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Washington's Limited License Legal Technician Rule and Pathway to Expanded Access for Consumers

Stephen R. Crossland* and
Paula C. Littlewood**

ABSTRACT

Washington's 2012 adoption of a Limited License Legal Technician (LLLT) rule has been a topic of great interest throughout the United States and elsewhere. This Article is co-written by Steve Crossland, who is the Chair of the Washington Supreme Court's Limited License Legal Technician Board, which is responsible for implementing the rule, and Paula Littlewood, who is the Executive Director of the Washington State Bar Association, which is the unified bar association charged, *inter alia*, with lawyer and LLLT regulation. This Article builds on the authors' previous articles about Washington's LLLT program by providing previously unpublished information about the LLLT program's implementation and by offering reflections about the program that are informed by the authors' five-year involvement with the rule (and multi-year involvement with the concept). This Article should prove useful to those interested in learning more about Washington's rule and to jurisdictions that are considering whether and how to expand access to legal services to address the vast unmet legal needs and the anticipated shortage of lawyers in the future.¹

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1. This Article is the most recent contribution by one or both of the authors about the motivation behind, and the development of, Washington's Limited License Legal Technician (LLLT) rule. See Stephen R. Crossland & Paula Littlewood, *Alternative Legal Service Providers: Filling the Justice Gap*, in *THE RELEVANT LAWYER: REIMAGINING THE FUTURE OF THE LEGAL PROFESSION* 25 (Paul Haskins ed., 2015); Steve Crossland & Paula Littlewood, *Should Legal Technicians Practice Law? PRO: An Idea Whose Time Has Come*, *L. PRAC.*, July/Aug. 2016, at 44 [hereinafter Crossland & Littlewood *PRO*]; Stephen R. Crossland & Paula Littlewood, *The Washington State Limited License Legal Technician Program: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession*, 65 *S.C.*

There are rare moments in history when the opportunity and need for systemic change presents itself for an industry. The legal profession and legal education are at such a crossroads, and the question presented for the profession is what path they will take forward.

THE NEED FOR NEW LEGAL SERVICE PROVIDERS

As consumers increasingly seek legal solutions to their problems through online providers and others not regulated or licensed by state supreme courts, lawyers become more and more obsolete as providers for a vast majority of consumers. The unmet legal need in this country is staggering. While most assume this demand is in the low- to moderate-income populations, which much of it is, the World Justice Project reports that 50 percent of middle income consumers go without the representation they need in many civil matters.² With 85 percent of low-income consumers going un-

L. REV. 611 (2014) [hereinafter Crossland & Littlewood SC]; Steve Crossland, *Restore Access To Justice Through Limited License Legal Technicians*, GP SOLO, May/June 2014, at 56 [hereinafter Crossland GP SOLO]; Stephen R. Crossland, *The Evolution of Washington's Limited License Legal Technician Rule*, B. EXAMINER, June 2014, at 20. While this Article occasionally references the history, motivations, and development of the LLLT rule, the articles and book chapter cited above provide greater detail about these topics. The primary goal of this Article is to provide current information and reflections about the implementation of the five-year old LLLT rule.

For additional information about the history and evaluation of the LLLT program, see generally Thomas M. Clarke & Rebecca L. Sandefur, *Preliminary Evaluation of the Washington State Limited License Legal Technician Program* (Am. B. Found. March 2017), http://www.americanbarfoundation.org/uploads/cms/documents/preliminary_evaluation_of_the_washington_state_limited_license_legal_technician_program_032117.pdf [<https://perma.cc/9VF2-8UQQ>]; REPORT OF THE LIMITED LICENSE LEGAL TECHNICIAN BOARD TO THE WASHINGTON SUPREME COURT: THE FIRST THREE YEARS, WASH. ST. B. ASS'N (2016), https://www.americanbar.org/content/dam/aba/directories/pro_bono_clearinghouse/ejc_2016_38.auth_checkdam.pdf [<https://perma.cc/7HVH-MLGX>] [hereinafter LLLT 3 Year Report]; *Historical Summary of the Limited License Legal Technician Rule* (undated document used at a LLLT Board meeting) [<https://perma.cc/6XJS-D3MU>] [hereinafter *Historical Summary*]. For links to documents related to the establishment of the LLLT Program, see Anna L. Endter and AJ Blechner, *Washington Limited License Legal Technician (LLL) Research Guide*, U. WASH., <https://lib.law.uw.edu/ref/wa-lllt.html> (last updated Aug. 20, 2015) [<https://perma.cc/4TGX-J7HL>].

For law review articles discussing Washington's LLLT program, see generally Elizabeth Chambliss, *Law School Training for Licensed "Legal Technicians"? Implications for the Consumer Market*, 65 S.C. L. REV. 579 (2014); Brooks Holland, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, 82 MISS. L.J. 75 (2013).

