

FILED

10/11/2017

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: AF 11-0765

# EXHIBITS



FILED

04/11/2017

*Ed Smith*

CLERK OF THE SUPREME COURT

STATE OF MONTANA

Case Number AF 11-0765

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 11-0765

APR 11 2017

ACCESS TO JUSTICE COMMISSION

ORDER

*Ed Smith*

CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Citing the State of Montana's multitude of challenges concerning self-represented litigants and litigants of modest means, and its mission to increase access to justice, the State Bar of Montana has requested permission to explore an alternate legal service model currently in use in the State of Washington, Limited License Legal Technicians (LLLTs). The State Bar, the State Bar's Paralegal Section, and the Access to Justice Commission wish to study the potential for a similar category of legal service providers in Montana.

IT IS HEREBY ORDERED that a working group, to include the following members, is appointed to study the idea of Limited License Legal Technicians in Montana:

- The Honorable Patricia Cotter, who will serve as chair of the working group;
- A member of the Paralegal Section of the State Bar of Montana, to be appointed by the Section Chair;
- A member of the State Bar of Montana, to be appointed by the President of the State Bar;
- A member of the Access to Justice Commission, to be appointed by the Commission Chair;
- An appointee of Montana Legal Services Association, to be appointed by its executive director;
- A representative from the University of Great Falls, to be appointed by the President of the University; and
- An appointee of the Alexander Blewett III School of Law, University of Montana, to be appointed by the Dean.

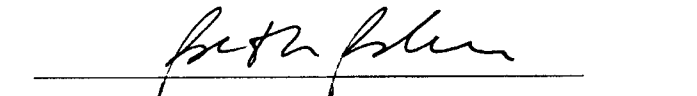
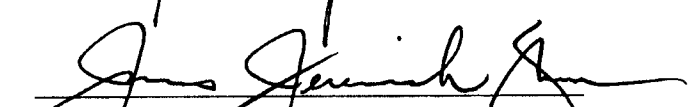
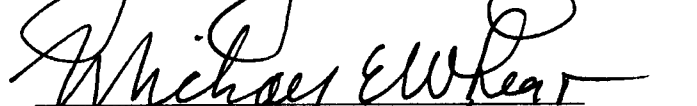

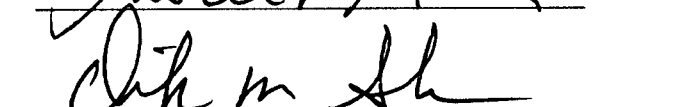
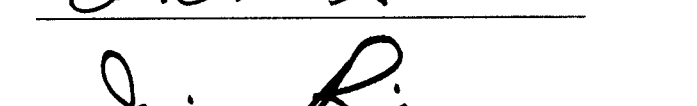
Each designated member shall provide his or her name and contact information to the Clerk of this Court, who shall notify the Chair when all members have been designated. The Chair shall organize meetings, giving preference to live meetings but with the option of telephonic or video-conferencing as participants' circumstances require. The working group shall meet as needed and be supported administratively by the State Bar of Montana.

The working group shall prepare a report for this Court within 6 months of the date of this Order. The Court will solicit public comment on the working group's recommendations after the report is submitted.

The Clerk is directed to provide copies of this Order to the Honorable Patricia Cotter, the Paralegal Section of the State Bar of Montana, the President of the State Bar of Montana, the Chair of the Access to Justice Commission, the Executive Director of the Montana Legal Services Association, the President of the University of Great Falls, and the Dean of the Alexander Blewett III School of Law.

Dated this 11th day of April, 2017.

  
Chief Justice

  
  
  
  
  
  
Justices



# Limited License Legal Technician (LLLT)

## What is the purpose of the Limited License Legal Technician?

A Civil Legal Needs study conducted in 2003 confirmed that more than 80 percent of Washington's low- and moderate-income populations experienced a legal need and went without help because they couldn't afford it or didn't know where to turn. This new type of legal professional is intended to help meet the unmet civil legal needs in our society. Referred to as Limited License Legal Technicians, they can provide limited legal assistance under carefully regulated circumstances, expanding access and affordability for quality legal assistance. Some consider LLLTs the nurse practitioners of the legal world.

## What are the educational requirements for LLLTs?

LLLTs are highly trained in a specific area of law. They are subject to rigorous training, not unlike that of a lawyer. They must possess an associate's degree or higher, of which 45 credit hours are in a core curriculum for LLLTs, and complete practice area courses with curriculum developed by an ABA-approved law school. Following completion of the required courses, students must take and pass three required exams; LLLTs must also acquire 3,000 hours of substantive law-related work experience supervised by a licensed lawyer prior to licensure.

## What kinds of services can a LLLT provide to clients?

The first LLLT graduates are restricted to family law issues, though plans to expand to other practice areas are underway. LLLTs can't represent clients in court, but can help with filing restraining orders or divorce documents, drafting parenting plans or child custody agreements, and can support clients in the often confusing maze of filing necessary court documents and the processes and procedures associated with navigating the legal system.

## Doesn't this set up competition between lawyers and LLLTs?

Our current legal system leaves many people without legal support and nowhere to turn. A primary component of the WSBA's mission is to serve and protect the public, and in order to fulfill that, our system must change. LLLTs will help lead that change by providing a level of access to our justice system that goes unmet. LLLTs won't replace lawyers. One can look at physicians and nurse practitioners as a model for different levels of service providers working together to fulfill a need.

## Who will regulate LLLTs?

Under Supreme Court order, the Washington State Bar Association will oversee regulation, licensure and discipline of LLLTs, not unlike the regulatory authority the WSBA has over practicing lawyers in Washington state.

