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September 14, 2018

Cindy Phillips
Judicial Administrative Assistant to
Chief Justice Mary E. Fairhurst
Washington State Supreme Court

Re: LLLT Expansion Proposal

Dear Ms. Phillips:

Please provide this letter to the Justices of the Washington Supreme Court for their consideration.

I am a 36 year member of the Washington State Bar Association. I am a proud family law attorney. I practice law in Seattle, Washington, and am a sole practitioner. Almost all of my practice is family law.

I graduated from the University of Puget Sound Law School in 1981 and was admitted to the Washington State Bar in 1982. I am also admitted to practice in the Federal courts in the State of Washington. In addition to being a member of the family law sections of the Washington State Bar Association and the King County Bar Association, I am a former chair of the King County Bar Association's Family Law Section's Legislative Committee and a former chair of the King County Bar Association's Family Law Section. I have spoken at numerous continuing legal education seminars on the subject of family law. I am a chapter author for the Washington State Bar Association's Family Law Deskbook. I have received awards for my work from the Greater Seattle Business Association as well as the King County Bar Association Access to Justice Award, and the WSBA Family Law Section Attorney of the Year award for 2017. I coordinate a neighborhood family law clinic in King County and have performed hundreds of hours of pro bono work.

Over the past two years, I have studied the LLLT situation and I write today after learning more disturbing information about the program. I urge the Washington Supreme Court to reject any expansion of the program in Consumer, Money and Debt Law, reject any expansion of the Family Law Program and, instead, examine this entire program in detail and determine its future.

Program training.

The training provided to prospective LLLTs is clearly inadequate since, according to information provided at the July WSBA Board of Governors meeting, more than 50% of the

persons taking the test fail. No information was given as to the results of those who passed. It would be appropriate to know how many barely pass, solidly pass or sail through with flying colors. It appears that the training is not being improved but, instead, the qualifications of the trainers is being reduced down. There is no indication that the LLLT Board is concerned in any way about the low passage rate and the apparent inadequacy of the training provided to date.

With such a poor passage rate, it is inconceivable to me that it would be appropriate that there would be an increase in the curriculum/program in the areas of family law to be taught. As has been demonstrated by prior submissions from the Family Law Section, family law is an extremely complex area covering a broad gamut of legal issues. Adding subjects is far more likely to further reduce the passage rate. This seems grossly ill-advised at this time.

There has been no objective determination that the LLLT program is a success in family law. After years of efforts and hundreds of thousands of dollars, there are a minimal number of independently practicing LLLTs. There has been no determination of the number of low income people actually helped by the program. In fact, it seems that most of the LLLTs work as paralegals just as they were doing prior to any certification or licensing at a LLLT. With the poor passage rate and the lack of success of the LLLT program with regard to family law, it seems further ill-advised to add any new subject area or any expansion of the existing subject area. Without objective analysis and determination of the flaws in the curriculum design, teaching methods and training overall in the family law program, the flaws are likely to be repeated in a new or expanded subject area. Expansion into a new subject area is premature, at best.

The choice of Consumer, Money and Debt Law for expansion is particularly ill-advised.

Expansion into Consumer, Money and Debt Law.

I comment again against the proposed expansion of the LLLT program into debt issues or any other subject area. The presently considered expansion seems truly inappropriate. As another attorney stated in a list serve email recently "the fact that many lawyers don't know how to do this stuff and/or do it badly is not an argument that other people who don't have a law school education should be taught it so they can represent people." Another said with regard to the LLLT program, "the cost was incredibly high for the number of people who are licensed, and I can't believe that anyone would want to replicate that result with other disciplines...FDCPA stuff is so insanely complicated that very few lawyers really understand it..."

While there are certainly consumer and/or debt issues that the low income public struggles with, the LLLT program that is being considered is clearly knowingly headed for failure. The LLLT Board itself said that "it was unclear whether or not legal assistance would materially address the consumer law problems ... and whether that assistance could be provided through some method other than direct representation exclusively by a lawyer." The LLLT Board also reported that significant advice already exists through the Northwest Justice Project site washingtonlawhelp.org. Yet the expansion recommendation continued to be pushed

forward.

