

# CROSSLAND LAW OFFICE

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April 2, 2009

FILE NUMBER

Chief Justice Gerry Alexander  
Associate Justice Charles Johnson  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

Re: Apr 28 – Legal Technician Rule

Dear Supreme Court Justices,

I am writing to you regarding the proposed Legal Technician Rule (LTR). One of my greatest concerns is that the discussion has become so narrowly focused that we have lost sight of the bigger picture, particularly in light of where this discussion began and where it is designed to head.

The purpose for the creation of GRs 24 and 25 was to deal with the two-pronged and very profound issues of:

- 1) the unauthorized practice of law and all of the problems created by untrained, unregulated legal service providers who prey upon unsuspecting consumers of legal services; and,
- 2) the access to justice issue clearly framed by this Court's Civil Legal Needs Study establishing that a very significant population (poor and working poor) are disenfranchised and not able to navigate our wonderful legal system.

Unfortunately, the discussion has become mired in whether it is appropriate to allow the LTR to be applied to the area of family law.

The LTR was conceived out of GR 25 wherein this Court determined it was vital to find ways in which non-lawyers could be authorized to provide legal services to those unable to afford legal services on the following conditions:

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(A) access to affordable and reliable legal and law-related services consistent with protection of the public will be enhanced by permitting non-lawyers to engage in the defined activities set forth in the recommendation;

(B) the defined activities outlined in the recommendation can be reasonably and competently provided by skilled and trained non-lawyers;

(C) if the public interest requires regulation under authority of the Supreme Court, such regulation is tailored to promote access to affordable legal and law-related services while ensuring that those whose important rights are at stake can reasonably rely on the quality, skill and ability of those non-lawyers who will provide such services;

(D) to the extent that the activities authorized will involve the handling of client trust funds, provision has been made to ensure that such funds are handled in a manner consistent with RPC 1.14 and APR 12.1, including the requirement that such funds be placed in interest bearing accounts, with interest paid to the Legal Foundation of Washington; and

(E) the costs of regulation, if any, can be effectively underwritten within the context of the proposed regulatory regime.

The purpose of the LTR was to replace unauthorized, unqualified and unregulated legal service providers with authorized, qualified and regulated legal service providers. There is no doubt (nor has there been for half a century or more) unauthorized practice of law exists and poses a significant problem for the consumers of legal services. Creating a system by which legal service providers can be trained and regulated not only creates a system by which the legal services providers have structure but, more importantly, the consumers have a system from which they can receive legal services from a credible legal service provider.

An additional focus of the LTR is to provide access to affordable legal services to a significant portion of the consuming public, that is, for the most part, without access to the legal system. The LTR is not designed to deal only with family law issues. It is designed to apply to a variety of practice areas the Court may, from time to time, find appropriate. Family law was simply the first area chosen largely because the Court found that a significant portion of the poor and working poor population is not having their legal needs met in this area.

I would also call the Court's attention to the fact that when we began this effort, a mere eight years ago, the economy was in much better shape. Given the present state of the economy, the need for the LTR is greater now than at any time since our work began. A growing population is unable to access mainstream lawyers who are priced well beyond its reach. Frankly, I don't think I could afford me.

It is incumbent upon this Court to follow through with the mission it began with the adoption of GR 25. The Court has over the last 30 years created exceptions in which the Court has ordered and authorized the practice of law by non-lawyers. In none of those instances did the Court take the next step of making sure that the non-lawyers who it authorized to practice

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law were trained, qualified and regulated. The LTR provides a framework for non-lawyers who the Court may authorize to practice law to be trained, qualified and regulated. In doing so the Court, the sole guardian of the delivery of legal services, will provide the underrepresented public with the seal of approval that the legal services it seeks will meet a certain minimum standard approved by the Court.

It is imperative for the Court to step back from the minutia of the arguments over the LTR, and more significantly whether the LTR is appropriate in the family law area, and exercise some philosophical and long range thoughts about the long-term effect of how legal services will be provided in the future. The historical model of having lawyers in law offices into which clients seek to purchase legal services will simply not work for many. It is not working now. We know:

- a significant portion of the public cannot afford legal services delivered by that model
- legal services provided by untrained, unqualified and unregulated service providers are an epidemic and will expand unabated unless the Court takes measures to reign it in
- the WSBA is not exercising any significant leadership to meet these very significant and growing needs
- the Court is solely charged with regulation of the practice of law
- the consuming and underrepresented public has a right to look to the Court to provide affordable access to legal services upon which the public can rely
- the Court can adopt the LTR and see if it works. If it does not work to the Court's satisfaction the Court can modify the LTR or repeal the LTR. To not adopt the LTR and to do nothing is unconscionable.

It has been 8 years since the adoption of GR 25. It has been three years since the first version of this proposed LTR was offered to the Court and the WSBA. It has been over a year since the Court asked for public comment regarding the LTR from the WSBA and other affected groups and entities.

On behalf of the Practice of Law Board I urge you to pass the Legal Technician Rule and allow the Practice of Law Board to begin the implementation of the Rule. You will become leaders in the Nation and will provide the opportunity for much needed legal services for low income citizens of the State of Washington.

Sincerely,



Stephen R. Crossland  
Chair of the  
Practice of Law Board

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cc Justice Barbara A. Madsen  
Justice Richard B. Sanders  
Justice Tom Chambers  
Justice Susan J. Owens  
Justice Mary E. Fairhurst  
Justice James M. Johnson  
Justice Debra L. Stephens

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