## Will there be a negative impact on law school enrollment?

The practice area courses required for LLLTs were developed and are currently being delivered through a collaborative effort of Washington's three law schools. The schools recognize the need for and support the new legal licensure and believe it will help to expand enrollment.

**If you have further questions or want to learn more, contact:**

**Washington State Bar Association**

206-443-9722

[questions@wsba.org](mailto:questions@wsba.org)

[wsba.org/LLLT](http://wsba.org/LLLT)



**Preliminary  
Evaluation of the  
Washington State  
Limited License Legal  
Technician Program**

March 2017

*Prepared by Thomas M. Clarke, National Center for State  
Courts, and Rebecca L. Sandefur, American Bar Foundation,  
with support from the  
Public Welfare Foundation*

**Public Welfare**  
Foundation

**ABF** American Bar Foundation  
EXPANDING KNOWLEDGE • ADVANCING JUSTICE



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2017



## **Executive Summary**

The Washington State Supreme Court and the Washington State Bar Association created an innovative program to expand the provision of legal services. Limited Licensed Legal Technicians (LLLTs) represent a new legal role that builds on the capabilities of traditional paralegals and operates without supervision by lawyers. LLLTs primarily help customers fill out legal forms and understand legal procedures. The program started with the family law practice area, but Washington State plans to expand to additional practice areas in the near future. A small number of LLLTs have been certified and are currently practicing.

The evaluation shows that the program has been appropriately designed to provide legal services to those who cannot afford a lawyer but still wish or need assistance. The training program prepares LLLTs to perform their role competently while keeping within the legal scope of that role. Customers have found their legal assistance to be valuable and well worth the cost. The legitimacy of the role appears to be widely accepted in spite of its short track record.

There are some questions about how best to scale up the program. The biggest current bottleneck is the required year of training with the University of Washington (UW) Law School. Washington State is actively pursuing other ways to mitigate that constraint. The regulatory costs of the program are not yet close to breaking even, but scaling up the program significantly would resolve that issue. LLLTs would greatly benefit from additional training on business management and marketing, but several of the first LLLTs are successfully running a full-time LLLT practice.

The example of the LLLT program in Washington State has already encouraged a second state to create a similar program. Utah is currently designing its Paralegal Practitioner program along the lines of the Washington State program. Several of the recently approved program changes in Washington State were incorporated immediately into the Utah program design.

The LLLT program suggests that new legal roles with costs lower than traditional lawyers are a potentially significant strategy for meeting the legal needs of many people who now are dealing with their legal problems unassisted. Creating similar programs in other states would clearly improve access to justice for a broad section of the public.

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## Research Summary and Recommendations

### Introduction

The Washington Supreme Court's Practice of Law Board started considering the possibility of creating new legal roles almost fifteen years ago. After many years of debate and discussion, the Washington Supreme Court adopted Admission and Practice Rule (APR) 28 authorizing the creation of the Limited License Legal Technician (LLLT) role in June 2012. APR 28 created the Limited License Legal Technician Board, which was tasked with developing and implementing the new license. The Washington State Bar Association (WSBA) staffs and funds the LLLT Board and regulates the LLLTs under delegated authority from the Washington Supreme Court.

After several years of work to create the regulations, training, and administrative mechanisms to do so, the first LLLT candidates entered their practice-area education classes in 2014. Three further classes have begun the practice-area courses since then with many more students completing their core education requirements at the community college level. In 2015, the first LLLTs were licensed by the Washington Supreme Court. At the time research for this evaluation was conducted, there were fifteen (15) licensed LLLTs. Since then, that number has slowly continued to grow.<sup>1</sup>

A number of other states have expressed interest in the possibility of starting similar programs. Given that interest, the Public Welfare Foundation (PWF) decided to fund an independent academic evaluation of the LLLT program. Because of its more general interest in new legal roles, the PWF also funded an evaluation of the New York City Navigator program by the same research team.

### Evaluation Approach

Since it was likely that states would create both similar new roles and other kinds of new legal roles, the research team first created an evaluation framework that was flexible enough to encompass a broad range of possible new legal roles.<sup>2</sup> The framework was also intended to support a variety of performance and evaluation measures. Given different program objectives, a particular program evaluation might utilize only a subset of the available evaluation dimensions, but at least the approach would be roughly consistent across program types and evaluator teams.

The framework identifies three broad evaluation categories at the highest level: appropriateness, efficacy, and sustainability. Essentially, researchers want to know if a program does the right thing, does it effectively, and is capable of doing it into the future. To know if the program is doing the right thing, it is necessary to see if the tasks performed by the new role align with the problems that are to be solved or the desired new services. It is also necessary to determine if the persons in the new role will be trained to perform those tasks.

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<sup>1</sup> For an excellent summary of the history, scope, and current status of the LLLT program, see "Report of the Limited License Legal Technician Program to the Washington Supreme Court: the first three years," February 2016, Washington State Bar Association.

<sup>2</sup> INCREASING ACCESS TO JUSTICE THROUGH EXPANDED 'ROLES BEYOND LAWYERS': PRELIMINARY EVALUATION AND CLASSIFICATION FRAMEWORKS, Rebecca L. Sandefur and Thomas M. Clarke, American Bar Foundation and National Center for State Courts, Chicago, IL and Williamsburg, VA, March 2015.

To be effective, researchers must see if the identified tasks are being performed competently by those in the new role and that, when they do so, the impacts on the targeted problems are positive and beneficial.

