

A PRACTITIONER'S PERSPECTIVE ON EMERGING LEGAL TRENDS

Practicing law without a law degree is now permissible in Washington State

Non-lawyers are now permitted to practice family law in Washington State, as a result of rule changes approved by the Washington Supreme Court in 2012. The first contingent of these non-lawyer practitioners became licensed in 2015.

The concept of nontraditional legal service providers has been a topic that many state bar associations have discussed for some time. The goal of establishing this new category of legal professional is to provide greater access to legal services. Washington is the first state in the nation to create a quasi-lawyer category of professional known as a Limited License Legal Technician, or LLLT. Under the new rule, *Admission to Practice Rule (APR) 28, Limited Practice Rule for Limited License Legal Technicians*, LLLTs may practice law and give legal advice in family law. LLLTs may engage in such practice within a law firm, or they may “hang out their shingle” and open their own quasi-law firms. The use of LLLTs in the legal profession may become analogous to the use of advance practice professionals in the healthcare industry.

Proponents of non-lawyers engaging in the limited practice of law cite many state and federal studies demonstrating that 80 to 90 percent of low- and moderate-income individuals with legal problems cannot afford to retain a lawyer. Moreover, the economics of law firm practice precludes many lawyers from sufficiently lowering their fees so that their services will be affordable to clients of modest means. Legal aid, *pro bono*, and other similar programs have not adequately bridged that gap.

The Washington State Bar Association's involvement in the LLLT program represents a reversal from its prior position. While the discussion pertaining to LLLTs was ongoing over several years, the Bar Association opposed the concept when the Washington Supreme Court first considered it. The Bar Association contended that it was impossible for LLLTs to receive the same rigorous education and training required of lawyers. Therefore, the Bar Association contended, they cannot be expected to provide the same expertise in handling legal matters.

On the national stage, these same concerns were at the forefront of the heavily contested Resolution 105 establishing Regulatory Objectives for the Provision of Legal Services, which was adopted by the ABA in February 2016. The ABA resolution states, in part, “that each state's highest court, and those of each territory and tribe, be guided by the ABA Model Regulatory Objectives for the Provision of Legal Services when they assess the court's existing regulatory framework and any other regulations they may choose to develop concerning non-traditional legal service providers.” So while Washington is at the vanguard of this development, additional states may be inclined to follow given the direction of the ABA's guidance.

Services that LLLTs May Provide

LLLTs are not fully licensed lawyers. Notably, APR 28 does not permit LLLTs to appear in court on behalf of clients, but they can provide several services that traditionally only lawyers could provide.

LLLTs are authorized to:

- obtain relevant facts from clients;
- inform clients about possible implications of the law as it applies to their cases;
- provide legal advice to clients on how to manage their family law matters;
- prepare clients to represent themselves in court appearances;
- perform legal research to answer clients' legal questions; and
- draft legal documents to be filed with the court.

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LLLT Education

An LLLT is not required to earn a law degree. Instead, APR 28 specifies that the LLLT must have earned the equivalent of a community college associate's degree. Half of those college credits must be in "core curriculum instruction in paralegal studies as approved by the Board with instruction to occur at an ABA approved law school or ABA approved paralegal education program."

APR 28 also requires LLLTs to acquire 3,000 hours of substantive law-related work experience under a licensed lawyer's supervision. However, the legal work may have focused upon areas other than family law practice.

The rule also requires the following:

In each practice area in which an applicant seeks licensure, instruction in the approved practice area, which must be based on a curriculum developed by or in conjunction with an ABA approved law school. For each approved practice area, the Board shall determine the key concepts or topics to be covered in the curriculum and the number of credit hours of instruction required for admission in that practice area. APR 28 (D)(3)(c).

In short, LLLTs must learn civil procedure, how to perform legal research, and principles of contract law and advanced family law.