The LLLT Board recommendation is that LLLTs be able to assist with RCW 10.82 Motions re Interest in LFOs. These motions apply to convicts trying to integrate into society. I didn't see that the LLLT Board provided any number of the people actually seeking help in this matter. In my 36 years of practice, including work with convicted criminals, no one has ever sought help with this kind of matter. I wouldn't think that this is a population with the funds to hire a LLLT.

There is a recommendation that LLLTs help with small claims court matters. There are numerous websites and materials available to help pro se parties with these small claims. Certainly paying a LLLT is not a likely priority when a person is trying to get someone to pay them \$500.

The LLLT Board recommendation is that LLLTs can help with debt collection not involving collection agencies. In fact, in this day and age, most collection actions involve collection agencies. If they don't initially, they surely will shortly.

There is a recommendation that LLLTs help with garnishments. Very few consumers initiate garnishment actions and there are limits on reimbursable "legal" fees. Packets of forms and instructions are generally available in every county and are also part of the legal forms available through the Administrator of the Courts.

The recommendation regarding identity theft is also ill-advised. This information is available through the Attorney General's office at no cost.

The recommendation regarding loan modifications is also somewhat laughable. These programs are very complicated and there are attorneys that specialize in it. These loan modifications are rarely granted and adding LLLTs to the mix will not improve that.

LLLTs are not needed with regard to protection orders since each county is required to have people at the courthouse to help provide forms. It is not explained how LLLTs would help get no contact orders in criminal cases; this is routinely done by prosecutors at initial criminal hearings.

LLLTs cannot provide meaningful help in bankruptcy issues since federal laws govern the debt counseling that consumers must obtain.

This proposed expansion of the LLLT program is simply designed for failure. If it is approved by the Washington Supreme Court, hundreds of thousands of dollars will be spent by the WSBA and any LLLT eventually trained and licenses will have few clients, if any, able to pay his/her fees.

LLLT family law program costs.

The Washington Supreme Court mandated the existing LLLT program and required the Washington State Bar Association to pay its costs. But, the Court also anticipated that the program would be self-sufficient in a reasonable period of time. In fact, the Court required that it do so in its Order: "[t]he Court is confident that the WSBA and the Practice of Law Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership." June 15, 2012 Order by the Washington Supreme Court, page 11. Despite the Court's good intentions, this confidence has not been borne out.

At this point, it is six years since that order by the Court. Not only is the program not self-sufficient, it is operating at a greater loss year after year. In 2017, the program sustained a loss of \$189,508.00. It was budgeted to lose \$262,022 in 2018. The draft budget for 2019 projects a loss of \$240,000 but this figure is misleading in that it does not reflect the total cost of the program. It is my understanding that many of the costs for the program are now included in other portions of the WSBA budget so this \$240,000 appears to be artificially lowered. See page 48 of the materials for the July 2018 BOG meeting, attached hereto. I am making a request for the data necessary to determine the cost of those other line items not included in the \$240,000 (see the footnote to that same page 48). It is concerning to note that the LLLT Board claimed that its expenses, direct and indirect, for 2018 were \$17,000 and \$92,636 (see page 433 of the materials for the July 2018 BOG meeting, attached hereto.) These significant costs seem to be in addition to the \$240,000. Additional data for those expenses has also been requested.

Time for a limit.

The lawyers of Washington State pay a significant sum in license fees. Many object to the amount of fees. Many sought to hold a referendum on the amount of fees but were not allowed to do so when the Court issued an order that the fee increase that had been imposed was "reasonable." Unhappiness with the fee increase and the inability to register an opinion with the referendum still resonates with many. This is made more concerning to many when the fees paid are used to pay for unpopular and unsuccessful programs such as the LLLT program. The BOG seems to feel that they are powerless to control costs in this program since the Court has mandated the program. But, the Court did not mandate a program that would be funded at the present extent by the lawyers of the WSBA or that the program would operate at such a loss. At this point, it seems this annual substantial financial loss seems to be permanent. This concern is not abated by the July 2018 fee development. As the Court likely knows, at its July 2018 meeting, the Board of Governors recommended that the LLLT license fees be increased to that of lawyers. That increase, even if approved by the Washington Supreme Court, would not make the present program self-sufficient. There would need to be over 500 LLLTs to even come close to paying for the program for one year. There is no realistic expectation that this will ever happen, let alone happen before another \$2,000,000-\$3,000,000 in WSBA losses occur.