Finally, the sustainability of the program requires positive answers to three different kinds of questions. Does the regulatory regime, including training, have a stable basis? Does the business model for the new role have a stable basis? Do customers, clients, and colleagues of the new role attribute to it enough legitimacy to provide a stable clientele?

At the time of this evaluation the LLLT program was about 15 months old. The small number of certified LLLTs did not permit a rigorous statistical evaluation. As a result, the researchers opted for a more ethnographic approach using structured interviews. Thus, this evaluation must be considered preliminary and provides first impressions of how the program is progressing. More definitive results must await a larger number of certified LLLTs.

The researchers interviewed 13 of the 15 then certified LLLTs, mostly by telephone.<sup>3</sup> They also interviewed four clients, several colleagues of various types, and representatives of both the regulatory office at the WSBA and the training schools at several state community colleges and the UW School of Law.

## **Program Appropriateness**

The stated objective of the LLLT program is to increase access to justice for low and moderate-income persons while protecting the public by ensuring the provision of quality legal services. This broad objective could not be pursued all at once. Instead the LLLT Board and the WSBA envisioned a more incremental approach to the new role. APR 28 was designed to have LLLTs licensed in specific practice areas, with the number of practice areas approved by the Supreme Court to grow over time. Prospective LLLTs would meet the qualifications and become licensed in each practice area separately. As practice areas were added, already licensed LLLTs could decide in which of any additional practice areas they wanted to become licensed.

The scope of the LLLT's authority was limited to be consistent with the training and testing requisite of a limited license. For example, LLLTs were barred from representing clients in talks or negotiations with lawyers or other parties. They also could not go into court hearings with their clients and assist them there. These restrictions still enabled LLLTs to provide process assistance and forms assistance. In the first practice area of family law, LLLTs can assist in these ways on a wide range of family law matters.

Training on these tasks followed a three-pronged approach. First, candidates had to receive, at a minimum, an associate level degree with 45 of the credits defined in the LLLT regulations. The courses were to be completed in an ABA-approved paralegal program. Upon the completion of this "core education," candidates then complete 15 credits in family law through a curriculum developed by an ABA-approved law school. Currently, the courses are offered through the UW School of Law, with Gonzaga University law professors helping to teach the courses. Concurrent with the education, candidates spend 3,000 hours working under the supervision of a licensed lawyer. In addition to these requirements, candidates must pass three exams: one at the completion of the core education (the

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<sup>3</sup> The researchers interviewed LLLTs, WSBA staff, lawyers, clients, and educators.

Paralegal Core Competency (PCC) Exam), an exam on the LLLT Rules of Professional Conduct, and a subject area exam.<sup>4</sup>

In order to facilitate a faster “ramp up” of the new program, the Court approved a waiver path to the license recommended by the LLLT Board. The waiver is allowed for existing paralegals who have spent at least ten years performing substantive legal work under the supervision of an attorney and have current national certification with one of the national paralegal association. If these requirements are met, the LLLT candidate can proceed directly to the practice-area education and the requisite exams required for licensure. This waiver was initially put in place until the end of 2016, but the LLLT Board was considering an extension as this study was being done. In fact, most of the current LLLTs satisfied their core education requirement in this way, while a few of the newest LLLTs went through the complete education cycle.

### ***Discussion:***

Although most of the waived LLLTs gained most of their experience in family law, the experience requirement does not require practice in family law matters. This suggests that the experience requirement is intended to provide general familiarity with legal procedures and processes, rather than specific expertise in family law. This means that the formal training curriculum must provide all required content for the family law practice area.

Not all of the community colleges in Washington State that provide paralegal programs are ABA-approved. That means that certain areas of the state are not conveniently served for that portion of the training requirements. The Supreme Court subsequently approved teaching the core courses at all LLLT Board approved community colleges, mitigating the problem of geographical access significantly. In contrast to the community college approach, the law school year of training is done entirely online, making it easy for candidates from all areas of the state to participate.

The law school had no precedent for this kind of training, so essentially it had to create both a new business process and a new business model for the LLLT program. The new process is able to take advantage of some of the services offered to regular law students, but not others. In particular, prospective LLLTs cannot avail themselves of any financial aid opportunities at the law school.

The UW School of Law originally expected much larger numbers of prospective LLLTs to matriculate. The much smaller initial numbers of students enabled the University of Washington law school to more easily revise its original approach as it learned what worked best. The annual cohorts of students will still need to increase significantly if the university is to achieve a breakeven point on the economics of the program and provide appropriate management. Estimates of the desired cohort size were rough and ranged from 25 to 100 students. It is also not clear if the law school can provide enough faculty to support student cohorts of this size. In short, the economics of the law school training business model are still somewhat uncertain.

Representatives of the community colleges with non-ABA-approved paralegal programs expressed a strong interest in becoming approved LLLT training programs. More broadly, representatives of the

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<sup>4</sup> The 2016 WSBA report describes these education requirements as: “At a minimum possess an associate level degree; complete 45 credits of core curriculum in paralegal studies as defined in the regulations; complete 15 credits of practice area course work; have 3,000 hours of work experience under the supervision of a licensed Washington attorney; pass a rigorous core curriculum examination; pass a rigorous practice area examination; and pass a rigorous professional responsibility examination.”

community colleges expressed a strong interest in the possibility of teaching the entire training curriculum, including the year that is now taught at the law school.

