Family Law Section

Family Law Section of the Washington State Bar Association

April 28, 2009

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

Re: Proposed Rule APR 28, Legal Technicians:

Dear Justice Johnson:

The WSBA Family Law Section's Executive Committee (FLEC), on behalf of our members, opposes, and respectfully requests that the Supreme Court resoundingly reject, in the strongest possible terms, the APR 28 proposals by the Practice of Law Board (POLB) for implementation of a legal technician program, via pilot project or otherwise. We believe this rule is ill conceived and that it will not ameliorate any of the issues associated with access to justice.

A letter recently letter posted on the Court's website in support of the legal technician proposal from a member of the POLB stated that "While this rule is likely not perfect, the Practice of Law Board has had virtually no suggestions on how to improve it other that requests to not propose it at all." This statement is simply untrue.

Stakeholder representatives that included FLEC were excluded from the development process of the proposed rule. Only after the POLB's presentation of the proposed rule to the WSBA Board of Governors in March 2006 were we invited to participate in discussions of the proposed rule and then for only a brief period between April and August 2006. While we, the stakeholders, had several suggestions to offer to improve the proposal or to provide alternate means of providing non-lawyer legal services, we were informed at that time that not a single word of the proposed would be changed as a result of the discussion sessions. In addition, the stakeholder representatives attempted to suggest creative, alternative means of providing affordable legal services to those identified in the 2003 Civil Legal Needs Study as most in need. Again, however, all such suggestions were ignored.

The issue of access to justice has been a concern for nearly two decades. APR 28 does not provide a viable solution to the concerns raised in the Civil Legal Needs Study nor to issues associated with barriers to access to justice.

In the area of family law, one of the first groups to take a serious look at appropriate steps to take to address the needs of persons unable to afford counsel and to promote access to the courts was the Domestic Relations Task Force established by the WSBA Board of Governors in February 1990.

Chair's Address: 427 Douglas Street, Wenatchee, WA 98801 (509) 663-8100; fax (509) 663-6165

I. Better Alternatives

- **Courthouse Facilitator Program**

Like access to justice, the concept of limited licensure of paralegals is also not new to the State of Washington. In February 1991 the WSBA Domestic Relations Task Force submitted its report to the WSBA Board of Governors. That task force unanimously concluded that while such proposals are advanced to help address the unmet legal needs of the indigent, the case for limited licensure of paralegals had not been made. They went on to conclude that, in the area of family law, limited licensure would provide very little assistance in the area of contested cases which is the principal area of need. They went on to conclude that "The difficulty of enforcing quality and ethical standards is substantial. Family law is notoriously productive of malpractice claims and complaints to the bar association; it is not the area one would pick to permit laypersons to begin practicing law." They supported the establishment of a Courthouse Facilitator program to assist pro se litigants in navigating through the system by helping them obtain the correct forms, telling them how to file, serve, note, and confirm motions, doing child support calculations, checking that all necessary pleadings and other documents had been completed and filed, and serving as a referral agency and clearinghouse for other services.

In 1993 the legislature passed what is now RCW 26.12.240 (amended in 2005) that authorized each county to establish a Courthouse Facilitator program to provide basic services to pro se litigants in the area of family law. It took another nine years before the Court approved GR27 which lays the framework for the Courthouse Facilitator program.

Some proponents of the legal technician rule have been rumored to say that the protestations from the legal community regarding this rule are the same as those from the days when the Courthouse Facilitator program was looking for support. The fact is that the WSBA Family Law Section and the WSBA Board of Governors supported the Courthouse Facilitator rule – and still do.

Another incorrect observation often made in comparing the proposed APR 28 to the Courthouse Facilitator program is the notion that the Courthouse Facilitator program is operating successfully and needs no further support. Another fallacy. Many counties across the state have either no facilitator program whatsoever or have a program that is allowed to operate only under severely restricted conditions; i.e. staffed with less than 1.0 FTE and some with less than 0.25 FTE. Efforts to support and expand the Courthouse Facilitator program in every county have been put on hold due to a number of reasons including but not limited to financial limitations, disputes between agencies, dissemination of misinformation, and the fear of the potential impact of a legal technician rule on the future viability of the Courthouse Facilitator program.

Contrary to the claims of the Practice of Law Board, the Legal Document Preparer programs established in California and Arizona far more resemble our Courthouse Facilitator program than what is currently being proposed for legal technicians in that the incumbents provide the same type of assistance as Courthouse Facilitators without being authorized to give legal advice, participate in negotiations, or appear in court to advocate for litigants. In addition, the web-based legal services ventures often cited by the POLB are more akin to document preparers and limit their services to uncontested or default proceedings.

The WSBA Family Law Section strongly supports our Courthouse Facilitator programs and have assisted with facilitator training and education as well as financial support through scholarships and grants to facilitators who otherwise could not afford to attend training. Unlike any proposed legal technician, our Courthouse Facilitators are on the front lines helping those in need at the courthouses everyday; without any profit-making objectives and without choosing one party over the other in any case.

As one suggestion to the Practice of Law Board, we urged them to refocus their efforts and to support the revitalization and building up and expanding the Courthouse Facilitator program statewide. They have thus far declined.

- **Civil Legal Services Programs including GAAP and Individual Pro Bono and/or "Low Bono" Services**

In addition, the WSBA Family Law Section supports the various civil legal services programs throughout the state. These include, but are not limited to, GAAP, the Northwest Justice Project offices, Columbia Legal Services, and the nineteen Volunteer Pro Bono programs across the state. Each of these programs offer affordable legal and law-related services from attorneys to a wide range of citizens who fall between the category of being indigent to those within 200% of the poverty guidelines.

We also have supported a broader notion of pro bono services by individual attorneys in their respective fields of expertise. For those who would not or cannot donate of their time, we have supported the option of a contribution of financial support in lieu of personal time contributions. Such funds could be used to expand Volunteer Pro Bono and GAAP programs that so desperately need money to continue with their good work in family law as well as many other areas of civil practice. In addition, while they cannot afford to do so on a full-time basis, many private attorneys report a willingness or current practice of providing their services at greatly reduced hourly rates to a certain percentage of their clientele as a public service; i.e. a growing concept known as "low" bono services.

In these current economic times, we believe the focus of the legal community should be on supporting and improving existing programs rather than taking from those programs to fund a dubious experiment that uses our citizens as its guinea pig. It is our position that the public – especially those who are most in need – would be better served by the Court and others supporting existing programs designed to help our low income citizenry; i.e. programs such as GAAP and the Northwest Justice Project as well as expanding the role of and funding for Courthouse Facilitator programs.