The LLLT program simply shows no promise whatsoever that it will EVER be self-sufficient. Its budgeted costs are approximately 35% higher for 2019 than for 2018. This cannot be sustained for even another year or two without hurting other more successful WSBA programs, a further increase in fees or staff reductions. Yet the LLLT Board and the Executive Director do not seem to be concerned about this in any way.

In the June 15, 2012 order which established the program, it was clear that the program was not necessarily permanent but that it would be "a sound opportunity to determine whether and, if so, to what degree the involvement of effectively trained, licensed and regulated non-attorneys may help expand access to necessary legal help in what that serve the justice system and protect the public. June 15, 2012 Order by the Washington Supreme Court, page 11-12. That objective analysis has never been done.

Time for a program assessment.

The LLLT program was designed to meeting the needs of low income Washingtonians. The program has provided no substantive analysis demonstrating that this goal has been met. The hourly rate charged by LLLTs is, quite simply, beyond the ability of low income people. The rates are also beyond the ability of almost all moderate income people.

After over five years of work, there are only 38 active LLLTs. I have reviewed the information available via the internet and/or the WSBA website. Most work in law firms and it is reasonable to assume that their work is little changed from that of an employed paralegal. It is likely that each of those LLLTs are being billed out at a significant rate. My review concludes that about half or less of the LLLTs are independently employed.

The needed type of assessment of the LLLT program must be done objectively. It is not reasonable to expect the Executive Director or staff under her control to conduct this objective analysis since, in fact, they have not done so. In the past several years, there have been no flags raised over the low number of active LLLTs given the funds spent and the hours of work, no flags raised over the increasing cost of the program, no flags raised over the dismal passage rate, etc. If the LLLT Board or the Executive Director have not done so by now, and given the conflict of interest posed by the personal relationship between the LLLT Board President and the WSBA Executive Director, the Court must provide a mechanism for this kind of objective analysis. Frankly, I believe that the available information should be sufficient to determine that the program is an utter failure already without any further analysis.

Lack of transparency.

I am also concerned about the large gaps in transparency about this program. The April, June, July and September 2018 LLLT Board meetings were cancelled. Without minutes from meetings, it is not possible to review the work of that Board during that time. The meetings of

the sub-committee that considers new subject areas used to be announced on the WSBA website with minutes available for review but are not any longer. My request for the minutes of the sub-committee working on new subject areas was denied. I was told I needed to make a public records request. This lack of transparency is quite troubling, particularly given the funds being expended and the demonstrably poor decision-making by the Board and the Sub-Committee from my perspective (and that of many others).

My review of the materials for the August LLLT Board meeting were troubling. The Board supposedly was given all of the comments about the program expansion but, upon review, my own prior comments were not included in the material provided. I don't know how many comments from others were withheld from the Board. The Board also commented about a letter favorable to the expansion and suggested that the author be invited to a meeting to elaborate. There seems to be little concern that the majority of responses were negative to the expansion idea.

It was also disturbing to see that the LLLT Board seems to be planning on offering scholarships to LLLTs. With a program operating hundreds of thousands of dollars in the red, even consideration of a program scholarship is inappropriate.

My review of the available LLLT board minutes and the New Practice Area Committee raise more concerns, particularly with regard to a previously planned expansion into immigration law. The April 2018 minutes state that the LLLT program is expanding into immigration law and that they had already contacted Governor Inslee to get his support for legislation to try and, in effect, "preempt" the federal law to allow local LLLTs to practice in the immigration field. This action by the LLLT program seems to have been done without the permission of the Washington Supreme Court or the WSBA Board of Governors. That attempted expansion was also ill-advised and should not be encouraged or permitted. The Washington State Immigration Services page on the Attorney General website calls immigration law "one of the most complicated areas in the legal field." ... [and] specialized training" is required...[and] the lawyer/expert must be "authorized under federal law to provide immigration services." While it seems that this attempted expansion is not presently being pursued, the LLLT board seemed to have acted improperly by going to the Washington State Governor without the support of the BOG or the Supreme Court.

