

Spring 2014

## The Promise and Challenges of Limited Licensing

Barbara Madsen

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Law Commons](#)

---

### Recommended Citation

Madsen, Barbara (2014) "The Promise and Challenges of Limited Licensing," *South Carolina Law Review*. Vol. 65 : Iss. 3 , Article 5.

Available at: <https://scholarcommons.sc.edu/sclr/vol65/iss3/5>

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact [digres@mailbox.sc.edu](mailto:digres@mailbox.sc.edu).

LUNCHEON KEYNOTE  
THE PROMISE AND CHALLENGES OF LIMITED LICENSING

The Honorable Barbara Madsen\*

Thank you very much for inviting me to speak today and for the introduction. I was initially told that your chief justice, Justice Jean Toal, would be introducing me today, but I learned today that she had medical difficulties and is unable to attend this Symposium. Because I thought that she would be here, I Googled her and I found that she has been making history right here at home with her reelection as chief justice.<sup>1</sup> I think this makes her the longest serving chief justice, at least in this state, if not in the entire country.<sup>2</sup> As such, Chief Justice Toal is an important and dynamic member of the Conference of Chief Justices. Membership in the Conference is like tenure in Congress: when a state has a senior member of the House or Senate, the state has real influence. Through your chief justice, Jean Toal, your state has an important influence in the Conference of Chief Justices. I am sorry she cannot be here, but tell her how glowing the terms were in which I described her.

I am here today to talk about alternative approaches for delivery of legal services. This is a big topic, but I am going to limit my remarks to Washington State and what we are doing to find new ways to deliver what we all recognize is critical to our own democracy: access to legal services for people in our communities. Specifically, I am here to talk about a position we have created in Washington—a legal provider we call a *limited license legal technician*. We have developed a rule that permits a limited legal practice—a nonlawyer practice in a limited scope—through a rule we adopted on June 15, 2012.<sup>3</sup> Before I talk about the rule, though, I want to set the stage to help you understand how we arrived at what ultimately became APR 28. For shorthand purposes, I am going to refer to the rule as “Triple LT.”<sup>4</sup>

The idea for the rule grew out of a concern among members of our state bar association in the mid-1990s about the unauthorized practice of law. Members of the bar contacted the supreme court with complaints about the practices of nonlawyers that were injuring the public. My husband frequently points out that I “live in an ivory tower” because I sit on the supreme court. Sometimes that turns out to be true: the court was in the ivory tower about the unauthorized practice of law. We needed to be convinced. What we learned was that the

---

\* Chief Justice, Washington Supreme Court.

1. See John Monk, *Toal Victorious in Historic Dual*, THE STATE, Feb. 6, 2014, at A1.

2. *Id.*

3. See *In the Matter of the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians*, No. 27500-A-1005, at 1, 12 (Wash. 2012) [hereinafter *Order Adopting LLLT Rule*], available at <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

4. See WASH. ADMISSION TO PRACTICE R. 28 (2014).

problem of unauthorized practice had reached new heights with the advent of the Internet. There was a proliferation of legal forms becoming available online through sites like LegalZoom. If you are not familiar with these legal services sites, you will be surprised at how many there are, and at the services they offer. Through the lawyers, we learned about do-it-yourself kits, do-it-yourself forms, and about people who were willing to help fill out those forms. One of the justices made it a point to go out into his local community to see what he could learn about this unauthorized practice of law problem. As the story goes, he came upon a doublewide trailer with a large billboard announcing, “Wills: fifty bucks.” There were other services as well—for example, divorces—that had another price advertised on the side of the trailer. Clearly, this was not a lawyer offering services. That trailer drove home the fact that practices which had great potential for harm to the public were going on in our communities, right outside our ivory tower. We became convinced that the unauthorized practice of law was a serious issue, and this concern launched one of the tracks that ultimately led to creation of the Triple LT rule. The other parallel track leading to the rule was a concern the supreme court heard from our trial judges.

