

Limited License Legal Technicians: Non-lawyers Get
Access to the Legal Profession, But Clients Won't Get
Access to Justice

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INTRODUCTION

Washington Limited License Legal Technicians (LLLTs) are non-lawyers who will supposedly help to close “the wide and ever-growing gap in necessary legal and law related services for low and moderate income persons.”¹ However, LLLTs will not close the access to justice gap because “[t]here are no protections . . . to ensure that legal technicians will actually provide services to the poor, as opposed to selling their services to those who can most afford them,”² and LLLTs are “not going to have the competency to actually do for the poor what needs to be done.”³ Additionally, the modifications of the Washington Rules of Professional Conduct (RPCs) accompanying the adoption of the LLLT rule create significant ethical issues by allowing non-lawyer ownership of law firms and fee sharing among lawyers and LLLTs.⁴

Currently, LLLTs only exist in Washington State, and the “legal technician” is a relatively new concept in the United States.⁵ In 2008, the Washington Practice of Law Board (POLB)⁶ recommended the LLLT rule, and the Washington State Supreme Court adopted the rule in 2012.⁷

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1. *In re* Adoption of New APR 28, No. 25700-A-1005 (Wash. Sup. Ct. June 14, 2012), <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf> [<http://perma.cc/3MCA-44WW>] [hereinafter LLLT Court Order].

2. Letter from Deborah M. Nelson, President, Wash. State Trial Lawyers Ass’n, to the WSBA, Bd. of Governors (Dec. 7, 2006), http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Erik%20Bjornson.pdf [<https://perma.cc/A2ER-JWN9>].

3. Robert Ambrogi, Opinion, *Who Says You Need a Law Degree to Practice Law?*, WASH. POST (Mar. 13, 2015), https://www.washingtonpost.com/opinions/closing-the-justice-gap/2015/03/13/a5f576c8-c754-11e4-aa1a-86135599fb0f_story.html [<https://perma.cc/9756-7T6F>] (quoting Ruth Laura Edlund, former chair of the WSBA Family Law Section).

4. *See infra*, Part II.A.

5. *See generally* John Levin, *Non-lawyer Legal Practitioners—A Coming Trend*, CHI. BAR ASS’N RECORD 48 (Apr./May 2015).

6. *See generally* WASH. SUP. CT. GEN. R. 24.

7. *See* LLLT Court Order, *supra* note 1.

In the court order creating Admission to Practice Rule 28 (APR 28), the Washington State Supreme Court said that, according to the Washington State Civil Legal Needs Study,⁸ “[e]very day, across this state, thousands of unrepresented (pro se) individuals seek to resolve important legal matters in our courts.”⁹ The court also said that many of these individuals are low-income or moderate-income people who “cannot obtain help from an overtaxed, underfunded civil legal aid system,” and cannot afford legal services.¹⁰ The court admitted that APR 28 would not “solve the access to justice crisis,” but concluded that the rule was “a good start.”¹¹

According to APR 28, an LLLT is “a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law.”¹² An LLLT is not permitted to represent clients in court but may provide “limited legal assistance” to clients representing themselves.¹³ Under APR 28, LLLTs have a limited scope of practice that requires them to tell clients to seek representation by lawyers if a legal issue is beyond the “defined practice area” for LLLTs.¹⁴ Currently, the defined practice area for LLLTs is called “domestic relations,” which includes family law issues such as child support modifications, dissolution, domestic violence, legal separation, and parenting plan modifications.¹⁵

In the domestic relations practice area, unless prohibited by other parts of APR 28, “LLLTs may advise and assist clients (1) to initiate and respond to actions and (2) regarding motions, discovery, trial preparation, temporary and final orders, and modifications of orders.”¹⁶ After determining whether an issue is within their scope of practice,¹⁷ LLLTs may do the following: engage in fact finding; inform clients of applicable procedures and required documents; provide clients with approved self-help materials; review information received from the opposing party;¹⁸ “[s]elect, complete, file, and effect service of [certain]

8. See generally WASH. SUP. CT. TASK FORCE ON CIVIL EQUAL JUSTICE FUNDING, WASHINGTON STATE CIVIL LEGAL NEEDS STUDY (Sept. 2003).