The Washington Supreme Court should demand some answers from the LLLT board and the Executive Director. Such answers should be in writing and made available to WSBA members. How many LLLTs are presently in practice and whom are they representing? What are they charging? While their fees may not be controlled under anti-trust considerations, the fees can certainly be analyzed to determine whether this program is meeting the needs of low-income or moderate means people. After all, this was the intent of the LLLT program. It is odd that the Executive Director and the LLLT Board are quick to say that they cannot/will not look at the fees charged by LLLTs while allowing LLLTs to advertise that they charge one-third of that

of a lawyer. How do they make that assertion without a factual basis for it?

I am concerned that the LLLT program seems to be operating without true and objective oversight or administration. The meeting with the Governor's office involving the Executive Director, Paula Littlewood, is a prime example. It is troubling that this action was not disclosed in her monthly activity reports. She apparently had two BOG members with her but this action was not reported in their monthly activity reports either. The Executive Director report of January 12, 2018 makes no mention of LLLT issues at all. Steve Crossland's report to the Board of Governors of January 4, 2018 discusses proposed expansion of the LLLT Family Law work and needed amendments to APR 28 and RPCs but no mention of immigration or consumer debt expansion.

How was it acceptable for these people to go to the Governor to lobby for changes in the law? Sections are supposedly not allowed to make any public statements without approval of the WSBA yet a meeting was apparently conducted with the Governor of this state without any such prior approval. Making public statements on the LLLT program and potential expansion without any advance consideration of the BOG or a subsequent report of the meeting to the BOG means that the BOG and the membership is being denied information that it should have.

Promotion of the program as a success.

I am particularly concerned about the promotion of the LLLT program to other states as a success. This program has 35 people working in the field, only some of which work independently. The others work in law firms and it seems that their work is that of a normal paralegal.

This program has cost the WSBA over \$1,000,000 since its inception. It operates at a considerable loss and that loss is increasing each year. This is not a success. The program should not be "sold" to other states as a success. Doing so will only serve to lower our standing with those states when they, too, suffer such losses and failures. It is distressing that our funds are being spent by Paula Underwood and Steve Crossland to visit various other states and countries "wearing WSBA hats" to talk up the LLLT program concept. I am concerned about the direct and indirect costs of their joint travel to various locales, including Hawaii and Canada. While I have been told that their "travel costs" are not paid by the WSBA, I do not know the status of their other costs. But, even if the costs are out of the picture, I am concerned about the appearance to the membership of this joint travel. It would certainly seem that the WSBA and the Washington Supreme Court are leaving themselves open to public criticism.

WSBA approach to LLLT program.

The present Executive Director's unbalanced and unobjective support for the LLLT program compared with her tepid or non-existent support for actual lawyers is disturbingly clear

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when the new website is examined. I am proud to be a lawyer. From my childhood spent reading and watching Perry Mason and other legal shows, I have always wanted to be a lawyer. This was solidified as I became an active feminist starting at age 16 or so and has continuing for the last 46 years. I followed and studied a civil rights movement that included landmark legal cases regarding education, public facilities, marriage (interracial and gay), sexuality, privacy and many others. None of that glorious history is reflected in the WSBA website, not even a reference to Thurgood Marshall, Ruth Bader Ginsburg or, even, our own William O. Douglas. Not a mention of any landmark cases which have resulted in improved lives for millions of Americans. In fact, the website page which describes becoming a lawyer is a dry recitation of the costs and burdens of being a lawyer.

By contrast, the website pages which describe becoming a LLLT is enthusiastic and glowing and makes broad promises about a career as a LLLT.

Conclusion.

I think it is time for the Washington Supreme Court to take another good hard look at the LLLT program and its purpose and structure. If it is to continue, it is time for reasonable and unbiased administration. It is also time for the Washington Supreme Court to demand that the WSBA administration enthusiastically support and applaud the work of lawyers.

If the Court agrees with my concerns, it is likely time to end this failed program. The 35 people that are presently licensed would likely just continue as well-paid paralegals.

