

# **LEGAL TECHNICIANS TASK FORCE**

## **FINAL REPORT TO THE BOARD OF GOVERNORS**

February 13, 2015

### *Introduction*

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In mid-2013, the Board of Governors through the Bar's President, Michael Haglund, established this Task Force to consider the possibility of the Bar's promoting the concept of licensing Legal Technicians<sup>1</sup> as one component of the BOG's overall strategy for increasing access to justice. Regardless of its ultimate recommendation, the Task Force was also directed to outline the preliminary considerations and outline an approach for developing such a licensure program.

The Task Force was comprised of eighteen members, drawn from a variety of sources, including representatives from Legal Aid organizations, young lawyers, the judiciary, the Professional Liability Fund, the Board of Bar Examiners, paralegal organizations and paralegal educators, and people with a history of working with and for self-represented litigants. In addition, other interested individuals, representing various constituencies, attended some or all of the Task Force's meetings.

The Task Force was chaired by Theresa Wright. Members of the Task Force were Gerald Brask, Shari Bynum, Hon. Suzanne Bradley Chanti, Michele Grable, Guy B. Greco, Professor Leslie Harris, William J. Howe III, Bradley D. Maier, John J. Marandas, Sean Mazorol, Hon. Maureen H. McKnight, Mitzi M. Naucner, Linda Odermott, and Hon. Jill A. Tanner. Joshua Ross was the BOG liaison; staff support was provided by OSB Executive Director Sylvia Stevens and Executive Assistant Camille Greene.

### *Executive Summary*

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At its December 2014 meeting, the Task Force agreed to submit a proposal to the BOG suggesting that it consider the general concept of a limited license for legal technicians as one component of the BOG's overall strategy for increasing access to justice. A large majority of, but not all Task Force members, concur with this recommendation.

The Task Force recognizes that the licensed legal technician concept is but one potential

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<sup>1</sup> The Task Force found this title to be less cumbersome than WSBA's "Limited License Legal Technician" and would also distinguish the Oregon concept from WSBA's LLLT program.

tool to address the “justice gap” and should not be viewed as the sole solution or in isolation. During its information-gathering meetings the Task Force acknowledged the funding cuts have eliminated much of the courthouse facilitator assistance and that inadequate funding for Legal Aid is a constant limitation on the availability of legal services for low-income Oregonians.

Should the Board decide to proceed with this concept, the Task Force recommends a new Board or Task Force be established to develop the detailed framework of the program. For the reasons set out herein, the BOG should review the recently established Washington State Bar Association LLLT program and consider it as a potential model.

## *Methodology*

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Beginning July 27, 2013, and through the end of the year, the Task Force met six times, approximately once per month for two to three hours each meeting.

Task Force members reviewed significant written material before the first meeting and additional materials at subsequent meetings. These materials included: Paralegal Regulation by State; *The Last Days of the American Lawyer* by Thomas D. Morgan; numerous articles from the states of California, New York and Washington, and the country of Canada; OSB 1992 Legal Technicians Task Force Report; Washington Supreme Court Rule APR 28 regarding the Limited License Legal Technician Board; Washington State Bar Association *Changing Profession – Challenges and Opportunities*; National Center for State Courts’ *Roadmap for Action – Lessons From the Implementation of Recent Civil Rules Projects*; Oregon State Family Law Advisory Committee’s *Oregon Family Courts – What’s new What’s to Come*; OSB Referral Information Services statistics; a WSBA Webinar that included Regulation of the April 28 LLLT Board, WSBA *Pathway to LLT Admission, and Program and Licensing Process*; *Protecting the Profession or the Public?* by D. Rhode & L. Ricca; and *The Incidental Lawyer* by Jordan Furlong.

The Task Force spent a fair amount of time reviewing and discussing the 1992 Legal Technicians Task Force report and the fact that no action ensued, and how this result could be different given the changes in the legal profession during the interim. Most notably, the Task Force was cognizant of the fact that there are more people unable to afford or unwilling to pay lawyers now than when the last report was issued, and no adequate solution has been found.

In addition, during the first two meetings, members discussed a variety of matters, including pros and cons of moving forward, access to justice, reasons for creating (or not creating) a Limited License, and other related matters. The October meeting was dedicated to a presentation from Paula Littlewood, Executive Director of the Washington Bar Association, about Washington’s efforts to create a Limited License Legal Technicians program. (See Appendix A.) During the final meeting, the Task Force received reports from various subcommittees (see below), and determined the actions to recommend to the Board.

## *The Washington State Bar Association Program*

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The Washington State Bar Association (WSBA) spent approximately two years developing its Licensed Legal Technician program, and it is comprehensive and well thought-out. As noted above, the Task Force believes that, should the Board of Governors choose to proceed with the idea of Licensed Legal Technicians, it should review, consider and learn from Washington's program, including the successes and challenges in its implementation. This includes educational requirements, extensive practical work experience under a licensed lawyer, and a licensure examination. Additionally, the WSBA program has provisions for continuing education, rules of professional conduct, mandatory malpractice insurance, and a disciplinary scheme. Their first WSBA LLLTs will be limited to practicing in the area of family law, and licensing of the first group is imminent.

A more detailed summary is contained in Appendix A.

## *Issues and Considerations Identified*

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The Task Force discussed the positives, negatives, and other factors in considering whether Oregon should implement a Licensed Legal Technician program.

### *Major Factors*

The major factors the Task Force identified were:

- the vast need for legal assistance in the low- to moderate- income populations;
- the concern that the Legislature might proceed with proposed legislation if the Bar does not act itself with a preferred program; and
- the need to balance increased access to justice and protection of the public.

That said, the primary concern of the Task Force was the issue of access to justice. The Task Force also understood that regardless of programs implemented by the Bar or other entities, there will never be 100% of clients who want or need representation.

The Task Force discussed reasons that people do not hire lawyers to represent them in their cases.

- While based primarily on anecdotal information, the consensus was that most people who do not hire lawyers for full representation cannot afford to do so.

This is the client base the Task Force hopes to reach with its proposal.

- There are others who may be adverse to hiring lawyers for a variety of reasons, although they are financially able to do so. These include those mistrustful of lawyers and those who believe they know enough about the court and legal system that they are able to represent themselves adequately.

The Task Force acknowledged that the legal profession and the provision of legal service has been changing and continues to do so:

- Consumers have much more access to legal information and “assistance” over the internet, and from other resources;
- Courts are moving toward having self-help forms available for litigants to complete on their own;<sup>2</sup>
- There have long been unlicensed “paralegals” in various communities providing various quality of assistance, sometimes to the significant detriment of the public;<sup>3</sup> and
- The proliferation of self-help books has also impacted the public’s use of lawyers for what they may view as the simpler legal procedures required by their situation.