### ***Findings:***

- The law school must subsidize the LLLT program at current student levels.
- It is not clear how much the student levels would need to increase for the law school to break even on the program. Rough estimates ranged from 30 to 60 students per year. Upcoming cohorts from the community colleges may be growing already, but if so it will not be visible yet.
- It is not clear to what extent staffing and other bottlenecks at the law school would constrain student numbers if they increased significantly.
- Participating community colleges are currently unable to reliably identify which of their paralegal students intend to become LLLTs.
- Teaching the practice area classes at community colleges using remote law professors, community college professors, or adjunct faculty would be one way to mitigate the possible bottleneck at the law school.
- The Seattle University and Gonzaga University law schools are struggling financially and felt unable to subsidize a new program like the LLLTs. Gonzaga University has contributed faculty to the courses at the UW School of Law.
- The inability of the UW School of Law to provide any kind of financial aid is a significant economic deterrent to prospective students.
- Allowing non-ABA-approved paralegal programs to qualify as part of the LLLT training program would significantly improve geographical convenience for students. [A recommendation to make this change has been subsequently proposed and approved by the Washington State Supreme Court.]

## **Program Efficacy**

The LLLT program is designed to provide assistance with the legal process and the preparation of legal forms. Program designers believe that consumers find these kinds of processes to be significant barriers to access when they cannot afford the assistance of a full-service lawyer. Thus, it was hoped that LLLTs would competently provide such services at a significantly lower cost to consumers and by doing so constitute an effective solution to this access problem.

If LLLTs are to benefit consumers in this way, it must be true that they can competently help with these kinds of tasks. It must also be true that consumers trust LLLTs to perform these tasks for them. Finally, competent assistance should result in better legal outcomes and may also improve perceived procedural justice.

### ***Discussion:***

Licensed LLLTs with education waivers uniformly felt competent to provide appropriate assistance in family law matters according to the defined scope of the role. This opinion was partly supported by LLLTs without family law experience, who did not feel they could provide assistance efficiently enough to charge their desired prices until they had more experience. It will be interesting to see how these opinions and perceptions change as more LLLTs go through the program without the long years of prior family experience as paralegals.

Clients were sometimes confused about exactly what LLLTs could and could not do. Because the line between allowable and forbidden types of assistance followed the complexity of legal tasks and not the typical tasks in types of family law actions, clients were sometimes forced to do things by themselves that they wanted LLLTs to do or were required to contract with lawyers for unbundled assistance when it was available. These distinctions made no sense to them as lay persons.

From a process viewpoint, LLLTs walked clients through the engagement agreement and explained their scope in detail. Some LLLTs made referrals to lawyers when they were unable to perform a task that a client needed. Conversely, some lawyers made referrals to LLLTs when tasks were within their scope and clients could not afford a lawyer.

### ***Findings:***

- Family law task competence was strongly ascribed to specific family law experience as a paralegal.
- At the same time, the training curriculum was deemed appropriate and adequate for the family law practice area.
- LLLTs suggested that the current training program be expanded to include a greater emphasis on practical completion of forms.
- LLLTs thought the 3,000 hours of experience required was about right.
- LLLTs also suggested that a subset of the experience hours should be dedicated to family law matters. Proposed ranges of dedicated experience hours ranged 500 to 1,000 hours out of a total of 3,000 hours.
- Some, but not all, of the small group of licensed LLLTs that went through the entire training sequence felt that they lacked enough specific family law experience to be fully competent at the beginning of their practice.
- Clients uniformly reported that LLLTs provided competent assistance.
- Clients reported that their legal outcomes were improved by utilizing the services of LLLTs.
- Clients were unable to articulate in what way procedural justice was improved for them, but they did frequently report reductions in stress, fear, and confusion.
- Some clients expressed a desire for LLLTs to provide similar assistance for excluded family law matters.
- Some clients expressed a desire for LLLTs to be able to represent them in conversations or negotiations with opposing lawyers and parties.
- Some clients expressed a desire for LLLTs to accompany them into court and at least assist them in answering questions during court hearings.
- Clients often did not understand the legal nuances of what tasks a LLLT could perform, even though LLLTs provided correct and detailed explanations.
- Clients did follow the advice of LLLTs on what legal assistance they could provide and when they needed to seek the help of an attorney.

## **Program Sustainability**

Sustainability requires the program business models to work for both the participants in the new role and the organizations providing training and regulation. Separately, the new role must be performed well enough for the public to view it as legitimate and effective in an on-going way. Both of these aspects of sustainability are critical to the long-term success of the program and the new role.

As noted in the LLLT Board's report to the Supreme Court, the typical total cost of all education required to become certified is \$14,440.<sup>5</sup> Licensed LLLTs must discover and attract sufficient numbers of clients and revenue to make an operational profit that provides a livable income and amortize the initial investment over a reasonable period of time. At the time of this evaluation, most LLLTs were not practicing full-time. Instead, they worked part-time as traditional paralegals or solely as a part-time job.

A couple of LLLTs did work full-time. These LLLTs understood very well the costs of specific tasks and managed the scope of their cases carefully. They had analyzed their tasks in enough detail to charge fees for discrete tasks, rather than charging hourly rates. They understood their business models well enough to know if they were achieving a practical standard of living or not.

Also per the LLLT Board report, the regulatory costs to date total \$473,405 and the fees collected in 2015 total \$11,188.<sup>6</sup> So, the WSBA has provided a large subsidy to date to operate the program. Many of the regulatory costs are relatively fixed startup costs that will not be incurred to the same extent as the number of participants increases. Startup costs should be smaller as new practice areas are added, since several aspects of the regulatory machinery will not need significant modification. Unfortunately, the WSBA does not break out one-time startup costs and on-going operating costs, but they should not be significantly different from the current operating costs in that regulatory area. It also has not estimated the cost of adding new practice areas, but they may be minimized by mostly using the current LLLT Board and committee members. While it may be difficult to estimate what number of new licensed practitioners per year would be required to achieve a breakeven point for operating the program with precision, presumably the WSBA could do so for various enrollment and certification scenarios.

