- 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 considered:

- statistics and reports discussing the legal need;
- comments by invited subject matter experts who explained what the practice areas entail;
- comments by these experts on what the LLLT could potentially do;
- committee discussion about the LLLT being properly trained in a limited scope within the practice area; and
- whether the practice area could be regulated appropriately so that the needs of the clients would be met, while also assuring that the clients would be protected.

The Better Business Bureau (BBB), the Attorney General's Consumer Protection Division, the Federal Trade Commission, and some organizations funded by United Way offer services related to consumer debt, such as debt management, debt renegotiation; and changing the behavior of businesses that prey upon low and moderate income consumers.

These services have been in existence for decades, and yet the demonstrated need in the Civil Legal Needs Study clearly shows that consumers with debt related legal issues are unaware of these services, do not believe these organizations can or will help them, have not been helped when using these services, or have needs that exceed the scope of the services these organizations can provide.

The proposed practice area is intended to help meet these significant unmet legal needs while giving LLLTs additional practice area options for expanding their businesses.

Evidence of Unmet Need

The starting point of the workgroup's analysis was identifying the unmet need that could be addressed by LLLTs licensed in a consumer law practice area. The workgroup found convincing evidence supporting the existing legal need for consumer law assistance in studies conducted at both the state and national levels. The workgroup also looked at statistics received from county-based volunteer legal services providers and the statewide Moderate Means Program, which demonstrated a consistent legal need in the consumer law area among low and moderate income people.

Statistics from State and Federal Studies

- The 2003 (Statewide 0-400% of Federal Poverty Level) and 2015 (Statewide, 0-200% of Federal Poverty Level) Civil Legal Needs Studies identified Consumer, Financial Services, and Credit among the three most prevalent problems that people experience and seek legal help to address. There was an increase in legal need in this area from 27% to 37.6% between 2003 and 2014.
- The Legal Services Corporation June 2017 Report: The Justice Gap (National, 0-125% of Federal Poverty Level) identified consumer issues as the second highest problem area for people at this income level.

Moderate Means Program Data

- The WSBA Moderate Means Program (Statewide, 200-400% of Federal Poverty Level) identified consumer issues as the second highest problem area. In addition, data provided by the program showed that consumer law represented 10% of the 2,321 requests for service from October 26, 2016 to October 27, 2017. Of the 233 consumer law requests, 74 related to bankruptcy or debtor relief and 71 were in collections, repossession, and garnishment.
- Data from the 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 from Volunteer Legal Service Providers

- The King County Bar Association’s Neighborhood Legal Clinics 2016 data showed that 15% (1,298 of 8,259) of legal issues addressed at the clinic were consumer law related.
- From 2012-2017 the King County based Northwest Consumer Law Center received 2,499 requests for service, all directly related to consumer law needs.
- Over the last three years, the Tacoma-Pierce County Bar Association Volunteer Legal Services had an average of 160 clients per year visit their Bankruptcy Clinic and an average of about 43 clients per year attend the Foreclosure – Home Justice Clinic.

How LLLTs Can Meet the Legal Need

When reviewing the Civil Legal Needs Studies, the workgroup noted that it was unclear whether or not legal assistance would materially address the consumer law problems the subjects were reporting, and if so, whether that assistance could be provided through some method other than direct representation exclusively by a lawyer.

The workgroup discussed many examples of consumer legal problems that may not have a legal remedy, such as a debt collection lawsuit where the money is owed. While discussing each example, the workgroup saw advantages to providing the consumer with legal advice, even if there did not appear to be a legal resolution to the issue. For example, in a debt collection lawsuit, the statute of limitations on collection of the debt may have passed, so the debtor may not be obligated to pay even though the debt is owed. For those debtors who do have defenses or where collection agencies are attempting to collect a legitimate debt in an unfair or illegal manner, a LLLT could be a valuable consumer protection tool. Even for consumers who have no defense to a lawfully pursued debt collection lawsuit, having the assistance of a LLLT throughout the process of responding to a lawsuit would speed judicial efficiency, as the defendant would understand the procedures and be able to respond in an appropriate and strategic way.

The extensive collection of self-help resources offered on washingtonlawhelp.org regarding consumer debt confirms that many consumers already face this issue pro se, and would undoubtedly benefit from consulting with an affordable provider of legal services in this area.

