

WASHINGTON STATE
BAR ASSOCIATION

TO: Budget and Audit Committee
FROM: Jean McElroy, Chief Regulatory Counsel
Robert Henry, Regulatory Services Associate Director
DATE: April 16, 2018
RE: Limited Practice Officer and Limited License Legal Technician License Fees and Client Protection Fund Assessment

ACTION: Recommend to the Board of Governors (BOG) that: (1) license fees for Active Limited Practice Officers (LPO) and Limited License Legal Technicians (LLLT) be increased to \$200; (2) license fees for Inactive LPOs and LLLTs be set at \$100; (3) Active LLLTs pay a \$30 annual Client Protection Fund (CPF) assessment; and (4) Active LPOs not pay any CPF assessment.

Background and Purpose

Historically, as discussed with the Committee in February, LPO license fees were established by the Limited Practice (LP) Board subject to Washington Supreme Court review; LLLT license fees were established by the LLLT Board subject to Court review; and clients of LPOs and LLLTs were not eligible to request gift awards from the WSBA Client Protection Fund (CPF). Effective September 1, 2017, under amended Admission and Practice Rules (APR) and according to the WSBA Bylaws, the BOG is responsible for establishing LPO and LLLT license fees subject to Court review. In addition, under the amended APR, LPO and LLLT clients may receive gifts from the CPF as prescribed by the CPF rules.

This memorandum provides feedback from the LP Board and the LLLT Board about proposed license fees for LPOs and LLLTs and about whether the BOG should recommend to the Court a CPF assessment for each of these limited license types. As requested, this memorandum also provides information showing the budget impact of a two-tier license fee structure. The information is provided so that the Committee can make an informed decision about establishing LPO and LLLT license fees and about whether the BOG should recommend to the Supreme Court that LPOs and LLLTs contribute to the CPF and, if so, how much the assessments should be.

To effect any changes for the 2019 licensing year, the Committee must make its recommendation as soon as possible. This will allow the BOG to similarly review the fees as soon as possible and send them to the Court, for review in time for the fees to be incorporated into the 2019 licensing processes that begin in October of 2018.

Two Tier License Fee Structure

One model we have been discussing with the Committee and with the LP and LLLT Boards is a two-tier license fee structure for WSBA members that has:

- 1) Active license fees for lawyers set at one amount (currently \$449); and
- 2) Active license fees for LPOs, LLLTs, and other licenses to engage in the limited practice of law only within defined scopes of practice, set at a different, lower amount (perhaps \$200, which is the license fee for Emeritus Pro Bono Lawyer members, who have a limited practice of law only within a defined scope of practice).

Discussions with LP Board and LLLT Board

Following the meeting, we continued discussions with the LP and LLLT Boards, including the possibility of the two-tier license fee structure discussed above, among other fee models. Both Boards support the two-tier fee structure, with the Active LPO and LLLT license fees set at \$200. In addition, we continued discussions with the Boards regarding possible CPF assessments. The LLLT Board supports a CPF assessment on Active LLLTs in the amount of \$30. The LP Board, on the other hand, recommends that Active LPOs not be required to pay any CPF assessment because LPO employers (and thereby LPOs) already have systems in place to protect clients. Letters from the chairs of both the LP and LLLT Boards are attached and explain their positions.

Budget Impact

At its February meeting, the Committee asked for information showing the budget impact of: (1) a \$200 license fee for Active LPOs and LLLTs; (2) a \$100 license fee for Inactive LPOs and LLLTs; and (3) the prorated license fee for new LPOs and LLLTs (consistent with the proration in place for new lawyers), as described in the WSBA Bylaw amendments (approved by the BOG on March 8, 2018).