The WSBA estimates that such a breakeven point may be achieved in five to seven years, which would include paying back the startup costs, but does not indicate what level of licenses would be needed to do so. It does estimate that up to 200 people may be currently enrolled in its core programs. If so, the WSBA can determine when the breakeven point will be achieved at least approximately. Community colleges know how many students are in their paralegal programs, but not how many of those students might go on to become licensed LLLTs. Previous estimates of LLLT cohorts have consistently proven to be too optimistic, but that may change as the program becomes better known and gathers momentum with a track record.

If the Supreme Court decides to accept training provided by community colleges with programs that are not ABA-certified, it appears that the community colleges collectively provide enough throughput to support a much larger number of LLLTs. No special subsidies would be required, since paralegal students train within the standard business model of the community colleges. The number of classes can be ramped up or down according to demand without significant disruption or change to the usual business processes.

As previously mentioned, the same is not true for the law schools. Although attempts have been made to actively involve all three law schools in the state, only the University of Washington had the resources to support the required training cycles. Gonzaga University contributed faculty in a small way, but nothing else. Even then, the University of Washington law school currently loses money on the program and must subsidize it. The first three cohorts through the law school curriculum were 17, 23, and 19 students respectively. The law school was initially expecting significantly larger cohorts, and they would still like to scale up cohort sizes significantly to make the program more economic. In particular, the law school wants a full-time administrator for the program, which would require cohorts of at least 25 to 28 students

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<sup>5</sup> See 2016 WSBA report.

<sup>6</sup> See 2016 WSBA report.



consistently. Larger cohorts might make the establishment of special financial aid and scholarship funds possible from an administrative funding point of view, but rules regarding financial aid would still have to be changed or finessed. On the other hand, larger cohorts might also create a faculty bottleneck according to the law school staff.

Aside from these issues, the law school supports the addition of business management and marketing content to the curriculum, but that would almost certainly lengthen the period of training and the associated costs for LLLTs. More positively, the law school thinks it could support revisions of the curriculum on court appearances and negotiations if the LLLT Board and the Supreme Court were to support those changes in LLLT scope. Washington State should know very soon if the Supreme Court is supportive. History suggests that it will be.

The law school still operates the year of LLLT training using a special and abnormal business process, because their normal process is uneconomic for LLLT training. It is run as a Continuing Legal Education (CLE) program with a large tuition break. That avoids \$480 a quarter in fees and reduces the cost per quarter to \$1,250. The law school and the LLLT Board are still working creatively with the community colleges to overcome the inability of the law school to offer financial aid to LLLTs. Because of the special process, LLLTs also do not have access to on-site university services, disability services, or career development services. Of those issues, the availability of financial aid is most important for prospective LLLTs.

It is also the only law school program that uses a synchronous online training method. Although not originally planned, that approach has worked well for LLLTs and the law school has been able to provide a quality educational experience. Both the law school teaching staff and the current group of licensed LLLTs consider the curriculum to be generally good, although the LLLTs consistently expressed a preference for additional practical training on forms. On the other hand, synchronous training is harder to scale and may experience problems attracting sufficient faculty in the future. An asynchronous approach would scale more easily. Perhaps a training model based on a broader provision of services by community colleges could overcome some of these issues.

The community colleges would definitely welcome an expansion of the program beyond the current ABA-certified colleges (and it has subsequently been approved). This expansion would definitely help expand the annual cohorts of LLLTs, since students noted both travel constraints and a desire to access the curriculum online when possible (which the ABA partially restricts now for certification). Providing online training is still a relatively new approach for most community colleges and not yet a core part of their education approach, but they expressed a willingness to expand those capabilities in the future.

Finally, the community colleges would agree to take on the entire curriculum, including the year that is currently provided only through the law school, if the LLLT Board and the Supreme Court would allow them to do so. That change in program design would potentially improve the sustainability of the LLLT program by solving a number of issues with the economic viability of the training program, including the financial aid issue.

The experience of licensed LLLTs to date has not been especially encouraging in terms of viable business models when operating as a pure full-time LLLT practice, but the evidence suggests that viable business models are possible under the right conditions. Two Yale University researchers describe three conceptual business models that LLLTs might implement: solo practice, semi-solo practice, and firm employee.<sup>7</sup> Of the currently licensed LLLTs, most are using either the semi-solo practice or the firm employee. Only a

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<sup>7</sup> "Pathway to Success," Jie Min and Bethany Hill, unpublished.

couple of LLLTs are attempting a true solo practice at this point, but that is very likely to change as the program grows.

The few LLLTs practicing full-time had very carefully analyzed their services and their related costs. They conducted their practices according to well-structured business models. The part-time LLLTs approached their businesses in a more unstructured way and charged hourly rates instead of fixed fees. Working for law firms as paralegals provided an economic safety net that made it less necessary to work out a more explicit and detailed business plan. Partly because the services offered by LLLTs are so new and limited in ways that are not obvious to the public, marketing and public education are important issues for attracting a viable volume of clients. Support by local bars and law firms clearly helped by providing cross referrals of clients, but more attention to fundamental business marketing is clearly needed. A growing number of county bars are accepting LLLTs as members and the WSBA made LLLTs members in January 2017.