The workgroup enlisted the advice of practitioners and other experts in the various areas of law to identify the legal work which could be effectively performed by LLLTs and provide an economically sustainable practice area. The workgroup identified that Consumer, Money and Debt Law LLLTs should be able to:

- offer advice regarding all identified topics
- fill out certain forms
- engage in limited negotiation in regard to particular issues
- attend specific hearings to advise the client and assist in answering procedural questions

- attend depositions
- prepare paperwork for mediation, and
- attend any administrative proceeding related to the practice area.

The workgroup carefully weighed the pros and cons of each of the above actions and determined that allowing this range of actions would greatly increase the quality of service that LLLTs could provide to their clients.

Target Clients and Scope

The target clients of this practice area are moderate and low income people with consumer debt or credit problems, or those to whom a small amount of debt is owed. The workgroup narrowly prescribed the focus of the recommended scope in order to provide a maximum benefit to these clients. The workgroup also identified limitations designed to ensure that LLLTs will provide service to consumers who currently do not have resources in this area.

The 2015 Civil Legal Needs Study noted that the average number of legal problems per household has increased from 3.3 in 2003 to 9.3 in 2014. In addition, the legal problems that low-income people experience are interconnected in complex ways. Consumer debt, for example, can be exacerbated by landlord/tenant issues, divorce, identity theft, lack of access to benefits, problems with an employer, lack of exposure to options such as bankruptcy, and domestic violence and other protection orders.

The workgroup thought holistically about this range of issues which often go hand in hand with consumer debt and credit problems and identified a range of actions which could appropriately be performed by a LLLT in the areas of protection orders, bankruptcy education, wage theft, and identity theft. Including these areas as part of the consumer law relief a LLLT will be able to provide will allow LLLTs to proactively help their clients to break the cycle of debt creation.

Proposed Consumer, Money, and Debt Law LLLT Practice Area

Scope	Proposed Permitted Actions & Proposed Limitations
Legal Financial Obligations (LFOs)	Proposed Permitted Actions: Assistance filling out forms (e.g., Motion for Order Waiving or Reducing Interest on LFO, Order to Waive or Reduce Interest on LFO)
Small Claims	Proposed Permitted Actions: Assistance preparing the Notice of Small Claim, Certificate of Service, Response to Small Claim, Small Claims Orders, Small Claims Judgment, and counterclaims Preparation for mediation and trial Obtaining and organizing exhibits

Comment [JP1]: NJP encourages striking the provisions of the proposal that authorizes LLLTs to engage in any activities classified as “Debt Adjusting”, debt settlement, credit counseling or the like. NJP feels these services are widely available and asks the Board to consider whether licensing LLLTs to engage in these activities serves any unmet need identified in the Civil Legal Needs Study. NJP asks the Board to consider reporting unfair acts, deceptive practices and consumer statutory violations to consumer protection attorneys and/or legal services agency in addition to regulatory authorities

Comment [JP2]: NJP asks to adopt the proposed permitted action of assistance with waiving legal financial obligations.
Edgar Hall supportive of these activities

Comment [JP3]: NJP asks the Board to consider revising the score of the proposed permitted actions of reducing the level of participation permitted in Small Claims Court cases to not exceed the participation restrictions in place against fully licensed attorneys, as well as a strict prohibition against LLLTs assisting creditors in small claims litigation or engaging in other conduct meeting the definition of “debt collector” under the FDCPA or a “collection agency” under WCAA
Edgar Hall supportive of all proposed activities

Comment [JP4]: State of Washington, Collection Agency Board is concerned with these services and concerned that any LLLT who performs these activities could be required to be licensed as collection agencies or require collection agencies to be licensed by the WSBA. CAB would like to be included as a stakeholder going forward and ask that WSBA conduct additional research (along with extending the comment period)

Student Loans	<p>Proposed Permitted Actions: Negotiation of debt or payment plans Modifications, loan forgiveness and debt relief Discharge</p>
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Debt Collection Defense and Assistance	<p>Proposed Permitted Actions: Negotiation of debt Assistance filling out Complaints, Answers and Counterclaims Affirmative Defenses including Statute of Limitations defenses Reporting Fair Debt Collection Act violations, including statute of limitations and state collection agency statute violations Reporting to Regulatory Agencies</p> <p>Proposed Limitations: LLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court (\$100,000)</p>
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Comment [JP5]: NJP asks the Board to consider revising activity involving student loan debt by permitting LLLTs to assist a debtor with only federal student loan repayment options

Edgar Hall feels this area requires deep level understanding of these accounts/accounting/background in general. He is completely opposed to all activities due to no statute of limitations, the possibility of attorney fees on the other side being racked up, LLLTs would need to give advice on federal statutes and federal law, LLLTs would need to argue administrative law before ALJs to appeal federal garnishments. Bottom line LLLTs could not obtain proper licenses to give out necessary advice to productively assist clients.