The Task Force was also cognizant of the number of new lawyers who are having a difficult time finding employment. Of particular note is that the most recent statistics show:

- Currently, approximately 86% of all family law litigants in Oregon are self-represented<sup>4</sup>. At least in terms of family law cases, the percentage of unrepresented litigants has not decreased over the years, indicating that new lawyers have not found a method to represent this population; and
- In 23% of civil cases (excluding cases such as landlord/tenant in which most tenants represent themselves) in Multnomah County one or both of the parties are self-represented.

The Task next identified the arguments in favor of and against the licensing of legal technicians:

#### *Pros*

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<sup>2</sup> In fact, Restraining Orders through the Family Abuse Prevention Act are available on a state-wide basis for litigants utilizing a “TurboTax” type of system.

<sup>3</sup> This is an unlawful practice of law issue which the Bar has been working to remedy for years.

<sup>4</sup> In 1992, when the prior Legal Technicians Task Force report was issued, the figure was 38%.

- It would be a step forward to providing access to justice for poor to moderate income Oregonians, although there may be less radical alternatives; and
- At least with respect to the family law arena, the risk of “cutting into” the work of unemployed lawyers appears to be negligible given the volume of potential clients in the low- to moderate-income community.

#### *Cons*

- Only one state (Washington) has developed and implemented a Licensed Legal Technician program; while others are exploring the idea, if Oregon were to go forward we would be clearly in the forefront;
- The WSBA program was created under a mandate of the Washington Supreme Court and continues to be controversial among the membership of WSBA; the BOG should expect that a similar program would be controversial in Oregon and further study should include input from the OSB membership;
- The licensing of legal technicians might have some impact on new lawyers’ ability to obtain employment or develop solo careers; and
- The imposition of the WSBA-style requirements on Licensed Technicians might not allow them to provide services to the target population at a cost lower than typical lawyer fees.

#### *Other Considerations*

The Task Force believes that if a licensing scheme is established, in addition to pre-licensure educational and experiential qualifications, Legal Technicians should have to meet certain post-licensure requirements including having malpractice coverage, complying with a code of ethics, and have continuing legal education.

Discussed but not decided was:

- What entity (the OSB, the Supreme Court or other?) should oversee the program?
- How the program would be implemented initially;
- How the initial implementation would be financed;
- Whether to recommend that Licensed Legal Technicians should have to contribute to some sort of client protection fund;

- Whether Legal Technicians would have to maintain client trust accounts;
- What entity should provide malpractice insurance;
- The actual scope of activities Legal Technicians could perform; for example, should Legal Technicians be allowed to draft or choose forms for clients, and what, if any, role, should Legal Technicians be allowed to have in the courtroom?
- How Legal Technicians with licenses from other states should be treated;
- How Oregon should handle Legal Technicians that have their primary office outside of the state of Oregon; and
- Clarification as to the different responsibilities Legal Technicians would have depending on whether they are under the direction and supervision of an attorney or not, or whether that supervision was relevant at all.

The Task Force also recognizes that in order for the Bar or other entity could proceed with a licensing program, the Bar Act would need to be amended to allow this category of legal practitioner, with possible limitations being statutorily defined. Supreme Court acceptance of the concept would also be critical

### *Subcommittee Recommendations*

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After its general discussion, Task Force members agreed that there were certain areas of law more conducive to non-attorney representation than others, discussed possible legislative amendments needed, and issues such as Continuing Legal Education and malpractice coverage. As a result, the Task Force formed Subcommittees to give close consideration to specific issues presented by the Subcommittee assignments. Each of these Subcommittees presented a written report to the Task Force. These written reports are attached to this report as exhibits, and summarized below.

Three Subcommittees focused on implementation issues and three focused on substantive issues.

#### *Implementing Legislation*

See Appendix B for proposed legislation.

#### *Client Protection/Ethics/Malpractice*

See Appendix C for commentary regarding these matters.

## *Education and Licensing*

See Appendix D for the full Subcommittee report.

The Education and Experience Requirements Subcommittee reviewed assorted resources regarding the WSBA requirements for its LLLTs; a number of documents related to different voluntary and mandatory paralegal regulation plans from states around the country (New York and North Carolina, for example); the education, experience and continuing education requirements from the three main national, paralegal certification programs (NFPA's, NALA's, and NALS); SB 1068 - the 1992 proposed Oregon legislation on this same topic; the 1992 final report from the OSB Task Force on this same issue, the Portland Community College Class Curriculum for the paralegal program, as well as other related documents.

The subcommittee found that although the Washington LLLT Program was well thought out, there were a number of items that needed revision for a Legal Technician plan to work in Oregon. After many discussions about the need for a definition of the education and experience requirements that a paralegal should possess, the group turned to the standards to create a new profession in form of a legal technician, as well as the need for a disciplinary body to oversee both paralegals and legal technicians. The Subcommittee considered the innovative idea of using the drafted education and experience requirements (crafted and edited by the subcommittee for the legal technician) as a jumping off point for a second prong of the proposed legislation – a Voluntary Oregon Registered Paralegal (VORP) program to be overseen by the OSB which would define education and experience requirements for those paralegals wishing to participate. This idea could be presented in concert with the concept of the Legal Technician (as the first prong in a two-prong proposal); or as a separate and independent, voluntary, paralegal-regulation model, which would bring paralegals under the disciplinary purview of the Oregon State Bar. This would assist in addressing the education and experience standards that a potential client contacting a self-identified paralegal possess, give disciplinary discretion to the OSB for ethical misconduct such as UPL performed by a VORP, and assist in public protection by creating a registry of paralegals who possess these minimum standards.

## *Family Law*

See Appendix E for the full Subcommittee report.

The Family Law Subcommittee created a list of probable tasks LLLT's certified in family law could perform, to include:

- providing approved forms (such as those on the OJD web site), assisting the "client" in choosing which forms to utilize, and assisting in completing these forms, in a ministerial capacity and without giving legal advice about the case;

- providing generalized explanations of the law without applying it specifically to the client's case or fact pattern;
- explaining legal options without offering legal opinions;
- reviewing approved documents completed by litigants to determine if they are completely and correctly completed;
- reviewing and interpreting necessary background documents (for example, review discovery and client's materials) and offering limited explanations insofar as necessary to complete approved forms;
- providing or suggesting published information to clients pertaining to legal procedures, client's legal rights and obligations and materials of assistance with children's issues (for example, *Isa Ricci's Mom's House, Dad's House*);
- explaining court procedures without applying it specifically to the client's case or fact pattern (for example, difference between traditional trial and informal domestic relations trial in Deschutes County);
- filing legal documents at the client's request; and

The subcommittee also discussed whether LLLTs should be permitted to work with both parties to divorce, subject to ethics rules applicable to LLLTs.