Based on the present number of LPO and LLLT licensees, the implementation of a two-tier license fee structure as described above would result in increased revenue of \$64,185. Pursuant to the WSBA Bylaws adopted on March 8, 2018, new LPO and LLLT members in their first two full years of licensure will pay a prorated license fee regardless of whether there is any change to the license fees next year. The table below demonstrates the sources of license fee revenue from LPOs and LLLTs and how it would change in 2019 based on the license fees suggested by the Committee and recommended by the LP and LLLT Boards. This table does not take into account any anticipated increase in the number of LPO and LLLT licenses for 2019.

	2018 License Count	Current License Fee Structure		Proposed Two Tier Structure		Increase (Decrease) Revenue
		License Fee	Revenue	License Fee	Revenue	
Active LPOs	745	\$110	\$81,950	\$200	\$149,000	\$67,050
New Active LPOs	50	\$110	\$5,500	\$100	\$5,000	(\$500)
Inactive LPOs	174	\$110	\$19,140	\$100	\$17,400	(\$1,740)
Total LPO Fees			\$106,590		\$171,400	\$64,810
Active LLLTs	17	\$175	\$2,975	\$200	\$3,400	\$425
New Active LLLTs	11	\$175	\$1,925	\$100	\$1,100	(\$825)
Inactive LLLTs	3	\$175	\$525	\$100	\$300	(\$225)
Total LLLT Fees			\$5,425		\$4,800	(\$625)
COMBINED FEE REVENUE			\$112,015		\$176,200	\$64,185

As we have informed the BOG over the last two years, with the coordinated admissions and licensing implementation, some of the administrative work associated with the LPO and LLLT programs has been consolidated into the WSBA Admissions, Licensing and MCLE workgroups within RSD. Because of this consolidation, all revenue and expenses related to the LPO and LLLT licenses, except for the board and outreach expenses, were moved out of the LPO and LLLT cost centers and into the appropriate cost center, e.g., Admissions, MCLE, License Fees, etc. However, WSBA accounting and administrative staff are still able to identify and estimate budget items related to the LPO and LLLT licenses when necessary for analysis and planning.

With respect to LPO fiscal impacts, the FY18 budget anticipates a net loss for the LPO license in the amount of \$44,530. All things being equal, the additional LPO license fee revenue of \$64,810 based on the two-tier license fee structure would result in a net income of \$20,280. This figure does not take into account expected increases in expenses, other revenue sources and changes in LPO license numbers. We expect that after taking into account all of the many budgetary forecasts and considerations, there would still be a net income but it would be closer to \$15,000. It is important to note, however, that these numbers could change depending on whether and how much of an increase we see in the numbers of LPOs and LLLTs licensed in FY 2019. With respect to fiscal impacts on the LLLT license, which is still in a start-up phase, the proposed license fee changes would result in a nominal decrease in revenue and have an overall negligible effect on the budget.

Client Protection Fund Assessment

As discussed above, the LLLT Board supports a CPF assessment on Active LLLTs. However, the LP Board does not support a CPF assessment on Active LPOs because LPO employers are already required to have fidelity bonds or insurance, or are lawyers who pay into the CPF. The attached letter from the LP Board explains its position in detail. The table below demonstrates that the CPF would receive approximately \$24,690 annually if a \$30 assessment on both license types were ordered by the Court, based on current license counts. If the Court does not order an assessment on LPOs, the annual additional amount to the CPF would be the approximately \$840 that is paid by LLLTs only.

	2018 License Count	\$30 CPF Assessment
Active LLLT (including new)	28	\$840
Active LPO (including new)	795	\$23,850
Total Potential CPF Revenue	823	\$24,690

ATTACHMENTS:

1. Letter from Limited Practice Board
2. Letter from Limited License Legal Technician Board

April 11, 2018

Kim Risenmay, Treasurer, and Budget and Audit Committee
Washington State Bar Association
1325 4th Ave Ste 600
Seattle, WA 98101

RE: LPO License Fees and Client Protection Fund Assessment

Dear Mr. Risenmay and Committee Members:

I write on behalf of the Limited Practice Board (LP Board) regarding Limited Practice Officer (LPO) license fees and an assessment on LPOs for the Client Protection Fund (CPF). The LP Board recommends that the Board of Governors:

- 1) adopt a two tier fee structure for WSBA members that has
 - a) Active license fees for lawyers set at one amount (currently \$449),
 - b) Active license fees for LPOs and Limited License Legal Technicians [LLLTs] (both have licenses to engage in the limited practice of law only within defined scopes of practice) set at a different, lower amount, and
 - c) Based on a) and b), an Active LPO license fee set at \$200 (the same amount as the license fee amount for Emeritus Pro Bono lawyer members, who also have a license to engage in the limited practice of law only within a defined scope of practice) with the inactive LPO license fee set at \$100; and
- 2) recommend that the Supreme Court not order LPOs to pay an annual assessment for the CPF, for the reasons stated below.

LPO License Fees

At the LP Board's March 13, 2018 meeting, the LP Board heard from WSBA staff about:

- the reallocation of revenue and expenses from the LPO cost center to various cost centers within the Regulatory Services Department as a result of LPOs becoming members of the WSBA and the efforts to coordinate the admissions, MCLE, and licensing processes for all Washington licensed legal professionals;



- the declining net income and, in recent years, the increasing net loss in the LPO cost center;
- the length of time since the last increase to LPO license fees, which occurred in 2006 (from \$85 to \$110);
- the approval by the BOG of the new admittee license fee proration Bylaw for new LPOs, thereby applying the same percentage license fee proration as is applied to new lawyer admittee license fees, resulting in a 50% reduction in the license fee for the first two full years after admission as a LPO; and
- several possible methods that could be recommended to the BOG for setting LPO license fees, including a two tier approach as described in this memo.

After considering and discussing all of the information provided, the LP Board unanimously endorsed and now recommends that the BOG adopt an Active LPO license fee of \$200 and an Inactive LPO license fee of \$100.

Client Protection Fund Assessment

Also at the LP Board's March 13, 2018 meeting, the LP Board was provided with information and had a discussion about the CPF and assessments paid by lawyers for that fund. The LP Board was advised that the Admission and Practice Rules (APR) already permit gifts from the CPF to clients of LPOs who have been harmed by the dishonest acts of, or failure to properly account for client funds by, LPOs. WSBA staff discussed how the CPF currently awards gifts to clients harmed by lawyers (and potentially LPOs and LLLTs). Even though the APR permit gifts to LPO clients, the LP Board believes that LPOs and their employers are already able and required to provide for financial harm caused by LPOs of the type that would potentially be covered by a CPF gift by virtue of several requirements for LPOs and their employers, as described below

LPOs, for the most part, work for three primary types of employers: independent escrow companies, title insurance companies, and lawyers. An independent escrow company operates with a license issued by the Department of Financial Institutions, which requires the company to have a fidelity bond that will pay out in cases of fraud or theft (RCW 18.44.201). Likewise, a title insurance company licensed to do business in Washington must also have a fidelity bond or fidelity insurance (RCW 48.29.155). Finally, a lawyer licensed to practice law in Washington already pays an assessment to the CPF.

Additionally, although not directly applicable to the types of losses that would be eligible for gifts from the CPF, LPOs are required to prove that they have the ability to respond in damages resulting from their acts or omissions in the performance of LPO services by having Errors and



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Omissions insurance coverage or by submitting audited financial statements indicating specified amounts of net worth. Finally, some LP Board members stated that title companies are also required to have insurance that covers losses to clients if the companies go out of business.

Because they have all of these types of coverages, the LP Board believed that the likelihood of an LPO's client not being able to be made whole under one of these other forms of coverage would be small and would not warrant imposing a CPF assessment on every LPO.

Therefore, the LP Board unanimously recommends that the BOG should recommend to the Supreme Court that it not order LPOs to pay an assessment for the CPF.

Thank you for your consideration.

