

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, May 10, 2016 11:38 AM
To: Tracy, Mary
Subject: FW: Comment to Proposed Change to APR 28 F, Scope of Practice for LLLT

Supreme Court Clerk's Office

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From: Terry J. Price [mailto:tprice@uw.edu]
Sent: Tuesday, May 10, 2016 11:35 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Patricia C. Kuszler <kuszler@uw.edu>; William Covington <covinw@uw.edu>
Subject: Comment to Proposed Change to APR 28 F, Scope of Practice for LLLT

Dear Justices:

I direct the LLLT Family Law Education Program at the University of Washington School of Law. I am also the instructor for the Introduction to Family Law course being taught right now, and I taught the same course to the other two previous LLLT cohorts. I am sending you via email my comments to the proposed change to APR 28 F, the Scope of Practice for LLLTs. I am copying Vice Dean Patricia Kuszler and Senior Lecturer William Covington who are members of the LLLT Board.

I have several concerns about the following proposed rule APR 28 F(8):

(8) Draft ~~legal~~ letters setting forth legal opinions that are intended to be read by persons other than the client, and draft documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a Washington lawyer;

My first concern is structural. One way to read this rule change would be in two parts: 1) Draft letters setting forth legal opinions that are intended to be read by persons other than the clients, and, on a separate note, 2) draft documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a Washington lawyer. In this reading, the LLLT would be free to draft letters to third parties without supervision. But, if the matter is beyond the scope, they must get attorney approval. Is that the intent of the rule change? Or was the rule supposed to be that they should get approval by an attorney in both instances? That fact that it could be read two ways leads me to believe it is ambiguous and should be clarified either way so that there is no confusion for practicing LLLTs (who are not lawyers and do not have their sophistication in parsing language). I believe the easiest way to accomplish the separation is to give them different numbers:

(8) draft letters setting forth legal opinions that are intended to be read by persons other than the clients;
(9) draft documents beyond what is permitted in paragraph (6), if the work is reviewed and approved by a Washington lawyer;
Etc.

My next concern is the language "setting forth legal opinions." My understanding from previous meetings with the Scope of Practice Board is that the LLLTs would be able to communicate with third-party experts (accountants, realtors, etc.) on behalf of their client. This language does not give that clarity. I would prefer the language to be slightly broader to include "setting forth legal opinions or requesting documentation or information on behalf of the client." Frankly, who would the LLLTs be writing with a legal opinion? They are prohibited in APR 28 H to negotiate a client's rights or responsibilities or participate in dispute resolution proceedings.

My last concern about this proposed rule change has to do with conflict in APR 28 H. If the LLLT will be able to draft letters to third parties, I think the rule needs some clarity how it will work without violating APR 28 H. Some reference in the proposed language to specify how it will work with the existing prohibitions would give necessary guidance to the LLLTs.

For some background, we spend a great deal of time in the classes talking to students about a workable business model. The LLLT students are much more concerned than JD students about how they will structure their business and make this work for them and for their clients. And why is this important? Because if we do not solve this, then we will never see the numbers of LLLTs that we had all hoped for out of this venture. We all take very seriously the scope of practice limitations and would like to see some changes made to make the business model work more smoothly. I will outline some of that in my next email commenting on their other proposed language rule change.

Additionally, I am copying here a paragraph that I sent you back in November 2015 about the idea to make the LLLTs "speaking agents," which is broader than the proposed rule. I still support this and it is implicated by this rule change:

The umbrella issue here is to what degree does the LLLT maintain a steady representation of a client during the dissolution. Translating the current rules into a practice model, the LLLT is limited to sporadic, unbundled services to the client. Our understanding from the Bar Association is that the LLLT will not file a Notice of Appearance, nor receive court filings on behalf of the *pro se* client. Further, under the current rules, she or he cannot speak on behalf of the client, even to the client's own agents (like an accountant or real estate broker). The LLLT will only be able to rely on the client for information, which that client may or may not have. Permitting the LLLT to call the client's agents and request information (for discovery, for completion of a child support worksheet and order, etc.) would decrease the client's frustration with the LLLT limitations and would improve the information flow to the legal professional directly from the source. If the goal is to provide comprehensive legal services to those who currently cannot afford them, then I believe strongly the LLLT should be allowed to assume the speaking agent role. I would remove the APR 28(H)6 phrase "or communicate with another person the client's position or convey to the client the position of another party," and instead place an affirmative permission in APR 28(F) under Scope of Practice.

Please feel free to contact me if I can provide any additional information.

Sincerely,

Terry Price

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