Along with the unauthorized practice trailer, we also began to see a large growth of unrepresented individuals coming into court.<sup>5</sup> I am sure those of you who have a practice that takes you to court have witnessed the large number of unrepresented people. The number continues to grow each year and has become one of the greatest challenges facing our trial courts. I have made it a point to pro tem in our courts of general jurisdiction.<sup>6</sup> I have been faced with people seeking parenting plans, for example, or a motion to modify a dissolution decree, and the paperwork is not filled out. The parenting form is long and complex. When the parties have trouble filling out the forms, they expect the judge to help them. The judge is trying to move the docket. There is little time to work with these unrepresented people who do not know what they are doing. Often, one party is represented and the other is not. There is a fine line that a judge must walk between being an advocate—wanting to make sure that the unrepresented parties have their day in court and are treated fairly—and being fair to the side that is represented.

Unauthorized practices of nonlawyers and the need for legal services for the indigent and moderate means individuals created parallel tracks within our bar: one based on a concern for litigants who were not getting justice in many

---

5. *See, e.g.*, THOMAS GEORGE & WEI WANG, WASHINGTON COURTHOUSE FACILITATOR PROGRAMS FOR SELF-REPRESENTED LITIGANTS IN FAMILY LAW CASES 10 (2008), available at <http://www.courts.wa.gov/wscsr/docs/Courthouse%20Facilitator%20Program.pdf> (discussing the increase of self-representation in family courts in the 1980s and 1990s).

6. *Superior Courts*, WASH. COURTS, [https://www.courts.wa.gov/newsinfo/resources/index.cfm?fa=newsinfo\\_jury.display&altMenu=Citi&folderID=jury\\_guide&fileID=superior](https://www.courts.wa.gov/newsinfo/resources/index.cfm?fa=newsinfo_jury.display&altMenu=Citi&folderID=jury_guide&fileID=superior) (last visited May 5, 2014).

instances because they lacked representation, and the other based on concerns with predatory practices in the community, such as the provision of forms and legal advice by people without training to give such advice. These tracks eventually came together and formed a task force in the bar association. The supreme court supported the formation of this group, and we realized that the first thing we needed to do—and I think many states have struggled with this—was to define the *practice of law*. If the court intended to address the unauthorized practices we saw, we had to determine the activities that constitute the practice of law. Trying to put a fine point on what it means to practice law is not a simple task.

I recently presented on Washington's Triple LT rule at the Conference of Chief Justices, and I was interested to learn how many states have attempted, and then abandoned, the effort to define the *practice of law*. We thought that defining the *practice of law* was an important component of addressing our dual concerns, so our new task force took on the challenge. After much debate, the group proposed a definition of the *practice of law*, which the supreme court adopted in a rule: GR 24.<sup>7</sup> GR 24 represents our concern with ensuring that the public has access to competent legal services and is protected from the unauthorized practice of law. Many states that have attempted to define the *practice of law* have encountered concerns with restraint on trade. Our court recognized the need to walk a fine line to ensure that we were not engaging in protectionism while attempting to protect the public. We believe we struck the right balance with GR 24.<sup>8</sup> If you have an opportunity to review GR 24, the rule says much more about what the practice of the law is *not* than about what the practice of law *is*, but it nevertheless forms the foundation for our Triple LT program.

Armed with the definition of the *practice of law*, we were ready to find solutions to our dual concerns—access to justice and protection of the public. We recognized that although the unauthorized practitioners posed a real danger to our state, we also recognized a market for this advice—a need for low cost, limited legal services. This led to the creation of the Practice of Law Board,<sup>9</sup> which is institutionalized in GR 25.<sup>10</sup>

The Practice of Law Board had two responsibilities. One was to investigate complaints of unauthorized practice of law and refer such practices for prosecution if necessary.<sup>11</sup> The board was also charged with offering advisory opinions about what the practice of law is and giving direction as to what activities a nonlawyer can engage in.<sup>12</sup> The last report from the bar stated that

---

7. See WASH. GEN. R. 24 (2002).

8. *Id.* R. 24(a).

9. See WASH. GEN. R. 25 (2006).

10. *Id.*

11. *Id.* R. 25(c)(2).

12. *Id.* R. 25(c)(1).

the board has investigated over 1,400 complaints of unauthorized practice of law.

In the worst case scenario, a person will be referred for prosecution.<sup>13</sup> There have been four successful prosecutions for the unauthorized practice of law. This is an important reminder to the predators who are practicing law that there are consequences for their conduct.

