April 28, 2008

Ronald R. Carpenter

Supreme Court Clerk

Temple of Justice

P O Box 40929

Olympia, WA 98504-0929

Dear Mr. Carpenter:

This is a comment paper and response to the submission by the Limited Practice Board of changes to Admission to Practice Rule 12 and accompanying proposed Rules of Professional Conduct for Limited Practice Officers as well as the Enforcement Rules. By way of introduction and perhaps to lend credence to the following comments, I would offer the following introduction:

Introduction: I am the recently appointed Escrow Representative to the Limited Practice Board. As such you are in receipt of my resume and past experience. I have in excess of 35 years in the escrow and settlement industry. I have actively served in the state professional association (Escrow Association of Washington) in many board positions and am a past president. I am currently the legislative chairperson. I am a past president of the national escrow association (American Escrow Association) and am involved as a past president educator and advisor. I am an active educator at the community college, state and regional association, conferences and seminars. I have closing experience in all types of transactions, including business opportunities and safe-harbor exchange escrows. Much of my closing focus has been in the commercial real estate field where I have worked with and had extensive contact with attorneys representing sellers and purchasers, respectively, as well as lenders. I was also one of the original members of the task force working with the WSBA in 1982 to solve the conflicts and work toward the creation of APR 12.

APR 12(h) proposed change:

(h) Treatment of Funds Received Incident to the Closing of Real or Personal Property Transactions. ~~Except to the extent certified closing officers are not required to be employed in~~

~~the selection, preparation and completion of closing documents under APR 12(g)(3), p~~ Persons admitted to practice under this rule shall comply with ~~APR 12.1~~ LPORPC 1.12A and B[1] regarding the manner in which they identify, maintain and disburse funds received incidental to the closing of real and personal property transactions, unless they are acting pursuant to APR 12(g)(3).

(1) *The request is to remove LPORPC 1.12B in its entirety. APR 12 by its own definition provides for the selection, identification and preparation of certain documents for real and personal property transactions. The full function of closing a transaction, including the handling of funds on behalf of the parties, should not be part of the rule. The concern has been historically (actually only ten years ago) to allow for IOLTA funds (LPORPC 1.12A). Beyond that, the actual handling of funds and property has been established by a practice as ancient as a representation for passage of stone or dirt. There is legislative oversight as well under RCW 18.44 and the title insurance statute. The fact that the respective government agencies (Department of Financial Institutions and Office of the Insurance Commissioner) may or may not have done a thorough job of developing and enforcing an Administrative Code for the respective statutes, should not create a requirement on the part of the LPO Board or this Court to do so. In fact, there should be a strong caution against overlapping and conflicting jurisdictions. Further, there is a strong tendency when considering LPO's as "limited attorneys" to compare them in all aspects to attorneys rather than only the limited duties to which they have been certified. LPO's are actually in the business of closing transactions and the limited portion of the transaction, if at all, that consists of document preparation, is less than 10% of the time. The preparation and inquiry regarding information for document preparation is critical to the business closing side as well. Thus, if the lawyers need to have trust accounting regulations, it does not mean that LPO's should as well. This would be true especially if the only consideration would be for increased and enhanced revenue through IOLTA. And, lastly, enhancing the rule and expanding the scope as to trust accounting records has the unprecedented and undocumented variable of extending the objectives for which the Rule was established originally and create greater liability for LPO's, not less.*

LPORPC 1.12A SAFEGUARDING PROPERTY:

LPORPC 1.12A SAFEGUARDING PROPERTY

(a) This Rule applies to (1) property of clients or third persons in the possession of an LPO or a Closing Firm in connection with a transaction, and (2) escrow and other funds held by an LPO or a Closing Firm incident to a transaction. For all transactions in which an LPO under the authorization set forth in APR 12(d) or a lawyer has selected, prepared, or completed documents[2], the LPO must insure that all funds received by the closing firm incidental to the closing of the transaction, including advances for costs and expenses, are held and maintained

as set forth in this rule.