2. MARK DAVID AGRAST ET AL., *THE WORLD JUSTICE PROJECT, RULE OF LAW INDEX: 2012–2013* 27, http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf [<https://perma.cc/6TM8-5QMJ>] [hereinafter WJP Rule of Law Index 2012–13].

represented for issues related to basic civil needs (e.g., family law, elder law, landlord/tenant and immigration), and 75 percent of moderate-income families also facing these issues without legal assistance, there is no question that the legal profession is not keeping up.³ Importantly, a moderate-income family of four is a household making just over \$98,000 per year.⁴ These consumers are not the working poor. These consumers have the ability to pay for services, just not at the rates most lawyers are charging.

There are three main dynamics facing the profession that define the context in which the legal profession must seek to serve the consumer: a shortage of lawyers coming in the next 10–15 years;⁵ increasing unmet need by the public as outlined above; and consumers seeking services from readily available and affordable providers such as LegalZoom, Avvo.com, Rocket Lawyer, Modria, and the list goes on. Lawyers used to be the only option for a consumer seeking legal services, but the government-sanctioned monopoly⁶ lawyers enjoyed has long since eroded. In addition to the prolifera-

3. WASH. STATE SUPREME COURT: TASK FORCE ON CIVIL EQUAL JUSTICE FUNDING, THE WASHINGTON STATE CIVIL LEGAL NEEDS STUDY 37 fig. 13 (2003), <http://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf> [https://perma.cc/TE84-SYMD]; WASH. STATE SUPREME COURT: CIVIL LEGAL NEEDS STUDY UPDATE COMMITTEE, 2015 WASHINGTON STATE CIVIL LEGAL NEEDS STUDY UPDATE 20 (2015), http://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf [https://perma.cc/D89U-DCBG].

For additional data, see generally LEGAL SERVICES CORPORATION, JUSTICE GAP REPORT: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS: EXECUTIVE SUMMARY (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-ExecutiveSummary.pdf> [https://perma.cc/5Y5W-4T6U].

4. The Washington State Bar Association has a program for its citizens of moderate means, which it defines as up to 400 percent of the federal poverty guidelines. See *Moderate Means Program*, WASH. ST. B. ASS'N, <https://www.wsba.org/connect-serve/volunteer-opportunities/mmp> (last updated Jan 18, 2018) [https://perma.cc/FWW2-K6F7] (including a link to the 2018 federal poverty guidelines, which for a family of four is \$25,100).

5. The “graying of the bar” is widely catalogued in the United States. See, e.g., NOBC-APRL: JOINT COMM. ON AGING LAWYERS, FINAL REPORT 5 n.3 (2007), <https://aprl.net/wp-content/uploads/2016/07/NOBC-APRL.pdf>, [https://perma.cc/YA2W-85JE] (“Statistics provided by the State of Bar of Michigan show that between 1995 and 2005 the number of lawyers turning 70 has remained roughly static at about 230–250 lawyers. By 2009, that number is predicted to double. By 2011, it is estimated that the number will nearly triple. One member of the Joint Committee described this phenomenon as the ‘senior tsunami.’”).

See generally WASH. STATE BAR ASSOCIATION, MEMBERSHIP STUDY 2012 (2012) https://www.americanbar.org/content/dam/aba/administrative/women/wsba_membership_study2012.authcheckdam.pdf [https://perma.cc/YQ5C-N94W].

6. See, e.g., *Colloquium: The Legal Profession’s Monopoly on the Practice of Law*, FORDHAM L. REV., <http://fordhamlawreview.org/symposiumcategory/colloquium-the-legal-professions-monopoly-on-the-practice-of-law/> [https://perma.cc/5HET-F8L6] (last visited Apr. 23, 2018) (including links to articles).

tion of online providers of legal services, banks, hospitals, and realtors are often providing legal advice to customers and patients, sometimes with sanction from the highest court in the state.⁷

It is against this backdrop that the profession must rethink the delivery of legal services. The medical profession faced this same dilemma some 40 years ago when Congress told the profession that it was not serving the consuming public.⁸ It is at this juncture that the medical profession begins to see the advent of the nurse practitioner, physician assistants, and other qualified and regulated medical providers.⁹ Likewise, in Washington State, the Supreme Court has authorized the licensing of the first independently licensed legal paraprofessional in the United States.¹⁰ Admission and Practice Rule (APR) 28¹¹ creates a license for the Limited License Legal Technician (LLLT): a new profession licensed to give legal advice to consumers in Washington State. Unlike other legal service providers, such as document preparers, the New York Navigators, or courthouse facilitators, LLLTs are licensed to give legal advice just as a lawyer can.¹² However, LLLTs are licensed in a specific practice area, currently only family law (see discussion *infra* regarding new practice areas being considered for licensure), and in a narrower scope than attorneys who, by comparison, have a full-scope license to practice in these areas.