Many of the practicing LLLTs cited revenue uncertainties as their motivation for selecting the semi-solo or firm employee business models. In most cases, both models took the form of relationships with existing law firms. In several cases the LLLTs had previously worked for those firms as paralegals and simply continued those relationships in a different way. Aside from revenue concerns, a close connection to a law firm also supported appropriate referrals both to and from the LLLT, which was beneficial for both business parties.

The Yale paper goes on to lay out in simple terms a standard approach to writing a good business plan. Like many new small businesses, LLLTs often lack basic skills in business management and are at high risk of business failure if they attempt a solo practice. That risk is not reduced by the obvious value that LLLTs provide to their clients. It is rather a normal function of being a new small business. Those risks include being under-capitalized and lacking an effective marketing plan. Again, the WSBA and LLLT Board are working to mitigate these issues.<sup>8</sup> Several of the Yale paper recommendations parallel recommendations made later in this evaluation.

### ***Discussion:***

Both the regulatory oversight and the law school training use unsustainable business models right now. With increased volumes of LLLTs both could potentially become sustainable, but the likelihood of sufficient volumes is an open question. Similarly, only a couple of the currently licensed LLLTs appear to be making a living solely as LLLTs. The rest are using mixed business models and working significant amounts as traditional paralegals for law firms to ensure sufficient incomes.

Effective marketing is perhaps the critical link for business success at this point. Many LLLTs are unable to attract a sufficient number of clients to run a viable business even though the evidence for a sufficient pool of potential clients is strong. With any new service that is not well known or understood by the public, it is difficult for potential clients to literally discover the existence of the new role and understand when it might make sense to use the services of a LLLT. When local law firms support the LLLT role and provide appropriate referrals, that behavior partially mitigates these concerns. Conversely, when the local bar is actively hostile, it makes the marketing issue much more difficult to solve. Fortunately, this problem seems to be dwindling as county bars gain experience working with LLLTs.

### ***Findings:***

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<sup>8</sup> "Suggestions for the LLLT Program," Jie Min and Bethany Hill, unpublished.

- The regulatory business model requires significant subsidies to operate to date.
- The law school business model also requires a subsidy to operate at current volumes.
- Most licensed paralegals work at least part-time for law firms as traditional paralegals.
- Even when LLLTs work for law firms as LLLTs, they sometimes receive a fixed salary rather than a proportion of the revenue they earn.
- Most LLLTs struggle to attract enough clients to sustain a viable business.
- When LLLTs understand their business well enough to charge flat fees without undue risk, they are better able to manage their business and market to potential clients.
- Many LLLTs could benefit from targeted training on business management and marketing.
- A hypothetical business model that charges fees between those of a paralegal and a lawyer seems viable, but current actual fees are mostly the same as a traditional paralegal. Where the LLLTs are operating a pure LLLT practice, their fees tend to be moderately higher than that of paralegals.
- Limited scope fixed fees can be charged for most or all current tasks, but most current LLLTs prefer to charge by the hour to mitigate risk.

## Conclusions

In many ways the current LLLT program is a success. It is appropriate, efficacious, and at least potentially sustainable. It meets a significant need and is viewed as a legitimate legal role. For a new kind of program designed “from scratch” to be so successful is quite impressive. Clearly a lot of careful thought went into program design.

Several of the concerns identified in this evaluation report may be mitigated or eliminated by program modifications being considered by the LLLT Board (and several of them have now been approved by the Board). These proposals include the addition of a new practice area that targets a broad and known need, the ability to draft legal letters, and the ability to help clients fill out legal forms not in the approved practice areas.<sup>9</sup> The Board considered and approved proposals to permit appearances in court, participation in legal negotiations, partial elimination of the real property exclusion from the family practice area, and an indefinite extension of the time waiver. These proposals are now before the state supreme court, except for the last one which has already been approved by that body.

The WSBA regulates the LLLT program very much after the model of the traditional bar with lawyers. This model is a fairly costly regulatory approach that is viable with lawyers because of the scale at which it operates. Fortunately, the bulk of the regulatory costs are incurred at the beginning of the program. Still, the use of LLLTs will either have to scale up significantly or a more lightweight regulatory approach will be needed. Balancing consumer protection with regulatory costs may require innovative strategies.<sup>10</sup>

## Recommendations

Several of the recommendations mirror proposed changes to the current LLLT program and the LLLT Board is already acting to implement several other recommendations.

1. *Require a dedicated subset of the experience hours to be in the specific practice area.*
2. *Expand the training devoted to practical document assembly tasks.*
3. *Allow community colleges without ABA certification to qualify as trainers (now approved).*
4. *Consider shifting the law school training to the community colleges.*
5. *Provide more training and practical advice on business management.*
6. *Provide practical advice and assistance on marketing.*

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<sup>9</sup> In late 2016 the WSBA Board of Governors (BOG) passed a resolution supporting the exploration of a new practice area, expanding the tools LLLTs may use with clients, and voted to make LLLTs (and LPOs) members of the bar and be allocated one seat (either a LLLT or a Limited Practice Officer or LPO) on the BOG.

<sup>10</sup> For a discussion of other possible regulatory approaches, see “How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering,” Gillian Hadfield and Deborah Rhode, *Hastings Law Review* Vol. 67 (June 2016): pgs. 1191-1223.