Despite the fact that the limited funds available to the WSBA are already severely strained, the WSBA has continued to provide support to various programs providing civil legal services to the citizens of this State including but not limited to their recent approval of funds for the Housing Initiative to assist individuals with mortgage foreclosure issues. In excess of $600,000 has already been expended by the POLB – all of which has been funded from the dues of WSBA members. The WSBA has estimated that it will cost in excess of an additional $700,000 just to fund any legal technician pilot project. This would seriously impact the ability of the WSBA to support existing civil legal services programs including GAAP, the Northwest Justice Project, the Legal Foundation of Washington, and others.

- **Simplified Mandatory Forms, Uniform Local Court Rules, and Unbundled Legal Services**

Another means of providing meaningful access to justice to pro se litigants has been our on-going concern regarding the proliferation of mandatory forms and local court rules, both of ever-increasing complexity and length. The WSBA Family Law Section continues to actively participate on the Court Forms Committee as well as the WSBA Local Court Rules Task Force in an effort to bring about change that will provide greater ease for all litigants in bringing their issues properly before the court for family law cases.

With the passage of rules authorizing lawyers to provide unbundled legal services, clients who could not otherwise afford an attorney to handle their entire case can now hire an attorney to handle only discrete segments of their case such as oral argument on a motion for temporary orders. Contrary to anecdotal reports that attorneys do not want to perform unbundled legal services, our experience has been quite the opposite. The problem is not an unwillingness on the part of attorneys but rather the fear of potential bar complaints. Greater education – both

for lawyers and for the public – on the option and benefits of utilizing unbundled legal services could potentially open the door to much greater utilization of this option.

II. Problems with the Legal Technician Proposal

The proposed rule has been submitted under the guise of being a means of solving the problem of access to justice for pro se litigants who cannot afford a lawyer. However, contrary to this claim, the proposal for legal technicians does not meet the needs identified in the 2003 Civil Legal Needs Study and rather than being a means to ameliorate the problem of access to justice will instead only serve to further dilute resources currently available that need greater support from the Court, the Bar, and the Legislature.

Some, certainly not all, of our concerns regarding this proposed rule are provided below for your consideration.

- **Affordability to the End User**

The proposed rule dose not include financial need as a component of or as an underlying qualifying factor for providing legal services by legal technicians. Those most in need of access to legal services in this state, our indigent and low-income citizens, would have to compete for the services of legal technicians on the same basis as individuals in the middle to high-income categories.

While the educational qualifications, and thus the education costs, of legal technicians would clearly be less than that required of a lawyer, the costs of running a business would not necessarily be any less than that of a lawyer.

One of the charges presented to the POLB by the WSBA Board of Governors in March 2006 was to return to that body with meaningful estimates of the costs of a pilot project as well as economic viability data to show the cost of maintaining an office as a legal technician and how much such technicians would have to charge for their services. This did not occur.

Like any other business, legal technicians would have to pay office rent and salaries, buy supplies and equipment, and incur other expenses related to the operation of a business Requesting realistic estimates of these costs was not unreasonable. Moreover, having such economic data is absolutely necessary in order to determine the economic viability of the project.

There are no fee schedules, advisory or otherwise, that would limit the rates charged by legal technicians. With the lack of limits on who the clientele would encompass and the cots of doing business being consistent with any attorney's practice, any suggestion of savings to litigants is illusory at best.

- **Pool of Candidates**

The pool of candidates the proponents suggest would fill the legal technician role consists of experienced paralegals. It must be presumed that the majority of these individuals are currently employed and are receiving salaries with benefits derived from their employers. The rate of pay for experienced paralegals varies from firm to firm, from rural to urban situations, and for other various reasons. However, it is well known that highly competent, experienced paralegals are well compensated. The question would be why would such an individual give up a lucrative position to start their own business, particularly to relocate to a rural area where the services would be most needed. The answer is simple – they would not.

The proponents often liken the proposed legal technician program with the LPO program and claim that the former will be self-supporting. Interestingly while the LPO program drew upwards of a hundred candidates each year, the most recently class of applicants consisted of only fifteen individuals. There is no reason to believe that a legal technician program would be self supporting.

In February 2009, the POLB attempted to put on a continuing legal education program at Seattle University for persons interested in the legal technician proposal. The program was cancelled due to a lack of interest!

Persons who are currently in the business of practicing law without a license are certainly unlikely to change their practice and become part of an "authorized" community of licensed non-lawyer practitioners.

- **Family Law Pilot Project Is Just The Beginning**

Although not mentioned in the rule submitted for comment, the POLB has recommended that a pilot project be undertaken with regard to legal technicians. They have selected family law as this pilot project's area of law. Despite this pilot project selection, it is clear from the record of the POLB meetings as well as correspondence submitted by Ms. Jeanne Dawes, a former POLB member, to the Court as a comment on APR 28, it is the intention of the POLB to expand the role of legal technicians to the areas of elder and landlord-tenant law. Most notably the POLB initially targeted family law, elder law, landlord-tenant, and immigration as the areas where they wanted to expand the work of legal technicians. The Elder Law Section and the National Academy of Elder Law Attorneys –Washington Chapter have each sent letters to POLB expressing their strong opposition to the proposed rule; a copy of their letters are attached for your information. In these and other instances, the concerns expressed by the opponents focus primarily on the potential harm to the public that would likely occur if non-lawyers were authorized to practice law. Ultimately, despite strong objections from the Family Law Section, the POLB chose family law for their pilot project.

Family law is one the most challenging areas of legal practice, balancing tlic skill of litigation with knowledge of the law, the psychology of clients going through one of the most stressful events of their lives, and developing the necessary financial acumen to make a practice thrive. Contrary to the misperception of some, family law is quite complex. Family law cases often involve issues regarding real estate, taxation, criminal law, bankruptcy, corporate or business matters, and so forth. Providing inaccurate or inadequate legal advice or services in family law cases can lead to long-term, disastrous results for the families of our state. Examples of a few of the numerous potential problematic outcomes include:

- loss of custody or contact with one's children,
- erroneous child support obligation calculations,
- inequitable or inaccurate allocation property and liabilities in dissolutions,
- misidentification of fathers,
- waiver of parentage challenges,
- lack of or inappropriate issuance of restraining or protective orders

For those who claim that lawyers oppose this proposed rule only to keep from losing income from these potential clients, they should be aware that the cost to the clients to correct most of these types of errors will far exceed the cost of doing them right the first time with the assistance of an experienced attorney. In many cases, there is no way, short of an extremely expensive appellate process, to correct such errors and in some cases, no means at all. Certainly we are concerned about legal technicians taking business away from our colleagues and in particular the young lawyers, many of whom are currently unemployed or underemployed and who are thus under ever increasing financial burdens, but our primary concern is for the client who will suffer far more greatly in the long run than had they hired an attorney at the outset. Yet while the proponents of this rule suggest that attorneys in opposition do so only because they are self-serving, the pool of these proponents includes many paralegals who are equally self-serving by supporting the proposal.