7. Hagan & Van Camp, P.S. v. Kassler Escrow, Inc., 635 P.2d 730 (1981).

8. See Crossland & Littlewood SC, *supra* note 1, at 613 (stating that the Washington LLLT initiative originally was inspired by the licensing of physician assistants and nurse practitioners in the medical field). See also John Michael O'Brien, *How Nurse Practitioners Obtained Provider Status: Lessons for Pharmacists*, 60 AM. J. HEALTH-SYS. PHARMACY 2301, 2301 (2003). The abstract to the O'Brien article states:

The nurse practitioner profession arose out of a need to meet a rising demand for primary care services, especially in rural areas. Some nurses and physicians vehemently opposed the nurse practitioner model, but studies documented the value of nurse practitioner services, and the utilization of these practitioners continued to grow.

Id.

9. O'Brien, *supra* note 8, at 2302 ("Nurse practitioners were granted Medicare provider status in 1997.").

10. WASH. ADMIS. PRAC. R. 28 [hereinafter APR 28]. This rule is available at https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr28 [<https://perma.cc/9BDS-HTSD>]. As of March 2018, this rule had been adopted effective August 20, 2013 and amended effective September 3, 2013; February 3, 2015; June 21, 2016; November 22, 2016; September 1, 2017.

11. *Id.*

12. *Id.* at § (F) (Scope of Practice Authorized by Limited Practice Rule).

QUALIFIED AND REGULATED LEGAL SERVICE PROVIDERS

As outlined in the Chief Justice’s Order adopting APR 28, the goal of the new license is to help consumers navigate their legal problems with qualified and regulated practitioners, so as “to ensure 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.”¹³ Consumers do not necessarily seek out legal services from the untrained person who offers to draft wills for \$50, they just may feel that the services of these untrained people are the only option they can afford and access.

The goal behind the LLLT profession is to provide expanded service providers in the market who are trained, licensed and regulated. With the limited scope of license comes a shorter training regimen, which in turn keeps entry costs into the market lower for the LLLT and thereby allows them to charge lower rates to consumers. While the average law student may accumulate a six-figure debt load by the end of their legal education, the total cost of education for a LLLT, including application for the requisite bar exam and licensing, is less than \$15,000.¹⁴ Trained and qualified LLLTs must obtain an associate level degree, which requires 90 credits in Washington State, with 45 of the credits defined by Court regulation.¹⁵ Upon completion of this “core education,” LLLT candidates can then move on to the second portion of their training in the practice area in which they seek to be licensed.¹⁶

For family law, the practice area curriculum was developed by the three ABA-approved law schools in the state and requires 15 credits (quarter hours) for completion.¹⁷ While not originally envi-

13. See In the Matter of the Adoption of New Apr 28—Limited Practice Rule for Limited License Legal Technicians, Order No. 25700-A-1005, Wash. (June 15, 2012). This Order is available online at *Historical Summary*, *supra* note 1, at 9–33. For additional commentary on the quality assessment aspect of Washington’s LLLT rule, see Chambliss, *supra* note 1, at nn.157–162 and accompanying text.

14. The authors have personal knowledge of these facts. See also *LLLT Education*, WASH. ST. B. ASS’N, <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians/become-a-legal-technician/lllt-education> (last updated Dec. 28, 2017) [<https://perma.cc/JGC3-M2D3>] [hereinafter *LLLT Education*]; LLLT 3 Year Report, *supra* note 1, at 25; RELEVANT LAWYER, *supra* note 1, at 32.

15. See APR 28, *supra* note 10, at Regulation 3 (Education Requirements for LLLT Applicants and Approval of Educational Programs).

16. *Id.* at Regulation 3(B); *LLLT Education*, *supra* note 14 (“To enroll in the Practice Area Curriculum, you must submit an Enrollment Form to the WSBA. We will verify completion of your prerequisites and provide the link to register for the Practice Area Curriculum.”).

