LBAW
Latina/o Bar Association of Washington
P.O. Box 21134 Seattle, WA 98111-3134 www.lbaw.org
"Representing the concerns and goals of Latino Attorneys and the Latino Community"

December 1, 2014

Clerk, Washington State Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
VIA EMAIL: supreme@courts.wa.gov

Re: Comments to Proposed APR 28, and the Proposed Limited License Legal Technician Rules of Professional Conduct.

To Whom It May Concern:

The Latina/o Bar Association of Washington (LBAW) submits the following letter containing comments for consideration by the rulemaking body that issued the proposed rules. The following comments are intended to form part of the record of the proposed rules and regulations associated with the above referenced APR.

LBAW is a non-profit corporation and a member organization, whose membership includes a wide variety of legal practitioners and community members from across Washington State. Its purpose is to represent the concerns and goals of Latina/o attorneys and Latina/o people of the State of Washington. LBAW has actively advocated in state rulemaking and legislation, state and federal policy, as well as by endorsing litigation positions that are important to members of the Latina/o community.

The creation of "Limited License Legal Technicians" (LLLTs) by the Supreme Court is an issue that is of critical importance to the Latina/o community. Of the estimated 967,282 Washingtonians living below the poverty line in 2013, approximately 28% are Latina/os.[1] Latinos, farmworkers, recent immigrants, as well as other people of color have been identified as demographic cluster groups that had particularly low rates of attorney assistance with legal problems.[2] LBAW is aware of the tremendous need for legal assistance for Washington's Latina/o community. LBAW's comments and input on the LLLT initiative are provided with a concern for providing quality legal services to Washington residents, especially the most vulnerable populations of our state. LBAW

[1] Source, American Community Survey Briefs, U.S. Census Bureau, accessed at: http://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-01.pdf; Socioeconomic Position in Washington, Washington State Department of Health, Updated March 25, 2014, accessed at: http://www.doh.wa.gov/Portals/1/Documents/5500/Context-SEP-2014.pdf

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has a vested interest in protecting Washingtonians with limited English Proficiency, with uncertain immigration status, immigrants and refugees, and low-wage workers.

The Court should consider adopting special protections for legal service consumers with limited English proficiency.

While LBAW is pleased that LLLTs are required to provide a written contract for services, there is nothing in APR 28 (G)(3) that addresses the concerns of limited English proficiency (LEP) clients. Because the LLLT program is novel and seeks to serve a vulnerable population which includes LEP clients, the practice rules should require that the written contract be either translated into the LEP client's language of choice, or that the contract contain a certificate of translation indicating that the contract was explained to the client in his/her language of choice, and that they indicated that they understood the terms of the contract. The certificate of translation should indicate who read the contract, and should bear the interpreter's signature.

The Court should adopt rules reflecting cultural competence with regard to terms used for advertisements or representations of LLLT services.

Because the LLLT is a new profession that has no equivalent in the U.S., the issue of how the LLLTs should represent themselves or advertise their services is a crucial concern. One of the protections written into APR 28(H)(4) prohibits the representation or advertisement of "other legal titles or credentials that could cause a client to believe that the LLLT possesses professional legal skills beyond those authorized." Special considerations regarding cultural competency need to be included in the rule to protect Latina/o consumers because this community is particularly vulnerable to this type of fraud.

The phenomena of fraud by notary publics who advertise to Spanish-speaking consumers as a "*notario publico*" is well documented[3]. The prevalence of *notario* fraud in immigration law led to the Washington State legislature adopting the "Immigrant Services Fraud Prevention Act" in 2011. *See* RCW Chapter 19.154. The measures taken by the legislature merit consideration and adoption into the proposed LLLT rules. A prohibition on the use of the term "notary", "notary public", and "notario", or "notario publico" in LLLT advertising is necessary to prevent confusion among Latino consumers as to the legal skills authorized under APR 28. The prohibition of representing

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or advertising as a notary public or *notario publico* safeguards the consuming public at little cost or burden to LLLTs.

The Court should clarify the scope of LLLT authorized practice by prohibiting LLLTs from practicing law wherever prohibited by state or federal statute, regulation, or procedure.

The scope of APR 28 should not be allowed to circumvent the express prohibition by the Legislature against nonlawyers practicing immigration law.

In 2011 the Legislature eliminated state authorization of Immigration Assistants under the "Immigration Assistant Practices Act" (IAPA) and passed the 2011 "Immigration Services Fraud Prevention Act" because the system created led to widespread abuse by immigration assistants, who often preyed on the most vulnerable Washington residents.[4] LBAW continues to support the prohibition on nonlawyers practicing immigration law, because it is a complex and specialized area of law, and because the consequences of errors for clients are so dire that they require, at a minimum, the supervision of an attorney.