### *Landlord/Tenant and Small Claims*

See Appendix F for the full Subcommittee report.

The use of LLLTs is recommended in landlord tenant cases and small claims cases. Both kinds of cases are largely populated by self-represented litigants and there are lots of forms available for litigants.

- There are more than twice as many of these cases than there are family law cases, by 2011 numbers about 48,000 family law cases compared to about 97,000 FED and small claims cases.
- There is demand for affordable help in the fields of landlord-tenant and small claims cases and this would be a good entry point for certified LLLTs.

### *Estate Planning*

See Appendix G for the full Subcommittee report.



The Estate Planning Subcommittee concluded that estate planning is not a suitable area of practice for LLLTs. The primary arguments against LLLTs being involved in estate planning are:

- There is no shortage of low cost attorneys (including many newer attorneys) in Oregon who handle wills and estate planning matters at very reduced and usually fixed rates;
- There is no evidence that the approximately 40% of Oregonians who die intestate do so because they could not afford a lawyer. People who die intestate or rely on forms they find online would continue to do so. LLLTs add no value in this area; and
- There is no such thing as a “simple will.” Ala carte services and use of online and template forms without analysis and plans already do more harm than good.

### *Conclusion*

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The Task Force recommends that the Board of Governors consider the possibility of the Bar’s creating a Limited License Legal Technician (LLLT) model as one component of the BOG’s overall strategy for increasing access to justice. It further recommends, should the Board decide to proceed with the LLLT concept, that it begin with the suggestions developed by Task Force Subcommittees. The Task Force also suggests that the first area that be licensed be family law, to include guardianships.

It should be noted that this recommendation is not unanimous one the Task Force, and that there are many members of the Task Force not in support of any sort of Licensed Legal Technician program. All were in agreement, however that, at a minimum, the Bar might want to explore creating a voluntary paralegal registry, so that members of the public who wish to can learn more about the qualifications of the paralegal from whom they are seeking legal services.

# LLLT Program

About the Program and the  
Licensing Process

# Impetus Behind the LLLT Rule

## 2003 Civil Legal Needs Study

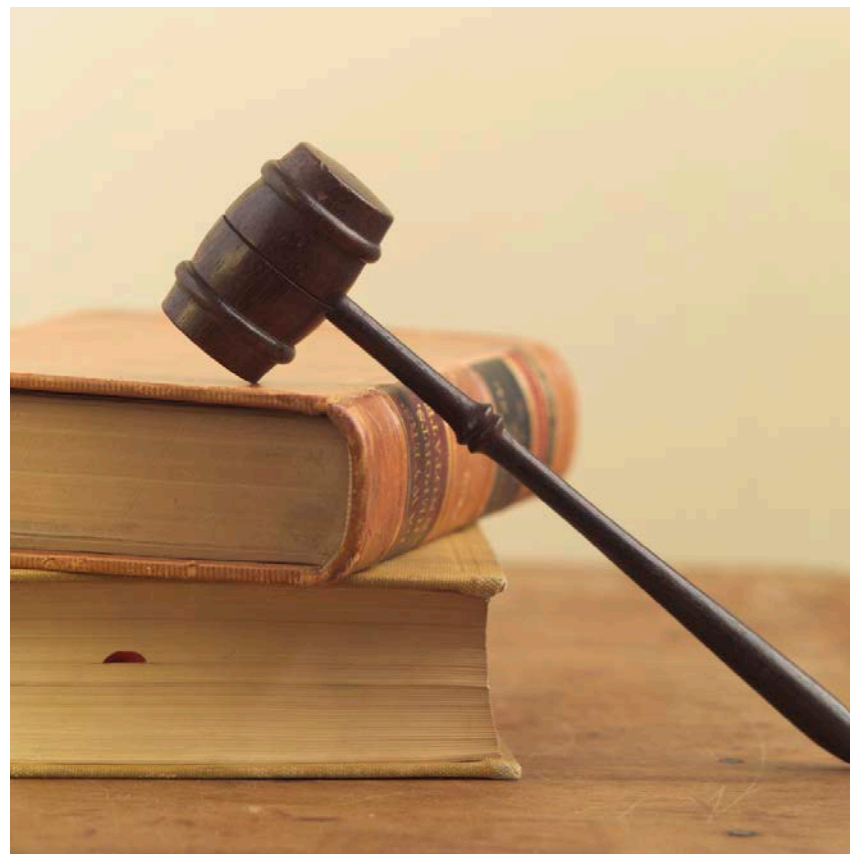
- Revealed glaring unmet need for legal services in WA low-income population (defined as families with incomes below 125% of the Federal Poverty Level)


## GR 25

- Instructed the Practice of Law Board to make recommendations re authorizing non-lawyers to “engage in certain defined activities that would otherwise constitute the practice of law as defined in GR 24.” GR 25(c)(4).

# Supreme Court Order

June 15, 2012: Supreme Court issues order adopting LLLT Rule, stating “[w]e have a duty to ensure the public can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.”  
Order at 5-6.





# Admission to Practice Rule (APR) 28

**Created LLLT Program &  
LLL Board**

**Authorizes limited  
practice of law by  
nonlawyers in approved  
practice areas**

**Specifies requirements for  
licensure**

# Legal Technicians may:

Inform clients of procedures and course of legal proceedings

Provide approved and lawyer prepared self-help materials

Review documents and exhibits from opposing party and explain them

Select, complete, file, and serve approved and lawyer prepared forms and advise of their relevance

Advise clients of necessary documents and explain their relevance

Assist client in obtaining necessary documents



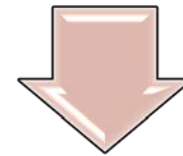
LLTs may not (unless permitted by GR 24):



# Initial Practice Area



Family law  
chosen as first  
practice area



Approved by  
Supreme Court  
in March 2013



# Defining the Family Law Scope of Practice

**Family law  
shall include  
(subject to  
limitations):**

- **Child support modification actions**
- **Dissolution and legal separation actions**
- **Domestic violence actions**
- **Committed intimate relationship actions**
- **Parenting and support actions**
- **Parenting plan modifications**
- **Paternity actions**
- **Relocation actions**