9. LLLT Court Order, *supra* note 1, at 4.

10. *Id.* at 4.

11. *Id.* at 11.

12. WASH. SUP. CT. ADMISSION TO PRAC. R. 28(B)(4); see also *Legal Technician FAQ*, WASH. ST. B. ASS'N, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians/Legal-Technician-FAQs> [<https://perma.cc/4V8T-6BS6>]. See generally KARL B. TEGLAND, 2 WASH. PRAC., RULES PRAC. APR 28 (7th ed. 2015).

13. See WASH. SUP. CT. ADMISSION TO PRAC. R. 28(B)(4).

14. See *id.* R. 28(F).

15. See *id.* R. 28, app. 2(B)(1).

16. *Id.* R. 28, app. 2(B)(2).

17. See *id.* R. 28(F).

18. See *id.* R. 28(F)(1)–(5).

forms”;¹⁹ do legal research; “[d]raft legal letters and documents . . . if the work is reviewed and approved by a Washington lawyer”;²⁰ and help clients obtain “necessary documents or records, such as birth, death, or marriage certificates.”²¹

In order to become an LLLT, a person must be at least eighteen years old, be of good moral character and fitness, have at least an associate level degree, have forty-five credit hours of training at an American Bar Association (ABA) approved law school, pass an examination, and accumulate 3,000 hours of supervised work experience within three years.²² APR 28 also requires an annual license fee and “proof of ability to respond in damages resulting from . . . acts or omissions in the performance of [permitted] services.”²³

The University of Washington School of Law offers the only LLLT program in Washington State.²⁴ The cost for the program is \$250 per credit hour, which equals \$11,250 for the required forty-five credit hours.²⁵ The first group of LLLTs graduated from the required training program in the fall of 2014, and seven members of the first group passed the first LLLT exam in May 2015.²⁶ As of the date of this Comment, the Washington State Bar Association (WSBA) website lists the names of only sixteen LLLTs.²⁷

Although many other authors seem to support the creation of practitioners like LLLTs,²⁸ this Comment argues that the Washington

19. WASH. SUP. CT. ADMISSION TO PRAC. R. 28(F)(6).

20. *Id.* R. 28(F)(8). There is a proposed rule amendment regarding this specific provision. See LTD. LICENSE LEGAL TECHNICIAN BD., REPORT OF THE LIMITED LICENSE LEGAL TECHNICIAN BOARD TO THE WASHINGTON SUPREME COURT: THE FIRST THREE YEARS 28 (Feb. 2016), <http://www.2civility.org/wp-content/uploads/February-2016-Report-of-the-LLLT-Board-to-the-Washington-Supreme-Court.pdf> [<https://perma.cc/9JFH-PRPT>] [hereinafter LLLT Report].

21. WASH. SUP. CT. ADMISSION TO PRAC. R. 28(F)(10).

22. See *id.* R. 28(D)(1)–(3); (E)(1)–(2).

23. *Id.* R. 28(E)(3)–(4).

24. See *Limited License Legal Technician Program in Family Law*, UNIV. WASH. SCH. OF LAW, <https://www.law.uw.edu/apply/special-programs/lllt/> [<https://perma.cc/WNR7-UCJY>].

25. See *id.* The total cost to become an LLLT is actually \$14,440. LLLT Report, *supra* note 20, at 26.

26. LLLT Report, *supra* note 20, at 22.

27. See *Limited License Legal Technicians Program*, WASH. ST. B. ASS'N, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians> [<https://perma.cc/BYC7-A7JV>]. For the most recent statistics on the population of active LLLTs, see LLLT Report, *supra* note 20, at 24.

