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Douglas J. Ende
Chief Disciplinary Counsel

December 1, 2014

Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Re: Comment on Proposed LLLT Rules of Professional Conduct

Dear Justices of the Washington Supreme Court:

As Chief Disciplinary Counsel of the Washington State Bar Association, I submit the following two comments pertaining to the Limited License Legal Technician Rules of Professional Conduct (LLLT RPC). These are my own views as Chief Disciplinary Counsel and do not necessarily represent the position of the Washington State Bar Association or its Board of Governors. Please note that I also served as a member of the LLLT Board RPC Committee.

LLLT RPC 1.15A(h)(9) – Trust account signatories. A revision to the language of this section is warranted. In August 2014, representatives of the LLLT Board presented the draft LLLT RPC to the WSBA Committee on Professional Ethics (CPE). Some of the discussion pertained to LLLT RPC 1.15A(h)(9), which specifies who can act as a signatory on a trust account. That proposed section provides as follows:

(9) Only a licensed LLLT or a lawyer admitted to practice law who is associated in a practice with the LLLT may be an authorized signatory on the account, except that a licensed LLLT who is associated in a practice with the lawyer may be an authorized signatory on the account only if a firm lawyer signature is also required for any withdrawals, transfers, or deposits on the account.

It was observed by one committee member that signatures are not typically required for some of the transactions specified in the last sentence of section (h)(9), such as deposits.¹

¹ This point has been comprehensively made in the comment on the proposed LLLT RPC filed by Anne I. Seidel, dated November 26, 2014. Ms. Seidel was the CPE member who raised this concern; while I agree with her analysis of the problem, I do not endorse her suggested solution.

After conferring with Steve Crossland, Chair of the LLLT Board, Ellen Dial, Chair of the LLLT Board RPC Committee, and Professor Brooks Holland, member of the LLLT Board RPC Committee, I concluded that the following language would better serve the purposes of Rule 1.15A and protect the public while doing away with the quandary identified by the CPE:

(9) Only an LLLT or a lawyer admitted to practice law may be an authorized signatory on the account. If an LLLT is associated in a practice with one or more lawyers, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

I recommend that the Court adopt this revised language rather than the language in the rule as proposed.

I note that the same issue is presented by the suggested “concordance” amendments to the lawyer RPC that have been drafted by the LLLT Board and approved by the WSBA Board of Governors. When the Court considers those amendments, I further suggest that the following version of lawyer RPC 1.15A(h)(9) be adopted in lieu of the originally drafted language:

(9) Only a lawyer admitted to practice law or an LLLT may be an authorized signatory on the account. If a lawyer is associated in a practice with one or more LLLTs, any check or other instrument requiring a signature must be signed by a signatory lawyer in the firm.

LLLT RPC 1.0, Comment 3 – “firm name” rather than “trade name”. Rule of Professional Conduct 7.5(a) governs use of firm names and trade names. It prohibits use of a firm name that violates Rule 7.1 (i.e., that is false or misleading), and it permits use of a trade name in specified circumstances. In the LLLT context, proposed Rule 7.5(a) goes on to require that an LLLT in private practice include the words “Legal Technician” in “any firm name” used by an LLLT if there are no lawyers in the firm.

Comment 3 to LLLT RPC 1.0A & B (Terminology) provides additional guidance regarding the terms “firm” and “law firm,” which are defined in LLLT RPC 1.0A(c). The last sentence of Comment 3 provides as follows: “Rule 7.5(a) requires that any trade name used for an LLLT practice that does not include a lawyer include the words ‘Legal Technician.’”

This creates a minor inconsistency between Rule 7.5(a) and the commentary to Rule 1.0. In Rule 7.5(a) the term “firm name” is used, and in Comment 3 to Rule 1.0A, the term “trade name” is used. This is a material difference because the term “trade name” is narrower in meaning than the term “firm name.” It appears this discrepancy was inadvertent.

I recommend that the Court change the words “trade name” in proposed Comment 3 to RPC 1.0 to “firm name.”

CONCLUSION. Ellen Dial presented both of these suggested revisions to the LLLT Board at its meeting November 20, 2014, and both were endorsed by the LLLT Board at that time.²

I am happy to answer any questions or provide additional information if the Court so requests.

Sincerely,



Douglas J. Ende
Chief Disciplinary Counsel

cc: Stephen R. Crossland, Chair, LLLT Board
Ellen Dial, Chair, LLLT Board RPC Committee
Paula C. Littlewood, WSBA Executive Director

² I understand that the LLLT Board voted further to suggest the addition of a comment to LLLT RPC 1.15A reflecting the reasoning behind the decision that lawyers maintain signatory authority on firm trust accounts, viz.: When a lawyer and an LLLT are associated in a practice together, the firm lawyer must be a signatory on any check or instrument requiring a signature, as the lawyer must maintain ultimate responsibility for trust account funds belonging to the lawyer's clients. I take no position on that suggestion.

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, December 01, 2014 3:49 PM
To: Tracy, Mary
Subject: FW: Comments on Proposed LLLT RPC
Attachments: Letter from Ende to Supreme Court Commenting on LLLT RPC (e-signed final).pdf

I acknowledged receipt.

From: Doug Ende [mailto:douge@wsba.org]
Sent: Monday, December 01, 2014 3:47 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Comments on Proposed LLLT RPC

Attached are comments on the proposed Limited License Legal Technician Rules of Professional Conduct (LLLTPC).

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