The supreme court and the Practice of Law Board have periodically discussed an amendment to the Consumer Protection Act, making the unauthorized practice of law a per se violation of the Act.<sup>14</sup> We have not taken that step in our state, but amending consumer laws is certainly a direction that other states have discussed as well—along with pursuing criminal prosecution.

The second charge to the board was to find ways to fill unmet legal needs of the indigent and moderate means individuals by exploring services that nonlawyers might offer without endangering the public. The board was asked to identify a number of limited legal activities that could be provided, how individuals providing these limited services could be regulated and trained, and how they would be disciplined if there were violations of a set of conduct rules. This board had two very daunting charges.

The board was created in 2001. It is clear from the dates that it took many years to get from the definition of the *practice of law* to what has become the limited license legal technician rule. After the board was formed, members took their show on the road, soliciting public comment over the space of several years. From the outset, the board ran into a buzz saw with the lawyers when they presented the idea of nonlawyers being licensed. Some of these board meetings were so heated that the lawyers on the board were not sure they would leave the room in one piece. Understandably, lawyers—anyone—would feel threatened. There were expressions of fear for the public, but primarily there was a fear of losing business to nonlawyers. Suffice it to say, there was pushback. We resolved not to rush a good idea because we had failed to adequately process it. If you know about Washington State, and particularly Seattle, we process everything. Ultimately, it took us seven years, from 2005 when the limited license rule was proposed, until 2012, to finally pass the rule.<sup>15</sup>

What were some of the considerations that led us to pursue what we knew was a very unpopular idea? One of the driving concerns was that legal services at the federal level were being cut back drastically—we needed to seek state funding for our legal services efforts. We have two legal services offices: one is

---

13. See *id.* R. 25(h)(1).

14. See WASH. REV. CODE §§ 19.86.010–86.170 (1981).

15. See Hon. Barbara Madsen & Stephen Crossland, *The Limited License Legal Technician: Making Justice More Accessible*, NWLAWYER, Apr.–May 2013, at 23, 23, available at <http://nwlawyer.wsba.org/nwlawyer/201304?pg=25#pg1>.

Columbia Legal Services<sup>16</sup> and the other is Northwest Justice Project.<sup>17</sup> With federal funding drying up, we had to convince the state legislature that the people of Washington had unmet legal needs. Convincing the legislature to pay for lawyers would be a challenge. In 2003, the supreme court—at the urging of members of the bar—commissioned a civil legal needs study. I was very proud of our court because we committed our limited resources to help finance this costly legal needs study.<sup>18</sup> The study consisted of extensive focus groups, individual interviews, and surveys—and strong attention to process. The study revealed a glaring unmet need for legal services among the low- and moderate-income population in our state. The report concluded that 85% of the state’s low-income population had serious legal problems involving such basic needs as housing, employment, and family stability—but only 15% of those legal needs were being met with legal assistance.<sup>19</sup> In the face of this critical need, we thought that the legislature would respond. The results of the study were also valuable in helping to identify the areas where the legal needs were most dire. This information would aid in deciding what areas our nonlawyers might be able to provide services in. The legal needs study was a big driver in our decision to go forward with the Triple LT program.

Another consideration that convinced us of the need to find an alternative legal services delivery model was that we continued to see an ever-increasing number of pro se litigants.<sup>20</sup> Judges were becoming very frustrated—particularly when the recession hit—and court budgets were drastically cut. Not only were low-income families struggling with unmet legal needs, but middle class families were also appearing in courts without lawyers. This was most evident when the foreclosure crisis hit. As an aside, I am very proud that our state bar association—as with many state bars—stepped up and volunteered hundreds of hours of legal work in mortgage foreclosure projects. But this was, again, volunteer lawyers—not an adequate long-term answer to what we saw as a growing problem.

Another driver that convinced the supreme court to stay the course was the ever-increasing cost of legal education. Those of you who are students, I am sure you strongly agree with me that a legal education is becoming cost-

16. See *About*, COLUMBIA LEGAL SERVICES, <http://columbialegal.org/about> (last visited May 5, 2014).

17. See *Our Vision: “Justice for All Low-Income People in Washington,”* NORTHWEST JUSTICE PROJECT, <http://nwjustice.org/our-vision-justice-all-low-income-people-washington> (last visited May 5, 2014).