There are already areas where authorized legal services by non-lawyers are available in family law cases to assist pro se litigants; i.e. Courthouse Facilitators, Guardians Ad Litem, mediation services, domestic violence advocates and programs, LPOs, and legal interns.

- **False Sense of Security for the Public**

The POLB has indicated that approval of the proposed rule will significantly reduce the number of individuals currently providing unauthorized legal services and that the proposed rule will make it easier to prosecute future violators.

When the POLB has taken no steps since its eight year existence to prosecute even one non-lawyer who is practicing law without a license, it is inconceivable that they would now propose to legitimize such practices under the pretext that doing so would facilitate prosecutions in the future. A weary public cannot be expected to discern the difference between what was considered illegal yesterday versus an act that is suddenly authorized by the highest Court in this State.

- **The True Value of An Attorney in Litigation**

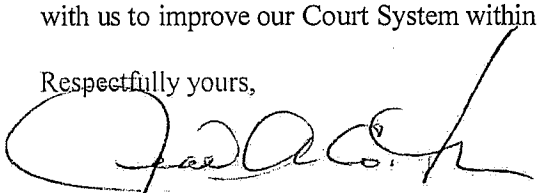
The true value of an attorney is not as a scrivener but rather as an advocate for the client. While a legal technician would be able to draft documents and give legal advice, the client would still be on their own in the courtroom and have to make their own legal arguments, examine witnesses, and be prepared to instruct the legal technician on the drafting of the court's oral orders.

The POLB has cited *King* v. *King,* 162 Wn.2d *378,* 174 P.3d 659 (2007) as a justification for approval of its legal technician rule. The problem in King was not that Ms. King required assistance with the preparation of pleadings but rather that she had to advocate for herself in the courtroom during the trial proceedings. She had had the assistance of counsel at all phases of her suit up to that point. Had she utilized a legal technician's services, she would have been in no better position than that in which she found herself and for which formed the basis of her unsuccessful appeal.

A public that is already overwhelmed with a complex legal system cannot be expected to understand that a legal technician is not the same as an attorney nor that the litigant will be on their own in court when they have opted to use the services of a legal technician rather than those of an attorney.

In summary and in closing, the WSBA Family Law Section Executive Committee joins with the members of the WSBA Board of Governors who have twice rejected the proposed legal technician rule, along with the WSBA Young Lawyers Division, Washington State Association for Justice (formerly WSTLA), the Washington Defense Trial Lawyers, the WSBA Elder Law Section, the Washington Chapter of the National Association of Elderly Law Attorneys, the WSBA Litigation Section, the Washington Chapter of American Immigration Lawyers, and others who oppose this ill-conceived proposed rule. We respectfully urge that the Court reject this rule and work with us to improve our Court System within the framework of existing resources.

Respectfully yours,



JEAN A. COTTON
Outgoing Chair on behalf of
WSBA Family Law Executive Committee

enc.

cc: Chief Justice Gerry L. Alexander
Justice Tom Chambers
Justice Mary E. Fairhurst
Justice James Johnson
Justice Barbara Madsen
Justice Susan Owens
Justice Richard B. Sanders
Justice Debra L. Stephens
Ms. Camilla Faulk - via email
Ms. Paula Littlewood, WSBA Executive Director – via email
FLEC – via email

Elder Law Section

of the Washington State Bar Association

October 5, 2007

Stephen Crossland, Chair
Practice of Law Board
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539

Re: Legal technicians practicing elder law

Dear Mr. Crossland:

The Elder Law Section of the Washington State Bar Association submits this letter to the Practice of Law Board as comment on the proposed rule and regulations for legal technicians certified in elder law.[1] The Elder Law Section ("Section") is concerned that the proposal, in its current configuration, may cause damage to the public, and erode public confidence in the administration of justice.

Generally, the Section supports the "expanded access to affordable and reliable legal and law-related services", and expansion of "public confidence in the administration of justice", as provided in GR 25(a). To this aim, the Section sponsored the recent Public Guardianship Law which was signed into law by Governor Gregoire in 2007, and worked closely with the Legislature on the 2007 changes to the Vulnerable Adult Protection Act. The Section regularly engages in guardianship and elder law issues raised by the public, legislators, and members of the bar, and has made over $140,000 in grants during the past 4 years primarily to LAW Fund (a program focused on providing legal services to those who cannot afford such services), and to other legal assistance programs for the under served in Washington through its internal grant program. The Section believes these grants have helped provide reliable legal and law-related services to those in need.

This letter reviews the Elder Law Subcommittee proposal, and addresses the various practice areas individually in which non attorneys are proposed to serve as legal technicians.

Final Report of the Elder Law Subcommittee

The Elder Law Subcommittee of the Practice of Law Board recommends that

1 Neither the Practice of Law Board nor its Elder Law Subcommittee sought input from the Elder Law Section of the WSBA. The executive committee of the Elder Law Section of the WSBA became aware of the proposed rule in September 2007

legal technicians be authorized to perform tasks in the areas of 1) guardianship, 2) estate planning, 3) probate, and 4) vulnerable adult proceedings under the Vulnerable Adult Protection Act. Additionally, a legal technician would be allowed to distribute elder law "informational material", and

> Assist client with forms that may be distributed by health care providers, the government, financial institutions, and insurance companies related to estate planning, guardianship and probate matters (e.g. beneficiary designation forms, account ownership designation forms, transfer of ownership in personal property forms, and applications for benefits).

Final Report of Elder Law Subcommittee, page 2. The report states that some of these services are presently being performed by non-lawyers in "hospitals, senior centers and homes." Costs are projected to be lower "because the practice will use preprinted forms, thus saving the time of drafting and producing the necessary documents," and the legal technician fees will be "much lower than the fees lawyers charge for the same service."

The subcommittee concludes that the legal technicians "could provide a lower cost option for pro se litigants," and that this would "create greater access to qualified legal services for lower income individuals."