Sincerely,


Nancy Hawkins, a proud lawyer.

cc. LLLT Board (with enclosures)

Washington State Bar Association
Budget Comparison Report
For the Period from October 1, 2018 to September 30, 2019

LIMITED LICENSE LEGAL TECHNICIAN	FISCAL 2018 BUDGET	FISCAL 2019 BUDGET	\$ CHANGE IN BUDGET	% CHANGE IN BUDGET
REVENUE:				
TOTAL REVENUE:	-	-	-	
DIRECT EXPENSES:				
LLT BOARD	17,000.00	17,000.00	-	0%
LLT OUTREACH	8,000.00	8,000.00	-	
STAFF TRAVEL/PARKING	600.00	600.00	-	0%
TOTAL DIRECT EXPENSES:	25,600.00	25,600.00	-	0%
INDIRECT EXPENSES:				
FTE	1.70	1.55	(0.15)	-9%
SALARY EXPENSE	142,602.00	135,526.00	(7,076.00)	-5%
BENEFIT EXPENSE	49,304.00	41,592.00	(7,712.00)	-16%
OVERHEAD	42,495.00	38,095.00	(4,400.00)	-10%
TOTAL INDIRECT EXPENSES:	234,401.00	215,213.00	(19,188.00)	-8%
TOTAL ALL EXPENSES:	260,001.00	240,813.00	(19,188.00)	-7%
NET INCOME (LOSS):	(260,001.00)	(240,813.00)	19,188.00	

The Limited License Legal Technician (LLLT) license type (APR 28), was created by the Supreme Court and delegated to WSBA in 2012. In the past, this cost center was used to track all revenues and expenses associated with the "LLLT Program". LLLTs are now WSBA members, and consistent with the WSBA Bylaws and the Washington Supreme Court Admission and Practice Rules, the administration and regulation of these member license types has been consolidated within existing work groups and cost centers that already perform these functions for lawyers, including Admissions, License and Membership Records, and MCLE (although it continues to be possible to determine these costs separately by member type if needed). For FY19, this cost center is used primarily to track staffing and expenses related to the LLLT Board, which by court rule oversees the license.

WSBA COMMITTEE/BOARD ANNUAL REPORT – FY18

<p>Limited License Legal Technician (LLLT) Board</p> <p>Chair: Steve Crossland</p> <p>Staff Liaison: Renata Garcia</p> <p>BOG Liaison: Dan Clark</p>	<p>Size of Committee: 15</p> <p>Number of FY19 Applicants: 6</p> <p>FY18 direct expenses: \$17,000</p> <p>FY18 Indirect expenses: \$92,636</p>
<p>FY18 Demographics:</p> <ul style="list-style-type: none"> • Gender (Female: Male: Not Listed): 12:2:0 (0 did not answer) • Number of members self-identified with a racial/ethnic under-represented group: 3 (0 did not answer) • Number of members self-identified as having a disability: 2 (0 did not answer) • Number of members self-identified as LGBT: 2 (0 did not answer) 	
<p>Background & Purpose:</p> <p>The Limited License Legal Technician (LLLT) Board derives its authority from the Washington Supreme Court under Rule 28 of the Admission to Practice Rules (APR), adopted effective September 1, 2012. By order of the Court, the WSBA is to administer and fund the LLLT Board and the program.</p> <p>APR 28 authorizes persons who meet certain educational and licensing requirements to advise clients on specific areas of law. The only currently approved practice area is domestic relations. The Supreme Court established the LLLT Board to oversee the LLLT license.</p>	
<p>Strategy to Fulfill Purpose:</p> <p>From 2013-2016, the LLLT Board concentrated on creating the operational details for the LLLT license; the LLLT Board is now focusing on the promotion, expansion, and development of the license.</p>	
<p>2017-2018 Accomplishments and Work in Progress:</p> <ol style="list-style-type: none"> 1) In February 2018, the LLLT Board submitted suggested amendments to APR 28, the LLLT RPC and the RPC for lawyers for consideration by the Washington Supreme Court. These amendments would enhance the scope of the current family law practice area. The Court recently published the suggested amendments for comment. Comments are due by no later than September 14, 2018. 2) The LLLT Board is currently circulating a new proposed practice area, Consumer, Money, and Debt, for comment before taking further action, i.e., developing curriculum requirements, seeking approval by the Court, etc. The LLLT Board hopes to engage as many subject matter experts as possible in the development of this and any future proposed practice areas. 	