7. *Accelerate adoption of the scope modifications for the current practice area.*
  - a. *Allow LLLTs to interact with opposing parties and their legal representatives.*
  - b. *Allow LLLTs to appear in court with their clients and clarify matters of fact during hearings.*
8. *Accelerate provision of new practice areas for future and existing LLLTs.*
9. *Consider the use of innovative regulatory approaches to reduce regulatory costs while continuing to adequately protect consumers.*

## **The Bottom Line**

The LLLT program offers an innovative way to extend affordable legal services to a potentially large segment of the public that cannot afford traditional lawyers. While the scope of the role is limited and will not be the answer for every legal problem, LLLTs definitely can provide quality legal services to those who need it and also significantly reduce the stress of navigating a foreign process that is complex and daunting.

The LLLT program also offers the possibility of improving the quality of filings in court cases involving self-represented litigants and thus reducing the time and cost required for courts to deal with such cases. The Washington State example suggests that LLLTs and lawyers may form mutually advantageous business relationships, making referrals to each other as appropriate. Since LLLTs appear to assist customers who could not afford lawyers, they do not compete directly with lawyers.

This program should be replicated in other states to improve access to justice. As experience is gained and its program design is optimized, affordable legal services should become widely available to those with needs in areas where the public typically must now use self-representation. By offering low cost legal services, state bar associations will be able to compete directly with for profit businesses operating outside the regulatory umbrella of state justice systems. By doing so, they can ensure that the public has access to quality legal services.

## **Appendix A. Acknowledgments**

The National Center for State Courts and the American Bar Foundation would like to thank the Public Welfare Foundation for sponsoring and funding this project as part of its on-going efforts to improve access to justice.

The Washington State Bar Association provided very generous support to this project and assisted in many ways.

*Any errors or omissions that remain are the sole responsibility of the study's authors.*

## **The Proposed Licensed Paralegal Practitioner Rules**

### **Published for Public Comment**

On July 25, 2017, and August 2, 2017, the Supreme Court of Utah approved several recommendations from its Steering Committee on Licensed Paralegal Practitioner. The Steering Committee had recommended that the Supreme Court approve publishing for public comment three sets of proposed rules governing the practice, conduct, and discipline of a new class of legal professional called the licensed paralegal practitioner. A brief description of the licensed paralegal practitioner program is set forth below. The proposals that are being published for public comment are:

- **Rules Governing Licensed Paralegal Practitioners,**
- **Licensed Paralegal Practitioner Rules of Professional Conduct, and**
- **Supreme Court Rule of Professional Practice 14-802 (Authorization to practice law)**

The public is invited to submit comments on the proposed rules. To view the proposals and submit comments, please follow the instructions posted on the court's website.

It is expected that additional sets of rules will be published for public comment shortly. Those proposals include rules governing the education, administration, licensing, and continuing legal education of a licensed paralegal professional.

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In May 2015, the Utah Supreme Court formed its Task Force to Examine Limited Legal Licensing to study the serious and growing problem of average citizens needing legal assistance but being unable to afford them. The task force was comprised of a broad cross-section of the community, which included elected officials, the Governor's Office, members of the Utah State Bar, public interest and self-help organizations, academia, and the judiciary. The Supreme Court issued two mandates to its task force: (1) consider emerging strategies and programs that permit qualified non-lawyers to provide certain legal services currently provided only by licensed attorneys, and (2) recommend whether such programs should be established in Utah.

The task force — after carefully studying the few states where similar efforts are underway and examining the most pressing needs in our own state and court system — recommended an innovative approach for improving access to justice in Utah. The task force recommended that qualified non-lawyers be authorized to practice law, on a carefully defined basis, in three areas where legal needs are most acute:

- Family law, in the areas of temporary separation, divorce, paternity, cohabitant abuse and civil stalking, custody and support, and name change;
- residential eviction; and
- debt collection.

Within these three areas, the task force had also recommended that the licensed paralegal practitioner be authorized to perform the following essential services:

- establish a contractual relationship with a client who is not represented by a lawyer;
- conduct client interviews to understand the client's objectives and to obtain facts relevant to achieving that objective;
- complete court-approved forms on the client's behalf;
- advise which form to use; advise how to complete the form; sign, file and complete service of the form; obtain, explain and file any necessary supporting documents; and advise the client about the anticipated course of proceedings by which the court will resolve the matter;
- represent a client in mediated negotiations;
- prepare a written settlement agreement in conformity with the mediated agreement; and
- advise a client about how a court order affects the client's rights and obligations.

Finally, the task force recommended that a steering committee be appointed to implement its recommendations. The Supreme Court later approved all of the task force's recommendations.

There still remains other work to be done, such as issuing rules governing the education, administration, licensing, and continuing legal education of a licensed paralegal professional. But the task force believes that this new approach holds great promise, not as a substitute for attorneys, but as a complimentary legal resource that provides meaningful assistance in discrete areas where existing legal resources are inadequate and the public's needs are great.

Information on the Steering Committee, including its agenda materials and meeting minutes, are posted [here](#). The complete report of the Supreme Court's Task Force to Examine Limited Legal Licensing is posted [here](#).



TO: Supreme Court of Utah

FROM: Dean Robert W. Adler (on behalf of the Education Subcommittee)

DATE: July 14, 2017

RE: Summary of Education Subcommittee Work of the Licensed Paralegal Practitioner Steering Committee

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This document contains a short summary of the recommendations from the Education Subcommittee of the Licensed Paralegal Practitioner Steering Committee since February 2016.