Analysis of Areas of Law Suggested by Subcommittee

1. Guardianship

Guardianship law is an exacting and complicated practice area not suitable for non-attorney legal technicians. Many guardianship attorneys themselves are specialists, commonly receiving referrals from attorneys in other practice areas who do not wish to venture into an unknown area of law. The presence of guardianship forms does not simplify the practice of guardianship law. Forms do not answer the larger questions of whether a limited or full guardianship should be brought, whether the petition should be for guardianship of the estate, of the person or both, who the guardian should be, or how to assess the motives of the petitioner. Guardianships may initially appear to be uncontested, but become contested in part because of the approach taken by the petitioner in his or her petition, or because of interactions with family members and the guardian ad litem, or in the details of the proposed order. Guardianship attorneys learn to assess many factors to shape the guardianship remedy, whether it be a full guardianship or some other approach to protect the alleged incapacitated person.

The complexity of guardianships is also due to a plethora of complex tax, Medicaid, and management of community property issues, each of which takes a broad understanding of diverse areas of the law at the earliest petition stage.

Guardianships involve constitutional issues. Just as in criminal proceedings, an alleged incapacitated person in a guardianship is guaranteed the right to counsel and a jury trial. At stake is the person's right to contract, marry, divorce, give assets to whom one chooses, choose whether to live or die, vote, buy a car, or do even the simplest things we all take for granted. Unlike incarceration which usually leads to release, however, an incapacitated person in a guardianship may never be "released." Our legal system would never empower legal technicians with an Associates of Arts Degree or Paralegal Certificate to fill out charging papers against a felon in a criminal proceeding. And yet, legal technicians are proposed to be empowered to "fill out" petitions for guardianship, which involve comparable loss of rights for the person who is alleged to be incapacitated.

Often the best solution is a settlement crafted by the parties' counsel at the time of the guardianship hearing. It is critical for the attorney to understand the many ways in which a guardianship may (or must) be avoided by utilizing alternatives to guardianship such as durable powers of attorney, trusts, or management of community property by a spouse, all of which may be addressed in a settlement. Unnecessary guardianships are costly not just to the alleged incapacitated person, but to the courts. A botched petition can and often does result in attorney fees being assessed against the petitioner, the AIP, or others (including, presumably, legal technicians). *See* RCW 11.96A.150.

A proposed guardianship order must be prepared by a petitioner, but cannot be adequately drafted until the guardian ad litem and medical reports have been filed. The order should be drafted by an attorney because it involves legal judgment – the order appointing the guardian specifies which individual rights are taken away and which retained, sets the amount of bond, lists the many parameters of the guardian's duties, and responds to the GAL's recommendations, each of which involves critical legal judgment for a successful guardianship.

The initiation of guardianships has never been an area of the law performed by non-lawyers in "hospitals, senior centers and homes", as one might believe from the subcommittee report. Hospitals and senior centers on occasion hire attorneys for guardianship matters where no family member is willing to petition, but the Section is not familiar with hospitals and senior centers engaging in the unauthorized practice of guardianship law.

If there are even modest assets, access to justice is not a problem – the petitioner's attorney is normally paid out of the incapacitated person's assets by

court order once the guardianship is established, and access to justice is usually not an issue. A petition prepared by attorney's supervised staff can be completed at paralegal rates, *with* attorney supervision. For persons with assets under $3,000, court filing fees are waived by statute, and the recently passed Public Guardianship Law is designed to provide guardianship services for many persons who do not otherwise have the assets for an attorney.

As seen in local Seattle papers over the past few years, guardianship is a hot topic in the press. The public is attuned to its misapplications, as is the Legislature, both of which want the public properly and judiciously served in guardianships. In the past year, the Elder Law Section of the WSBA formed its own committee to look into and address perceived guardianship problems and issues. As a result of these current issues, no has proposed that guardianship petitions be more easily brought by use of non attorneys.

For these reasons and the protection of the public, the Section believes that guardianship is not an area of law in which non-attorneys should practice law.

2. Estate Planning

The subcommittee report recommends estate planning in a number of areas. The Section agrees that non attorney legal technicians should be allowed to practice in the area of living wills, or Directive of Physicians, as they are often prepared in "hospitals, senior centers and homes", and are needed by persons who may not have other estate planning documents, or lack the need for other documents.

The other estate planning documents proposed for legal technicians (wills, durable powers of attorney and community property agreements), however, all require an attorney's understanding of many issues, such as various levels of competency needed; the possibility of undue influence; community property law; and the possibility of resolution of disputes under the Trust and Estate Dispute Resolution Act (TEDRA).

a. Durable powers of attorney. Durable powers of attorney improperly drafted have serious consequences for the principal. Powers typically conveyed include full access to 100% of the principal's assets, and for this reason are a favorite vehicle for exploiters of elders and vulnerable persons. Powers of attorney inappropriately given to persons who abuse their fiduciary role is a problem in Washington which is not best addressed (and may in fact be aggravated) by non attorneys filling in durable power of attorney "forms". The public sometimes misperceives powers of attorney as "boilerplate" documents. Attorneys who practice in the area often grapple with gifting issues, when a power of attorney should come

into effect, who should serve as the attorney-in-fact, and whether certain individuals should be excluded on the document as allowed under RCW 11.94.

Additionally, powers of attorney often unknowingly or mistakenly create powers of appointment in the agent. For example, a power of attorney may grant unlimited gifting powers to the agent, which, if the agent dies, results in the principal's assets being included in the agent's estate for tax purposes. This is a commonly misunderstood area of the law – legal technicians, with limited training in the complex area of income or estate tax, cannot be expected to deal with the issue. Gifting language often either waives statutory protections against the creation of a power of appointment, or adopts an IRS "ascertainable standard" as to the agent, which agents rarely understand or follow and which can result in failed Medicaid plans and unexpected taxation. This is not a "simple" issue to be drafted around in a form, but rather takes a fundamental knowledge of tax law.

b. Community property agreements. Similarly, community property agreements should not be drafted by non attorneys. They are far less commonly used than they once were, in part because of the ramifications community property agreements have on Medicaid eligibility, and because a surviving spouse often has no need to probate their deceased spouse's estate. Community property agreements can have terrible consequences where a three prong agreement turns separate property into community property at the expense of a divorcing spouse, for example, or where a spouse loses Medicaid eligibility at the well spouse's death. Community property agreements should be drafted sparingly by attorneys because of unforeseen consequences, and should never be drafted by non attorneys.

c. Basic Wills. Drafting wills is an obvious area of complexity and legal danger. Even "basic wills" are contested. All wills, basic or not, are complicated by the motives of persons who attempt to influence testators. Competency of the testator is often at issue. Clients may approach attorneys seeking a "simple will," but what they really need is something more complex such as a testamentary special needs trust for a disabled beneficiary, for example, or another trust where a beneficiary cannot or should not receive assets directly. Sometimes, an attorney recommends a doctor's report and specialized execution if a will contest is possible. Credit shelter trusts may be needed in case of an expected inheritance, or the earning expectations of the testators.

