

THE EVOLUTION OF WASHINGTON'S LIMITED LICENSE LEGAL TECHNICIAN RULE

by Stephen R. Crossland

In June 2012, the Washington Supreme Court entered an Order adopting Admission to Practice Rule 28, Limited Practice Rule for Limited License Legal Technicians, which authorized a new group of legal service providers, Limited License Legal Technicians (LLLTs).¹ Washington is the first state to adopt a rule that authorizes limited practice legal professionals to deliver legal services that are authorized and regulated by the state Supreme Court. This article will discuss the path to the adoption of the LLLT rule—a path that began more than 20 years ago—and the considerations that led to its adoption.

THE SEEDS OF THE LLLT RULE

General Rule 24: Definition of the Practice of Law

The LLLT rule has its philosophical roots in the issues of access to justice and consumer protection. The consumer protection issue was how to address the proliferation of the unauthorized practice of law (UPL) in order to ensure that the public have access to trained and regulated legal service providers without falling prey to unscrupulous and unqualified persons engaging in UPL. Most efforts to analyze this problem led to the conclusion that in order to regulate UPL it would first be necessary to define what in fact the practice of law is. It seemed foolish, if not impossible, to prosecute someone for UPL if that person had not first been told what he or she was not authorized to do.

In 1998 the Committee to Define the Practice of Law was created to define the practice of law with the intent of recommending that the Supreme Court adopt the definition by Court Rule. The belief was that to protect the separation of powers between the Court and the Legislature, this would need to be done by Court

Rule rather than by legislation (although Washington does have a statute that makes UPL a crime). The committee consisted of two former Chief Justices of the Washington Supreme Court, a retired trial judge, several members of the Board of Governors of the Washington State Bar Association, the Solicitor General for the State of Washington, and a representative from the Attorney General's office.

After nearly two years of deliberation, the committee submitted its proposed rule to the Supreme Court, which adopted the rule as General Rule 24 in 2001. (See page 22 for General Rule 24.)

General Rule 25: Practice of Law Board

The Supreme Court then asked the committee to recommend an additional rule that would apply General Rule 24 to a mechanism focusing on the two motivating concerns that led to the rule—namely, consumer protection (UPL) and access to justice.

The additional request led the committee to recommend a rule that soon became General Rule 25 in 2002. General Rule 25 essentially did three things. It created the Practice of Law Board (POLB), and it gave the POLB two functions. First it asked that the POLB field complaints regarding UPL and issue opinions regarding whether the alleged acts were or were not UPL. The other function of the POLB was to propose a rule to the Supreme Court that

non-lawyers be authorized to engage in certain legal or law-related activities that constitute the practice of law as defined in GR 24, [and that] the Board shall determine whether regulation under authority of the Supreme Court (including the establishment of minimum and uni-

form standards of competency, conduct, and continuing education) is necessary to protect the public interest. Any recommendation that non-lawyers be authorized to engage in the limited provision of legal or law-related services shall be accompanied by a determination:

(A) that access to affordable and reliable legal and law-related services consistent with protection of the public will be enhanced by permitting non-lawyers to engage in the defined activities set forth in the recommendation;

(B) that the defined activities outlined in the recommendation can be reasonably and competently provided by skilled and trained non-lawyers;

(C) if the public interest requires regulation under authority of the Supreme Court, such regulation is tailored to promote access to affordable legal and law-related services while ensuring that those whose important rights are at stake can reasonably rely on the quality, skill and ability of those non-lawyers who will provide such services;

(D) that, to the extent that the activities authorized will involve the handling of client trust funds, provision has been made to ensure that such funds are handled in a manner consistent with RPC 1.15A and APR 12.1, including the requirement that such funds be placed in interest bearing accounts, with interest paid to the Legal Foundation of Washington; and