The required curriculum is estimated to cost about \$10,000, a fraction of the cost of a law degree even at a public law school. The lower tuition helps to reduce the barrier to entry for LLLT applicants and should enable LLLTs to charge substantially lower fees and thereby promote the goal of greater access to legal representation.

Historical Background

The Washington Supreme Court has exclusive power to regulate the practice of law in Washington. The Court's decision to permit non-lawyers to practice law in a limited capacity is not without precedent in Washington. Historically, APR 12 has authorized "Limited Practice Officers," or LPOs, to prepare legal documents in four specific areas: escrow, lending, title insurance, and real estate. LPOs are permitted to select, prepare, and complete documents in those limited areas, and may do so only on form documents pre-approved for that purpose. LPOs must advise the parties to such transactions that they do not represent any party, cannot provide legal advice, and that the parties are entitled to independent legal counsel from a lawyer. Clearly, LLLTs' responsibilities will be more similar to lawyers than those of LPOs.

The first LLLTs passed their licensing examination in May 2015. As of December 2015, only seven individuals in Washington State are licensed LLLTs.

LLLT Board

APR 28 creates a 13-person LLLT Board. The Board and the Washington State Bar Association, which regulates the legal profession in Washington State under the Supreme Court's supervision, defined the parameters of the program. The Board supervises and administers the program and determines many of its guidelines, such as the continuing education credits required of LLLTs.

APR 28 expressly permits the Board to recommend "practice areas of law for LLLTs, subject to approval by the Supreme Court." Clearly, family law may represent the first of many practice areas in which LLLTs will be permitted to practice.

LLLT Rules of Professional Conduct

When creating the LLLT designation, the Washington Supreme Court also enacted a unique set of Rules of Professional Conduct (RPCs) applying ethical standards specifically to LLLTs. These new RPCs are analogous to the Washington State RPCs, as well as the American Bar Association Model Rules of Professional Conduct. For example:

- An LLLT must follow the same rules as a lawyer in timely and fully communicating with clients. RPC 1.4.
- An LLLT's fee arrangements must meet much the same ethical standards as a lawyer's. RPC 1.5.
- An LLLT must follow the same rules as a lawyer in maintaining client confidentiality. RPC 1.6.
- To the extent applicable, an LLLT must follow the same rules governing conflicts of interest as to current clients, RPC 1.7, and former clients, RPC 1.9.
- An LLLT may enter into a business relationship with a client in circumstances similar to those in which a lawyer may do so. RPC 1.8.
- An LLLT must follow the same rules as lawyers in handling client funds, safeguarding client property, and maintaining a trust account and records of that account. RPC 1.15A, RPC 1.15B.
- An LLLT is subject to many of the same rules as a lawyer regarding declining, or permissive or mandatory withdrawal from, representation. RPC 1.16.
- An LLLT must follow the same standards as a lawyer in transactions with persons other than clients, including persons represented by a lawyer. RPC 4.1, RPC 4.2, RPC 4.3.
- Many of the same basic ethical rules govern advertising by LLLTs and lawyers. RPC 7.2. However, in order for the public to accurately understand the limitations on the practice of an LLLT, the LLLT must communicate that he or she may deliver legal services only within the LLLT's limited scope.

LLTs must adhere to the same professional and ethical standards as lawyers. Similar to attorney/client communications, the communications between LLLTs and clients are privileged. The applicable ethical rules also hold LLLTs to the standard of a lawyer, resulting in a similar professional liability risk that a lawyer would encounter. LLLTs are required to have professional liability insurance with minimum coverage amounts. APR 28 also specifies a list of prohibited acts for LLLTs when dealing with clients. The most obvious difference between the RPCs for LLLTs and the RPCs for lawyers is that the former clarify that LLLTs may not represent clients in court.

Several other states may follow the Washington State model. The bar associations of California, Colorado, New Mexico, and Oregon are reportedly considering similar arrangements by which non-lawyers can engage in the limited practice of law.

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