(2) *This language should be stricken in its entirety. In real property transactions, especially in commercial transactions, there are many documents which require the preparation and completion by attorneys, e.g. Assignment of Lease, which are not on the LPO approved list of documents. By following the rule in one instance, and advising the parties relative to which documents can be prepared by an LPO, it would be inconsistent then to require that that same LPO maintain an IOLTA account when they are not able to prepare documents. APR 12(d) provides:* **(d) Scope of Practice Authorized by Limited Practice Rule.** Notwithstanding any provision of any other rule to the contrary, a person certified as a closing officer limited practice officer under this rule may select, prepare and complete documents in a form previously approved by the Board.....*It again seems to focus an intent on enhanced revenue through IOLTA rather than proper conduct for an LPO. Further, it would seem to require a determination by an LPO of what a "legal" document actually is. There is no precedent for such an action defined in the Rule to date. And lastly, although the LPO Board has offered a comment regarding the closing of a loophole, it is not a large one, in the overall picture, and has more to do with IOLTA than the professional reputation of LPO's in general. The LPO Board has also provided in explanation that there is generally 100% compliance with IOLTA.*
More than that, there should not be the ability of an attorney to determine whether or not the business of closing may be handled by a closing office merely based on whether or not they are able to get the proper certification. If an LPO is unable to prepare a document, for whatever reason, it is no reflection on the ability of an LPO as an escrow closer to handle the complicated details of a transaction, including closing statement calculations. The ability to handle closing transactions should not be decided by an outside influence, i.e. an attorney, and thus have a direct impact on the commerce aspect of the process. If there are no documents prepared by an LPO, then there should be no application of APR 12. If a closing office handles only refinances and does not prepare document one, then IOLTA does not apply, nor does APR 12. The creation of APR 12 was a compromise to allow certain lay persons to continue preparing documents in real and personal property transactions as well as to provide an economical means for the consumer to have all aspects of the closing transaction handled. The point was to have the lay person certified as having certain knowledge and experience and held to the standard of an attorney – for document preparation, NOT for the handling of funds. Taxation is the jurisdiction of the legislature. There should not be a continued blurring of the separation of powers.

LPORPC 1.12B REQUIRED TRUST ACCOUNT RECORDS

Comment[3]

[1] LPOs must assure that IOLTA accounts are used in any transaction involving the practice of law for others. In addition to closings where legal documents have been selected, prepared or completed by LPOs, IOLTA accounts must hold funds for closings involving legal documents prepared by lawyers. Such transactions would include extensions of credit with loan documents prepared by a lender's lawyer, as well as sale closings with deeds and other legal documents prepared by the clients' lawyers.

(3) See comments under (2) above.

LPORPC 1.12A SAFEGUARDING PROPERTY:

(h)(7) An LPO or Closing Firm must not disburse funds from a trust account until deposits have cleared the banking process[4] and been collected, unless the LPO or Closing Firm and the bank have a written agreement by which the LPO or Closing Firm personally guarantees all disbursements from the account without recourse to the trust account.

(4) RCW 18.44 provides for collected funds for all escrows falling within the definition of an escrow in the statute. It includes reference to the federal banking laws as well which have certain specific provisions for available and collected funds. The above reference is in direct conflict with the collected funds statute and should be re-written to conform. The entire function of the good funds legislation was to prevent disbursement of funds which did not belong to the specific parties to the transaction. Truthfully, the entire section should be stricken. The comments under (1) above are applicable here as well.

Certainly, and without question, the passage of APR 12 has given professionalism to the preparation of documents in real property transactions. It has, more than anything else, provided a mandatory vehicle for education and communication and creating standards for excellence in the closing industry. It should not be manipulated and molded, however, beyond the purpose for which it was created, solely for financial gain under the guise of creating clearer standards. I would respectfully request the consideration of the comments above.

Respectfully submitted,

Dee McComb, LPO No. 306

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OFFICE RECEPTIONIST, CLERK

To: Jan Grant
Subject: RE: APR 12 Proposed Rule changes

Rec 4-28-08
Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Jan Grant [mailto:jan.grant@comcast.net]
Sent: Monday, April 28, 2008 11:00 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: APR 12 Proposed Rule changes

Dear Mr. Carpenter:

Dee McComb is currently out of the country, but asked me to forward her comments in reference to the proposed changes to APR 12 and 12.1 to you. Her comments are attached to this email. In the event you have any questions, feel free to contact me.

Jan Grant
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