17. The authors have personal knowledge regarding the facts in this paragraph and the development of the curriculum. For additional information regard-

sioned to be taught at the law schools, the University of Washington School of Law offered to teach the practice area courses, and all of the courses are taught through synchronous online courses. The classes are twin taught by law professors and practitioners, so students receive both doctrine and information on the practical application of the doctrine for clients. By streaming the courses, students can live anywhere in the state to access the education. Gonzaga University School of Law likewise has professors who help teach the courses.¹⁸

Importantly, the Washington Supreme Court LLLT Board uses three guiding principles to inform its development of the license: Affordability, Accessibility and Academic Rigor.¹⁹ These three “A’s” are reflected in the affordability of the education, the rigor of the two-level training at the community college level and the law school involvement, and the accessibility statewide by candidates who are able to attend a local community college for the core training and the practice area education online. At the outset of creating the profession, APR 28 required that the core education be provided only through ABA-approved paralegal programs in Washington State.²⁰ However, the Court has since amended the requirement upon request of the LLLT Board, and community colleges throughout the state can now qualify to provide the courses upon

ing the contents off the curriculum, see APR 28, *supra* note 10, at Regulation 3(B)(1)(b) (“Practice Area Curriculum. . . . 1. Domestic Relations. . . . b. Credit Requirements: Applicants shall complete 5 credit hours in basic domestic relations subjects and 10 credit hours in advanced and Washington specific domestic relations subjects.”); *Limited License Legal Technician Program in Family Law (LLLT)*, U. WASH., <https://www.law.uw.edu/academics/continuing-education/lllt> (last visited Apr. 23, 2018) [<https://perma.cc/2R34-VELU>].

18. See LLLT 3 Year Report, *supra* note 1, at 15 (“Education . . . Practice area curriculum at the University of Washington School of Law in conjunction with Gonzaga’s School of Law”); Crossland & Littlewood SC, *supra* note 1, at 617 (citing the FAQ questions that referred to collaboration among schools); Crossland GP SOLO, *supra* note 1, at 56.

19. See LLLT 3 Year Report, *supra* note 1, at 4 (“When the LLLT Board began its work in January 2013, it identified three important criteria that it has used to evaluate each of its recommendations to the Supreme Court: affordability, accessibility, and academic rigor.”); Crossland & Littlewood *PRO*, *supra* note 1, at 44 (“In designing the program the board ascribes to guiding principles that are called the Three A’s: The program should be affordable, accessible and academically rigorous.”). The authors have personal knowledge of the continuing importance of the “Three A’s” as guiding principles.

20. See LLLT 3 Year Report, *supra* note 1, at 7 (noting proposed rule change); *Historical Summary*, *supra* note 1, at 23 (contains original Rule 28(D)(3)(a)(i), which stated “Have the following education and experience: (i) An associate degree or equivalent program, or a bachelor degree, in paralegal/legal assistant studies approved by the American Bar Association or the Board. . .”).

application and approval by the LLLT Board.²¹ This accreditation by the LLLT Board now allows the 29 community and technical colleges to provide the training if they desire, as opposed to limiting training to the four ABA-approved paralegal programs in the state.²² Interestingly, a community college in Portland, Oregon, is offering the core education, which provides access for students in southwest Washington.²³

Community colleges came to the dialogue quickly, as they realized the potential for a new career path for their students with the LLLT license. Outreach is now extending to high school counselors, who likewise see great opportunity for their students upon graduation.²⁴

BUILDING A PROFESSION OUT OF WHOLE CLOTH

Currently, 36 LLLTs are licensed.²⁵ APR 28 was adopted almost six years ago and some look at that number and criticize the

21. APR 28, *supra* note 10, at Regulation 3(A)(2). This part of the rule/regulation states:

LLL Educational Program Approval Requirements for Programs Not Approved by the ABA. The LLLT Board shall be responsible for establishing and maintaining standards, to be published by the Association, for approving LLLT educational programs that are not otherwise approved by the ABA. Educational programs complying with the LLLT Board's standards shall be approved by the LLLT Board and qualified to teach the LLLT core curriculum.

Id. See also LLLT 3 Year Report, *supra* note 1, at 7 (citing the pending amendment to expand the schools permitted to offer the core curriculum).

22. APR 28, *supra* note 10, at Regulation 3(A)(2). The LLLT webpage invites colleges to apply to be an approved educational institution. See *Limited License Legal Technicians*, WASH. ST. B. ASS'N, <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians> (last updated Mar. 28, 2018) [<https://perma.cc/CC8H-V6ZM>] [hereinafter LLLT webpage]. This webpage includes active links to the LLLT cored education program approval standards, policies and procedures, and the application form. *Id.*

23. See, e.g., WASH. ST. B. ASS'N, LIMITED LICENSE LEGAL TECHNICIAN (LLL) BOARD MEETING MINUTES FOR MARCH 23, 2017, https://www.wsba.org/docs/default-source/legal-community/committees/lllt-board/2017-03-23-lllt-board-meeting-minutes.pdf?sfvrsn=ab973bf1_0 [<https://perma.cc/3LN4-GZKB>] (“Portland Community College recently created a course alignment chart with the LLLT core curriculum for their ABA approved paralegal program.”).