Case books are filled with litigation over wills. A legal technician cannot be expected to know, and keep up with, the many obvious and subtle legal issues which arise in drafting and executing even "basic" wills.

d. Alternative sources of forms. Estate planning documents are available from attorneys who have signed up with AARP, where wills are available for $75 and powers of attorney for less than $50, in each case with consultation from an attorney. Additionally, the rules of intestacy provide a backup "will" which disposes of property to family members in the absence of a will — often an acceptable option for individuals whose testamentary desires are the same as the rules of intestacy.

Except for helping a pro se with health care directives, estate planning is not an area where non attorneys should practice law, as the issues are complex and vast.

3. Probate

The subcommittee report recommends broad areas of probate for non attorneys to practice law, including "advising clients as to whether a probate is necessary," preparing creditor claims, settling creditor claims for estates passing without probate, petitioning to open safe deposit boxes, petitioning for orders adjudicating testacy or intestacy and heirship and "related notices", and "preparation of Court-approved forms related to probate and nonprobate proceedings."

As a threshold matter, the Section questions whether probate should be considered an area where persons lack access to legal services. Solvent estates (and thus those open to legal technicians) almost always have access to competent attorney representation because of the assets. Surviving spouses often have no need to probate their spouse's estate, except to fund a credit shelter trust for estate tax purposes, or other trust, in which case access is not an issue because of the available assets. Similarly, where no spouse is involved, a solvent estate can generally always pay attorney fees. Those estates which cannot afford attorney fees are often close to insolvency, in which case they cannot be assisted by legal technicians. Attorney fees for Washington probates are not onerous because of Washington's streamlined probate.

Probates often involve delicate interactions with family members and beneficiaries by the personal representative and his or her attorney. Without a knowledge of TEDRA and the ability to seek court authority or direction as the need arises, probates can become unnecessarily hotly contested, to the detriment of everyone.

Considering the serious consequences of probate proceedings, the lack of an access to justice issue, and little evidence of unlawful practice of law, the Section does not believe that probate is an appropriate area for non attorney legal technicians.

4. Vulnerable Adult Protection Act

The Legislature recently authorized non attorneys to aid in preparation of Vulnerable Adult Protection Act petitions. The Section agrees with the subcommittee report that non attorneys should be allowed to fill in the forms as allowed under the statute. The Administrative Office of the Courts has prepared standardized forms and instructions as of October 2, 2007, which, unlike other areas of practice, must be used throughout the state by anyone filing pleadings.

5. Assistance with "Preprinted Information Material"

The subcommittee report contemplates assistance by legal technicians

> with forms that may be distributed by health care providers, the government, financial institutions, and insurance companies related to estate planning, guardianship and probate matters (e.g. beneficiary designation forms, account ownership designation forms, transfer of ownership in personal property forms, and applications for benefits).

As discussed elsewhere in this letter, preprinted forms do not fit all circumstances. Filling in a form often involves legal judgment which has long reaching and potentially deleterious effects. Generally, someone with considered judgment and experience should decide what part of any form is appropriate, and what needs to be changed. A simple example is beneficiary designation forms, which often defeat an estate plan in a will by removing the asset from the probate estate. In some cases, a beneficiary designation form will cause estate taxes where none are necessary, or disinherit a testamentary beneficiary.

To allow legal technicians to fill in forms just because forms exist makes little sense. None of this is simple because of the judgment and broad legal knowledge that must be brought to bear.

General Comments Concerning the Quality of Legal Services Provided

The Section is concerned about the welfare of the public and the quality of legal services that would be performed by non-attorneys. While such a program might provide some benefits to the public, it would be counter productive if those benefits are outweighed by the costs of increased disputes, malpractice claims or public disillusionment and harm. The following are general comments meant to give a broader perspective on issues raised by the proposal for non-attorneys to practice in the area of elder law.

1. Forms.

Forms have been touted as appropriate for legal technicians because forms are used in less complex areas of the law. This raises a misconception about forms. No one would say that tax, securities, or immigration law lacks complexity because of the existence of forms. While forms are currently available in the area of guardianship, and could be developed in estate planning and probate, forms themselves do not lessen the complexity of elder law. No form addresses the difficult questions of whether to bring a guardianship action in the first place. Forms cannot address the question of whether a simple will is the type of will needed, who the intestate heirs are and whether to name them all, or how to draft a residuary clause consistent with non probate dispositions. Similarly, although a form might be developed to initiate a probate, or to establish or deny a creditor claim in probate, no form can substitute for the analysis needed to determine the risks, opportunities, and legal questions inherent in these issues. Forms are "less expensive" (in the words of the subcommittee report) to the extent they are used without detailed legal analysis, without inquiry into the relevant facts of the client's circumstances, and without judgment that attorneys inevitably and ethically must bring to their use.

2. Complexity of "Elder Law"

"Elder law" is really just a conglomeration of traditional areas of the law which relate to each other. Estate planning, probate and guardianship have been practiced for many centuries. In the last 20 years, since the term "elder law" has come into being, the complexity of the underlying areas of the law have increased. For example, estate planning and probate are made more complex by:

- IRS rules, e.g., the ever-shifting federal credit exemption or the uncoupling of the State and Federal exemptions;
- Medicaid benefits, which rules and regulations are often in flux;
- Exploitation of seniors and vulnerable adults as adults live longer, well into years of diminished awareness and increased vulnerability;
- The need for trusts in many instances for different – and not so obvious – reasons; and
- A mobile citizenry with assets and family in more than one state or country.

"Elder law" is unavoidably complex. Such complexity has resulted in areas

of specialty in guardianship, estate planning and probate.

3. Need to Know Court System. To practice elder law well, one needs to be familiar with the court system, the manner in which cases are brought and disputes resolved, and the very real consequences when things go wrong. Legal technicians would suffer from a lack of knowledge of the advantages and disadvantages of court, which lies at the center of guardianship, estate planning and probate.