28. See generally Benjamin P. Cooper, *Access to Justice Without Lawyers*, 47 AKRON L. REV. 205 (2014); Stephen R. Crossland & Paula C. Littlewood, *The Washington State Limited License Legal Technician: Enhancing Access to Justice and Ensuring the Integrity of the Legal Profession*, 65 S.C. L. REV. 611 (2014); Brooks Holland, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, 82 MISS. L.J. SUPRA 75 (2013); Leslie C. Levin, *The Monopoly Myth and Other Tales About the Superiority of Lawyers*, 82 FORDHAM L. REV. 2611 (2014); Matthew Longobardi, *Unauthorized Practice of Law and*

State Supreme Court erred in adopting APR 28 and amending the Washington RPCs because the existence of an access to justice gap is not a sufficient justification for allowing non-lawyers to access the legal profession. Low-income people need lawyers, not LLLTs, and the potential ethical issues that arise by allowing LLLTs to practice law demonstrate that APR 28 is improperly designed.

Part I of this Comment discusses the extensive limitations APR 28 imposes on LLLTs. Part II discusses the relevant RPC amendments and the potential impact of the proposed LLLT Rules of Professional Conduct (LLLTPCs),²⁹ which further limit LLLTs' scope of practice. Part III discusses the arguments against LLLTs. Finally, Part IV discusses a viable alternative to the LLLT rule.

I. THE FIRST "L" IN LLLT: LIMITED

Despite the Washington State Supreme Court's contention that LLLTs are needed to help close the access to justice gap in Washington, the number and type of limitations APR 28 imposes on LLLTs make it unlikely that they will serve this purpose. As mentioned above, APR 28 sets forth a detailed scheme of limitations on LLLTs generally³⁰ and further confines LLLTs to practicing only in the area of domestic relations.³¹

The general limitations on LLLTs include that LLLTs shall not represent clients in court or other formal adjudicative or dispute resolution proceedings; negotiate clients' legal rights; communicate clients' positions to others; tell clients another party's position;³² or "[r]epresent or otherwise provide legal or law related services to [clients], except as permitted by law, [APR 28] or associated rules and regulations."³³ The result of these general limitations is that LLLTs can

Meaningful Access to the Courts: Is Law Too Important to be Left to Lawyers?, 35 CARDOZO L. REV. 2043 (2014); Laurel A. Rigertas, *Collaborations Between Lawyers and New Legal Professionals: A Path to Increase Access to Justice and Protect Clients*, 24 KAN. J.L. & PUB. POL'Y 539 (2015); Jack P. Sahl, *Cracks in the Profession's Monopoly Armor*, 82 FORDHAM L. REV. 2635 (2014); Richard Zorza & David Udell, *New Rules for Non-Lawyers to Increase Access to Justice*, 41 FORDHAM URB. L.J. 1259 (2014).

29. Currently, the full text of LLLTPCs is only available via a download. See *Proposed Rules Archives*, WASH. COURTS, http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplayArchive&ruleId=385 [https://perma.cc/MDP6-2F2D]. "In July 2013, the LLLT Board convened the RPC Subcommittee to draft the LLLT RPC." *Id.*

30. See WASH. SUP. CT. ADMISSION TO PRAC. R. 28(H).

31. See *id.* R. 28, app. (2)(B)(3)(a)–(e). There is a proposal to expand LLLTs' practice areas into housing, immigration, and elder law. See LLLT Report, *supra* note 20, at 31.

32. See WASH. SUP. CT. ADMISSION TO PRAC. R. 28(H)(4)–(6).

33. *Id.* R. 28(H)(8). There is a proposed rule amendment that would allow LLLTs to prepare documents involving issues outside of LLLTs' scope of practice. See LLLT Report, *supra* note 20, at 28.

only help clients with family law problems that do not require advocacy in a court or formal negotiations with opposing parties.³⁴ If a matter progresses to the point where these services are required, then LLLTs must refer clients to lawyers.

The specific limitations in the domestic relations practice area are extensive. APR 28 prohibits LLLTs from advising clients about various financial matters, including the division of real estate, business entities, retirement assets, benefit plans, or contribution plans.³⁵ Also, LLLTs cannot advise clients about bankruptcy issues, including the disposition of debts when one party is in bankruptcy, unless attorneys instruct the LLLTs on how to proceed.³⁶ In domestic violence matters, LLLTs cannot advise clients about anti-harassment or anti-stalking orders, no contact orders, or sexual assault protection orders.³⁷ As far as child custody issues are concerned, LLLTs are prohibited from advising clients about major parenting plan modifications unless the parties have previously agreed to them. Furthermore, LLLTs cannot assist with objections or responses to relocation petitions, temporary orders in relocation actions, or, with limited exceptions, final parenting plans in relocation actions.³⁸ Finally, LLLTs cannot take depositions or initiate or respond to appeals.³⁹