Sincerely,



Shelley Miner
Chair, Limited Practice Board



April 12, 2018

Kim Risenmay, Treasurer, and Budget and Audit Committee
Washington State Bar Association
1325 4th Ave Ste 600
Seattle, WA 98101

RE: LLLT License Fees and Client Protection Fund Assessment

Dear Mr. Risenmay and Committee Members:

I write on behalf of the Limited License Legal Technician Board (LLLT Board) regarding Limited License Legal Technician (LLLT) license fees and an assessment on LLLTs for the Client Protection Fund (CPF). The LLLT Board recommends that the Board of Governors:

- 1) adopt a two tier fee structure for WSBA members that has
 - a) Active license fees for lawyers set at one amount (currently \$449),
 - b) Active license fees for LLLTs and Limited Practice Officers [LPOs] (both have licenses to engage in the limited practice law only within defined scopes of practice) set at a different, lower amount, and
 - c) Based on a) and b), an Active LLLT license fee set at \$200 (the same amount as the license fee amount for Emeritus Pro Bono lawyer members, who also have a license to engage in the limited practice of law only within a defined scope of practice) with the inactive LLLT license fee set at \$100; and
- 2) recommend that the Supreme Court order LLLTs to pay an annual assessment for the CPF in the amount of \$30, for the reasons stated below.

LLLT License Fees

At the LLLT Board's January 18, 2018 meeting, the Board unanimously endorsed and now recommends that the BOG adopt an Active LLLT license fee of \$200 and an Inactive LLLT license fee of \$100.

Client Protection Fund Assessment

Also at the LLLT Board's January 18, 2018 meeting, the LLLT Board discussed whether LLLTs should pay an assessment to the CPF. Although LLLTs currently are not required to pay into the



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fund, CPF funds are available to make gifts to LLLT clients who have been harmed by the dishonest acts of, or failure to properly account for client funds by, LLLTs. The LLLT Board endorsed and now recommends that the BOG should recommend that the Supreme Court order LLLTs to pay an assessment in the amount of \$30 for the CPF.

Thank you for your consideration.

Sincerely,



Stephen Crossland
Chair, LLLT Board



RCW 48.29.155

Agent license—Financial responsibility—Definitions.

(1) At the time of filing an application for a **title insurance** agent license, or any renewal or reinstatement of a title insurance agent license, the applicant shall provide satisfactory evidence to the commissioner of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond or fidelity insurance providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering the applicant and each corporate officer, partner, escrow officer, and employee of the applicant conducting the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under *RCW 18.44.021(6), or a guarantee from a licensed title insurance company as authorized by subsection (5) of this section; and

(b) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized, or eligible under chapter 48.15 RCW, to do a surety business in this state as surety, or some other security approved by the commissioner, unless the fidelity bond or fidelity insurance obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the commissioner of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the commissioner. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not liable for any penalties imposed on the licensee, including but not limited to any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" means a primary commercial blanket bond or its equivalent satisfactory to the commissioner and written by an insurer authorized, or eligible under chapter 48.15 RCW, to transact this line of business in the state of Washington. The bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the bond, acting alone or in collusion with others. The bond shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the title insurance agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(3) For the purposes of this section, "fidelity insurance" means employee dishonesty insurance or its equivalent satisfactory to the commissioner and written by an insurer authorized, or eligible under chapter 48.15 RCW, to transact this line of business in the state of Washington. The insurance shall provide coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the policy of insurance, acting alone or in collusion with others. The insurance shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the insurance company be liable under the insurance to any other party. The insurance shall name the title insurance agent as the named insured and shall protect the named insured against the loss of money or other real or personal property belonging to the named insured, or in which the named insured has a pecuniary interest, or for which the named insured is legally liable or held by the named insured in any capacity, whether the named insured is legally liable therefor or not. The insurance coverage may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(4) The fidelity bond or fidelity insurance, and the surety bond or other form of security approved by the commissioner, shall be kept in full force and effect as a condition precedent to the title insurance agent's authority to transact business in this state, and the title insurance agent shall supply the commissioner with satisfactory evidence thereof upon request.