The main outputs of the Education Subcommittee have been the following: an articulation of the minimum educational and other admission requirements for entry into the LPP profession (enumerated in Rule 15-705 of the LPP Admissions Rules), along with waiver requirements for existing paralegals and others (otherwise known as “grandfather provisions”); a detailed set of core competencies and learning outcomes for the training program that will prepare future LPPs for the licensing exam; and an outline of recommendations for the development of such a training program.

#### **Waiver Requirements and Exemption Provisions**

<b>Requirement</b>	<b>Eligibility for exemptions</b>
<b>Prior degree:</b> <ul style="list-style-type: none"><li>• Associate in Paralegal Studies from accredited school</li><li>• Bachelor in Paralegal Studies from accredited school</li><li>• Any Bachelors from accredited school plus paralegal certificate or 15 credit hours of paralegal studies/paralegal training</li><li>• J.D. from ABA accredited school</li></ul>	<p>A paralegal with an associate degree in any field of study who has been working as a paralegal for 7 out of the last 10 years.</p> <p>The window for to apply for this exemption will be 2 years from the start of the LPP program. Applicants granted a waiver will have 2 years to complete their remaining licensure requirements.</p>
<b>Pass NALA or NALS exam</b>	<b>J.D. recipients exempt</b>

1500 hours of experience within last 3 years; 500 in relevant specialty area	<p>Internships in paralegal study programs count; law school internships, clinical programs, clerkships count</p> <p>Prospective LPPs who have received an exemption for the education requirement above will automatically meet this requirement by virtue of having worked as a paralegal for 7 out of the last 10 years; however, they must demonstrate 500 hours in the specialty area to be licensed.</p>
3 credits in professional ethics for LPPs	J.D. recipients exempt but recommended to pass licensing exam
5 credits in specialized instruction in each specialty area to be licensed	J.D. recipients exempt but recommended to pass licensing exam
Pass licensing exam in ethics	None
Pass licensing exam in each specialty area to be licensed	None

### Core Competencies

(Please see Appendix A for a full description of the recommended Core Competencies)

General learning and competency outcomes for an LPP training program:

- Basic knowledge of substantive law
- General knowledge of legal ethics
- Rules governing the unauthorized practice of law
- Client intake and interviewing
- Principles for providing appropriate information to clients
- Reading and analytical skills
- Negotiation and mediation skills
- General knowledge of the legal system and legal terminology
- Knowledge of the court system, relevant administrative tribunals and relevant procedures

Substance-specific learning and competency outcomes for an LPP training program, generally:

- General knowledge of the area of law

- Knowledge and understanding of relevant forms
- Experience and demonstrated proficiency in completing each of the relevant forms in the area of law

For Landlord-Tenant Law, specifically:

- Ability to respond appropriately to eviction attempts
  - Negotiation
  - Rights of tenants and landlords
  - Legitimate debts
  - Underlying concerns
- Ability to provide clients with information regarding settlement offers
- Ability to answer a complaint
- Ability to navigate discovery
- Knowledge of when, why, and how to file a Motion to Set Aside Judgment

For Collection Law, specifically:

- Ability to respond appropriately to out-of-court collection efforts
  - Negotiation
  - Rights of debtors
  - Basic familiarity with landlord-tenant eviction statutes
  - Legitimate debts
  - Underlying concerns
- Ability to provide clients with information regarding settlement offers
- Ability to answer a complaint completely
  - Time to respond
  - Defenses
  - Statutes of limitation
  - Family expense statute
- Ability to navigate discovery
- Ability to identify motions to be filed and the form for each motion

For Divorce and Family Law, specifically:

- Jurisdiction and venue
- Divorce and child custody
  - Divorce education/orientation courses
  - Initial paperwork for filing – vital statistics, child support worksheets, child location worksheet, petition, summons
  - Custody (sole v. joint legal custody)
  - Parent time
  - Parenting plans
  - Custody evaluations
  - Child support
    - Determining incomes
    - Determining incomes when a party is not forthcoming with financial information
    - Discovery issues

- Navigating child support worksheets
  - How parent time affects child support
  - Children from prior relations
- Circumstances/time frame for updating/modifying child support
- Alimony
- Division of retirement
  - QDRO and an understanding that the involvement of a licensed attorney is necessary
- Division of real property
- Division of personal property
- Mediation
- Final paperwork – settlement, findings, decree of divorce, affidavit of jurisdiction, affidavit of income
- Enforcement
- Petition to modify

Ethics, specifically:

- Rules governing Licensed Paralegal Practitioners (and limitations on LPP practice)
- Basic principles of LPP ethics, professionalism, and civility
- Associated concepts of law

### **Training Program**

(Please see Appendix B for a full description of the training program recommendations)

The Education Subcommittee's focus has been to ensure that at least one institution of higher education will offer a training program to help paralegals and other professionals become Licensed Paralegal Practitioners. Both Utah Valley University and Salt Lake Community College, which have existing ABA-approved Paralegal Degree Programs, have expressed interest in developing and delivering such a training program, with limited advice and assistance as appropriate from the S.J. Quinney College of Law at the University of Utah. The Education Subcommittee recommends that the training program be offered through a combination of online and live training components, at multiple locations and times designed to facilitate participation throughout Utah. The Education Subcommittee further recommends that the curriculum of the training program cover, in discrete components, ethical requirements for LPPs, basic skills required of LPPs, and each of the three substantive areas of practice for which LPPs may be licensed in Utah. Finally, the Education Subcommittee recommends that institutions offering the training program coordinate closely with Supreme Court's LPP Steering Committee and relevant subcommittees, along with representatives of the Utah State Bar, to help ensure that the content of the training program meets needs and considers the nature and content of LPP licensing examinations.