If any of the above issues arise, then LLLTs must refer clients to lawyers.⁴⁰ Therefore, APR 28 greatly restricts the kinds of matters and clients LLLTs can accept. After a comprehensive review of APR 28, it is not clear what types of matters LLLTs can actually handle; the scope of practice for LLLTs is not made any clearer by looking closely at the revisions to the RPCs adopted in conjunction with APR 28.

II. ETHICAL RULES FOR LAWYERS AND LLLTS

This Part discusses the revisions to the Washington Rules of Professional Conduct (RPCs) and the proposed LLLT RPCs. The important changes in the RPCs allow business partnerships and associations between LLLTs and lawyers, provided that LLLTs do not have control over lawyers' professional judgment.⁴¹ Generally, the LLLT

34. The WSBA is currently in the process of revisiting these limitations. See LLLT Report, *supra* note 20, at 32.

35. See WASH. SUP. CT. ADMISSION TO PRAC. R. 28, app. (2)(B)(3)(c)(i).

36. See *id.* R. 28, app. (2)(B)(3)(c)(ii)–(iii).

37. See *id.* R. 28, app. (2)(B)(3)(c)(iv).

38. See *id.* R. 28, app. (2)(B)(3)(c)(v), (viii), (ix).

39. See *id.* R. 28, app. (2)(B)(3)(d)–(e).

40. See *id.* R. 28(F).

41. See WASH. RULES OF PROF'L CONDUCT r. 5.9(a)(2), (b)(1)–(3).

RPCs place additional limits on LLLTs scope of practice that are not clearly stated in APR 28.

A. Revisions to the Rules of Professional Conduct

In addition to adopting APR 28 in 2012, the Washington State Supreme Court amended the RPCs in 2015.⁴² The most dramatic changes to the RPCs include an important modification of RPC 5.4 and the addition of two new rules, RPCs 5.9 and 5.10.⁴³ Of the fifty-one United States jurisdictions, all but the District of Columbia (D.C.),⁴⁴ and *now* Washington, follow the ABA Model Rules of Professional Conduct (Model Rules) by prohibiting partnerships between lawyers and non-lawyers.⁴⁵ The amended RPC 5.4 departs from this general prohibition by allowing LLLTs and lawyers to form partnerships,⁴⁶ and RPC 5.9 has been added to address the issues created by amending RPC 5.4.

1. RPC 5.4: “Professional Independence of a Lawyer”

In terms of the ethical implications of LLLTs participating in the legal process, “the elephant in the room is Rule 5.4.”⁴⁷ RPC 5.4 provides that “[a] lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.”⁴⁸ The amendment to the rule comes in the addition of Comment 4, which states

42. *In re* Expedited Adoption of Proposed Amendments to Rules of Professional Conduct, Order No. 25700-A-1096 (Wash. Sup. Ct. Mar. 23, 2015), http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Committee%20on%20Professional%20Ethics/25700-A-1096.ashx [<https://perma.cc/5LUC-A2KT>] [hereinafter RPC Amendments].

43. *See id.* at 59, 62–64. This Comment does not discuss the new RPC 5.10. In general, the rule provides that “a lawyer having direct supervisory authority over [an] LLLT shall make reasonable efforts to ensure that the LLLT’s conduct is compatible with the professional obligations of the lawyer and the professional obligations applicable to the LLLT directly.” WASH. RULES OF PROF’L CONDUCT r. 5.10(b).

44. *See* D.C. RULES OF PROF’L CONDUCT r. 5.4(b).

45. “A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.” MODEL RULES OF PROF’L CONDUCT r. 5.4(b). However, many foreign jurisdictions do not have the same restrictions and allow lawyers and non-lawyers to form multidisciplinary partnerships. *See generally* MICHAEL T. MADISON, JEFFRY R. DWYER & STEVEN W. BENDER, 2 THE LAW OF REAL ESTATE FINANCING §§ 16:14–15, 17 (5th ed. 2013). For more discussion of the impact of non-lawyer ownership on such partnerships, see Nick Robinson, *When Lawyers Don’t Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 GEO. J. LEGAL ETHICS 1 (2016).

