

GR 9 COVER SHEET

**Suggested Amendments
ADMISSION AND PRACTICE RULES (APR)
Rule 28F and Regulation 2 of
Appendix APR 28; Regulations of the APR 28
Limited License Legal Technician Board**

Submitted by the Limited License Legal Technician Board

A. Name of Proponent:

Limited License Legal Technician (LLLT) Board

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C. Purpose: The primary purposes for the suggested amendments are to clarify the meaning of a portion of APR 28(F) that creates uncertainty concerning the scope of an LLLT's permitted practice as it relates to writing letters, and to modify a portion of Appendix 2A that creates significant barriers to an LLLT's ability to provide meaningful and useful advice to a client in a timely manner. The issues came to the attention of the Board as the scope of practice was being taught for the first time by the University of Washington School of Law; Board members heard from faculty and students alike concerning the difficulties posed by these issues. The Board discussed the two issues at a number of meetings over many months and concluded that changes to the rule

language were desirable. The Board received advice and input from a scope of practice committee which included family law professors and private attorneys with family law experience. A draft of the rule changes was submitted by Board member Ellen Dial at the Board's April 2015 meeting, and the Board approved the draft at its meeting in May, 2015.

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

APR 28(F)(8) - Scope of Practice Authorized by Limited Practice Rule

The Board suggests an administrative amendment to add a clarifying phrase after the first three words of APR 28(F)(8). That section permits an LLLT to “draft legal letters...if the work is reviewed and approved by a Washington lawyer.” The Board believes that the intent of the rules is to prohibit an LLLT from writing letters containing legal advice that are intended to be read by persons other than the client unless the work is reviewed and approved by a Washington lawyer, but that it is not the intent of the rules to imply that LLLTs may write letters to clients only after review and approval by a lawyer. The authority of an LLLT to reduce to writing the legal advice that the LLLT has given or is giving to a client, where the intended recipient of the writing is the client, is implied by the express authorizations to give advice to a client that are set forth in other subsections of APR 28(F). Prohibiting LLLTs from writing of letters to a client unless under the supervision of a lawyer would unduly hinder the LLLT in giving meaningful and timely advice to the client within the authorized scope of the LLLT's practice. The Board believes that letters containing legal advice that are intended to be read by persons other than the client should be reviewed and approved by a Washington lawyer, because advice given to third parties is beyond the authorized scope of an

LLLT's practice. These letters, which are often referred to as "opinion letters," are often intended to describe to a third person a legal analysis in support of the author's client's position, another activity that is prohibited to LLLTs. Accordingly, the Board suggests an administrative amendment to clarify that the type of letters written by LLLTs that must be reviewed and approved by a Washington lawyer are letters that sets forth legal opinions and that are intended to be read by persons other than the client. The proposed amendment adds a clarifying phrase after the words "legal letters" in APR 28(F)(8), and begins a new second clause concerning preparation of other documents by repeating the word "draft" at the commencement of the second clause.

**Regulation 2: Practice Areas—Scope of Practice Authorized by Limited License
Legal Technician Rule—Issues Beyond the Scope of Authorized Practice**

The Board suggests a substantive amendment to subpart A of Regulation 2, to allow an LLLT to prepare a document that includes an issue that is outside of the scope of the LLLT's authorized practice if the LLLT complies fully with the obligations set forth in that Regulation to identify and describe the issue in writing and to recommend that the client secure advice from a lawyer, and if the client nonetheless elects not to seek advice from a lawyer but directs the LLLT how to complete the document with respect to the issue.

As currently written, the regulation prohibits an LLLT from completing any document that involves such an issue. The result is that a client who elects not to engage a lawyer is left without effective assistance in completing the document. The Board believes the current language might also emphasize form over substance, because an LLLT is able to advise a client how to complete the portions of a form document that do lie within the authorized scope of the LLLT's practice, but is not able to complete those portions him- or herself. Under the proposed amendment, the LLLT would be able to prepare the

document under those circumstances, but would still be prohibited from advising the client regarding the issue that lies outside of the authorized scope of the LLLT's practice, and would be obligated to complete any portion of the document that involves such an issue only at the client's direction. Above the LLLT's signature on the document, the LLLT would be obligated to insert a statement to the effect that the LLLT did not advise the client with respect to any issue that lies outside of the scope of the LLLT's authorized practice and completed any portions of the document with respect to any such issues at the direction of the client. The proposed amendment modifies the second full paragraph of the Regulation, adds new material in the form of a second set of subparagraphs, and modifies the last sentence of the Regulation to reflect the new material.

Conclusion

The LLLT Board believes that it is important that these proposed amendments be adopted and effective as soon as possible.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: Expedited consideration is requested in order to promote the effective practice of the first cohort of LLLTs licensed in 2015. The LLLT program's goal is to provide much needed access to justice. Delay of the amendments will hinder the LLLTs in providing relief to those in need of LLLT services.

F. Supporting Material: None.

SUGGESTED AMENDMENTS TO APR 28 F

TITLE

ADMISSION AND PRACTICE RULES (APR)

RULE 28. LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A.-E.

[Unchanged.]

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 provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

- (1) Obtain relevant facts, and explain the relevancy of such information to the client;
- (2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;
- (3) Inform the client of applicable procedures for proper service of process and filing of legal documents;
- (4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board that contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;
- (5) Review documents or exhibits that the client has received from the opposing party, and explain them to the client;
- (6) 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 Board; and advise the client of the significance of the selected forms to the client's case;

SUGGESTED AMENDMENTS TO APR 28 F

- (7) Perform legal research;
- (8) Draft ~~legal~~ letters setting forth legal opinions that are intended to be read by persons other than the client, and draft documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a Washington lawyer;
- (9) 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;
- (10) Assist the client in obtaining necessary documents or records, such as birth, death, or marriage certificates.

G.-L.

[Unchanged.]

SUGGESTED AMENDMENTS TO APPENDIX APR 28 REGULATION 2A

TITLE

APPENDIX ADMISSION AND PRACTICE RULE (APR) 28

REGULATIONS OF THE APR 28 LIMITED LICENSE LEGAL TECHNICIAN BOARD

REGULATIONS 1: IN GENERAL

[Unchanged.]

REGULATION 2. 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.

An LLLT has an affirmative duty under APR 28(F) to inform clients when issues arise that are beyond the authorized scope of the LLLT's practice. When an affirmative duty under APR 28(F) arises, then the LLLT shall inform the client in writing that:

1. the issue may exist, describing in general terms the nature of the issue;
2. the LLLT is not authorized to advise or assist on this issue;
3. the failure to obtain a lawyer's advice could be adverse to the client's interests; and,
4. the client should consult with a lawyer to obtain appropriate advice and documents necessary to protect the client's interests.

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. 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

SUGGESTED AMENDMENTS TO APPENDIX APR 28 REGULATION 2A

2. 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.

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

B. Domestic Relations.

[Unchanged.]

REGULATIONS 3-20

[Unchanged.]