

## Not every legal problem needs a lawyer according to Chief Justice

By Ralph Schaefer TB&LN Correspondent | Posted: Tuesday, September 8, 2015 12:00 am

A concern for people to have access to justice spurred the Washington State Supreme Court to move forward with a Limited Legal Licensed Technician program.

That need also was pushed by that state's bar association because members realized that not everyone could afford legal services and it was a measure to protect the courts from those who would practice law without training or licenses.

Barbara A. Madsen, chief justice of the Washington Supreme Court, discussed the LLLT and the seven-year effort to get it passed during the annual Tulsa County Bar Association/Foundation meeting.

Justice Madsen was in her office and was "virtually" welcomed to the meeting via Skype by Oklahoma Supreme Court Chief Justice John F. Reif, who opened and closed the discussion.

Ken Williams, Tulsa County Bar Association president, while making the introduction, said the people's limited access to justice was an issue "near and dear to his heart" and that when he sought Justice Madsen out, she readily agreed to share her thoughts on this tool for equal access to justice.

The move toward the LLLT (triple LT) program actually started in the 1990s when it was noted in Washington and across the country that a larger number of people were involved in the unauthorized practice of law, Madsen said.

More and more people were coming into court without attorneys and research showed that around 70 percent of the litigants would be unrepresented in the domestic family related court.



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Barbara A. Madsen, Washington State Supreme Court chief justice, discussed the state's Limited Legal License Technician program with Tulsa County Bar Association members during the annual meeting. Justice Madsen was virtually welcomed to Oklahoma via Skype. She made the presentation from her office. Lawyers in the foreground are Dean Luthey and John Morris Williams, Oklahoma Bar Association executive director. Ralph Schaefer for TB&LN

While the legal community was concerned with the lack of adequate representation, no action was taken until a former chief justice happened to pass by a double-wide trailer off the interstate offering to prepare wills for \$50.

“We knew it wasn’t a law office,” Madsen said.

That was when she became convinced there really was a problem.

“We decided at that time, we had to start the process by defining the practice of law,” Madsen continued.

The court passed a rule, GR24, that defined the practice of law. Another rule, GR25 established the practice of the law board.

That board was charged with finding ways to meet the public’s need of legal advice short of having a fully licensed lawyer offering that advice.

That began a series of public hearings, focus groups, and outreach programs across the state to think about what a model of legal services would look like if it did not include a lawyer.

“This really was an epiphany for all of us to think that not every problem needed someone with a JD [juris doctorate],” she said. “Not every legal problem needs a lawyer became our mantra.”

Universities got involved and people talked about their legal problems and whether or not they were being met.

“We discovered that fully 80 percent of the poor, the indigent folks in our state were not having their legal needs met,” she said. “That 80 percent was a horrifying number for all of us. We also looked at the practice of law where those needs were not being met.”

Research found the top two areas were domestic relations and landlord-tenant law.

Folks were being evicted with no legal recourse because they couldn’t understand what their legal recourse might be,” Madsen said.

This study and the court’s concern with the access to justice gap led to a court rule and rule of practice that allowed non JDs to practice law in the limited area of domestic relations.

Changes did not come easy.

Outcries came from the bar association and it was seven years before the order was signed.

“We started in 2005 and I signed the order in 2012,” Madsen said. “Our bar association wanted an opportunity to fill the unmet needs of the state’s residents in another way.”

Several methods were tried, including a collaboration between the state's law schools and bar association that required legal students to do intake cases and do research to keep costs down so lawyers might be able to take a case at a lesser fee.

A moderate means program was developed and a sliding scale with rates between \$25 to \$100 an hour was adopted.

While it was thought these solutions would perhaps meet the legal needs of the indigent to lower middle income folks, it didn't work, Madsen said. The LLLT rule was finally passed in 2012, but even now, it is just a baby step.

There were sharp cries from the Washington Bar Association even though the organization was part of the beginning for the rule that became known as AR28.

Washington's legal community came to the court and said they were concerned about the unauthorized practice of law because people were not going to lawyers and were not having their legal needs met.

"We as a court tried to walk arm in arm with the state bar association," Justice Madsen said. "In this instance, the court had to take a leadership role and say the incredible unmet need is more than we can tolerate and say we are a justice system."

Initially, the state bar board of governors voted against the rule and the court knew they wouldn't have their blessing.

"Once the rule was made, the bar stepped up incredibly well," she said. "An LLLT board has been established and about 100 applications have been received from people who want to join to really find a new legal services provider role.

"We really have seen our bar association realizing that those clients going to an LLLT are not the ones who will come to lawyers for services," Madsen said. "The bar association realized it was more important to fill the justice gap than their own pockets. It made me proud that our lawyers have stepped up to the program.

"They looked at changing the regulatory scheme and look at entity regulation, giving serious consideration to alternative structures. Having been dragging their feet to embrace the notion of full access, it has been great to watch. Now they (the Washington State Bar Association) is wholly on board."