18. See TASK FORCE ON CIVIL EQUAL JUSTICE FUNDING OF THE WASH. STATE SUPREME COURT, *THE WASHINGTON STATE CIVIL LEGAL NEEDS STUDY 8* (2003), available at [http://www.wsba.org/~media/Files/Legal%20Community/Committees\\_Boards\\_Panels/ATJ%20Board/Washington%20State%20Civil%20Legal%20Needs%20Study%20Executive%20Summary%20-2003.ashx](http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/Washington%20State%20Civil%20Legal%20Needs%20Study%20Executive%20Summary%20-2003.ashx).

19. *Id.* at 25.

20. See generally Drew A. Swank, *The Pro Se Phenomenon*, 19 BYU. J. PUB. L. 373, 376–77 (citations omitted) (discussing the rise in pro se litigants over the years).

prohibitive. The cost, even for a public law school education, has grown exponentially. Since 2001, the cost for a public school education in law has tripled.<sup>21</sup> We also know that enrollment in law schools has declined and was at the lowest in 2013 as it had been since 1977.<sup>22</sup> The enormous increase in cost and the reduction in the number of people who can take on that debt convinced us we had to find an alternative to law school-trained legal services providers.

Another argument for our Triple LT program was the proliferation in the number of unauthorized practitioners. Online there are dozens of legal help sites. There are even sites that offer arbitration services, where thousands of dollars are changing hands.<sup>23</sup> Sites that used to provide forms are now branching out—sites such as Nolo.com, DivorceNet.com, experthub.com, and DisabilitySecrets.com.<sup>24</sup> Legal services are being offered by shadowy outfits as well as legitimate practitioners. The challenge is knowing which is which.

In addition to the concerns I have discussed, we also thought it was important to acknowledge that lawyers are not the only professionals facing these issues: there are other professions that we can learn from. The medical profession is a case in point. In the 1960s, the medical profession was ahead of us in recognizing the soaring cost of a medical degree. The profession recognized that many more doctors were specializing, leading to many fewer family practitioners. The medical needs of the average family were not being addressed.<sup>25</sup> When leaders in the medical profession suggested that a more limited medical license might be a solution, they too experienced pushback from the profession.<sup>26</sup> Because of the similarity of the challenges between the professions, we looked closely at their experience with differing tiers of medical professionals—from the physicians' assistants to the nurse practitioners to the certified midwives. While the decision to offer limited licenses was highly

21. See *Law School Tuition 1985-2012*, AM. BAR ASS'N, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/lis\\_tuition.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/lis_tuition.authcheckdam.pdf) (last visited May 5, 2014); *Tuition Tracker*, LAW SCHOOL TRANSPARENCY, <http://www.lawschooltransparency.com/reform/projects/Tuition-Tracker/> (last visited May 5, 2014).

22. Jennifer Smith, *First-Year Law School Enrollment At 1977 Levels*, WALL ST. J. L. BLOG (Dec. 17, 2013, 1:12 PM), <http://blogs.wsj.com/law/2013/12/17/first-year-law-school-enrollment-at-1977-levels/>.

23. See Gabrielle Kaufman-Kohler, *Online Dispute Resolution and its Significance for International Commercial Arbitration*, in GLOBAL REFLECTIONS ON INTERNATIONAL LAW, COMMERCE AND DISPUTE RESOLUTION 437, 438 (2005).

24. See *Extensive Reach Brings Results*, NOLO LAW FOR ALL, <http://www.nolo.com/advertisers/website-domains> (last visited May 5, 2014) (providing a list of Nolo.com's extended network of providers).

25. See Madsen & Crossland, *supra* note 15; Carolyn McClanahan, *The Bipartisan Plan to Eradicate Family Medicine*, FORBES.COM (Dec. 11, 2012, 6:30 PM), <http://www.forbes.com/sites/carolynmcclanahan/2012/12/11/the-bipartisan-plan-to-eradicate-family-medicine/>.

