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RECEIVED BY E-MAIL

December 1, 2014

Chief Justice Barbara Madsen
Washington State Supreme Court
Temple of Justice
supreme@courts.wa.gov

Re: Proposed Limited License Legal Technician Rules of Professional Conduct

Dear Chief Justice Madsen:

I write in my capacity as Chair of the RPC Subcommittee of the Limited License LLLT Board. I am also a member of that Board. Together with the Board, the RPC Subcommittee crafted the Rules that were proposed to the Court in August of this year. This letter is intended to provide background information in connection with the Court's review of comments to the proposed Rules of Professional Conduct for LLLTs.

Admissions and Practice Rule 28 establishes a new form of legal professional, one whose scope of practice is significantly smaller and more narrow than that of a lawyer, but one who nonetheless will give legal advice within the authorized scope. In conceiving ethical rules that would meet the goals of APR 28, the Subcommittee and the Board were presented with fundamental questions about the relationship between a LLLT and his or her client, as well as the obligations of a LLLT to the courts and to the public.

We were guided in our discussions by APR 28, including not only that rule's strict limitations on the scope of practice, but also the principle that an LLLT is to be held to the same standards as a lawyer. LLLTs, like lawyers, will be fiduciaries, and will have duties of loyalty, competence, diligence and confidentiality, and the duty to exercise their professional judgment independent of influence by others. We also acknowledged that the authorized scope of practice of an LLLT is a limited form of practice of law, and that, in order to contribute meaningfully toward achieving the goals of APR 28, LLLTs will need to become part of the community of legal professionals in Washington. The new concept of "legal practitioner" introduced into the proposed LLLT RPC reinforces the nature of the duties that an LLLT will have to clients and to the public, and also emphasizes that an LLLT will be a part of the broader profession.

Another guiding principle for the Subcommittee was that the LLLT RPC should follow the Lawyer RPC as closely as possible to the extent consistent with APR 28. Our goal wherever possible was to preserve the history of interpretation of the Lawyer RPC, and the usefulness of the Comments to the Lawyer RPC, to provide guidance to LLLTs and regulators alike on how the LLLT RPC should be interpreted and applied.

The members of the Subcommittee, identified in the GR 9 cover sheet, represent a broad cross-section of the existing legal community. This group discussed at length each aspect of the conceptual framework of the proposed LLLT RPC, in some cases over a period of many months. Among those issues were the questions whether an LLLT “represents” a client when that LLLT cannot appear in court or negotiate a client’s legal rights or responsibilities, whether an LLLT practices law, whether it is misleading to allow LLLTs practicing together to call themselves a “law firm,” and whether the obligations of an LLLT to a client or to the public change when the LLLT practices in the same firm with lawyers.

The Subcommittee, and the Board, concluded that use of the words “represent” and “representation” in describing the relationship between an LLLT and a client is appropriate. An LLLT has the same fiduciary role towards a client that a lawyer has. In limited circumstances that do not involve acts that are specifically prohibited by APR 28, an LLLT may speak for a client, in securing information from a third party, for example, or making arrangements in connection with implementing an agreed course of action. Many law practices involve primarily providing legal advice and documents to a client, without the involvement of third persons. Yet we do not question that lawyers represent clients when they are delivering legal advice and documents, because they are fiduciaries who have extraordinary obligations to the client.

Among the many concerns presented and discussed in the Subcommittee’s meetings were concerns about the inherently vulnerable nature of some of the individuals and communities that LLLTs will serve. The Subcommittee acknowledged the critical need to make clear to clients and prospective clients that an LLLT is not a lawyer, cannot perform the full scope of services that a lawyer can perform, and can provide legal advice only within the strict confines of the authorized scope of practice. Indeed, APR 28 is exceedingly clear on these points; its strictures are mirrored in the proposed LLLT RPC.

The principles underlying the proposed LLLT RPC in this regard are to acknowledge that LLLTs will engage in a limited scope of practice of law, while emphasizing the requirements that LLLTs disclose the limited nature of their practices in all forms of communication about their services, including in advertising and in their contracts with clients, and limit their services accordingly. As one small example, under proposed Rule 7.5(a), if LLLTs use the word “law firm” in a firm name and there are no lawyers in the firm, the words “Legal Technician” must appear in the firm name.