24. The authors have personal knowledge regarding outreach to high school counselors.

25. See Licensed Legal Professional Search Results, WASH. ST. B. ASS'N, [<https://perma.cc/9XNB-PALR>] [hereinafter LLLT Directory]. See also Crossland & Littlewood *PRO*, *supra* note 1, at 44 (“The first graduates of the program took their licensing exam in May 2015.”). See *infra* note 27 for information about the number of individuals who currently are preparing to become LLLTs.

fact that not many LLLTs are licensed.²⁶ However, one must consider that the LLLT Board administered by the Court's regulatory agency (the Washington State Bar Association (WSBA)) had to work to create a new profession out of whole cloth. No model existed in the country for a paraprofessional licensed to give legal advice. While document preparers, navigators, and courthouse facilitators are important to the fabric of delivering legal services, none of these providers are licensed to give legal advice like a LLLT and a lawyer.²⁷ As such, the first two years after APR 28 was adopted were consumed with the LLLT Board and WSBA building the regulatory requirements for the license before applicants for the license could even begin their education.²⁸

Currently, about 50 percent of LLLTs are practicing on their own, while the other 50 percent are practicing within law firms.²⁹ Importantly, LLLTs and lawyers are able to co-own a firm so long as the LLLT does not own more than a 49 percent share in the firm and the LLLT cannot supervise a lawyer or direct his or her professional judgment.³⁰ One LLLT in the central part of the state practices in all three practice models envisioned: she has her own

26. See, e.g., Chambliss, *supra* note 1, at 597. See also Lorelei Laird, *Despite Kinks In Program, Nonlawyers Successfully Providing Some Legal Services In Washington State*, ABA J. (2017).

27. See, e.g., Chambliss, *supra* note 1, at n.122 and accompanying text; Ambrogi ABA J., *supra* note 2 (contrasting Washington's LLLT program and the New York Court Navigators program); *Limited License Legal Technicians Materials*, COLO. SUP. CT., OFF. ATT'Y REG. COUNS., <http://www.coloradosupremecourt.com/AboutUs/LLLTMinutes.asp> (last visited Apr. 23, 2018) [<https://perma.cc/S2WV-TYUE>]; *Information for Alternative Licensure*, NAT'L ORG. B. COUNS., <http://www.nobc.org/index.php/jurisdiction-info/global-resources/alternative-licensure> (last visited Apr. 23, 2018) (includes links to a general information sheet, an alternative licensure table, and a bibliography).

28. The authors have personal knowledge of this statement.

29. The authors have personal knowledge of these facts. See also LLLT Directory, *supra* note 25.

30. See WASH. R.P.C. 5.9 (Business Structures Involving LLLT And Lawyer Ownership), which took effect April 4, 2015. This rule states:

- (a) Notwithstanding the provisions of Rule 5.4, a lawyer may;
 - (1) share fees with an LLLT who is in the same firm as the lawyer;
 - (2) form a partnership with an LLLT where the activities of the partnership consist of the practice of law; or
 - (3) practice with or in the form of a professional corporation, association, or other business structure authorized to practice law for a profit in which an LLLT owns an interest or serves as a corporate director or officer or occupies a position of similar responsibility.
- (b) A lawyer and an LLLT may practice in a jointly owned firm or other business structure authorized by paragraph (a) of this rule only if;
 - (1) LLLTs do not direct or regulate any lawyer's professional judgment in rendering legal services;
 - (2) LLLTs have no direct supervisory authority over any lawyer;

clients, contracts with a law firm, and works part time for the local volunteer legal program.³¹

As the pipeline fills with students seeking to become trained as LLLTs, expansion of the certified community colleges that offer the core curriculum as well as expansion of the number of practice areas for which training is available is critical to the success of the program. In addition, after receiving feedback from professors teaching the family law practice area and LLLTs in the field serving clients, the LLLT Board has requested an enhancement to the family law practice area.³² These evolutions in the license are outlined below in more detail.

A DESIGN FOR MULTIPLE PRACTICE AREAS

As outlined above, APR 28 authorized LLLTs to deliver legal services in any number of practice areas. The first practice area authorized was family law. The choice of family law as the initial practice area was, in part, because previous studies had identified family law as an area of high unmet need for legal services for a very significant segment of our population.³³

The LLLT Board envisions that many practice areas will be approved by the state supreme court over time. It is important to authorize additional practice areas for a number of reasons. First and foremost, there are multiple areas of significant unmet need where consumers go without representation.³⁴ The LLLT Board

(3) LLLTs do not possess a majority ownership interest or exercise controlling managerial authority in the firm; and

(4) lawyers with managerial authority in the firm expressly undertake responsibility for the conduct of LLLT partners or owners to the same extent they are responsible for the conduct of lawyers in the firm under Rule 5.1.