# Legal Technicians shall:

Be at least 18 years of age

Have a minimum associate level degree

Meet education, examination, and  
experience requirements

Show proof of financial responsibility

Show proof of continuing legal  
education courses

Abide by a code of ethical conduct  
(LLLT RPC)

Be subject to discipline

# Pathway to Admission

## STEP 1: COMPLETE EDUCATION

- Minimum **associate level degree**
- **Core Education:** 45 credit hours at an ABA approved program
- **Practice Area Education**



## STEP 2: PASS EXAMINATIONS

- **Core education exam**
- **Practice area exam**
- Exams include multiple choice, essay, and practice exercise sections



## STEP 3: ESTABLISH EXPERIENCE

- **3,000 hours of substantive law-related experience**
- Supervised by a licensed lawyer
- Within 3 years before or after passing examination

# Step 1: Core Education, 45 Credit Hours

Intro to Law and Legal Process, 3 credits

Civil Procedure, 8 credits

Legal Research, Writing, and Analysis, 8 credits

Contracts, 3 credits

Professional Responsibility/Ethics, 3 credits

Law Office Procedures and Technology, 3 credits

Interviewing and Investigation Techniques, 3 credits

**ELECTIVES:** Applicant may take remaining credits as legal studies elective courses



# Limited Time Waiver

The Board will waive the **associate degree** and **core education** requirements, if you have:

1. Passed the Certified Paralegal Exam (NALA) **OR** the Paralegal Advanced Competency Exam (NFPA) **OR** the Professional Paralegal Exam (NALS)

2. Active certification as a NALA Certified Paralegal **OR** NFPA Registered Paralegal **OR** NALS Professional Paralegal

3. 10 years of substantive law-related experience supervised by a licensed lawyer

# Limited Time Waiver Applications

## How to Apply

- Meet all 3 requirements
- Provide original certification documents
- Obtain Declaration(s) of Supervising Lawyer(s)
- Pay \$150 application fee

## Restrictions

- Is *not* a license to practice as an LLLT
- Does *not* waive practice area education
- Must apply for waiver by December 31, 2016
- Apply for licensure by December 31, 2018 or waiver will expire

# Step 1 continued

## Practice Area Education

Must be taken in each  
practice area

Must be developed by or in  
conjunction with an ABA  
approved law school

Should include WA law  
specific topics



## Family Law Courses

Developed by all 3 WA law  
schools

Offered by UW in Winter  
2014, with all law schools  
providing instruction

To be offered by live  
webcast and in person

# Family Law Courses

## Course Description

- 5 credits of basic domestic relations subjects
- 10 credits in advanced and WA specific domestic relations subjects

## Core Prerequisites

- Intro to Law & Legal Process
- Civil Procedure
- Legal Research, Writing, & Analysis
- Professional Responsibility
- Interviewing & Investigation

## How to Enroll for Winter 2014

- Complete prerequisites **OR**
- Have a paralegal degree from an ABA approved program with  $\frac{1}{2}$  of 45 core credits completed, **OR**
- Have an approved waiver
- Submit enrollment form **OR** waiver application by December 16, 2013



## Step 2: Examination

**When can I apply?**

- Early Fall 2014
- After completing the core and practice area education

**Do I have to pass both exams to be licensed?**

- Yes, for initial licensure
- For new practice areas, LLLTs take only the practice area exam

**When is the 1<sup>st</sup> exam?**

- Approx. mid-late Fall 2014

# Step 3: Experience

## “Substantive law-related work”

- Requires knowledge of legal concepts and is customarily but, not necessarily, performed by a lawyer

## “Supervised”

- Lawyer personally directs, approves, and has responsibility for work performed

## 3,000 Hours of Experience

- Approx. 18 months full time
- Within 3 years before or after notification of passing exams

## Declaration(s) of Supervising Lawyer(s)

- Certification of substantive experience and period of supervision by lawyer



# Learn More

Visit our website at  
[www.wsba.org/llt](http://www.wsba.org/llt)

Contact Thea Jennings at (206)  
727-8289 or [theaj@wsba.org](mailto:theaj@wsba.org)

## Draft Bill

### LICENSED LEGAL TECHNICIANS

1. Subject to the approval of the Supreme Court, the board of governors may adopt a plan to license legal technicians to provide a limited scope of legal services to the public independent of supervision by licensed attorneys. The board may create a Legal Technicians Licensing Board (LTLT Board) which, subject to approval of the Supreme Court, shall have authority to:

(a) establish the education, experience and examination requirements for licensure of legal technicians;

(b) define areas of law for licensed legal technician practice and establish the special requirements for certification in each practice area;

(c) establish continuing education requirements;

(d) promulgate and enforce rules of professional conduct and disciplinary procedures for licensed legal technicians;

(e) require licensed legal technicians to contribute to the OSB Client Security Fund;

(f) establishing financial responsibility requirements; and

(g) establish application, annual licensure, special certification, and any other fees necessary to carry out the duties and responsibilities of the LTLT Board.

2. An applicant for licensure must satisfy all of the requirements of ORS 9.220 (1)-(2) and all other requirements that may be established by the LTLT Board.

3. Oregon law of attorney-client privilege and the law of a lawyer's fiduciary responsibility to the client shall apply to the Licensed Legal Technician-client relationship to the same extent as to the attorney-client relationship.

### **Formulation of Rules of Professional Conduct; Formulation of Rules of Procedure.**

(1) The LLLT Board shall formulate rules of professional conduct, and when such rules are adopted by the Supreme Court, they shall be binding upon all LLLTs.

(2) The board, subject to the approval of the Supreme Court, may also adopt rules of procedure relating to the investigation of the conduct of LLLTs and applicants for a LLLT license, the reinstatement of such a license, and relating to the conduct of licensing, reinstatement, and disciplinary proceedings.

#### **Comment:**

Subsection (1) is based on ORS 9.490(1). Subsection (2) is based on ORS 9.542(1). It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

### **Limited Licensed Legal Technician Client Security Fund.**

(1) As used in this section “client security fund” means a fund created under subsection (2) of this section.

(2) The board may adopt a plan to relieve or mitigate pecuniary losses to the clients of LLLTs caused by dishonest conduct of those LLLTs in their work as LLLTs. The plan may provide for establishing, administering and dissolving a separate fund and for payments from that fund to reimburse losses and costs and expenses of administering the fund. The board may adopt rules of procedure to carry out the plan. The insurance laws of the state shall not apply to the fund.