Terminology, and consistency of terminology, occupied a good deal of time in the work of the Subcommittee. As a new form of legal professional is introduced, new terms are needed and old terms must sometimes be infused with new meaning. Both must be used consistently in the rules and in our discussions and debates. Many different words might have been used, but certain words were selected and, we believe, used appropriately and consistently throughout. Continuing to use selected terms consistently is critical to establishing in the public mind the scope and limitations of practice of an LLLT.

The proposed LLLT RPC includes one very clear departure from the historical manner in which providers of legal services organize themselves, in that it would allow lawyers and LLLTs to be co-owners of a firm so long as the independence of the lawyers is preserved. The Board and Subcommittee concluded that this significant step is warranted by the need to provide flexibility

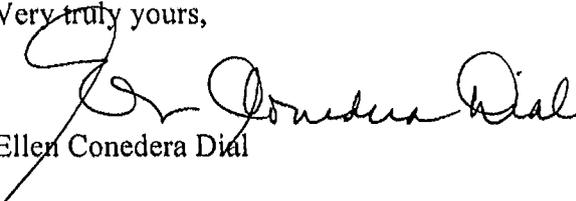
to LLLTs and lawyers alike as LLLTs take their place in the legal community. Since both are licensed and regulated through the same bodies, we believe that the challenges presented by proposed LLLT RPC 5.9, and the parallel new Lawyer Rule 5.9, can be successfully managed through the limitations embodied in those Rules.

Neither the decisions of the Subcommittee nor the decisions of the Board were in all cases unanimous. Yet over the almost 12 months of regular meetings, these issues were identified, explored, discussed, debated and decided by majority votes. The issues discussed by Ms. Perluss in her letter on behalf of the Northwest Justice Project, and reflected also to some extent in the comments of the Access of Justice Board, were discussed and debated by the Subcommittee at length. The extraordinary commitment of those leaders of the access to justice community is unquestioned, and the concerns expressed inspired the Subcommittee to ever deeper thought. With respect specifically to the proposed LLLT RPC, despite respectful disagreement over some issues, their commitment to protecting clients and the public was shared by members of the Subcommittee and reflected in the proposed LLLT RPC.

As we launch this new legal profession, it is incumbent on members of the legal community to be clear with clients and prospective clients about the unique and limited nature of an LLLT's qualifications. It is also incumbent on us to support implementation of APR 28. Steve Crossland, Chair of the LLLT Board, has often said that the rules creating and implementing this new form of legal professional are a work in progress, perhaps not perfect but capable of improvement as the profession emerges in our state. The same might be said about the proposed LLLT RPC. It represents the best efforts of thoughtful, committed members of the legal community over a year of hard work and debate. The Board's recommendation represents its conclusion that the proposed LLLT RPC provides a sound basis for describing, and prescribing, the ethical obligations of LLLTs.

Chief Disciplinary Counsel Ende will recommend to you two minor corrections that the Board considered and approved at its November meeting. With those corrections, I urge you to adopt the proposed LLLT RPC as presented. Thank you.

Very truly yours,



Ellen Conedera Dial

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, December 01, 2014 1:52 PM
To: Tracy, Mary
Subject: FW: Comments to Proposed Limited License Legal Technician Rules of Professional Conduct
Attachments: 2014-12-01 Letter to Chief Justice Barbara Madsen.pdf

I acknowledged receipt.

From: Dial, Ellen Conedera (Perkins Coie) [mailto:EDial@perkinscoie.com]
Sent: Monday, December 01, 2014 1:51 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Steve Crossland
Subject: Comments to Proposed Limited License Legal Technician Rules of Professional Conduct

Dear Chief Justice Madsen,
As Chair of the RPC Subcommittee of the LLLT Board, I submit this letter as background for the Court's consideration of comments to the proposed LLLT RPC.
Thank you.
Best regards,
Ellen

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