Id. See also In the Matter of the Expedited Adoption of Proposed Amendments to Rules of Professional Conduct, Order No. 25700-A-1096, Wash. (March 23, 2015); *Comments for LLLT RPC—ALL—Limited License Legal Technician Rules of Professional Conduct*, WASH. CTS., https://www.courts.wa.gov/court_rules/?fa=court_rules.commentDisplay&ruleId=385 (last visited Apr. 23, 2018) [<https://perma.cc/XV7Q-Z8SC>].

31. The authors have personal knowledge of these facts.

32. See LLLT Webpage, *supra* note 22. At the time this article was written, these proposed amendments were not listed on the Supreme Court's website. For a history of the amendments to APR 28, see *Proposed Rules Archives*, WASH. CTS., https://www.courts.wa.gov/court_rules/?fa=court_rules.archive (last visited Apr. 23, 2018).

33. See, e.g., *Historical Summary*, *supra* note 1, at 1 (“The [Board] decided to recommend the practice area of family law, after determining it was the area of most need.”).

34. See *supra* note 3 (citing the 2003 and 2015 Washington Civil Legal Needs studies).

also believes that it will be beneficial for LLLTs to embrace a business model that allows them to deliver services in more than one practice area.³⁵ This diversification will allow their businesses to be more economically viable. Finally, the Board has found that many persons considering an LLLT career path would not choose to deliver services in the area of family law because their passion may be in some other practice area.

Another consideration for expanding the number of practice areas is the demographic facing the profession. As outlined above, there is an impending shortage of lawyers coming. If lawyers as a profession are not able to meet the legal needs of the consuming public now with the current number of lawyers, our inability to meet the unmet need will reach crisis proportions. In particular, there is concern that rural areas will be impacted disproportionately given the current drain of lawyers from rural areas.³⁶ The LLLT Board expects this decrease in rural lawyers to continue and such areas in the state will have very few providers.

In order to address this concern, the use of community colleges for the core education helps provide access to the LLLT license to those in rural areas. The community college system by its very nature provides education in the various communities spread geographically around the four corners of our state. The intention is that LLLTs will take their core courses in their communities (or very nearby) and will hopefully stay in their communities which are generally non-urban communities.³⁷ With the licensing of LLLTs in the various community college regions of our state, the drift of the few remaining lawyers to urban areas will hopefully be filled by LLLTs who may be the only remaining legal service providers in these non-urban areas.

This dynamic is an additional reason for LLLTs to be authorized to practice law in several basic practice areas to meet the basic needs of the consumers within these non-urban regions of our state (and country). Fundamentally, the most used areas of practice in

35. The authors have personal knowledge of the facts in this paragraph. See also LLLT 3 Year Report, *supra* note 1, at 30.

36. The authors have personal knowledge of the Board's concern about the impact of demographic trends on rural areas of the state. For additional information about demographics and legal services in rural areas, see *Rural Support Programs*, ABA, https://www.americanbar.org/groups/delivery_legal_services/legal_access_jobs_corps/lajc_resource_center/rural_support_programs.html (last visited Apr. 23, 2018) [<https://perma.cc/46C2-6YSC>]; Grant Gerlock, *Lawyer Shortage In Some Rural Areas Reaches Epic Proportions*, NPR (Dec. 26, 2016, 5:00 AM), <https://www.npr.org/2016/12/26/506971630/nebraska-and-other-states-combat-rural-lawyer-shortage>.

37. The authors have personal knowledge of the facts in this paragraph.

non-urban areas are family law, estate planning and real estate.³⁸ While LLLTs have a limited license, consumers in such areas will hopefully be able to have much if not all of their legal services met, and, where needed, consumers will be referred to lawyers to complete the representation.

At present, the LLLT Board is considering the following practice areas for licensure: consumer, money and debt; immigration; bankruptcy; limited estate planning; and some aspects of guardianships and probates.³⁹

ANATOMY OF A PRACTICE AREA

The LLLT Board has adopted a process by which a new practice area can be vetted and recommended to the state supreme court for consideration and adoption.⁴⁰ The criteria adopted by the LLLT Board when considering a new practice area are as follows:

- Whether the practice area represents an area of high unmet need for legal services;
- Whether an LLLT may effectively represent clients in the proposed practice area given the limited scope of their legal services and, if not, whether the appropriate scope of practice should be broader than that permitted in APR 28; and
- Whether the LLLT practice in the proposed limited scope of practice can be economically viable for the LLLT.

Each of these criteria may be given significant weight when evaluating whether a practice area may be appropriate for recommendation to the court.

The process to study and recommend a new practice area to the court can be somewhat lengthy. As discussed above, in exploring new practice areas, the Board seeks to balance the unmet need of consumers with the ability of the LLLT to provide services at a

38. *See supra* note 3 regarding civil legal needs.