(3) A client security fund may include:

- (a) Transfers by the board from other available funds;
- (b) Voluntary contributions and payment by licensees under subsection (4) of this section;
- (c) Claims recovered under subsection (7) of this section; and
- (d) Income from investments of the fund.

(4) To establish and maintain a client security fund, the board may require an annual payment by each active LLLT. The payment authorized by this section shall be due at the same time, and enforced in the same manner, as payment of the annual license fee.

(5) (a) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss under subsection (2) of this section, the board or its designated representatives shall determine if the person named in the

claim as the LLLT whose dishonest conduct caused the loss maintained an office in the State of Oregon at the time of the transaction out of which the claim arose; and

(1) Has been found guilty of a crime arising out of the claimed dishonest conduct which caused the loss;

(2) In the case of a claim of loss of \$5,000 or less, has had his or has resigned his or her license due to circumstances arising out of the claimed dishonest conduct which caused the loss; or

(3) Has been the object of a judgment entered in any proceeding arising out of the claimed dishonest conduct which caused the loss and, if the object of a judgment for money entered in favor of the claimant, has failed to pay the judgment, and execution issued on the judgment has been returned uncollected or that issuance of execution would be a useless act.

(b) After complying with subsection (a) of this section, if the board or its representatives require additional information to determine the claim, the board or its representatives may compel by subpoena the person named in the claim as the LLLT whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records, documents and other things pertinent to the claim. The subpoena shall have the same force and effect as in a civil action in circuit court for the county in which the person was served or in the county in which the principal office of the board is located.

(6) (a) Any person who has made a claim with the Board of LLLTs concerning a loss allegedly caused by the dishonest conduct of the person's LLLT, or who has given information to the board relative to a proposed or pending client security fund claim shall be absolutely immune from civil liability for such acts.

(b) The Board of LLLTs, its officers, the members of any client security fund committee, investigators, agents, and employees shall be absolutely immune from civil liability in the performance of their duties relative to proposed or pending client security fund claims.

(7) Reimbursement from the client security fund is discretionary; however, the board shall not authorize payment unless the conditions of subsection (5)(a) of this section have been found to exist. However, the board may, in its sole discretion, waive one or more of the conditions of subsection (5)(a) of this section in cases of extreme hardship or special and unusual circumstances. The LLLT Board is subrogated, in the amount that a client's claim is reimbursed from the client security fund, to all rights and

remedies of that client against the LLLT whose dishonest conduct caused the loss, or against the estate of the LLLT, or against any other person liable for the loss.

**Comment:**

This language is taken verbatim from ORS 9.615 through ORS 9.665 which created the Oregon State Bar Client Security Fund. It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

Most client security fund claims arise from the misappropriation of lawyer trust account funds. While this writer is not in favor of authorizing trust accounts for LLLTs, misappropriation of funds could still occur when clients prepay for LLLT services which are not rendered by the practitioner. Therefore, a client security fund is still a necessary regulatory component.

**Professional Liability Coverage**

(1) The board shall require LLLTs to carry professional liability coverage or to secure and provide some other proof of financial responsibility, of a type and amount deemed appropriate by the board, prior to practicing LLLT activities. The board shall be empowered, either itself or in conjunction with other organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization under the laws of the State of Oregon and to establish a LLLT professional liability fund.

(2) This fund, if established, shall pay, on behalf of LLLTs whose principal offices are in Oregon, all sums as may be provided under such plan which any such LLLT shall become legally obligated to pay as money damages because of any claim made against such LLLT as a result of any act or omission of such LLLT in rendering or failing to render services for others in the person's capacity as a LLLT or caused by any other person for whose acts or omissions the LLLT is legally responsible. The board shall have the authority to assess each LLLT whose principal office is in Oregon for contributions to such fund, to establish definitions of coverage to be provided by such fund and defend and control the defense against any covered claim made against such LLLT. Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.

(3) For the purposes of subsection (2) of this section, the principal office of a LLLT is considered to be the location where the LLLT engages in LLLT activities more than 50 percent of the time. If a LLLT performs LLLT services in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the LLLT is not considered to be in Oregon unless the LLLT engages in LLLT activities in Oregon more than 50 percent of the time engaged in LLLT activities.

**Comment:**

This language is taken from ORS 9.080(2) authorizing the Board of Governors to create the Professional Liability Fund. It was part of the proposed limited law advisor statute drafted by the 1992 Task Force.

This language authorizes the governing board to determine what type of financial responsibility is most appropriate for LLLTs.



The Subcommittee on Education and Experience Requirements recommends:

**Both a Voluntary Oregon Registered Paralegal program and Limited License Legal Technician program**

Preliminary Statement: The availability of affordable legal services to the public is a goal to which the Oregon State Bar is committed and which is supported by the longstanding commitment of Oregon lawyers and the Code of Professional Responsibility. The employment of Paralegals is a longstanding practice of some law firms, government agencies, and in-house counsel which reduces the cost of legal services to their clients. Utilization of and reliance upon Paralegals by Attorneys in the delivery of legal services is supported and encouraged by the Bar.

Voluntary registration of Paralegals would provide a standard for the utilization of this valuable profession and provide appropriate recognition for the advancements this paraprofession has made in the legal industry. The creation of a separate professional status of Limited License Legal Technicians to serve the public would further enhance the opportunities available to the public for utilization of alternative legal resources at a reduced cost.

For purposes of this Rule, a **Voluntary Oregon Registered Paralegal** is a person who meets the State's requirements for this profession and who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible, such as: apply substantive knowledge of the law and legal procedures in rendering direct assistance to lawyers engaged in legal research, preparing or interpreting legal documents, drafting procedures, meeting clients and witnesses and other aspects of the operation of a law office, government agency, or in-house counsel.

For purposes of this Rule, a **Limited License Legal Technician** will be someone who meets the State's requirements for this profession and who is permitted to provide limited legal assistance to clients without being under the supervision of a lawyer as defined under these Rules.