- 3) The LLLT Board recently approved the University of Washington Continuum College Paralegal Studies Program to teach the LLLT core curriculum.
- 4) The LLLT Board has been engaging in discussions to explore ways in which LLLT students may qualify for financial aid.

2018-2019 Goals:

- 1) The LLLT Board will continue to consider and recommend new practice areas for approval by Supreme Court.
- 2) If the family law enhancements are approved by the Court, the LLLT Board will develop the required training for currently licensed LLLTs.
- 3) The LLLT Board also plans to expand the accessibility of the LLLT core curriculum across the state by continuing to approve core class programs at additional community colleges.
- 4) The LLLT Board will continue to engage in outreach efforts, including working with the WSBA communication team to expand outreach to a diverse pool of LLLT candidates, including college and high school students.
- 5) The LLLT Board also plans to advance its efforts to provide access to financial aid for students in the LLLT practice area classes.

Please report how this committee/board is addressing diversity:

1) Are you using any of the tools provided by WSBA and if so, how? 2) Have you sought out training or consultation from the Inclusion and Equity Specialist? 3) How have you elicited input from a variety of perspectives in your decision-making? 4) What have you done to promote a culture of inclusion within the board or committee? 5) What has your committee/board done to promote equitable conditions for members from historically underrepresented backgrounds to enter, stay, thrive, and eventually lead the profession? 6) Other?

- 1) The LLLT Board seeks members from different backgrounds and experiences who work together to foster a positive work environment in concert with WSBA's commitment to diversity and inclusion.
- 2) The LLLT Board will schedule training with WSBA's Inclusion and Equity Specialist.
- 3) The LLLT Board seeks input from all WSBA members as well as the legal community in general when making important decisions such as developing a new practice area.
- 4) APR 28 has been amended at the request of the LLLT Board to allow LLLTs and LPOs as well as attorneys with judicial and emeritus pro bono status to serve as Board members.
- 5) The core curriculum educational approval process reflects the LLLT Board's commitment to diversity in that it requires any institution offering the core curriculum to have diversity, inclusion, and equal access policies and practices in place. The LLLT Board also sought to increase diversity within the LLLT profession by extending the limited time waiver (see APR 28 Regulation 4) to 2023 in order to allow a group of candidates qualified by work experience rather than by education to enroll in the practice area classes. The ongoing effort to provide a pathway to financial aid for the practice area classes also aims to provide more opportunities to join the LLLT profession to prospective applicants from diverse socio-economic backgrounds.
- 6) N/A

Please report how this committee/board is addressing professionalism:

- 1) Does the committee/board's work promote respect and civility within the legal community?
- 2) Does it seek to improve relationships between and among lawyers, judges, staff and clients?
- 3) Does it raise awareness about the causes and/or consequences of unprofessional behavior?
- 4) Other?

- 1) The LLLT Board has set up rules of professional conduct and a disciplinary system for LLLTs, as well as requiring LLLTs to carry malpractice insurance and conform to the same rules as lawyers regarding IOLTA accounts.
- 2) The LLLT Board has worked to promote LLLTs in the legal community and educate all legal professionals about the permitted scope and models for LLLT practice, as well as highlighting the ways in which collaboration with LLLTs can contribute to the efficiency and accessibility of any legal practice.
- 3) N/A
- 4) N/A

Please report how this committee/board is integrating new and young lawyers into its work:

- 1) How have you brought new and young lawyers into your decision making process?
- 2) Has the committee/board supported new and young lawyers by (for example) helping to find and prepare them for employment, assisting with debt management, building community, and providing leadership opportunities?
- 3) Other?

- 1) All WSBA members are invited to provide comments on rules and new practice area suggestions and development, including new and young lawyers.
- 2) N/A
- 3) N/A

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 14, 2018 4:26 PM
To: Hinchcliffe, Shannon
Cc: Jennings, Cindy; Tracy, Mary
Subject: FW: LLLT program
Attachments: 9-14-18 Phillips Letter.pdf

From: Nancy Hawkins [mailto:nhawkins@seanet.com]
Sent: Friday, September 14, 2018 4:08 PM
To: Phillips, Cindy <Cindy.Phillips@courts.wa.gov>; OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>;
LLLT@wsba.org
Subject: LLLT program

See attached. Hard copy to follow by mail to the Washington Supreme Court.
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