4. Complexity of Tax Law. The importance of tax law cannot be underestimated in elder law. It is not uncommon for elder law firms to seek to hire attorneys with an LLM in Taxation. A simple gift of property may result in unintended tax consequences unimagined by the elder or the legal technician, for example in a loss of the step-up in tax basis. A gift may or may not be appropriate, but the tax implications must be understood and clearly disclosed to the client. Similarly, the tax implications of powers of appointment must be understood and communicated to the client. The creation of a "simple" will, trust or community property agreement in a taxable estate can trigger taxes equal to half of the estate that exceeds the exemption.

5. Size of Estate. Nothing in the subcommittee's proposal limits access to persons of limited means. Some members of the public with substantial estates will certainly access legal technicians to save money in estate planning. If they do, and the technician is not a lawyer, unfortunate tax or other consequences may result. Similarly, solvent probate and guardianship estates face serious financial consequences if non attorneys are making initial decisions as to petitions and other pleadings without the full appreciation of the legal, tax and familial consequences. At the very least, there is no cost related or access to justice reason to make legal technicians available for reasonably solvent estates.

6. Recent Law and Revocable Living Trusts. In 2007, the Legislature prohibited non attorneys from drafting revocable living trusts. The law was sponsored by the Washington Attorney General, and was signed into law by Governor Gregoire in 2007. The law carves out no exception for persons of limited means or for "basic" revocable living trusts, rather, it draws a bright line prohibiting non attorneys from drafting any revocable living trust. Many of the same arguments against non attorneys drafting revocable living trusts are present in the proposal enabling legal technicians to practice estate planning.

7. Privacy. Anyone involved in estate planning, guardianship and probate has access to confidential information such as bank account and social security numbers, and, often, private family information. Medicaid involves access to similar information, as well as SSI, Medicaid and SSDI disability information. Medical reports are mandated in establishing guardianships, which reveal private medical records and diagnoses. For any court related proceeding, such as guardianships and probate, the attorney must be familiar with the current confidentiality rules and procedures, such as GR 15, 22 and 31, which are not always easy to comply with. Lawyers have an absolute duty to preserve such confidences, and can suffer severe sanctions if they fail to adhere to these standards, up to and including disbarment. Legal technicians, as non attorneys, have a dissimilar duty of confidentiality. Although a legal technician could lose their license, they could find work as a legal assistant or paralegal if they violate a confidence, for example. Lawyers, on the other hand, face disbarment and the loss of income and practice, and so have a considerably higher degree of sensitivity to the issues of privacy and confidentiality.

8. Solutions and Ideas. The Section agrees that access to the legal system is important, and unauthorized practice of law can be and will always be present as a problem to the bar. The solution is not to allow non attorney legal technicians to practice in the complex area of guardianship, estate planning, probate, and filling out a myriad of Medicaid, beneficiary and other critical forms. To the limited extent that access to the legal system is an issue in elder law, solutions may be crafted that include increased funding to LAW Fund or Columbia Legal Services, for example, and increased opportunities for pro bono and reduced rate services. For most families, these services are available and affordable. Perhaps an expansion of these opportunities is possible.

Most bar associations have pro bono programs. Legal services are accessible via bar run legal clinics such as The Center for Justice, Columbia Legal Services, and private legal clinics at senior centers and elsewhere. Every year attorneys report giving thousands of hours of pro bono work. Some of those pro bono hours may be redirected into programs that address the committee's concerns.

The difference between the Section's proposal and the proposal for legal technicians, is that pro bono work clinics and legal aid programs provide access to lawyers. Each law school in the State of Washington provides legal services to those in need by students. The students are college graduates attending law school, directly supervised by a lawyer qualified to practice in these areas who is able to

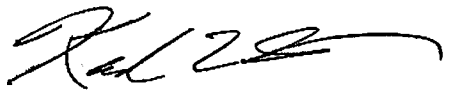
both guide the student, and provide experienced judgment in these complex areas.

Further, the supervising lawyer is liable for damages caused by errors or omissions, and will be able to pay any judgments obtained. Elder law attorneys often carry $2,000,000 in malpractice insurance. Although the legal technician proposal speaks to liability, no present malpractice insurance is available for legal technicians, nor might there ever be such insurance in sufficiently affordable and substantial amounts. Given the potential liability, it is unlikely that a seriously harmed client could be made whole.

The Section believes that attorney-supervised legal technicians may be able to fill some of the void perceived by the Committee. Without direct attorney supervision, however, the consequences of the practice of complex law by non lawyers can open the door to unwitting abuse, financial exploitation, unnecessary taxation and unintended consequences well beyond any possible benefits.

The Section looks forward to hearing from the Practice of Law Board or its Elder Law Sub Committee to answer questions or address any issue.

Sincerely yours,



Karl L. Flaccus
Chair of the Elder Law Section
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National Academy of Elder Law Attorneys

Washington Chapter [IRS § 501C(6)]

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October 12, 2007

Stephen Crossland, Chair
Practice of Law Board
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539

Re: Proposal to allow legal technicians to practice elder law

Dear Mr. Crossland:

The Washington Chapter of the National Academy of Elder Law Attorneys asks that you consider the following comments regarding a proposal by the Practice of Law Board to allow non-lawyer legal technicians to practice the legal specialty of elder law.

The National Academy of Elder Law Attorneys is a non-profit association of attorneys who devote a significant part of their practice to working with older clients and their families. The Academy was established in 1987 to provide resources and assistance to attorneys who deal in the highly specialized issues which its members encounter on a daily basis in providing legal services to elderly clients and those with special needs.

The Washington Chapter of the National Academy of Elder Law Attorneys consists of members who not only practice elder law, but are also especially aware of and concerned with the special issues pertaining to the practice of elder law in Washington state. Our members are very concerned with access to justice issues and have participated in many efforts to ensure reasonable access to appropriate legal advice and services. In addition, the great majority of our members provide a significant amount of pro bono and reduced fee services to the public.

Our organization agrees with the general proposition that the public should have expanded access to "affordable and reliable legal and law-related services" as provided in General Rule 25(a). Our members have been very active in the public guardianship law which was adopted this year, the vulnerable adult protection act, and the changes to that act that were adopted this year, as well as a number of changes to the regulatory environment which have greatly benefited the citizens of the State of Washington.