**Voluntary Oregon Registered Paralegal**

- A Voluntary Oregon Registered Paralegal is defined as a person who:
  1. Is at least 18 years of age; and
  2. Has a minimum Associates level Degree in Paralegal or Legal Studies or related program from an ABA Approved Institution or other college or institution approved by the Oregon State Bar, with:
    - a) 45 quarter credits (or equivalent) in Paralegal Core Curriculum, as part of an AA or BA/BS;
      1. Paralegal Core Curriculum shall be 45 quarter credits (or equivalent) in Paralegal or Legal Studies; as defined in the LLLT Core Education Requirements, including: introductory law, civil procedure, legal research, professional responsibility, law office management, interviewing skills and legal technology; or
    - b) A law school degree from an ABA Approved institution provided; however, that the person:
      - 1) is not licensed as a lawyer; or

- 2) a lawyer who has been disbarred or suspended; and
3. Show proof of continuing learning education courses; and
4. Abides by the Oregon Code of Professional Responsibility; registers and pays required fees; is subject to discipline; and complies with other such regulation as enacted by the Oregon State Bar; and
5. Works under the ***supervision and direction*** of a licensed lawyer or government agency.

- **Exception to Education Requirements/Grandfather Clause.**

An applicant for Voluntary Oregon Registered Paralegal may request waiver of the Education requirements within 2 years of the effective date of the Voluntary Oregon Registered Paralegal program. The Bar will waive the Education requirement if the applicant has:

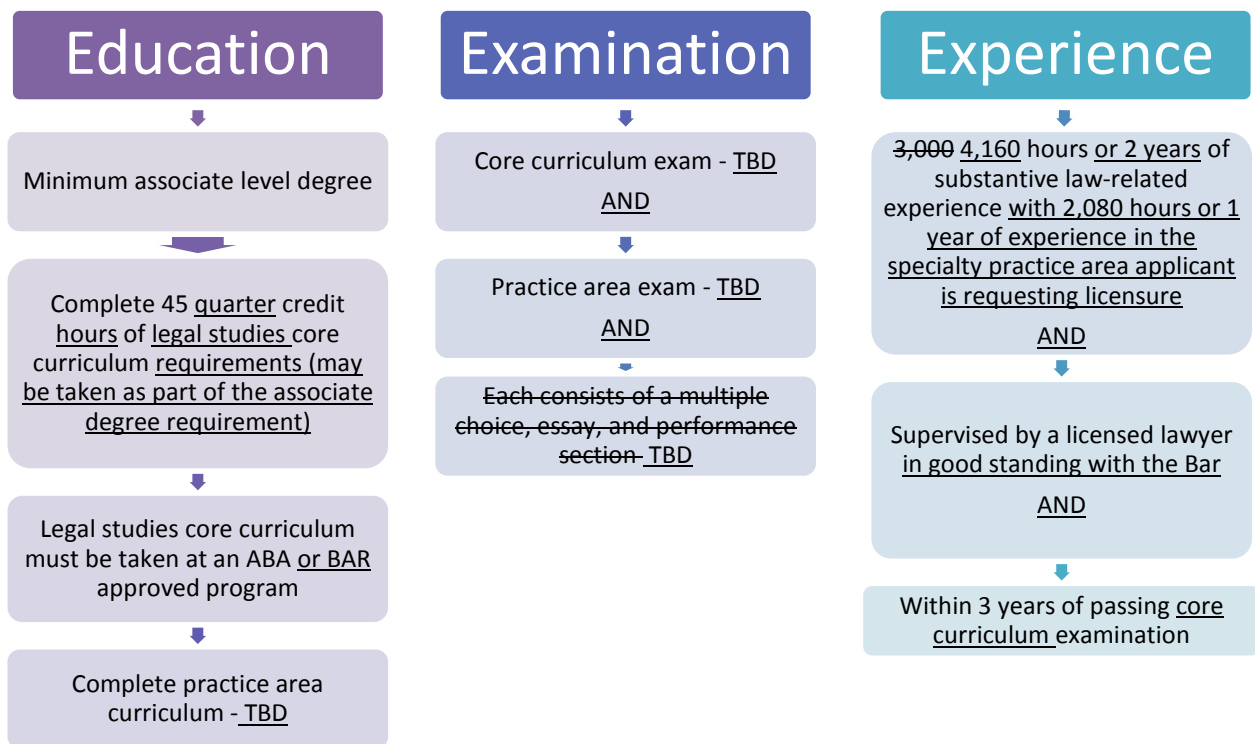
- a) Passed the Certified Paralegal Exam (NALA) **OR** the Paralegal Advanced Competency Exam (NFPA) **OR** the Professional Paralegal Exam (NALS) **OR** the Paralegal CORE Competency Exam (NFPA); and
- b) Active certification as a Certified Paralegal **OR** PACE Registered Paralegal **OR** Professional Paralegal **OR** CORE Registered Paralegal ; or
- c) Has 10 years of substantive law related experience as a paralegal, supervised by a licensed lawyer in good standing with the Bar, as evidenced by a supervising attorney declaration of same.

\*Note: Leslie Harris is abstaining from the Voluntary Oregon Registered Paralegal portion of the subcommittee's recommendations.

## 1. Limited License Legal Technicians shall:

- Be at least 18 years of age;
- Have a minimum associate level degree;
- Meet education, examination, and experience requirements;
- Show proof of financial responsibility;
- Show proof of continuing learning education courses – TBD;
- Abide by a code of ethical conduct – TBD;
- Not be a lawyer who has been disbarred or suspended in any state; and
- Be subject to discipline - TBD.

## 2. To be eligible for licensure, candidate shall complete the following:



3. Associate Degree and Core Curriculum Requirement Waiver; Grandfather Clause.  
The applicant may request a waiver of the associate degree and core curriculum requirements within 2 years of the LLLT program effective date (TBD), if:

Until 2 years after the effective date of the program - TBD, the Board will waive the associate degree and *core curriculum requirements*, if the applicant has:

1. Passed the Certified Paralegal Exam (NALA) **OR** the Paralegal Advanced Competency Exam (NFPA) **OR** the Professional Paralegal Exam (NALS)

2. Active certification as a Certified Paralegal **OR** PACE Registered Paralegal **OR** Professional Paralegal

3. 10 years of substantive law-related experience supervised by a licensed lawyer in good standing with the Bar

4. Legal Studies Core Curriculum; the subcommittee recommends 45 Quarter Credits (or equivalent) to include the following topics:

