Responsive Law
The Consumer's Voice in the Legal System

Comments on: Washington Suggested Limited License Legal Technician Rules of Professional Conduct

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Testimony to the

Washington Supreme Court

December 1, 2014

Consumers for a Responsive Legal System ("Responsive Law") thanks the Court for the opportunity to present these comments. Responsive Law is a national, nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its customers. In particular, we support policies that expand the range of legal services available to meet people's legal needs.

Responsive Law supports the creation of the Limited License Legal Technician (LLLT) profession as an additional way of making legal help more affordable. We submit these comments to reemphasize the need for the LLLT program and to express our support for the proposed LLLT Rules of Professional Conduct, with one exception noted below.

The LLLT Program Fills a Gap in the Range of Legal Help Available to Washingtonians

Washington, like the rest of the country, is facing an access to justice crisis, with its residents increasingly unable to afford legal help. With lawyers' fees starting at $200 per hour, full lawyer representation in even uncontested divorces is beyond the reach of the average Washingtonian. As a result, increasing numbers of divorce litigants are self-represented.

Making more lawyers available through pro bono or "low bono" programs, while helpful, is not enough to solve this problem, as there are simply not enough pro bono lawyers to meet the needs of the public.[1] Having such a high percentage of unassisted litigants is also

[1] There were over 25,000 divorces in Washington in 2013. National averages show that 80% of divorce litigants are self-represented. Washington has about 24,000 practicing lawyers. Assuming 1,000 (or just over 5% of them) practice

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not a sustainable solution, as it not only leaves people without meaningful access to the courts, but also burdens the underfunded court system.

In any industry, consumers are best served when a range of services is available to meet the continuum of needs they face. For example, consumers of health-related services can choose among doctors, physical therapists, exercise instructors, diet consultants, and pharmacists—among others—depending on whether they are trying to fix a heart condition, heal a muscle sprain, lose weight, lower their cholesterol, or fight allergies. The consumer decides who will serve her based on what type of service she needs and what she is willing or able to pay. She is not forced to go to a doctor for all services related to her health. To do so would force consumers to pay far more for health services than they already do.

Until now, Washington's regulations governing the provision of legal services prohibited consumers from having access to a range of services geared toward their needs and their ability to pay. Instead, lawyers have had a virtual monopoly on providing services related to law, regardless of the complexity of the issue a consumer faces. Prohibiting a person trying to obtain an uncontested divorce from using a service provider who is not a lawyer is the equivalent of requiring someone with seasonal allergies to go to a doctor to diagnose the problem rather than allowing them to get medicine at a pharmacy.

Although self-represented litigants have access to a number of published resources and software-driven solutions to help them, their only option for human help has been expensive lawyers. Limited license legal technicians (LLLTs) will, for the first time, allow Washingtonians to use the services of an individual other than a lawyer to help them navigate the legal system. For the many parts of the family law system where people need guidance short of full lawyer representation, LLLTs may be able to provide a helping hand at an affordable price.

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family law, each of those lawyers would have to take on 40 pro bono or "low bono" divorce clients to meet the demand for assistance.

The Requirement That a Fee Agreement Be in Writing Provides Protection to Both Clients and LLLTs.

Section 1.5(b) requires that the scope of the representation and the basis of the LLLT's fee be placed in writing before services are provided. Putting fee agreements in writing can help resolve disputes that may arise over the course of the LLLT-client relationship. It also helps educate the customer about what services an LLLT can and cannot provide. This is important information for the consumer of any professional services, but is even more important when the profession in question is a new one.[2]

The Suggested Rules Are Sufficient to Assure That Consumers Are Not Misled to Believe That LLLTs are Fully-Licensed Lawyers

Responsive Law agrees with the LLLT Board that the suggested rules are sufficient to protect consumers from being misled as to the nature of LLLT qualifications and services. As the Board noted, calling an LLLT practice a law firm is not misleading, as LLLTs are engaged in the practice of law, albeit in a limited scope.

Allowing an LLLT practice to call itself a law firm will allow consumers to more easily find it when searching for legal help. Since, in the early stages of the LLLT profession, many consumers will not know that the profession exists, the most likely way they will find LLLTs is through a general search for legal help. Such a search—whether through an online search engine, print sources such as the Yellow Pages, or serendipitous exposure to advertising—is more likely to lead to an LLLT if "law firm" is a permissible term to use when describing a company consisting of LLLTs. Any concerns about misrepresentation are addressed by the requirement that LLLTs describe themselves as "legal technicians" in their firm name, as well as by the other disclosures that LLLTs must make about the permissible scope of their practice.

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[2] While beyond the scope of these proposed rules, it is worth noting that a similar provision for lawyers would also help protect lawyers and their clients. Responsive Law has advocated such a provision in lawyers' rules of professional conduct through its Clients' Bill of Rights (http://responsivelaw.org/index.php/resources/how-to-hire-and-use-a-lawyer#2)

The Proposed Rules Relating to Fee-Sharing Are Too Restrictive to Allow LLLTs to Form Innovative Business Structures That Could Increase Access to Justice

Proposed Rule 5.9, allowing LLLTs to be partial owners of law practices comprised of both lawyers and LLLTs, will not allow providers of legal sufficient room for innovation in the way their businesses serve customers. A better solution would be to remove the prohibition on majority ownership by LLLTs in 5.9(b)(3) and the restriction on direct supervisory authority in 5.9(b)(2).

With these restrictions in place, LLLTs will be prohibited from forming many types of businesses that could prove beneficial to consumers. For example, an existing firm owned and operated solely by LLLTs might wish to expand its services to include those that can only be provided by lawyers. However, short of giving majority ownership to a newly hired lawyer and naming them chair of the firm, there would be no way to do so.

Consumers will see greater benefit from an increased number of ways that they can purchase legal services. Allowing LLLTs to provide services is one piece of this puzzle, but the proposed rules, while allowing LLLTs to share some of the benefits of a successful business, would still limit them to either practicing entirely separately from lawyers or from having a role that resembles a paralegal with profit-sharing in an existing law firm. Neither role adds as much as it could to the range of options consumers have when seeking legal help.

Furthermore, given that lawyers are already governed by their own rules of professional conduct, the frequently stated concern about allowing non-lawyers to have managerial authority over lawyers is misplaced. Lawyers already face financial temptation to bend or break legal ethics rules. For example, the need to meet billable hours requirements (or in solo practice, the need to pay the bills) can pressure lawyers to inflate time statements. However, the profession has yet to consider banning hourly billing, and relies on the rules of ethics to protect the integrity of the profession. It is the height of professional narcissism to imagine that only a lawyer is qualified to supervise a lawyer. This is especially true when the alternative supervisor in question is a member of an even more regulated legal profession.

Conclusion

Responsive Law supports the LLLT Rules of Professional Conduct, with the reservation that Rule 5.9 should be amended to allow for more innovative ways of serving customers. We hope that this one flaw can be corrected to allow customers to benefit even more from the LLLT profession. We look forward to seeing the LLLT profession in action, and hope that Washington's experience will serve as a model for other jurisdictions.

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, December 01, 2014 1:31 PM
To: Tracy, Mary
Subject: FW: Comments on Suggested LLLT Rules of Professional Conduct
Attachments: WA LLLT RPC Comments - Responsive Law.pdf

I acknowledged receipt.

From: Tom Gordon [mailto:TOM@responsivelaw.org]
Sent: Monday, December 01, 2014 1:18 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Comments on Suggested LLLT Rules of Professional Conduct

Clerk of Court:

I have attached our comments on the Suggested LLLT Rules of Professional Conduct. Please feel free to contact me with any questions.

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