46. *See* WASH. RULES OF PROF’L CONDUCT r. 5.4, cmt. 4.

47. *See* Elizabeth Chambliss, *Law School Training for Licensed “Legal Technicians”?* *Implications for the Consumer Market*, 65 S.C.L. REV. 579, 590 (2014).

48. WASH. RULES OF PROF’L CONDUCT r. 5.4(b).

that “[n]otwithstanding Rule 5.4, lawyers and LLLTs may share fees and form business structures to the extent permitted by Rule 5.9.”⁴⁹

The above amendment makes Washington’s rule similar to D.C.’s rule, which is broader than the new RPC 5.4. D.C.’s rule does not limit non-lawyer partners to any specific person or type of practitioner (such as an LLLT), but refers to non-lawyers who “perform[] professional services which assist the organization in providing legal services to clients.”⁵⁰ The D.C. RPCs explain that “the purpose of liberalizing the Rules regarding the possession of a financial interest or the exercise of management authority by a non-lawyer is to permit non-lawyer professionals to work with lawyers in the delivery of legal services without being relegated to the role of an employee.”⁵¹ However, the D.C. RPCs also specify that the rule “does not permit a corporation, an investment banking firm, an investor, or any other person or entity to entitle itself to all or any portion of the income or profits of a law firm or other similar organization.”⁵²

Although it deviates from the Model Rules, D.C.’s rule has a specific justification that does not apply in other jurisdictions. According to the U.S. Chamber Institute for Legal Reform, “Washington, DC, is a unique legal environment—and its experience cannot serve as a model for other states.”⁵³ This organization has also opined that D.C.’s rule is in place to allow local law firms to engage in lobbying as part of their legal services and that the benefits of allowing lobbyists to partner with lawyers is necessarily restricted to the D.C. legal market.⁵⁴ Moreover, there is a “natural check” against abusing D.C.’s rule “as a means to generate capital” because any firm wanting to partner with non-lawyers would have to practice only in D.C.; however, “this natural check would disappear” if other states adopted similar versions of the rule.⁵⁵

Washington D.C. and Washington State are the only jurisdictions that have created exceptions to the general rule that lawyers are prohibited from forming partnerships with non-lawyers, but there is one large firm advocating for modifications of Model Rule 5.4. In a recent

49. RPC Amendments, *supra* note 42, at 59.

50. D.C. RULES OF PROF’L CONDUCT r. 5.4(b).

51. *Id.* r. 5.4, cmt. 7.

52. *Id.* r. 5.4, cmt. 8. For a discussion of D.C. RPC 5.4 in the context of multidisciplinary practices, see MADISON, DWYER & BENDER, *supra* note 45, at § 16:16.

53. See Letter from Skadden, Arps, Slate, Meagher & Flom, LLP, to Natalia Vera, Senior Research Paralegal 5 (June 1, 2011), http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/ethics_20_20_comments/uschamberinstitutelegalreform_issu espaperconcerningalternativebusinessstructures.authcheckdam.pdf [https://perma.cc/AS5P-5FAC] [hereinafter Letter from SASMF, LLP].

54. See *id.*

55. See *id.*

case, Jacoby & Meyers LLC (Jacoby & Meyers) claimed that New York RPC 5.4⁵⁶ is unconstitutional.⁵⁷ The court dismissed the firm's third amended complaint,⁵⁸ but the claims made illustrate the business reasons behind the objections to Model Rule 5.4. Jacoby & Meyers claimed that "New York's prohibition on non-lawyer equity investment in law firms jeopardized J & M's commitment to providing low-cost legal services to the poor"⁵⁹ because it prevented the firm from acquiring more capital from non-lawyer investors.⁶⁰ The firm alleged that the ban on non-lawyer ownership in law firms was preventing Jacoby & Meyers from accepting offers from "several high net-worth individuals' and institutional investors who 'have expressed their commitment to invest significant sums of money' . . . in exchange for equity in the firm."⁶¹