Intro to Law and Legal Process

Ethics and Professional Responsibility

Legal Research and Library Use

Computer Assisted Legal Research

Applied Legal Research and Legal Writing

Interviewing and Investigation Techniques

Law Office Procedures and Technology /Software

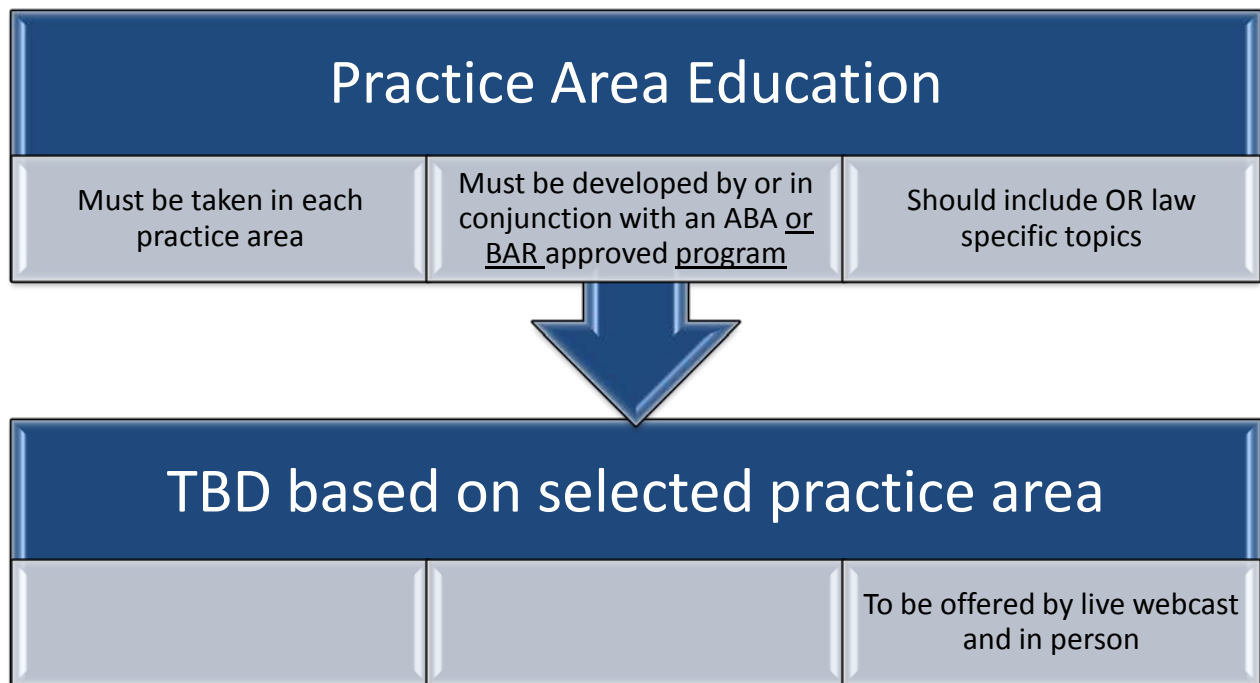
Law Office Management/Administration

Civil Procedure/Litigation

ELECTIVES: Applicant may take remaining credits as paralegal studies or legal elective courses

\*Note: the subcommittee would revisit this section and refine it, should the recommendation be approved.

4a. Practice Area Education, recommend requirements:



5. Examination. The subcommittee recommends the use of an existing National Certification Exam to satisfy the legal studies core curriculum requirement of the Examination. Further, we recommend that the practice area portion of the Exam be created based upon the specific practice area selected for licensure.

6. Experience Requirements, recommend to include:

#### “Substantive law-related work”

- Requires knowledge of legal concepts and is customarily but, not necessarily, performed by a lawyer

#### “Supervised”

- Lawyer in good standing with the Bar personally directs, approves, and has responsibility for work performed

#### 4,160 Hours of Experience

- Approx. 2 years full time
- With 2,080 hours or 1 year of experience in the specialty practice area applicant is requesting licensure
- Within 3 years before or after notification of passing core curriculum and practice area exams

#### Declaration(s) of Supervising Lawyer(s)

- Certification of substantive experience and period of supervision by lawyer

7. Continuing Education Requirements: Subcommittee recommends a two-prong CLE requirement, similar to the OSB Attorney CLE Requirement. We recommend a 45 CLE hour requirement every 3 years with a 3 year rotating reporting cycle. One prong of the CLE component would cover the core CLEs including: ethics (6 hours), mandatory reporting (3 hours), access to justice (3 hours) and practical skills - legal technology (3 hours), office administration, etc...) and the other prong would be specific to the specialty license - TBD.

\*Note: the subcommittee would revisit this section and refine it, should the recommendation be approved.

**Should the LLLT proposal be approved by the BOG, the Education and Experience Subcommittee members; Shari Bynum, Gerry Brask, Jill Tanner, Leslie Harris, and Linda Odermott, have committed to seeing this project through to final resolution.**

## **Outline of Possible Tasks to be Performed by Licensed Legal Technicians in Oregon**

**Discussion Draft** - LLLT Task Force, Family Law Subcommittee, 1/21/14

1. Provide state forms (such as those on the OJD web site), help them choose which ones to use, and assist in completing these forms, in a ministerial capacity and without giving legal advice about the case.
2. Provide generalized explanations of the law without applying it specifically to the client's case or fact pattern. Explain legal options without offering legal opinions. For example:
  - Options for children include joint or separate custody.
  - Define terms such as "joint custody", "sole custody," "separate property," maintenance vs. transitional vs. compensatory spousal support, "custody" vs. "parenting time."
  - What happens to separately acquired property (gifts, premarital and inheritances): Answer, the court can divide it or not. "The rules are complex, you will need a lawyer to advise you on how the rules apply to your case."
3. Review documents completed by litigants to determine if they are completely and correctly completed.
4. Review and interpret necessary background documents (for example, review discovery and client's materials) documents and offer limited explanations.
5. Provide or suggest published information to clients pertaining to legal procedures, client's legal rights and obligations and materials of assistance with children's issues (for example, Isa Ricci's *Mom's House, Dad's House*)
  - Any limits? Materials from Planned Parenthood? Advocacy groups such as DV organizations, dad's rights groups and religious organizations?
6. Explain court procedures without applying it specifically to the client's case or fact pattern (for example, difference between traditional trial and informal domestic relations trial in Deschutes County).
7. Filing and serving legal documents at the client's request.
8. Allow attendance at court proceedings?

### **ADDITIONAL QUESTIONS:**

- Can the LLLT's work with both parties to the case?
- Any conflict with the PLF if paralegals in firms do this type of work?



## **Use of Limited License Legal Technicians in Landlord / Tenant Law & Small Claims Advising**

Landlord-tenant legal work is likely suitable as an initial area of practice for Limited Legal License Technicians (LLLTs) for several reasons. First, it is a discrete area of the law with discrete tasks. All remedies are statutory and statutes are strictly construed. In an FED, a prevailing landlord is limited to recovery of possession of the property (plus fees and costs). If a tenant prevails her recovery is limited to her fees and costs. There is little overlap with other areas of the law such as business law, torts, family law, bankruptcy, etc.