We believe the motives of the Practice of Law Board in seeking to provide low-cost services to the public are well-intentioned. However, had we been consulted, which we were not, we would have provided additional comment regarding the specialized nature of elder law services and the significant public harm which will result if non-lawyer legal technicians are allowed to practice elder law in the areas that your Elder Law Subcommittee has identified.

The following comments are not meant to be comprehensive, but rather illustrative of the significant difficulties with the Elder Law Subcommittee's final report and proposal.

A. ESTATE PLANNING

The Elder Law Subcommittee report suggests that non-lawyers should be able to draft wills, durable powers of attorney, community property agreements, and presumably numerous other estate planning documents. Such a position presupposes that there can be "simple" form-based solutions to the needs of many elderly persons and their families. While at first blush, such a presupposition may seem reasonable, it is, unfortunately, totally untrue. Senior citizens and their families face an array of complex legal and regulatory hurdles to accomplish any reasonable estate planning. Such persons must consider potential tax implications, planning for incapacity, adequate protection of the elder person's personal and financial status, the possible need for long-term care, Medicaid regulations, Medicare regulations, and numerous other issues. To add to this complexity, the rules and regulations change, sometimes on a monthly or even weekly basis. Untrained non-lawyer legal technicians would have little hope of understanding the complex needs of modern senior citizens and even less hope of being able to identify and properly interpret the regulations which would apply to their "clients."

Consider first the extraordinary difficulty which is often encountered in determining who the "client" is and what the capacity of the "client" may be. Capacity issues are legion in the law and have led to innumerable will contests and other litigation. The capacity necessary to make a will is different from the capacity to make a power of attorney, and arguably different from the capacity to create a health care directive. Moreover, many, if not most, elderly persons are receiving assistance from a family member or a third party in their later years. Therefore, the issue of undue influence must always be examined and balanced against the apparent capacity of the "client."

Looking at specific documents, please consider the myth of the "simple will." While some wills are short, the planning necessary to draft an appropriate and adequate will is never simple. This is especially true for older Washington citizens with modest assets. Consider an elderly couple who own a home and have a nest egg of perhaps $100,000. A legal technician would doubtless be tempted to write a simple "I Love You" will in which each spouse leaves all of his or her assets to the surviving spouse. However, if one spouse becomes ill and enters a nursing home, the end result will likely be that all of the assets will be expended on nursing home care or to satisfy Medicaid liens, and in addition, will result in a lower quality of life for both spouses. An elder law attorney, on the other hand, can provide solutions, such as a testamentary spousal sole benefit special needs trust, consideration of any caretaker children, the potential for transfers to trusts for disabled family members, and a multitude of other potential methods by which assets can be conserved and quality of life enhanced. Such advanced planning cannot be provided through filling out "forms," and is far beyond the ability of persons who might be licensed as "legal technicians."

It is troubling that the Practice of Law Board's proposal says nothing about the financial status of "clients" legal technicians would work with. Persons with potentially taxable estates need significant advice regarding tax strategies. We do not believe that legal technicians could adequately draft credit shelter trusts, disclaimer trusts, charitable remainder trusts, life insurance trusts, or any of the vast array of tax planning and avoidance documents which are used to meet the needs of clients with large estates.

Durable powers of attorney are even more problematic than wills. The legislature was so concerned with the potential for abuse of powers of attorney that it imposed strict new guidelines in 2001 and created specific provisions at RCW Chapter 11.94 regarding petitions for interpretation of powers of attorney and other remedies. A legal technician could not be expected to adequately assess the effect of the new rules or the numerous potential disasters which will result if a power of attorney is not carefully drafted to include the specific provisions necessary to meet the needs of an individual client. Powers of appointment, gifting in order to qualify for Medicaid, power over community property, payment of taxes, creation of trusts, ability to make changes of beneficiary on non-probate assets, and transfers of real estate are but a few of the myriad issues that must be considered in drafting a power of attorney. All of these issues require formal legal training and expertise and sometimes consultation with experts in various fields. A mistake in a power of attorney can dissipate an estate, lead to family disputes, cause unintentional taxation, and leave a "client" much worse off than would be the case if no document had been drafted at all.

The Subcommittee also suggests that legal technicians be able to draft community property agreements. While Washington does provide for the use of community property agreements to transfer all property to a surviving spouse, such agreements are fraught with difficulty. A "simple" community property agreement can easily result in complete loss of the estate if one spouse needs to qualify for Medicaid or other public entitlement benefits. Consideration must always be given to the family status of the "client" as well

as the potential for death, dissolution of marriage or disability. These considerations are far from simple and the risks associated with any community property agreement are vast. It seems inconceivable that a non-attorney legal technician would be able to assess the specific potential legal ramifications of the provisions of a community property agreement much less draft a document which did not risk substantial harm to the client.

B. PROBATE

The Subcommittee believes that legal technicians would be capable of "advising clients as to whether a probate is necessary," and take other actions to probate estates, petition for orders in probate cases, and other probate services.

As a first consideration, the legislature has recently raised the financial limit for use of an Affidavit of Successor to $100,000. Thus, if an otherwise probatable estate has probate assets of less than $100,000 (excluding life insurance and other beneficiary-designated instruments which may be far in excess of $100,000) a probate may now be avoided in many cases. Thus the need for probate in cases where the deceased was truly poor may be eliminated and the cost of any necessary legal services greatly reduced.

Furthermore, where there are significant assets, the issues regarding distribution are often complex. These issues can have both legal and relational aspects which require a significant knowledge of the law in the areas of wills, estate administration, tax, community property, and the rules contained in the Trust and Estate Dispute Resolution Act at Chapter 11.96(A) RCW.

Many of the same considerations mentioned above regarding Estate Planning apply equally to the area of probate. The initial decision as to whether or not a probate is "necessary" as well as the numerous decisions that must be made as the administration of an estate progresses are complex and can result in significant losses if not made correctly. This is simply not an area in which non-lawyer legal technicians can provide significant services without creating a potential for significant harm to the public.

C. GUARDIANSHIP

We do not understand why the Practice of Law Board believes that non-lawyers can or should practice in the area of guardianship. First, the Supreme Court has already authorized the establishment of "certified professional guardians" who receive significant training and must complete continuing education in order to remain certified. These persons are already available at a lower cost than attorneys to provide professional guardianship services. While professional guardians can provide the on-going administration, the professional guardianship board continues to recognize the need for skilled guardianship attorneys in preparing petitions, orders and certain other legal documents in guardianship cases.

