

The track record of the Limited License Legal Technician Program does not warrant expansion at this point. While the program was motivated by good intentions, the program does not appreciably help those with low income, the costs outweigh the benefits, and interest is dwindling.

Although the stated objective of the LLLT program is to increase access to justice for low and moderate-income persons¹, no requirement limits their fees nor their clients' incomes. The savings due to reduced hourly fees have long been available through appropriate use of paralegals, who at least are subject to the supervision of an attorney.

At the 2/15/17 WSBA town hall meeting, one of the first questions raised from the floor was from a Superior Court judge, who asked how the LLLT program can be evaluated. LLLT Board Chair Stephen Crossland said that an evaluation was being conducted, and that its preliminary findings were very positive and that steps were being taken to address the shortcomings. The evaluation was published in March 2017, after evidently being circulated earlier to the LLLT Board, judging by Mr. Crossland's reference to it a month before.

The March 2017 Preliminary Evaluation of the Washington State Limited License Legal Technician Program, funded by the American Bar Foundation, is available online.² It appears that its primary sources for information were the LLLT Board and the WSBA Executive Director. The LLLT Board Chair and WSBA Executive Director have stumped the country to paint glowing pictures of the LLLT program's success in self-justifying efforts to have other jurisdictions adopt similar programs.

Mr. Crossland's 9/15/17 letter responding to Chief Justice Fairhurst's 4/3/17 concerns (*If there are no additional subject matter areas, can the program continue?*) stated:

As the LLLT profession has evolved, four realities are presented. While they are not determinative of the continuance of the profession, they cannot be ignored. First, the LLLT Board's outreach to community colleges reveals that those students who are not interested in Family Law may be interested in other practice areas. Second, classes taught

¹ The first line on the WSBA website about LLLTs still claims: "Washington is the first state in the country to offer an affordable legal services option to help meet the needs of those unable to afford the services of a lawyer."

² Clarke, Thomas M. and Sandefur, Rebecca L., *Preliminary Evaluation of the Washington State Limited License Legal Technician Program*, March 2017, available online at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwits_6rIoDWAhVkwVQKHZoNDAsQFggoMAA&url=http%3A%2F%2Fwww.americanbarfoundation.org%2Fuploads%2Fcms%2Fdocuments%2Fpreliminary%2Fevaluation%2Fof%2Fthe%2Fwashington%2Fstate%2Flimited%2Flicense%2Flegal%2Ftechnician%2Fprogram%2F032117.pdf&usg=AFQjCNFkkXtoM5aRpojT2nXXNUa4VO3NTw, p. 3. Note: the role of LLLTs surveyed didn't include the pending amendments to APR 28, which would allow LLLTs to help their clients in court, to negotiate with opposing parties and counsel, and to appear at mediations and arbitrations.

through the University of Washington Law School must reach a sustainable level in order for the School to financially afford to teach LLLT classes. Third, the Washington State Bar Association is currently underwriting the LLLT profession in its initial stages. In order to offset the start-up costs and continuing costs of the license, the population of LLLT practitioners must expand. Fourth, and most importantly, there is a significant unmet need in areas beyond Family Law. We simply can't put off trying to meet the painful and significant unmet needs in other areas of the practice of law.

Fallacies:

- A. The statement that community college students who are not interested in family law “may be” interested in other practice areas is speculation.
- B. There is no indication whether such students are interested in the areas of greatest unmet need.
- C. The fees which LLLTs can charge are not regulated and probably can't be, due to antitrust issues, so there is no showing that low income needs will be met.
- D. Nothing indicates that their numbers would be sufficient to make the LLLT Program economically viable.

The program costs outweigh the benefits. For fiscal year 2016, the LLLT Program deficit was \$216,358. For fiscal year 2017, the budgeted deficit was \$221,664. Subsequent costs are more difficult to identify, because WSBA combined LLLT program costs with other WSBA costs starting in FY 2018. The March 2017 evaluation findings noted that the UW law school must *subsidize* the LLLT program at current student levels, while Seattle University and Gonzaga law schools are struggling financially and felt unable to subsidize a new program like the LLLTs (though Gonzaga contributed faculty to the courses at UW law school.) The study further found that, though it's not clear how much student levels would need to increase for the law school to break even on the program, rough estimates ranged from 30 to 60 students per year.³

I attended the LLLT Board's 4/4/18 annual meeting with the Supreme Court, and heard Mr. Crossland assure the court that the LLLT program had an estimated 100-200 “in the pipeline”. That phrase rang a bell. I remember him using similar words over a year earlier at the WSBA town hall meeting on 2/15/17. After six years (four years of exams), there are only 35 active LLLTs since the Washington Supreme Court authorized LLLT practice through APR 28 on June 15, 2012. Many of that number essentially grandfathered in, using their multiple years of family law paralegal experience. The numbers aren't escalating. Despite the glowing reports and predictions to the Supreme Court, only 3 passed the February 2018 LLLT exam, mirroring the 3 in spring 2017.

So where are those hundreds “in the pipeline”? The ABA Foundation's Findings in the March 2017 Preliminary Report found that:

³ Clarke and Sandefur, at p. 8

While it may be difficult to estimate what number of new licensed practitioners per year would be required to achieve a breakeven point for operating the program with precision, presumably the WSBA could do so for various enrollment and certification scenarios.

The WSBA estimates that such a breakeven point may be achieved in five to seven years, which would include paying back the startup costs, but does not indicate what level of licenses would be needed to do so. *It does estimate that up to 200 people may be currently enrolled in its core programs.* If so, the WSBA can determine when the breakeven point will be achieved at least approximately. *Community colleges know how many students are in their paralegal programs, but not how many of those students might go on to become licensed LLLTs. Previous estimates of LLLT cohorts have consistently proven to be too optimistic,* but that may change as the program becomes better known and gathers momentum with a track record. (p. 10)(emphasis added)

Apart from the LLLT Program's generally failing to serve low income needs, costs outweighing benefits, and minimal interest, the proposed APR 28 rule changes were not appreciably altered in response to the detailed criticism provided by the King County Bar Association's Family Law Section and others. In Mr. Crossland's summary of input efforts, notable by its absence was any reference to WSBA's Family Law Section, the American Academy of Matrimonial Lawyers, or the Domestic Relations Attorneys of Washington.

There should be no expansion ("enhancement" is marketing spin), either to new areas of family law or to new legal fields. Before embarking on areas of new practice, the court should wait and determine whether the unmet legal needs of the public are being significantly met by this program, and whether the benefits justify the costs. Rather than continuing the LLLT Board as a large standing committee of the Supreme Court, incurring triple-digit deficits annually, it makes more sense to have it convene only periodically to evaluate progress and identify whether expansion is warranted.⁴

The foregoing represents my opinion, and not that of any bar association or section.

Mark Alexander

⁴ For example, the Child Support Schedule Workgroup convenes every four years to make recommended changes to the Legislature.

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, September 6, 2018 4:29 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: Comments on APR 28 changes re: LLLTs
Attachments: LLLT ltr Supreme Ct 2018-09-06-1535.docx

From: Mark [mailto:mark@seattledivorceservices.com]
Sent: Thursday, September 6, 2018 4:27 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Comments on APR 28 changes re: LLLTs

I respectfully submit my attached comments about the proposed rule changes to APR 28.

Mark Alexander
Seattle Divorce Services
2317 NW Market Street
Seattle, WA 98107
(206) 784-3049