Generally both parties are self-represented. Parties to these cases are often inexperienced, lack business skills, or are landlords with few units. All parties are potential clients who could benefit by some direction or assistance in navigating the legal process. Simply explaining the process, timeline, potential for technical errors (avoiding them or identifying them), and the likely results at trial would help inform the parties' as to their options, negotiating strategy, and need to emotionally and financially prepare for what will come next.

Few attorneys are interested in these cases because they usually involve a small amount of billable time and there are relatively small dollar amounts at stake.

There are lots of forms and information available from the various circuit courts, and it would be fairly simple to standardize the forms for uniform, state-wide practice. Many of the notices required by statute are also already formalized by legal form publishing companies and could be standardized by updates to statutes or the UTCR.

The complexities in landlord-tenant cases come in collateral issues such as tenant rights when domestic violence is part of the landlord's reason for eviction, personal injury claims arising out of tenancy, Fair Housing Act issues and reasonable accommodation requests, violations of local building codes, and the removal of squatters and non-tenants. Training on identifying and appropriately handling these issues would require a modest amount of time, making it an attractive option for LLLTs.

There are some limitations to the value of LLLT for these cases. Most of an attorney's work in this field often relies on communications with the other party—either settlement negotiations by email, letter, or phone, or by drafting and sending written notice required by the statute. If they are forbidden by ethical rules from this communication, their value to their client may be substantially limited.

Another concern is that eviction cases are designed to progress quickly. If a client needs a letter written, communication to an opposing party, or representation at trial, the time to get a lawyer is very brief. By the time a client has called and set up an appointment with an LLLT, they may not have time to call and set up a separate appointment with an attorney.

A companion set of cases that may be suitable for LLLT work are small claims matters. Many of these cases are a result of landlord-tenant relationships arising as complaints for damages caused by tenant or tenants claiming the return of deposits or the value of personal property. These cases are limited in scope because of the

statutory limit on the amount of damages and the one-year statute of limitations for landlord-tenant claims. Lawyers are generally barred from appearing in small claims matters and because of the small amount at controversy lawyers are usually not hired in these cases. Potential clients often need help with filling out the forms, understanding the substantive rules involved, understanding the presentation of evidence, and preparing their cases for trial or mediation.

The numbers of cases filed show that there is a substantial demand for affordable legal services in these fields of law. In 2011 (the latest numbers available on the OJD website) there were 47,918 family law type cases filed in Oregon Circuit Courts. Of that number about 10,800 were Family Abuse Prevention Restraining Order cases leaving about 37,118 other family law cases. By comparison there were about 23,700 FED cases filed and over 73,600 small claims cases. The FED cases and small claims cases do not include cases that were filed in the various municipal and justice courts across the state. There are more than twice the number of landlord-tenant and small-claims cases filed in Oregon courts than there are family law cases, implying a larger pool of potential clients for LLLTs in this field than in others. However, it should be noted that entity owners and property managers are already allowed to file FEDs without representation and regularly do so. Entities are also permitted to file in small-claims court without an attorney. Because non-attorneys are already sanctioned to “practice law” in these arenas, there may not be much paid demand for advise-only consultations.

On balance, the demand for affordable help in the fields of landlord-tenant law and small-claims cases certainly exists and may well be a good entry point for a limited-license legal technician program to operate.

## LLLT Task Force, Estate Planning Sub-Committee 01/23/2014

For a variety of reasons, estate planning is not a suitable area of practice for Limited Legal License Technicians (“LLLTs”) because there is no demonstrated need for lower cost legal services and no access to justice argument. There is no shortage of low cost attorneys in Oregon willing to handle wills and estate planning matters. Many new and solo attorneys practice in this area in particular and rates already tend to be very low and competitive. There is also no evidence that the approximately 40% of Oregonians who die intestate do so because they could not afford to hire lawyers to prepare will or estate planning documents for them. For estates that end up in probate, most courts compel the heirs to engage legal counsel. The cost of legal fees are controlled and managed by the probate court and the legal fees are paid from the proceeds of the estate. Unlike other areas of the law, consumers do not go without counsel because they can’t afford to pay a lawyer upfront.

Oregon’s intestate succession laws protect the heirs of decedents who die intestate. Simple estate planning template forms are readily available online and from Stevens Ness and many consumers use them. However, people who self-represent tend to cause problems for themselves. Their estates and heirs typically pay out far more in legal fees to resolve disputes caused by poorly drafted wills and related documents than if they had died intestate or paid even a nominal fee to get succession planning advice. The problem with a la carte estate planning documents is that they easily (though usually unintentionally) harm the intended heirs. Will forms are deceptively simple. Common message is that “stakes are high, there is no such thing as a simple will, and the devil is in the details.” Having an LLLT assist with form preparation does not solve this problem. Only sound legal analysis and strategic advice can address and resolve complex issues in the tax and estate planning arena.

Assuming LLLTs become authorized to practice in the estate planning arena, it is unlikely that consumers who die intestate or choose to rely on templates or online forms rather pay even nominal fees for legal services would pay for the advice and assistance of an LLLT. Further, consumers with any wealth at stake, concern about guardianship of their children, or in need of bulletproof advance directives will continue to engage the services of lawyers who specialize in the field. In short, “there is no value added to the consumer by creating a class of non lawyers authorized to prepare estate planning documents.”

Consulted with:

1. Two local practitioners (one small firm, one big firm).
2. Multnomah County Circuit Court Judge who regularly handles probate matters (as well as family law).
3. Chair of OSB Estate Planning Section.
4. Members of Executive Committee of OSB Estate Planning Section.

Concerns:

1. No access to justice argument.
2. People who die intestate or who rely on online forms will do so anyhow (no value added to the consumer).
3. No such thing as a “simple will.”
4. There’s a critical role for paralegals to play in the practice (and they do) but not solo.
5. Lawyers already handle these matters at very low rates.
6. High value clients will pay for lawyers.
7. Concern about whether and how privilege will attach.
8. Who will cover malpractice?
9. How get relevant and necessary experience in drafting without court litigation?
10. Issue of dual representation.
11. Online and template forms without analysis and a plan are useless and do more harm than good.
12. LTTT’s won’t be able to make any money without charging lawyers rates.
13. High risk with too much at stake.
14. Concern about potential for increased elder abuse due to lack of due diligence, legal analysis.
15. Can only work with fiduciary relationship.