

March 7, 2017

To the Justices of the Washington State Supreme Court:

We write to express serious concerns about the expanded areas proposed for Limited License Legal Technicians in family law. We leave reaction to the proposed new areas of “estate and healthcare” (e.g., probate and guardianships) to those regularly involved in those areas. These comments represent the individual concerns of the undersigned, and not those of any state or local bar or judges association.

Neither participation nor input on these family law proposals was sought from the Family Law Sections of the Washington State Bar Association or the King County Bar Association by the LLLT Board or its Family Law Advisory Committee. All that has been released to date is a bullet list, which could only be unearthed (at page 213 out of the 407 page January BOG meeting materials) as one of the Executive Director’s “information” items, under section 8 – Information – b. ED Report – ED Information.

There was a Town Hall meeting on Feb. 15 at the WSBA offices. Unfortunately, it was scheduled for only 1-1/2 hours, which wasn’t adequate for all those present and online to pose their questions and make their comments. The overwhelming viewpoint expressed at that meeting was opposition to most of the proposed expansion.<sup>1</sup>

Many are concerned that the manner in which the LLLT idea was pitched to the superior court judiciary (and certainly to the bar) in the first place was with assurances this was not and was never intended to include in-court appearances. Yet the publicly-disclosed outline would authorize LLLTs to engage in:

- Major modifications of parenting plans
- Nonparental custody<sup>2</sup>
- Mediations, arbitrations, and settlement conferences
- Negotiations<sup>3</sup>
- Appearances on motion hearings for:
  - Protection orders (e.g., domestic violence)
  - Temporary family law orders
  - Child support modifications

These areas involve some of the most complex substantive issues, which affect fundamental rights of parents and litigants. The public is ill served by entrusting their children and their financial futures to legal technicians educated through online courses.

When concern about such court appearances was voiced at the Town Hall meeting, for the first time, LLLT Board member Ms. Ivarinen stated that the LLLT would only be assisting and not speaking for the client at a hearing. Nowhere does that limitation appear in the materials made available to the public or the legal community. That reveals a fundamental due process shortcoming. There has been no notice of

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<sup>1</sup> That conclusion can be gleaned from watching the recorded meeting, on the WSBA website at <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians> .

<sup>2</sup> Parenting plan modifications and nonparental custody actions would be authorized up to the adequate cause hearing, but many cases are essentially won or lost by that time.

<sup>3</sup> The outline would require “prior written consent” from the client, but that consent would doubtlessly be included in most LLLT’s representation agreement.

what is specifically proposed, but only an outline of bullet points. Yet the LLLT Board is scheduled to meet with the Supreme Court *tomorrow* to present the proposed expansion.

From its minutes, it appears that the LLLT Board is routinely handling the issues of expanding LLLT areas on its “consent agenda”. As a single item, a consent agenda is voted on with a single vote: to approve the consent agenda. The key to a consent agenda is that there is *no discussion* of that item. Proper use of a consent agenda is for “routine”, “perfunctory” items, about which “there is no need for discussion.” This approach is particularly troubling, given similar practices underlying the mass resignation of the Practice of Law Board<sup>4</sup>, BOG’s decision to disregard the fees referendum approved by WSBA members, and the increased tendency of the BOG to take action through its Executive Committee and to meet in “executive sessions”, which are closed to the public and to the Sections’ BOG liaisons.

Not all of the family law proposals are objectionable. Filling out quit claim deeds and real estate excise tax affidavits, and presenting agreed orders in Ex Parte, may be appropriate for a legal technician. But there is and should be a major difference between the ambit of a legal counselor and a technician. These proposals would unavoidably blur those lines, to the public detriment.

Many of these LLLT proposals will in fact be counterproductive, reducing lawyers’ motivation to provide free or discounted services. The draft expansion discourages young attorneys from offering their lower rates to meet the public’s unmet legal needs. In the face of these proposals, “Why did I go to law school?” is commonly voiced. Washington lawyers have volunteered thousands of hours to help those with low income deal with their legal needs, including:

- Helping clarify over 200 family law forms through plainer language
- Volunteering for legal clinics
- Forming an entire WSBA section for Low Bono attorneys
- Working through mentor programs to help newer attorneys handle critical family law needs for free
- Informally helping answer young attorneys’ questions locally and through family law listservs

As a result, the most recent Washington Civil Needs Study<sup>5</sup> shows that family law is no longer among this state’s principal unmet legal needs: “The most common problems have changed. Health care, consumer/finance and employment now represent the three areas with the highest percentage of problems.”

It’s questionable whether LLLTs are in fact meeting the needs of those with low income. There is no requirement that LLLT services be either low cost or rendered to those with low income. The experience with some LLLTs thus far is not that they are working with low income people; but rather, they are working with people who could pay for a lawyer but who prefer to pay less for an LLLT. At the Town

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<sup>4</sup> See its resignation letter here: [http://www.abajournal.com/files/Letter\\_to\\_Supreme\\_Court\\_Explaining\\_Resignations.pdf](http://www.abajournal.com/files/Letter_to_Supreme_Court_Explaining_Resignations.pdf).

<sup>5</sup> <http://ocla.wa.gov/final-report-2015-civil-legal-needs-study-update/>

Hall meeting, the LLLT Board members acknowledged that about half of the 20 LLLTs work in attorney offices.

Nor are the LLLTs meeting the needs of rural areas. The WSBA website<sup>6</sup> graphically shows how the 20 LLLTs are concentrated almost exclusively in the major population centers:



As of September 2016, there were only 14 LLLTs in Washington State. For Fiscal Year 2016, the LLLT Board had \$11,325 in revenue and \$227,683 in expenses, for a net deficit of (\$216,358): a deficiency of \$15,454 per LLLT. Now there are 20 LLLTs. The LLLT Board has a deficit of (\$221,664) for Fiscal Year 2017. That deficiency amounts to \$11,083 per LLLT.<sup>7</sup> Although the LLLT Board is a Supreme Court board, those costs are so far being paid by this state's attorneys, through the WSBA. In these times of scarce resources, the legal needs of low income households could be better served by promoting family law court facilitators and legal services attorneys.

Sincerely,

Theresa Ahern  
Michelle Ahrens  
Mark Alexander  
Virginia Amis  
Bart Anderson  
Brandy Andersson  
Robin Andrews  
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Bruce Clement  
Nathan Cliber  
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Rob Cottle  
Jean Cotton  
Sandra Cribbs  
Betsy Crumb

<sup>6</sup> <http://wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Directory>

<sup>7</sup> <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Directory>  
<ftp://publicftp.wsba.org/BOGBookPublic/Sept2016SupplementalMaterials.pdf>  
(LLL information begins on page 82)

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