(E) that the costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime.²

DEVELOPMENT AND ADOPTION OF THE LLLT RULE

For the next 12 years, the POLB struggled with the proposed rule, in part due to concerns among lawyers that

these non-lawyers would not be qualified to deliver legal services and that they would take work away from lawyers. The proposed rule was twice submitted to the Board of Governors of the Washington State Bar Association, and it was twice rejected (by votes of 13-1 and 12-2, respectively). At the urging of the Supreme Court, the POLB recommended potential practice areas to which the proposed rule might be applied. These practice areas were selected based upon a Civil Legal Needs Study that the Supreme Court had commissioned in 2003.³ The proposed practice areas were Family Law, Immigration, Landlord Tenant Matters, and Elder Law. The POLB recommended that the rule be first applied to the practice area of Family Law.

Finally, in June 2012, the Supreme Court entered an Order adopting Admission to Practice Rule 28, Limited Practice Rule for Limited License Legal Technicians. (See page 24 for excerpts from the rule.) The Court's reasoning in adopting the rule was especially captured in the following statement: "We have a duty to ensure that the public can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place."⁴

Educational and Work Experience Requirements

The LLLT rule requires candidates to have an associate-level degree or higher, 45 credit hours of core curriculum from an ABA-approved law school or ABA-approved paralegal program, and practice-area courses with curriculum developed by an ABA-approved law school (for each specific practice area, the Board determines the key concepts or topics to be covered in the practice-area curriculum and the number of credit hours of instruction required for admission in that practice area).

In addition, LLLT candidates must acquire 3,000 hours of substantive law-related work experience supervised by a licensed lawyer, to be acquired no more than three years prior to or three years after licensure.

GENERAL RULE 24
DEFINITION OF THE PRACTICE OF LAW

(a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental Agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

Source: Washington State Court Rules, General Rule 24, Definition of the Practice of Law (adopted effective September 1, 2001; amended effective April 30, 2002).

IMPLEMENTATION OF THE LLLT RULE

The rule provided for the creation of a Limited License Legal Technician Board. That Board began its work in January 2013. Its first task was to recommend to the Court a practice area to which the rule would be initially applied, keeping in mind that the rule was designed to be applied to any practice area that the Court felt would be helpful to the public. The Board recommended that the rule first be applied to Family Law, which the Supreme Court approved in March 2013. The Board then divided the task of implementation among four subcommittees. The first two subcommittees were charged with defining the scope of practice and creating an education program to teach the necessary skills for preparation and qualification to deliver legal services within the scope as defined.

DEFINING THE SCOPE OF PRACTICE

In an effort to define the scope of practice, the subcommittee charged with that task invited Family Law practitioners to describe the breadth and depth of what they do in the anatomy of a Family Law case. The subcommittee then attempted to determine what services would be needed by the public to fulfill the unmet needs in this practice area and how those services could be rendered in a way that would not likely pose a risk to the consumer. That proposed scope was then sent to the Supreme Court for its consideration and approval.

DEVELOPING AN EDUCATION PROGRAM

The next task was to develop an education program to educate LLLT candidates so that they would be qualified to deliver services within the scope of practice as approved by the Supreme Court. This phase of the process revealed collaborations that were unanticipated. The subcommittee charged with this task looked to the Washington community college system and its paralegal programs to assist it in developing education in the core components. The LLLT Board had actually cre-

ated its own criteria for the core curriculum, which in many cases didn't align with the existing paralegal curricula. After examining the Board's criteria and reevaluating their curricula, the community colleges decided to adjust their curricula to match the LLLT Board criteria.

The subcommittee next looked to the law schools in Washington and asked their assistance in creating the Family Law curriculum to meet the authorized scope of practice. All three law schools agreed not only to help develop the curriculum but also to assist in teaching the classes. The first of a series of three Family Law classes was offered in January 2014 by the University of Washington School of Law, the first school to offer the series of three classes.⁵ The first year of classes are streamed live from the University of Washington School of Law, but it is anticipated that the classes will be offered both live and streamed thereafter. The classes are co-taught by a law school professor and a practicing Family Law lawyer. The classes are interactive so that students from all across the state can actively participate in all classes.