39. The authors have personal knowledge of the facts in this paragraph. *See also* WASH. ST. B. ASS'N, LIMITED LICENSE LEGAL TECHNICIAN (LLL) BOARD MEETING MINUTES FOR AUGUST 17, 2017 2, https://www.wsba.org/docs/default-source/legal-community/committees/lllt-board/2017-08-17-meeting-minutes---approved.pdf?sfvrsn=f2973bf1_0 [<https://perma.cc/VE9C-T59P>] (includes the New Practice Area—Immigration Subcommittee Report and New Practice Area—Personal Services Subcommittee Report).

40. The authors have personal knowledge of the facts in this paragraph. *See also* WASH. ST. B. ASS'N, LIMITED LICENSE LEGAL TECHNICIAN (LLL) BOARD MEETING MINUTES FOR JULY 20, 2017 2, https://www.wsba.org/docs/default-source/legal-community/committees/lllt-board/2017-07-20-meeting-minutes---approved.pdf?sfvrsn=d6973bf1_0 [<https://perma.cc/CK7V-7SFK>] (“The Board discussed the importance of identifying what the civil legal need to be addressed should be, where that data comes from, and how LLLTs can address the need.”).

price that allows them to be economically viable. Economically viable takes into consideration the number of consumers who might need these services and have some ability to pay a modest price for the services.⁴¹

The LLLT Board process involves the following steps:

General Vetting: The Board considers many sources as resources for consideration of new practice areas, such as the Civil Legal Needs Studies commissioned by our State Supreme Court, data from legal service providers, and consumers/public requests.⁴² The Scope Committee of the LLLT Board invites practitioners in the potential practice areas as well as consumers in these practice areas to come to Committee meetings to provide information regarding the practice area. In addition to consumer need and economic viability, the Committee also takes into consideration whether the training and licensing can be accomplished in such a manner that the consuming public will not only be served but also protected through qualified and regulated LLLTs.

As a result of this process, the Scope Committee makes a recommendation to the LLLT Board for a potential practice area. After considerable analysis, the LLLT Board gives its direction to the Scope Committee to proceed further with more in-depth vetting and development of a more refined scope of the potential practice area. During this phase, the Scope Committee invites subject matter experts and any others who may have relevant information in for discussions regarding the potential scope of the recommended practice area. The WSBA membership is also notified as well as the WSBA practice sections that might have valuable input in the particular practice area. This process is intended to determine the broad scope of all services that a lawyer and consumer may consider in the practice area and then develop the particular limited services the LLLT could be authorized to provide.

Following this thorough vetting, the Scope Committee makes a recommendation of the fully developed practice area scope for consideration by the full LLLT Board. The LLLT Board may either adopt the recommendation; reject the recommendation; or modify the recommendation or the scope of the proposed new practice area. If the LLLT Board adopts the recommended scope of the new practice area, that recommendation is forwarded to the supreme court for its consideration.

41. *See supra* note 40.

42. *Id.*

Supreme Court Preliminary Approval: A report is sent to the supreme court that outlines the proposed scope of the recommended practice area. The recommendation includes data that supports why the practice area is appropriate and why the court should give approval to complete the recommendation process. In the past, the court and the LLLT Board have met in joint session to consider the proposed scope of the recommended practice area.⁴³ Following such a meeting, if the court is so inclined, the court will give preliminary approval for the LLLT Board to complete the development of the practice area.

Curriculum Development: Pursuant to APR 28, representatives from the law schools' faculties and practitioners in the proposed practice area are invited in to help develop the curriculum needed to train LLLTs in the doctrine and skills necessary to provide the recommended services. Importantly, the curriculum is designed to educate the LLLT candidates in services beyond the authorized scope of the practice area so they understand when they have gone beyond the scope of their license. During development of the curriculum, faculty are also identified who can teach these classes.

Examination Development: While the other phases of practice area development are time consuming, the exam phase of the development takes the most time and is a very labor-intensive phase.⁴⁴ With the family law exam, the Board was fortunate to have a group of very committed volunteers, including the chair of the WSBA Family Law Section. The Exam Committee established a "bank of questions" that could be "reshuffled" every year for years to come. Even today, they continue to meet and revise the questions to make certain that the questions can be added to and revised as necessary. The Board works with a professional test company to create the actual exam for each sitting.

Creation and Adoption of Court Rules: Once the practice scope has been fully defined, the curriculum completed, and the exam questions drafted, rules adopting the practice area are submitted to the court for approval and implementation.

