March 2, 2017

**SENT VIA EMAIL**

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Re: Comments Regarding Expansion of LLLT Program to Elder Law

Dear Ms. Kirkevold, Mr. Crossland, Ms. Reed, and Ms. Carlson:

 The purpose of this letter is to express our concerns regarding the expansion of the Limited License Legal Technician (LLLT) Program to Elder Law. We share the same concerns that the Elder Law Section presented in their letter dated April 13, 2016, specifically:

* Lack of Oversight - Unlike family law, for which the Court provides almost constant oversight, Elder Law has very little oversight. Failure to provide such checks and balances may result in conflict, not only between documents (Wills versus Community Property Agreements; Transfer on Death Deeds versus Wills; and/or Wills versus Beneficiary Designations), but also within the same document. Lack of oversight may also result in the unintended conversion of Separate Property to Community Property. These problems have the potential to be further exacerbated by the fact that the majority of the Elder Law community’s clientele are vulnerable and unable to act as a backstop to any potential problems. Problems such as these will not likely be realized until much later on, at which time it may be too late or too expensive to fix, defeating the fundamental foundation of the LLLT Program.
* Limiting Market Place for Practicing Attorneys - By implying that only taxable individuals require assistance from attorneys the LLLT Program severely limits the market place for practicing attorneys.
* Failure to Show Need for Expansion into Elder Law – Although access to justice is of the utmost importance, there does not appear to be as high of a need within the Elder Law Sector compared to other types of law, such as debt collection and housing (15.2% of the total according the NJP intake data and survey results cited in the WSBA Elder Law’s letter compared to 34% for housing and 20% for debt collection). Additionally, access to justice is already fairly high within Elder Law with the creation of the new Guardianship Forms on the Courts’ websites, as well as the layperson information provided by websites such as www.wa-probate.com.
* Technicians are Forced to Make Legal Conclusions – Despite the fact that the intent is to limit the practice to non-taxable individuals, Technicians would still be required to determine whether an individual was taxable. Determining whether an individual is taxable is a very complicated process, requiring an up-to-date understanding of the ever expanding tax provisions governing Estates and Trusts. Making an incorrect decision may result in unnecessary payment of tax through the failure to include necessary tax savings provisions, and/or incur penalties and interest as a result of not paying tax which should have been paid. Additionally, without a formal legal education Technicians may lack the skills/experience to make necessary legal conclusions. For example, there may be unintended and dire consequences if a Technician fails to have a mastery of the terminology associated with Wills, including but not limited to: “by right of representation”, the specific language required to avoid an omitted spouse or child, and language necessary to disinherit someone.
* Use of Forms is Inadequate – We all know that our clients are not one size fits all, so the fact that the program limits Technicians to approved forms seems problematic, at best. What happens when the Technician’s client does not fit within the series of boxes provided? Are they able to alter the forms in these instances? Likewise, what is a Technician to do when they begin to assist someone only to find out that their situation is slightly different than what the approved forms provide? Are they required to terminate their relationship and make the client begin anew with an attorney? Lastly, there are no approved forms for Durable Powers of Attorney despite the fact that they directly impact our clients’ lives by entrusting a huge amount of power to a third party with little to no oversight.

For these reasons, as well as those outlined in the Elder Law Section’s letter to Mr. Crossland and Ms. Carlson dated April 13, 2016, it is my opinion that the expansion of the LLLT Program to Elder Law would be detrimental not only to myself and my fellow colleagues but also to our clientele.

Best regards,

**VANDEBERG JOHNSON & GANDARA, LLP**

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