26. See Madsen & Crossland, *supra* note 15.

controversial and strongly resisted at first, this approach has been accepted by the medical profession as “just the way they do business.” In researching the evolution of medical technicians, I learned that in 1977, Congress actually mandated that 50% of health services in rural communities be provided by nurse practitioners, certified midwives, or physicians’ assistants.<sup>27</sup> That mandate certainly gave the medical profession a little more “urgency” than the legal profession is likely to have, but the drivers that led to the mandate can be seen in our profession as well. The high cost of medical school; the unmet medical needs of many families; the high cost of the medical providers; and the urge to specialize, leaving fewer doctors to meet the important medical problems that all families experience—these concerns parallel our own. Why not a legal technician similar to a physician’s assistant or a nurse practitioner? We believed that certain legal services could be performed by nonlawyers—law-trained, but not lawyers. Licensing nonlawyers for these limited services would address both the concern for unmet legal needs and for purveyors of incompetent legal services.

However, because of resistance from the bar, we needed to explore all other avenues before adopting the rule. The board of governors voted against the Triple LT rule in 2006.<sup>28</sup> We continued working, despite the opposition. But we did challenge the bar to propose alternative solutions—and it did. In our state, the supreme court instituted the Access to Justice Board at the request of the bar association.<sup>29</sup> This board was intended to coordinate legal services throughout the state between the two legal services agencies and local county volunteer lawyer organizations. Nearly every county bar association has a legal services component. We also developed the Clear Line, which is a legal advice line for those problems that can be resolved by limited legal advice over the phone,<sup>30</sup> and then a referral to a lawyer if the problem is more serious. We also instituted the Courthouse Facilitator Program.<sup>31</sup> This program allows nonlawyers to provide

27. Madsen & Crossland, *supra* note 15; see Rural Health Clinic Services Act of 1977, Pub. L. No. 95-210, 91 Stat. 1485.

28. Minutes of Washington State Bar Association Board of Governors (Mar. 3, 2006) (on file with the *South Carolina Law Review*); see Brooks Holland, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, 82 MISS. L.J. SUPRA 75, 97 (2013), [http://mississippilawjournal.org/wp-content/uploads/2013/02/3\\_Holland\\_Final.pdf](http://mississippilawjournal.org/wp-content/uploads/2013/02/3_Holland_Final.pdf); LLLT BOARD, HISTORICAL SUMMARY OF THE LIMITED LICENSE LEGAL TECHNICIAN RULE 1, available at [http://bog11.homestead.com/legaltechtf/july27/wsba/wsba\\_intro\\_materials.pdf](http://bog11.homestead.com/legaltechtf/july27/wsba/wsba_intro_materials.pdf).

29. *About the Access to Justice Board*, WASH. STATE BAR ASS’N, <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/About-the-Access-to-Justice-Board> (last visited Apr. 6, 2014).

30. See *Get Legal Help*, NORTHWEST JUSTICE PROJECT, <http://nwjustice.org/get-legal-help> (last visited May 6, 2014).

31. See *Courthouse Facilitators*, WASH. COURTS, [https://www.courts.wa.gov/committee/?fa=committee.home&committee\\_id=108](https://www.courts.wa.gov/committee/?fa=committee.home&committee_id=108) (last visited May 6, 2014).



forms at the courthouse.<sup>32</sup> The facilitator cannot give legal advice.<sup>33</sup> This is a wildly popular program, but it does not meet all of the needs of pro se litigants because the level of authority is very minimal. In addition, because the program is county funded, resources are unstable.

The last thing that the bar proposed is referred to as the Moderate Means Program.<sup>34</sup> This is a volunteer program in which lawyers agree to reduce their fees, depending upon the client's income measured against the poverty level.<sup>35</sup> The charge may be anywhere from twenty-five to one hundred dollars.<sup>36</sup> The program involves law students—Washington has three law schools<sup>37</sup>—who do the client interviewing, intake, and paperwork.<sup>38</sup> The bar helps to facilitate the connection between the law school and the lawyers. The lawyers provide the legal service.<sup>39</sup> This program provides a great opportunity for law schools to partner with practicing lawyers in the community. The law students gain valuable experience gathering information and interviewing clients, leaving the lawyers to provide the legal advice. Many lawyers and law students have signed up for the program, but the numbers are not sufficient to meet the need.