The Court should also delete the authorization APR 28(F)(6), that permits an LLLT to "select, complete, file, and effect service" of "federal forms". Such an authorization suggests a loophole on the prohibition of such activities by RCW 19.154.060 (2)(b) – (e). The Supreme Court should avoid creating any authorization of LLLT activities that undermine the legislative mandate of RCW Chapter 19.154.

The Supreme Court should also avoid conflict with existing administrative regulation, particularly at the federal level, of practice before administrative tribunals.

Although the Washington Supreme Court has the power to license legal practitioners before Washington State Courts, Federal Courts and administrative agencies retain the ability to determine who is allowed to practice before them.[5] Attorneys who are otherwise permitted to

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[4] *See*, BellevueReporter.com, "State charges disbarred Bellevue attorney with illegally practicing immigration law", Nov. 4, 2010. Available at: http://www.bellevuereporter.com/news/106747318.html; Seattle Post-Intelligencer Blog, "State takes action to end exploitation of immigrants", July 23, 2010, available at: http://blog.seattlepi.com/boomerconsumer/2010/07/23/state-takes-action-to-end-exploitation-of-immigrants/; Legal Newsline, "Report: Wash. AG, immigration advisor reach agreement", July 18, 2011, available at: http://legalnewsline.com/news/233327-report-wash-ag-immigration-advisor-reach-agreement.; Press Release, Washington State Attorney General Consumer Protection Division, "Latino immigrants at risk of being exploited by 'notarios'", July 13, 2010, available at: http://www.atg.wa.gov/pressrelease.aspx?id=26098#.VHi66IvF98E.

[5] *E.g.*, 31 U.S.C. §330 (regarding the regulation of practice before the Secretary of the Treasury in Internal Revenue Service proceedings); 8 C.F.R. §§ 1.2, 292.1, 292.2, 1292.1, 292.2 (setting for the rules for representation of persons before the USCIS and immigration courts (EOIR)); 20 C.F.R. §§404.1705, 416.1505 (setting forth the requirements for representatives in Title II and Title XVI claims before the Social Security Administration). *See also, Matter of*

practice by a State Supreme Court, may be prohibited from practicing before an administrative agency pursuant to an act of agency discipline.

LBAW is concerned that consumers, particularly low-income and limited English proficiency Washington residents are vulnerable to predation by nonlawyers who represent that they are authorized to represent people before agencies when they are explicitly prohibited. Absent a clear indication from the Supreme Court, there is a potential danger that LLLTs will attempt to use their Washington State acquired license to circumvent the rules of practice before administrative agencies. Even if the administrative agencies diligently enforce their practice rules, absent a specific prohibition from the Washington Supreme Court, LLLTs may continue to provide advice and representation for remuneration by advising clients to submit documents prepared by an LLLT in *pro se*.

The Court should require disclosure of malpractice insurance coverage and strengthen liability for LLLT malpractice.

APR 26(a) requires annual certification by each member of the WSBA of the malpractice insurance coverage by lawyers in private practice. APR 26(b) requires that the certification be made publicly available. It is unclear from the proposed rules whether the insurance certification requirement would extend to LLLTs. It is an important consideration for consumers to be notified of the existence of malpractice insurance, particularly for LLLTs because of the novelty of the licensing scheme. LBAW believes that the Court should amend the LLLT practice rules and/or APR 28 and APR 26 in order to extend the requirement of public disclosure of the existence of malpractice insurance to LLLTs.

Conclusion

LBAW appreciates the opportunity to provide comments to the proposed rules governing LLLT licensing and practice. LBAW's concerns regarding these proposed rules focuses on the potential harm to the Latina/o community, whose socio-economic, linguistic, and cultural characteristics present unique challenges to the LLLT program. It is our hope that the Court will consider these needs when promulgating its final rules and comments to those rules.

Thank you for your consideration.

Ayuda, 26 I&N Dec. 449 (BIA 2014) for an explanation of the factors and considerations weighed by the Board of Immigration Appeals when determining whether to permit a nonlawyer to practice before the Immigration Service and Immigration Courts.

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President of the Board of Directors,
Latina/o Bar Association of Washington

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, December 02, 2014 8:15 AM
To: Tracy, Mary
Subject: FW: Comments on LLLT Rules
Attachments: LBAW Comments 12.1.14.docx

I believe this needs to be forwarded to you since it does seem to do with the LLLT rules.

Kris Triboulet
Receptionist/Secretary
Washington State Supreme Court
Kristine.triboulet@courts.wa.gov
360-357-2077

From: David B. Mendoza [mailto:dbmendoza@gmail.com]
Sent: Tuesday, December 02, 2014 7:49 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: Comments on LLLT Rules

Please see below for edited comments. Our full comments are en route via standard mail, a copy is attached.

December 1, 2014

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David B. Mendoza
President of the Board of Directors,
Latina/o Bar Association of Washington

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