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Washington's LLLT Experiment

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Last year, Washington began an ambitious experiment for increasing access to justice for people of modest means. At the urging of the Washington Supreme Court, the Washington State Bar created a program for “limited license legal technicians”—“LLLTs” for short—who can provide some legal services independent of lawyers and directly to clients. As the name suggests, LLLTs are licensed after a prescribed course of study and an examination. As the name also suggests, LLLTs are limited in both the substantive areas they can practice in and the tasks they can perform. The history and a detailed description of the Washington LLLT program are available on the WSBA web site (www.wsba.org), along with the associated rules issued by the Washington Supreme Court regulating LLLT practice.

The results of the Washington experiment are modest thus far. The numbers remain small—with fewer than 25 having passed the licensing exam last year. Similarly, the program is confined to family law practice at this point. But, both the numbers and range of practice areas are expected to expand. As Oregon continues to study the Washington experience and Oregon lawyers who also practice in Washington begin to encounter LLLTs, we’ll look at three facets of the Washington LLLT program. First, we’ll examine the relationship between LLLTs and their clients. Second, we’ll look at the relationship between LLLTs

and lawyers. Third, we'll survey where LLLTs "fit" in the broader legal profession. We'll then conclude with a brief status report on Oregon's review of the LLLT concept.

LLLTs and Their Clients

Under Washington Admission and Practice Rule 28F, which sets out the scope of LLLT practice, LLLTs can independently advise clients within the areas authorized for LLLT practice and prepare documents for client signature that will be used in court. Under APR 28H, however, LLLTs cannot represent clients in court proceedings or negotiate directly with opposing parties or their lawyers. In essence, the LLLT rules allow an LLLT to "ghost-write" pleadings and counsel clients "behind the scenes." Under APR 28 Appendix Regulation 2A, LLLTs have an affirmative obligation to inform clients when issues arise that are beyond the relatively narrow scope of their practice and to encourage the clients to seek appropriate advice from a lawyer. Similarly, LLLTs are prohibited under APR 28H from providing any services involving another state unless the laws of that state specifically authorize them to do so.

LLLTs and Lawyers

Because clients of LLLTs remain, in effect, "pro se," lawyers are permitted to deal with them as such. For example, the "no contact" rule—RPC 4.2—only

applies when a person is represented by another lawyer, not an LLLT. And, as noted earlier, LLLTs are prohibited from negotiating directly with opposing counsel. Despite this novel and seemingly awkward approach, LLLTs and lawyers may join together in owning firms under the LLLT and lawyer versions of RPC 5.9 and can share fees from that co-owned firm as long as the LLLTs do not direct the lawyers' professional judgment. At the same time, nothing prohibits an LLLT simply employed by a law firm from functioning instead as a paralegal, where, under the supervision of a lawyer, a paralegal can, for example, deal directly with opposing counsel.

LLLTs and the Legal Profession

When the Washington Supreme Court adopted rules governing LLLTs, it also amended the lawyer RPCs to integrate the two. Reflecting this broader and interwoven concept, the court adopted the term “legal practitioner” to apply to both lawyers and LLLTs. Accompanying Comment 1 to RPC 1.0B in many respects captures the expansion of the legal profession that the court was seeking in encouraging the adoption of the LLLT program: “This rule addresses the evolution of the practice of law in Washington to include the limited licensure of legal professionals[.]” Although family law is the first practice area opened to

LLLTs, the APR 28 is structured so that the practice areas can be expanded over time.

Oregon's Review

In 2013, the OSB Board of Governors appointed a task force to study the LLLT concept. The task force issued a report a year ago this month, which is available on the OSB web site. The task force report largely surveyed the LLLT concept and recommended that if the Board of Governors wishes to pursue the idea further that it appoint a follow-on group to develop a specific framework. The report also cautioned that questions remain on whether the LLLT model is the best way to address unmet legal needs and acknowledged that its recommendations were not unanimous. The report also observed that Washington's program was driven by its Supreme Court and remains controversial among the practicing bar. In his August/September mid-year report in the OSB Bar Bulletin, then-OSB President Rich Spier noted that the Board of Governors wanted to study Washington's LLLT experience as implemented before making any recommendations here.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory and attorney-client privilege issues for lawyers, law firms and corporate and governmental legal departments throughout the Northwest. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is also a former member of the Oregon State Bar Legal Ethics Committee and is a current member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the quarterly Ethics & the Law column for the WSBA *NWLawyer* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB *Ethical Oregon Lawyer*, the WSBA *Legal Ethics Deskbook* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.