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March 25, 2009

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Subject: Proposed Rule, APR 28, Limited Practice Rule for Legal Technicians

Honorable Members of the Supreme Court:

We, the undersigned partners of Wechsler Becker, LLP, submit our unanimous opposition to the adoption of the proposed new Admission to Practice Rule 28, creating a new classification of "Legal Technician" (LT).

The bases for our opposition are many and include those which have already been published by the Board of Governors of the Washington State Bar Association (WSBA) and the Board of Trustees of the Washington State Bar Young Lawyers Division (WYLD).

We agree that there is a great and unmet need for legal services in our State, as emphasized by the findings of the Civil Legal Needs Study. We disagree that the proposed rule is an effective and prudent way to meet that need. It does not directly address the major concerns identified in the Study.

One of our primary objections to the rule is the lack of definition of the areas of law in which a Legal Technician may be certified. As stated by the WYLD, a "to be determined" approach is a recipe for disaster. Such an approach would inherently result in disagreement among the legal and LT communities and, more importantly, does not address the need for protection of the LTs' potential clients. Due to the similarity of the proposal for creating this new class of legal practitioners to that of LPOs who handle escrow work, our firm has a major concern about LTs attempting to practice in the highly complex field of family law. Unqualified legal service is like unqualified medical service in that it will make the problem worse while steering the client away from effective help.

Since the "areas of practice" of LTs are as yet undefined, and because a large part of the unmet need for legal services is in family law, we are especially concerned that practice in

this area could be treated as routine or mundane and not requiring the knowledge, training, education, and experience that are essential. Family law impacts families in intimate, important and long-lasting ways and should not be treated as something that can be reduced to checking off boxes (which is not the intent or effect of the OAC pattern forms). Any significant property or parenting issues demand more of a legal services provider than proposed APR 28 requires.

The need for expertise in the family law area could be addressed to some degree by close supervision by lawyers. However, the lack of direct and continuous oversight of the work of LTs by lawyers is one of the major defects in the proposed rule. An inherent defect in the rule itself is that the LT is required to "[a]scertain whether the problem is within the defined practice area." [Section D)1)] As Donald Rumsfeld famously said: "You don't know what you don't know." And while a question may appear on its face to be within the LT's area of certification, that does not mean the LTs are competent to handle it or even capable of recognizing their lack of competence. Lawyers are much better equipped to recognize when an issue is outside their competence and should be referred out or another attorney associated in. Nothing in this rule provides any similar assurance to the clients of Legal Technicians; it is just assumed.

Because there is no regulation of fees to be charged by LTs, the proposed rule fails to address the major argument for its adoption: inability to afford lawyers. The Civil Legal Needs Study identified this as a problem. Since LTs will be faced with nearly the same office and practice-related costs, the fees they will be required to charge will need to accommodate their overhead costs and still meet their income expectations. The "savings" to the client will probably turn out to be illusory, even ignoring the costs of poor results.

There are currently individuals placing advertisements and assisting persons in need of legal services through what is undoubtedly the unauthorized practice of law. There have been few prosecutions of these individuals. Because of the lackadaisical enforcement of the prohibition against the unauthorized practice of law, it is unlikely anyone would choose to undergo the cost and requirements of certification when they can already practice law without any realistic threat of prosecution for doing so. Without more enforcement, the proposed rule does nothing to reduce existing providers of inadequate services.

Another defect is the failure to provide for the application of the attorney-client privilege. There is an interesting conundrum created in the last paragraph of Section D) of the proposed rule:

> While acting within the scope of the authority set forth in this rule, the relationship between the Legal Technician and the client shall be governed by all rules, expectations, privileges and considerations that govern the relationship between lawyers and their clients.

It is to be noted that the passage above is the closest the proposed rule comes to addressing attorney-client (or LT-client) privilege. If the LTs are working in an area outside

of the area of law in which they are certified (or are otherwise acting outside the scope of their authority), the rule itself does not apply. The only conclusion is that, unlike attorneys, the attorney-client privilege does not apply to the LT in that situation. That fact will be invisible to the client.

In summary, it appears this rule, created to address the problem of unmet needs, will almost certainly create new problems without addressing the existing ones. If we apply the medical dictum "first, do no harm," the proposed rule fails the test.

Thank you for your time and attention. We urge you not to enact this proposed rule.

Very truly yours,
WECHSLER BECKER, LLP

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