(5) A title insurance company authorized to do business in Washington under RCW 48.05.030 may provide a guarantee in a form satisfactory to the commissioner accepting financial responsibility, up to the aggregate amount of two hundred thousand dollars, for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners of a title insurance agent that is appointed as the title insurance company's agent. A title insurance company providing a guarantee as permitted under this subsection may only do so on behalf of its properly appointed title insurance agents. If the title insurance agent is an agent for two or more title insurance companies, any liability under the guarantee shall be borne by the title insurance company for those escrows for which a title insurance commitment or policy was issued on behalf of that title insurance company. If no commitment or policy was issued regarding the escrow for which moneys were lost, including but not limited to collection escrows, each title insurance company, for which the agent was appointed at the time of the fraudulent or dishonest act, shares in the liability. The liability will be shared proportionally, as follows: The premium the agent remitted to the title insurance company in the year prior to the fraudulent or dishonest act will be compared to the total premium the agent remitted to all title insurance companies, for whom the title insurance agent was appointed, during the same period.

(6) All title insurance agents licensed on or before July 24, 2005, shall comply with this section within thirty days following July 24, 2005.

[2005 c 115 § 1; 2003 c 202 § 1.]

NOTES:

*Reviser's note: RCW 18.44.021 was amended by 2015 c 229 § 1, changing subsection (6) to subsection (1)(f).

RCW 18.44.201

Financial responsibility—Fidelity bond—Errors and omissions policy—Surety bond.

(1) At the time of filing an application for an **escrow agent** license, or any renewal or reinstatement of an escrow agent license, the applicant shall provide satisfactory evidence to the director of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond providing coverage in the aggregate amount of one million dollars with a deductible no greater than ten thousand dollars covering each corporate officer, partner, escrow officer, and employee of the applicant engaged in escrow transactions;

(b) An errors and omissions policy issued to the escrow agent providing coverage in the minimum aggregate amount of fifty thousand dollars or, alternatively, cash or securities in the principal amount of fifty thousand dollars deposited in an approved depository on condition that they be available for payment of any claim payable under an equivalent errors and omissions policy in that amount and pursuant to rules and regulations adopted by the department for that purpose; and

(c) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, unless the fidelity bond obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" shall mean a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact this line of business in the state of Washington. Such bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the corporate officers, partners, sole practitioners, escrow officers, and employees of the applicant engaged in escrow transactions acting alone or in collusion with others. This bond shall be for the sole benefit of the escrow agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party unless the corporate officer, partner, or sole practitioner commits a fraudulent or dishonest act, in which case, the bond shall be for the benefit of the harmed consumer. The bond shall name the escrow agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is

legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. An escrow agent's bond must be maintained until all accounts have been reconciled and the escrow trust account balance is zero. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent. In the event that the fidelity bond required under this subsection is not reasonably available, the director may adopt rules to implement a surety bond requirement.

(3) For the purposes of this section, an "errors and omissions policy" shall mean a group or individual insurance policy satisfactory to the director and issued by an insurer authorized to transact insurance business in the state of Washington. Such policy shall provide coverage for unintentional errors and omissions of the escrow agent and its employees, and may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

(4) Except as provided in RCW 18.44.221, the fidelity bond, surety bond, and the errors and omissions policy required by this section shall be kept in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business in this state, and the escrow agent shall supply the director with satisfactory evidence thereof upon request.

[2013 c 64 § 4; 2010 c 34 § 7; 1999 c 30 § 5; 1979 c 70 § 1; 1977 ex.s. c 156 § 5; 1971 ex.s. c 245 § 4; 1965 c 153 § 5. Formerly RCW 18.44.050.]