The curricula for both the community colleges and the law school are unique for the LLLT program. The community colleges and the law school collaborated to develop the curricula and to coordinate the curricula to ensure that everything is covered in the combined programs.

The LLLT Board has developed what it calls the "Three A's" to assess decisions about the LLLT program. The program should be "Accessible," "Affordable," and "Academically Rigorous." The collaboration of the Washington community college system and law schools coupled with the use of technology has helped the Board achieve the Three A's.

CREATING EXAMINATIONS AND RULES OF PROFESSIONAL CONDUCT

The third subcommittee effort pertained to creating examinations to test the competency of the candidates

EXCERPTS FROM ADMISSION TO PRACTICE RULE 28
LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. Purpose. The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribe the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.

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B. Definitions. For purposes of this rule, the following definitions will apply:

....

(4) "Limited License Legal Technician" means a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a pro se client.

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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; APR 28 Page 4

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(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, which 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 side, 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;

(7) Perform legal research and draft legal letters and pleadings documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;

(8) 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;

(9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

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Source: Washington State Court Rules, Admission to Practice Rules, Rule 28, Limited Practice Rule for Limited License Legal Technicians.

in the core curriculum and also in the specific practice areas (e.g., Family Law). Once a candidate passes the core curriculum examination, he or she is not required to retake that examination when seeking to be authorized in additional practice areas as may be approved by the Supreme Court; the candidate will only need to take the specific examination for the additional practice area. The work of this subcommittee is ongoing; it is anticipated that the first examination will be given in spring 2015.

The fourth subcommittee's charge relates to the creation of Rules of Professional Conduct, which will very much mirror the existing Rules of Professional Conduct now in existence for lawyers in the state of Washington. It is anticipated that this work will be completed in August 2014 so that the rules can be sent to the Supreme Court for consideration in September 2014.

INCORPORATING ADDITIONAL PRACTICE AREAS

The LLLT Board will begin to study additional practice areas within the coming months. Once additional practice areas are approved by the Supreme Court, the same process will need to be followed: defining the scope of practice to be approved by the Supreme Court, developing a curriculum in conjunction with the law schools to educate candidates in the limited scope of the practice area, and developing an examination to test candidates' proficiency in that practice area. It is not known which will be the next recommended practice area or how many practice areas may ultimately be recommended to or approved by the Supreme Court.

CONCLUSION

The Board anticipates giving examinations and licensing its first LLLTs in the spring of 2015. Since it began implementation of the LLLT rule in January 2013, the Board has found its work to be challenging, exciting, and rewarding, and it has been incredibly diligent in performing the work required to implement the rule. Likewise, the Washington Supreme Court has been extremely helpful in assisting in implementation of the rule.

Washington's LLLT program is the first in the nation to authorize limited practice in specific approved practice areas of law as defined. The program will provide legal services designed to fulfill unmet needs in those practice areas while doing so at a price that the consumer can afford. The LLLT Board eagerly anticipates the delivery of services by LLLTs and the refinement of the LLLT program. 

NOTES

1. See Washington State Bar Association, Limited License Legal Technicians (LLL), <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians>, which includes the Order and Rule (last visited May 24, 2014).
2. Washington State Court Rules, General Rule 25, Practice of Law Board (adopted effective Sept. 1, 2001; Sept. 1, 2006).
3. Washington State Supreme Court, Task Force on Civil Equal Justice Funding, "The Washington State Civil Legal Needs Study" (Sept. 2003), available at <http://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>.
4. The Supreme Court of Washington, Order No. 25700-A-1005, In the Matter of the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians (June 2012).
5. See University of Washington School of Law, Limited License Legal Technician Program in Family Law, <http://www.law.washington.edu/LLL/Default.aspx> (last visited May 25, 2014).



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