The supreme court took the next step. We asked the Practice of Law Board to propose practice areas where nonlawyers might provide services. The areas the board identified were immigration, landlord-tenant, elder law, and family law.<sup>40</sup> Family law lawyers raised many concerns, as did immigration lawyers.<sup>41</sup>

In 2008, the board recommended the initial practice area for limited licensees: family law.<sup>42</sup> The court then published the rules for comment. The

32. *See id.*

33. *See id.*

34. *Moderate Means Program*, WASH. STATE BAR ASS'N, <http://wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program> (last visited May 6, 2014).

35. *How the WSBA Moderate Means Program Works*, WASH. STATE BAR ASS'N, <http://wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program/Moderate-Means-Legal-Help/> (last visited May 6, 2014).

36. *See id.* (indicating that the average rate is \$200 per hour, but that discounts range from 25% to 75%).

37. Participating institutions in the Moderate Means Program include the law schools of Gonzaga University, Seattle University, and the University of Washington. *Moderate Means Program*, GONZAGA UNIV. SCH. OF LAW, <http://www.law.gonzaga.edu/centers-programs/clips/moderate-means-program/> (last visited Apr. 6, 2014).

38. *Id.*

39. *See id.*

40. Letter from Stephan R. Crossland, Chair of the Practice of Law Bd. to Chief Justice Gerry Alexander, Wash. State Supreme Court, at 2 (Jan. 7, 2008) [hereinafter 2008 POLB Proposal], available at [http://wsbaonline.org/index.php?option=com\\_phocadownload&view=category&id=15:wspa-nfpa&download=77:polb-report-to-the-court&Itemid=90](http://wsbaonline.org/index.php?option=com_phocadownload&view=category&id=15:wspa-nfpa&download=77:polb-report-to-the-court&Itemid=90).

41. *See Holland, supra* note 28, at 97 n.101 (noting that 89% of the Family Law Section of the Washington Young Lawyers Division opposed implementing the LLLT rule).

42. 2008 POLB Proposal, *supra* note 40, at 3.

court and the bar association engaged in more community outreach with lawyer groups and then, finally, the supreme court took the plunge on June 15, 2012.<sup>43</sup> We adopted the limited license legal technician rule.<sup>44</sup> A majority of the board of governors again voted against the rule.<sup>45</sup> Indeed, the court itself was not unanimous. In light of the controversy surrounding the rule, the court issued a twelve-page order adopting the rule, in which we explained the reasons for the rule and answered the challenges to the rule.<sup>46</sup> We wrote about the rule of law, which we believe in to our core. But I question how people can have faith in the justice system if they cannot access it. That was, for the court, the most compelling reason for passing the rule: to encourage respect for the rule of law by making the justice system more accessible. The order is available on our court website.<sup>47</sup> The order also addressed concerns raised by the dissent,<sup>48</sup> which objected to passing the cost of discipline for this rule onto paying members of the bar.<sup>49</sup> As you will note, the rule provides that the limited license program will be self-sustaining. The program is patterned after a limited practice rule for real estate closing officers.<sup>50</sup> In Washington, closing officers must possess a limited license to perform real estate closings.<sup>51</sup> The Limited Practice Officer (LPO) program is self-sustaining, and these officers also contribute to legal services in our state because they are required to maintain trust accounts that fund legal services.<sup>52</sup> Closing officers—LPOs—are required to be tested and receive continuing legal education. The bar has created a discipline system for LPOs, which has been very effective.<sup>53</sup> The Triple LT program replicates much of the LPO system and will build on the technology already in place for the program.

---

43. See Order Adopting LLLT Rule, *supra* note 3, at 12.

44. *Id.* at 1.

45. See In the Matter of the Adoption of New APR 28—Limited Practice Rule for Legal Technicians and New APR 28—Non-Lawyer Practice Commission Regulations 1-7, No. 25700-A-1005 (Wash. 2012) (Owens, J., dissenting) [hereinafter Dissent to Order Adopting LLLT Rule], available at <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

46. See Order Adopting LLLT Rule, *supra* note 3, at 6–11.

47. *Supreme Court Adopts Rule Authorizing Non-Lawyers to Assist in Certain Civil Legal Matters*, WASH. COURTS (June 15, 2012), <http://www.courts.wa.gov/newsinfo/?fa=newsinfo.pressedetail&newsid=2136>.

