

**Paul A. Bastine, Judge (Ret.)**

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Honorable Charles W. Johnson  
Washington State Supreme Court  
Temple of Justice  
P. O. Box 40929  
Olympia, WA 98504-0929

Re: Proposed APR 28—Legal Technicians

Dear Justice Johnson:

I did not originally support the legal technician rule.

By way of history and explanation, I was a member of the WSBA Domestic Relations Task Force (1991) chaired by Marvin L. Gray, Jr. The task force specifically recommended against licensure of non-attorneys in family law. The task force did recommend establishment of the courthouse facilitator program as subsequently adopted. Both Mr. Gray and I now support the authorization of non-lawyers to practice as proposed in the current rule. Mr. Gray is a member of the WSBA Legal Aid and Pro Bono Committee that has endorsed the rule.

I likewise did not support the Limited Practice Officer Rule APR 12, adopted in 1983. At that time a substantial portion of the gross income for my law office was in the area of residential real estate closings. We employed as many as three real estate closing paralegals whose work was primarily supervised by me. My concern was similar to that of many who oppose the current proposal: that my practice and income would be impacted. In fact, that did occur but not as I anticipated. Our closing business changed from clerical types of closing activities to legally involved and challenging transactions. I found myself doing legal work, not clerical work. It allowed me to use my time other than supervising real estate closing paralegals. I was able to increase my legal practice and correspondingly my net income. I was able to do what lawyers do best: practice law. I submit the same will happen with this proposed rule.

Over the last twenty years there has been significant study and information gathered which relate to the issue before you. In 1992, the Oregon State Bar Legal Technician Task Force recommended that bar association propose

legislation in form similar to that pending before you. Similarly in September 1995, the Washington State Bar Association Task Force on Nonlawyer Practice of Law recommended to our Board of Governors a proposal by a vote of 9 to 6 to authorize practice as outlined in APR 28. In a "nearly unanimous" series of recommendations as set forth by that task force, the Practice of Law Board has adopted the conditions recommended by that study group. The Court should likewise be aware that the American Bar Association conducted an extensive study on non-lawyer practice of law reported in June 1995. That report, more than 200 pages in length, outlines the significant development of non-lawyer practice. While mentioning in passing the advent of computer technology, the report pre-dates the use of inter-net legal services such as "legalzoom.com" and "online divorce.com." to name only two. The use and proliferation of these entities has expanded dramatically in the short period of time the Practice of Law Board has been studying this issue. The public acceptance and use of these inter-net services should cause the Court and bar to recognize the need for the proposed rule offering trained, regulated services in an appropriate framework.

The Practice of Law Board has had the benefit of various materials from the Department of Justice and the Federal Trade Commission helping guide the board in attempting to protect the Supreme Court, the Washington State Bar Association and the consuming public from inappropriate activities. There is the material gathered from Arizona where a legal technician rule, though not identical to this proposal has been in place now since 2003.

More recently, the Washington State Center for Court Research report of March 2008 entitled Washington's Courthouse Facilitator Programs for Self-Represented Litigants in Family Law Cases provides significant information pertinent to this matter. Together with the Civil Legal Needs Study (September 2003), we have substantial information regarding legal services for low and moderate-income individuals. Both studies, of course were done before the current economic crisis. The Civil Legal Needs Study shows that nearly 9 out of 10 persons in the study group do not obtain any legal assistance at all. It was found that family law assistance is the second most pressing legal need of those studied. The facilitator study, while focused on courthouse facilitators, provides a more defined picture of the pro-se litigant in family law. That study relates that in dissolutions without children for all jurisdictions except King County, at least one litigant is pro se in 66% of the cases (page 11). At page 10, it is indicated that King County reports "that the percentage of domestic cases involving at least one pro se party exceeded 70%." That is consistent with my personal experience on the family law dockets in Spokane County during my terms in that rotation. It should be noted that statistics are not consistently reported in this state in this regard. They are optional and non-existent prior to 1994 (f.n.2, page 10). Further, if an attorney appears for either side, even for a limited period as in an unbundled situation, the case is noted as having an attorney in place. In my experience, modifications, paternity matters and third party custody cases, with the numbers increasing dramatically, rarely have attorneys.

The facilitator study found that 60% of those self-represented could not afford an attorney. (Table 5, page 29.) Twenty nine percent did not believe their case was complicated enough to warrant hiring a lawyer and 18% did not know if they needed legal counsel. (The table responses exceed 100% because of multiple responses.) At page 39, the report, under the topic "*Legal Advice and Legal Aid*" acknowledges that the inability of facilitators to give legal advice is a significant challenge with the result that "the lack of legal aid services for family law cases forced many litigants to continue without representation, placing facilitators and judicial officers in a difficult position." As a family law judge, I can admit that many times I assisted pro se litigants with some legal advice when their paperwork was procedurally correct through the assistance of the facilitator but their parenting plan or property matters were significantly inappropriate. To do have not assisted such litigants would have been an injustice at worst and a subsequent modification at best.

There have been significant numbers of studies and substantial material available prior to the Practice of Law Board undertaking the mission submitted to us by this Court. We not only had such information but also the board has had first hand involvement with those who engage in the unlawful practice of law. These persons and entities are unregulated, untrained and responsible to no one. They prey on innocent and vulnerable individuals who many times do not know they are being victimized. Many are reluctant to come forward and file a complaint with our board. Many are in ethnic communities or otherwise disadvantaged in ways that limit their ability and willingness to remedy their having been victimized.

We have publicly worked on this proposal for more than seven years, held at least six public hearings at various locations around the state, made dozens of presentations to any group that invited us or was willing to listen including at least four presentations at the Access to Justice conferences. There were two full issues of the Washington State Bar News devoted to this issue and at least three list-serve requests for comments to all members of the Washington State Bar Association. This matter has been fully debated on at least two occasions by the Board of Governors of the bar association. While this rule is likely not perfect, the Practice of Law Board has had virtually no suggestions on how to improve it other than requests to not propose it at all.

Based on the information available and my personal experiences, I conclude that this rule should be adopted. I have come to the conclusion, as this Court did when it adopted GR 25 that non-lawyers have a role to play in providing legal services. To argue that lawyers alone can do so is to argue against reality. Non-lawyer legal practice is a fact. It is my opinion that if the courts and the bar association do not take immediate and significant action to fulfill this societal

need, it will be done by others. If we do not act, we, who are best trained and able to provide professional expertise, will be sideline observers. I urge the adoption of APR 28.

Very truly yours,

Paul A. Bastine

Cc: Chief Justice Gerry L. Alexander  
Justice Tom Chambers  
Justice Mary E. Fairhurst  
Justice James M Johnson  
Justice Barbara Madsen  
Justice Susan Owens  
Justice Richard B. Sanders  
Justice Debra L. Stephens  
Email copies to members of the Practice of Law Board