43. The authors have personal knowledge of these meetings.

44. The authors have personal knowledge of the facts in this paragraph. See also LLLT 3 Year Report, *supra* note 1, at 20–23 (Examination Committee Report); *LLLTT Examination*, WASH. ST. B. ASS'N, <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians/come-a-legal-technician/lltt-examinations> (last updated Mar. 28, 2018) [<https://perma.cc/3N56-W8FE>] (“There are three examinations that must be passed to be licensed as a LLLT: Paralegal Core Competency; LLLT Practice Area Exam; LLLT Professional Responsibility Exam.”).

From identification of a potential practice area to adoption of court rules implementing it, the Board anticipates about 18 months is needed to complete this process for each new practice area.

COURSE CORRECTIONS ALONG THE WAY

When originally adopted, APR 28 included some provisions that, upon implementation, seemed to need adjustment so that consumers, LLLTs, and the trial court would all be better served.⁴⁵ Inasmuch as this rule was drafted without a model from another state, the Board was realistic enough to inform the supreme court that there may be need for modifications to the rule to make sure that the intended purpose of the rule will be fully and effectively accomplished.

For example, when adopted, APR 28 included the following prohibitions:

H) Prohibited Acts. In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

2) Retain any fees or costs for services not performed;

3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client; or

4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized by the license held by the Limited License Legal Technician;

5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

6) Negotiate the client's legal rights or responsibilities, or communicate with another person the client's position or convey to the client the position of another party; unless permitted by GR 24(b);

45. The authors have personal knowledge of the facts in this paragraph. *See also supra* note 32 (explaining that the LLLT Board has submitted proposed amendments to the supreme court); LLLT 3 Year Report, *supra* note 1, at 7 (describing proposed changes to the family law scope of practice rules).

- 7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client;
- 8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;
- 9) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

One of the prohibitions set forth above in provision H(5) prevents LLLTs from appearing in Court. Experience from several perspectives has suggested that allowing LLLTs to appear in court in some limited fashion will be beneficial.⁴⁶ Without the LLLT in the courtroom, the client is still disadvantaged appearing in a forum that is completely foreign and intimidating. If even for moral support, it will be helpful for both the court and the client to have a person familiar with the process alongside the client.

The client is better served because the LLLT can assist throughout the process and make sure that the LLLT's work product is carried through to completion. Judges have expressed that the whole process will go better and quicker if the LLLT is present in the courtroom to answer questions regarding whether the right form was selected or whether the correct information is on the forms.⁴⁷ Finally, if the court is able to process more cases in a shorter period time due to efficiencies realized by having the LLLT alongside the client, the whole judicial system is better able to function efficiently and effectively.

Another prohibition is in H(6), which prohibits LLLTs from negotiating on behalf of the client.⁴⁸ After implementing the rule, the LLLT Board and LLLTs have learned that the clients and the process of obtaining a dissolution of marriage would work much better and more efficiently if LLLTs were authorized to negotiate with the other party or counsel in the process of completing the dissolution of marriage.⁴⁹ The practice of doing otherwise is cumbersome and prone to ineffective communication. With the current prohibition, the client is the courier of the negotiation and often is not able to effectively convey the communication to the opposing party.

46. The authors have personal knowledge of the bases for the proposed amendments.

47. The authors have personal knowledge of feedback from the judiciary.

48. APR 28, *supra* note 10, at § (H)(5).

49. The authors have personal knowledge of the facts in this paragraph and the bases for the proposed amendments.

Currently, suggested amendments to APR 28 are pending with the Court to remove the prohibitions in both H(5) and H(6).⁵⁰ The supreme court had given provisional approval of these enhancements to the scope prior to the Board submitting actual rule language.⁵¹

CONCLUSION

The LLLT Board is entering its sixth year of implementing APR 28. The LLLT Board feels that much has been accomplished in that period of time. It essentially took more than two years to develop the framework for the rule as set forth above before applicants could be accepted into the educational training program. It was a process of breaking new ground as there was no template for how to implement APR 28.

The focus now turns to implementing new practice areas and making both consumers and potential applicants for the license aware of the LLLT pathway. The LLLT Board and the Washington State Bar Association are increasing communication to the public about the services available through LLLTs as well as increasing outreach to high school and community college students who may be interested in becoming LLLTs.

There is no expectation that this license will solve the access to justice problem, but it is believed that it will have a significant impact on addressing the problem. With amendments to APR 28 allowing LLLTs to have a limited appearance in court and to negotiate on behalf of their clients, the quality of services provided by LLLTs will greatly improve. In addition, by adding new practice areas and increasing awareness of this new profession, the demand for the services of LLLTs will increase. Numerous states are considering adoption of such a license. Hopefully someday the LLLT will be as ubiquitous as the nurse practitioner in medicine and consumers of legal services will have expanded options for assistance.

50. See *supra* note 32 regarding the proposed amendment.

51. See Letter from the Washington Supreme Court to the Limited License Legal Technician Board, April 2, 2017 (on file with authors).