48. See Order Adopting LLLT Rule, *supra* note 3, at 11 (“Another concern that has been raised is that attorneys will be called upon to underwrite the costs of regulating non-attorney limited license legal technicians against whom they are now in competition for market share. This will not happen.”).

49. Dissent to Order Adopting LLLT Rule, *supra* note 45, at 1 (“Rather, my opposition to the rule is based on the fact this rule and its attendant regulations impose an obligation on the members of the WSBA to underwrite the considerable cost of establishing and maintaining what can only be characterized as a mini bar association within the present WSBA.”).

50. WASH. ADMISSION TO PRACTICE R. 12 (2009).

51. See *id.* R. 12(b)(2)(iii).

52. *Id.* R. 12(h).

53. *Id.* R. 12(b)(2)(ii)–(v).

After passing the rule, the court formed an oversight board: the Triple LT board.<sup>54</sup> The board is made up of thirteen members and has four nonlawyers and a legal educator; the remainder is lawyers.<sup>55</sup> The board is charged with creating the operational details for the program, including the activities the limited legal technicians could perform.<sup>56</sup> We were delighted that over seventy individuals applied for membership on this board. The shift from a board of governors that was strongly opposed to the rule in 2006,<sup>57</sup> to the outpouring of interest in membership on the new board in 2013, was very gratifying.

As I mentioned, family law was selected as the first area for limited license technicians. Some of the tasks that our legal technicians can perform include informing clients about legal procedures and the legal proceedings in which they are involved.<sup>58</sup> Triple LTs can provide approved self-help materials prepared by lawyers and review those documents, as well as documents that are coming from opposing parties. They can explain those documents; select, complete, and file approved lawyer-prepared forms; advise the client as to the meaning of those forms; and assist the client in obtaining documents that the client might need.<sup>59</sup> What are legal technicians not allowed to do? They cannot represent a client in court, an administrative hearing, or a formal dispute resolution proceeding; they cannot negotiate the client's legal rights; nor can they communicate the client's position.<sup>60</sup> I must say that we started off very conservatively because it is unwise to put a frog in boiling water; better to start with cold water and apply heat. We are starting slow, but there is discussion on the court about allowing technicians to negotiate their clients' rights with third parties. Going into court may be more controversial.

The board was also tasked with defining the scope of practice and developing admission requirements. This was really exciting because we started conversations between our law schools and community colleges. There are ongoing discussions on how to offer limited legal technician training in rural communities where there are no law schools. We have only three law schools, but we have a population of almost seven million in Washington,<sup>61</sup> so there is a need for legal services in many rural communities.

---

54. *Id.* R. 28(C)(1).

55. *Id.*

56. *See id.* R. 28(C)(2).

57. *See supra* note 28 and accompanying text.

58. WASH. ADMISSION TO PRACTICE R. 28(F)(2).

59. *Id.* R. 28(F)(4)–(6).

60. *Id.* R. 28(H)(5)–(6).

61. *State and County QuickFacts: Washington*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/53000.html> (last updated Mar. 27, 2014, 9:58 AM).

The education for our technicians includes forty-five credit hours at an ABA-approved program.<sup>62</sup> At this point, the program is being provided by our law schools online.<sup>63</sup> We anticipate adding practice areas in addition to family law. If limited legal practitioners want to expand their practice beyond family law, training in the new practice area will be required as well. There will be an exam for the practice area curriculum as well as the core subject exam. It is important that the technician not cross the line into the unauthorized practice of law. The core education component is intended to train the technicians to recognize the limited scope of their authority. The practice area exam, of course, tests on the particulars of the practice area. The rule also includes an experience requirement.<sup>64</sup> The core education is forty-five hours, as I said,<sup>65</sup> and you can see in this slide the required subject areas. Some are what you might expect for a first-year law course, but certainly the courses train on the activities these technicians will be engaging in.

To speed up the launch, we are offering a waiver for certified paralegals.<sup>66</sup> A paralegal with ten years of substantive or law-related experience with a licensed lawyer will not have to meet the other requirements.<sup>67</sup> The first cohort is moving through the education courses as we speak. I believe that, by the end of 2014, our first class of limited legal technicians will graduate. By the middle of 2015, the new Triple LT Board will propose the next practice area. We are very excited and optimistic.