Comment [JP6]: Edgar Hall "hesitatingly" says these activities should be allowed with the reservations of: 1) negotiation of debt 2) filling out answers but not counter claims unless they associate with someone licensed in federal court as the claim would be removed and incur additional attorney's fees 3) reporting statutory violations to regulatory agencies. He feels it is hard to consider anyone not familiar with bankruptcy laws being competent to render debt defense. He also feels by allowing LLLTs to file counterclaims will lead to additional attorney fees against the debtor. He says in a perfect world, there would be some kind of mandatory bankruptcy screen, counter claim screen and with either of those being flagged a referral would be given to the client.

Comment [JP7]: NJP feels permitting LLLTs to negotiate debts would subject LLLTs to regulation as a debt adjuster under the Debt Adjustment Act.

NJP asks the Board to abandon this permitted action.

ATJ Board suggests the proposal should not allow LLLTs to represent any corporate entity, partnership or person in connection with the business of debt collection, debt buying or money lending.

Comment [JP8]: State of Washington, Collection Agency Board is concerned with these services and concerned that any LLLT who performs these activities could be required to be licensed as collection agencies or require collection agencies to be licensed by the WSBA. NJP also voiced concerns about LLLTs filling out complaints, as this falls squarely within federal regulation as "debt collectors" under the Fair Debt Collection Practices Act and as a debt collection agency under Washington Collections Agency Act.

NJP asks the Board to abandon this permitted action.

Comment [JP9]: NJP asks the Board to adopt the permitted action of preparing answers to debt collection lawsuits as well as assistance in applying for Charity Care when appropriate

Comment [JP10]: CD suggests setting the dollar limitation to \$5,000. Final proposal must contain explicit instructions on calculating the dollar cap that LLLTs can assist with.

Garnishment	<p>Proposed Permitted Actions: Negotiation Voluntary Wage Assignments Assistance filling out forms (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) Exemption Claims, including assistance at court hearings</p> <p>Proposed Limitations: LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court (usually \$100,000) LLLTs may render legal services for debt collection only when there is a direct relationship with the original creditor and may not act as or render legal services for collection agencies or debt buyers as defined under RCW 19.16. No prejudgment attachments No executions on judgments</p>
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Comment [JP11]: NJP asks the Board to abandon all actions related to garnishment except assistance with exemption claims
Edgar Hall supports all permitted actions and would like to add that a referral to a bankruptcy attorney or screen would be useful and should be mandatory

Comment [JP12]: State of Washington, Collection Agency Board is concerned with these services and concerned that any LLLT who performs these activities could be required to be licensed as collection agencies or require collection agencies to be licensed by the WSBA.
NJP also voiced concerns about LLLTs filling out complaints, as this falls squarely within federal regulation as “debt collectors” under the Fair Debt Collection Practices Act and as a debt collection agency under Washington Collections Agency Act.

Comment [JP13]: NJP asks the Board to abandon the proposed permitted action of representation in court and at depositions

Comment [JP14]: CD suggests setting the dollar limitation to \$5,000. Final proposal must contain explicit instructions on calculating the dollar cap that LLLTs can assist with.

Identity Theft	<p>Proposed Permitted Actions: Advise regarding identity theft Best practices for protecting information Contacting credit bureaus Reporting to law enforcement and other agencies such as Federal Trade Commission</p>
Wage complaints and Defenses	<p>Proposed Permitted Actions: Representation in negotiations or hearings with Labor and Industries Accompany and assist in court Advice and reporting regarding Minimum Wage Act Advice and reporting regarding Fair Labor Standards Act Actions permitted under RCW 49.48 (Wages-Payment-Collection) Actions permitted under RCW 49.52 (Wages-Deductions-Contributions-Rebates)</p> <p>Proposed Limitations: LLLTs may not represent clients in wage claims which exceed the jurisdictional limit set by the District Court (\$100,000)</p>

Comment [JP15]: NJP asks the Board to adopt the proposed permitted action of providing advice regarding identity theft, including assistance with filling out police reports and necessary forms from government entities or private creditors and educating consumers on identity theft issues, best practices and provide resources.

Edgar Hall supports as drafted.