Moreover, a review of the appellate cases in Washington over the last several years indicates that litigation is growing in the guardianship area. Even the most specialized practitioners of guardianship law encounter significant challenges when dealing with this complex part of the law. All of the issues identified in the discussions of estate planning and probate above are equally applicable in the guardianship arena, and as a result the preparation and planning necessary to provide beneficial guardianship services has increased.

The guardianship statutes that are in place now reflect a studied attempt by the Washington legislature to provide for the rights of persons who may be subjected to a guardianship petition. If guardianship petitions and other guardianship documents are drafted by non-lawyers, the potential for needless or increased litigation is enormous. The statutes provide that an alleged incapacitated person has a right to counsel and the right to receive specific information regarding the pending guardianship. The notice rules in guardianship cases are exacting and precise. An inappropriately drafted petition, or worse, an unnecessary petition, will almost certainly lead to significant financial loss and disputes between family members or other interested parties.

The issues surrounding entry of a final guardianship order are just as complex as those encountered in deciding whether to go forward with a guardianship petition. The reports of the guardian ad litem (both public and private), the required medical or psychological report, the nature of the assets involved, the individual needs of the alleged incapacitated person, and any pending disputes between family members must all be accommodated. It takes a knowledgeable lawyer, and often a lawyer with special skills, to analyze the medical, social, psychological, financial and other issues and thereby draft an appropriate order granting full or limited guardianship of the person or the estate. This is not something that a non-lawyer should do or consider doing.

D. ACTIONS TO PROTECT VULNERABLE ADULTS

The Washington State Legislature has recently adopted significant changes to the Vulnerable Adult Protection Act found at RCW Chapter 74.34. The amendments include provisions which will allow Superior Court clerks and other non-lawyers to assist petitioners through the use of standardized forms which are being prepared and should be available throughout the state. It is anticipated that personnel in the various clerk's offices will be available to assist potential petitioners free of charge. While this will not eliminate the need for lawyers in contested cases, it appears that the legislature has already moved to provide a low-cost remedy for persons needing to file petitions in vulnerable adult cases.

E. THE NATURE OF ELDER LAW

Any person or organization seeking to provide elder law services should understand the basic nature of elder law and the breadth of knowledge required in the practice of elder law.

"Elder Law" has been defined as the legal practice of counseling and representing older persons, their representatives and their families about the legal aspects of estate planning, health and long-term care planning, public benefits, surrogate decision-making, capacity, conservation, disposition and administration of older persons' estates, and the implementation of their decisions concerning such matters. Elder law requires that any practitioner give due consideration to the applicable tax consequences of the action and the need for more sophisticated tax, health care, public benefits and estate planning expertise. Persons practicing elder law must be capable of recognizing issues of concern that arise during counseling and representation of older persons, or their representatives, with respect to abuse, neglect, exploitation, insurance, housing, long-term care, employment and retirement. Such professionals must also be familiar with the resources and services available to meet the needs of older persons and must further be capable of recognizing professional conduct and ethical issues that arise during such representation.

At its core, "Elder Law" represents a constellation of unique and complex issues which must be considered any time an older person seeks legal services. Indeed, many elder law attorneys find the broad field so complex that they specialize in one particular field, such as, guardianship, Medicaid planning and qualification, estate planning, or planning for incapacity.

It is notable that the Federal courts have found elder law and especially public entitlement planning, such as Medicaid, to be nearly incomprehensible. As Judge Barker declared in Cherry By Cherry v. Magnant, 832 F.Supp. 1271:

> The federal and state Medicaid statutes have been described as the regulatory equivalent of the "Serbonian bog." *See* John Milton, Paradise Lost, bk. 2, 1.592 ("A gulf profound, as that Serbonian bog Betwixt Damiata and Mount Casius old, Where armies whole have been sunk.") These regulations have also been characterized as "almost unintelligible to the uninitiated," *Friedman v. Berger*, 547 F.2d 724, 727 n. 7 (2nd Cir. 1976) (Friendly, J.), *cert denied*, 430 U.S. 984, 97 S.Ct. 1681, 52 L.Ed.2d 378 (1977); as an "aggravated assault on the English language, resistance [resistant] to attempts to understand it"; *Friedman v. Berger*, 409 F.Supp. 1225, 1225-26 (S.D.N.Y. 1976); and by this circuit as "labyrinthian." *Roloff v. Sullivan*, 975 F.2d 333, 340, n. 12 (7th Cir. 1992).

The difficulty that learned judges have understanding and applying the rules for this one small area of the elder law profession should give all of us pause. The applicable tax, estate planning, guardianship rules and regulations are just as complex.

Attorneys who practice elder law have often spent many years learning and relearning their craft. Those of us who practice in this area frequently encounter lay persons who have relied on a form, a book, documents available through the internet or other sources, and have thereby caused themselves or their family terrible consequences. Allowing or certifying non-lawyers to practice Elder Law, when they have no real knowledge of the court or legal systems and lack a thorough understanding of the consequences which may be caused by documents that they draw, would only further exacerbate a growing problem.

F. SOME SUGGESTED ALTERNATIVES

There are a number of low-cost or no-cost legal services available. Columbia Legal Service and the Northwest Justice Project are currently providing services to the most needy in communities throughout Washington.

We realize that there are still poor persons who cannot afford legal representation and have unmet legal needs. Some of the programs already in effect could and should be expanded in order to provide better access to the legal system. Further funding of Columbia Legal Services and the Northwest Justice Project could help alleviate some of these needs. In addition, each of the State's three law schools have legal clinics. The clinics could be expanded so that students working under the supervision of a fully qualified attorney could, with the guidance of their supervising lawyer, provide legal services to indigent clients. If the funds which are being proposed to be spent on the legal technician program were instead used to fund and expand existing programs, we believe the public would be better served.

Washington lawyers in general, and our members in particular, provide a great deal of pro bono work. We hope that your Board might consider helping to formalize the delivery of pro bono services. Perhaps your Board could help to establish a particular referral network for elder law clients or take other steps to insure that willing attorneys are put in touch with elder clients who are indigent and in need of pro bono services.

In any event, we believe that the proposal of your Board to certify elder law "legal technicians," despite the best of intentions, has the potential to do much more harm than good for the citizens of the State of Washington. Nevertheless, there are certainly opportunities to increase access to legal services for older Washington state citizens and our organization would be happy to work with or consult with your members in order to improve services for Washington seniors.

Thank you in advance for the careful consideration we hope you will give this letter. We look forward to hearing from you in order to address any questions or concerns which you have.

Very truly yours,

Erv DeSmet, President

James M. Brown, Vice President and Legislative Committee Representative