On the next panel, Steve Crossland is going to cover the work of the Triple LT board. As I understand, the board is working now on RPCs to govern Triple LTs. The board is also exploring the next practice area.

The limited legal technician rule is not necessarily for everyone. I have to admit when I made this presentation to the Conference of Chief Justices, my goal was to avoid tomato stains. What I saw were jaws dropping among the chief justices of this country, but I also saw signs of enthusiasm. Many of the chief justices expressed genuine interest in this experiment. I am optimistic that the Triple LT program will be a model that others can emulate. I commend the idea to you as worthy of consideration.

I would like to end my presentation by leaving you with a few observations—albeit from the ivory tower, I have to admit. First, we can no longer depend on our law firms to train new lawyers. Legal educators recognize

---

62. *Limited License Legal Technician Program in Family Law*, UNIV. OF WASH. SCH. OF LAW, <http://www.law.washington.edu/LLLT/Default.aspx> (last updated Dec. 17, 2013).

63. *Id.*

64. *Id.*

65. *Id.*

66. *Limited Time Waiver Frequently Asked Questions*, WASH. STATE BAR ASS'N, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Limited-Time-Waivers/Waiver-Information#waliver> (last visited May 6, 2014).

67. *Id.*

this. Law firms used to hire associates in the summer, train, and then hire them. Now—at least in my part of the country—law firms are hiring about fifty percent fewer new graduates as associates.<sup>68</sup> Instead, hiring is lateral—that is, firms are hiring people who have already been trained.

Second, new lawyers are not happy in the firm model. I know, those of you who have spent your lives in firms cannot believe it. Wasn't making partner the ultimate goal? Not for these young people: firm life is not what many of them want for themselves. They will go to the law firm for training, and then do what they really want to do. Many reject trading family for billable hours. This is a different generation and many do not golf. This is also a much more diverse generation. The demographics show that our country is becoming very diverse, very rapidly. Lawyers today have different experiences than people of my generation—and different expectations. They are not on a partner track. We need to be attuned to where our graduates are going—and their destination is not the big law firm.

Third, the traditional law school education—the three-year model with classroom learning from live professors—is no longer viable. I wonder how many of you at Christmastime went to a brick and mortar store to shop. I did not; I did not have time for traditional shopping. Most of America shops online. What makes legal services different? If a consumer wants a commodity like legal services, why not go online, especially when everything is there at the touch of a key? The law school model of bricks and mortar must be rethought. It is a very expensive way to deliver education. My daughter is five years out of law school and I do not know when she will be out of debt. As students, professors, and administrators, you must be leaders in finding new ways to deliver legal education and legal services.

Triple LT is one alternative. These technicians are nonlawyers, but they are law-trained. What an opportunity for law schools! I know our law schools are jumping on board. The law schools are on the forefront, being creative in their thinking about how we can increase the delivery of legal services through limited technician rules.

Recently, the Conference of Chief Justices heard a presentation about a trade agreement being negotiated between the U.S. and the European Union (EU). The speaker mentioned that, for the first time, a trade agreement with the EU will include provisions related to legal services. We are witnessing a breakdown in the barriers to practicing law across borders.

Finally, a hopeful note. Because technology has changed so much of what is possible, those of you who are students have a real advantage. When I set up my

---

68. See *Entry Level Law Firm Recruiting Remains Mostly Flat*, ASS'N FOR LEGAL CAREER PROF'LS (Feb. 19, 2014), [http://www.nalp.org/march14\\_perspectives\\_pressrel](http://www.nalp.org/march14_perspectives_pressrel).

computer today, I was thinking, “I am not a native.” But you are. Your law practice will have an online component. There are many creative ways to deliver services. Most states allow unbundled legal services. I see a hopeful note that our new lawyers will find new innovative ways to make the delivery of legal services more affordable. The need is out there. People without lawyers experience legal problems that are life and death—the difference between losing their job, losing their house, and losing their kids. They want and need a lawyer. Through technology, coupled with creativity, you will find ways to provide affordable legal services in a new delivery model that will reach these people. The hopeful note that I will leave with you is that I think you can do it. Thank you very much for your attention. I have really enjoyed being here.

\*