Comment [JP16]: NJP asks the Board to adopt the proposed permitted actions of assisting consumers with wage complaints to L&I, assistance with negotiation and administrative hearings in wage complaint cases, advice and reporting under the MWA and FLSA and referral to a private attorney or legal services of claims and statutory rights enforcement that requires civil litigation

Edgar Hall shares same reiterates same concerns shared with debt collection defense and assistance permitted actions ("hesitatingly" says these activities should be allowed with the reservations of: 1) negotiation of debt 2) filling out answers but not counter claims unless they associate with someone licensed in federal court as the claim would be removed and incur additional attorney's fees 3) reporting statutory violations to regulatory agencies. He feels it is hard to consider anyone not familiar with bankruptcy laws being competent to render debt defense. He also feels by allowing LLLTs to file counterclaims will lead to additional attorney fees against the debtor.

He says in a perfect world, there would be some kind of mandatory bankruptcy screen, counter claim screen and with either of those being flagged a referral would be given to the client.)

He feels with state and federal laws to consider and LLLTs only being able to handle half the book is problematic at best. Feels this would open employee up to large counterclaims that will mandate their bankruptcy if they fail.

Comment [JP17]: NJP asks the Board to abandon representation in court as a permitted action

Edgar Hall has concerns regarding malpractice in the loan modification area. Suggests requiring a higher policy minimum in this area to practice. Has strong opposition to foreclosure defense. Has seen firsthand what harm unexperienced attorneys have done in this area and cannot imagine the harm a LLLT could do. Feels there has to be a base knowledge of litigation, possibility of class actions, understanding of mortgage accounting works and loan processing. Has additional concerns because banks are represented by experienced national/multinational firms. Bottom line, he supports load modification assistance but does not support foreclosure defense other than through the foreclosure modification program.

<p>Loan Modification & Foreclosure Defense and Assistance</p>	<p>Proposed Permitted Actions: Accompany and advise in mandatory mediation process Assist with non-judicial foreclosure actions and defenses under RCW 61.24.040 Advise regarding power of sale clauses and the Notice of Sale Right of Redemption Proposed Limitations: LLLTs would be prohibited from assisting with non-judicial foreclosures if the LLLT does not meet the requirements of RCW 61.24.010. No judicial foreclosures</p>
<p>Protection Orders</p>	<p>Proposed Actions: Selecting and completing pleadings for Protection Orders for domestic violence, stalking, sexual assault, extreme risk, adult protection, harassment, and no contact orders in criminal cases</p>
<p>Bankruptcy Awareness and Advice</p>	<p>Proposed Actions: Explain the options, alternatives, and procedures as well as advantages and disadvantages Refer to budget & counseling agency Refer to bankruptcy attorney Proposed Limitation: No assistance with bankruptcy filing in court</p>

Comment [JP18]: NJP asks the Board to abandon all actions related to loan modification and foreclosure defense and assistance

Comment [JP19]: Edgar Hall supports this as written

Comment [JP20]: CD suggests the removal of this area from any final proposed expansion.

Comment [JP21]: NJP asks the Board to consider revising the scope of permitted actions of providing bankruptcy advice in a manner that conforms with and does not overlap with 11 US Code 111 and fulfills an identified legal need or supplements a need not already met by "credit counselors"

Edgar Hall supports as written.

Comment [JP22]: Additional Suggestions from CD:
 A means test for potential clients, 200% is the suggested amount. LLLT's would only be authorized to assist people not business entities and should only represent debtors.
 Review RPCs to consider changes that would allow attorneys more flexibility to address needs through relaxation of the rules on unbundling legal services and/or advertising.

Comment [JP23]: Edgar Hall feels one way to help with the debt issues is to require more precision of process servers. He also feels garnishment laws need to be more protective, and feels we need less than 25% of wages to be garnished. Also feels more should be required in initial complaint than vague statements.

Comment [JP24]: NJP proposes permitted actions of:
 a) Assisting consumers in obtaining relief in form based procedures in addition to applying for LFO interest waivers such as: waiver of LFO; exemption claims in garnishment; relicensing programs; expungement or sealing or criminal records; restoration of civil rights (voting); GR 34 waiver of Court fees; other appropriate form based on non-adversarial proceedings
 b) Assisting and advising consumers with pre-unlawful detainer landlord tenant disputes, such as documenting the condition of the property, habitability rights, applications for subsidized housing, education and resources

Additions

The LLLT Board will coordinate with the Washington law schools in the development of the practice area curriculum and ensure that appropriate faculty is available to teach the curriculum. The LLLT Board may modify the proposed practice area based on:

1. consideration of public comments;
2. issues discovered during the drafting of new practice area regulations; and
3. issues that arise during the law schools' development of the practice area curriculum.

Please provide comments to the LLLT Board via email to LLL@wsba.org by July 16, 2018.