Before rejecting all of Jacoby & Meyers's constitutional claims, the court explained the states' strong interest in regulating lawyer conduct:

A state's interest in regulating lawyers, the Supreme Court has said, is 'especially great' because 'lawyers are essential to the primary governmental function of administering justice, and have historically been officers of the courts.' For that reason, and because the judiciary and the public depend upon the 'professionally ethical conduct of attorneys,' courts themselves have 'a significant interest in assuring and maintaining high standards of conduct of attorneys engaged in practice.'⁶²

Although it failed to state a claim against New York's RPC 5.4, Jacoby & Meyers is not alone in objecting to the prohibition of non-lawyer ownership of law firms.⁶³ Advocates of non-lawyer ownership of law firms argue that outside investment in law firms provides capital for expansion, investments in technology, new associate training, financing for contingency fee cases, and reduced reliance on bank debt.⁶⁴

56. "A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law." N.Y. RULES OF PROF'L CONDUCT r. 5.4(b).

57. See *Jacoby & Meyers, LLP v. Presiding Justices*, 118 F. Supp. 3d 554 (S.D.N.Y. 2015).

58. *Id.* at 560.

59. *Id.* at 564.

60. See *id.* *Contra* Letter from SASMF, LLP, *supra* note 53, at 2–3 (referring to *Jacoby & Meyers* and arguing that "notwithstanding some firms' complaints about their ability to raise money, there is no evidence that U.S. law firms lack sufficient capital to serve their clients").

61. *Jacoby & Meyers*, 118 F. Supp. 3d at 564.

62. *Id.* at 567 (quoting *Middlesex Cnty. Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 432–34 (1982) and *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975)).

63. See Note, Bernard Sharfman, *Modifying Model Rule 5.4 to Allow for Minority Ownership of Law Firms by Non-lawyers*, 13 GEO. J. LEGAL ETHICS 477 (2000).

64. See *id.* at 483–86.

In addition to the court in the Jacoby & Meyers case, the ABA has opined on the issue of lawyers partnering with non-lawyers.⁶⁵ ABA Formal Ethics Opinion 91-360, issued in 1991, discusses D.C.'s modification of Model Rule 5.4, which took place the same year.⁶⁶ In this opinion, the ABA identified two scenarios when a lawyer practicing in a jurisdiction with a modified Rule 5.4 might be subject to discipline in a jurisdiction governed by the Model Rules: (1) a lawyer is licensed in both D.C. and a Model Rules jurisdiction, is a member of a firm that includes non-lawyer "partners or principals," and practices only in D.C.; and (2) a lawyer is licensed in both D.C. and a Model Rules jurisdiction, is a member of a firm with non-lawyer partners, but the lawyer practices only in the Model Rules jurisdiction.⁶⁷ The ABA concluded that, in the first situation, Model Rule 5.4 would not prohibit what D.C.'s rule allows and that, in the second situation, Model Rule 5.4 "must prevail."⁶⁸ In other words, a lawyer licensed in both types of jurisdictions practicing in a Model Rules jurisdiction "must see to it that no part of the lawyer's practice . . . is conducted through a firm with a non-lawyer partner or principle."⁶⁹

More recently, the ABA considered and rejected amending Model Rule 5.4 to remove the general prohibition against non-lawyer ownership of law firms.⁷⁰ In 2011, the ABA Commission on Ethics 20/20 decided that "two options for alternative business structures—passive equity investment in law firms and the public trading of shares in law firms—would not be appropriate to recommend for implementation in the United States at this time."⁷¹ One reason the ABA declined to change Model Rule 5.4 is that "[o]pponents to the change argued 'that non-lawyer ownership is unnecessary, [and] threatens the profession's core values.'"⁷²

Considering the authorities on the issue, and the fact that only two jurisdictions have departed from the Model Rules, all the effects of Washington's modification of RPC 5.4 are unknown at this time. Presumably, ABA Formal Ethics Opinion 91-360, discussed above, means that lawyers licensed in both Washington and a Model Rules

65. See ABA Comm'n on Ethics & Prof'l Responsibility, Formal Op. 91-360 (1991).

66. See *id.*

67. See *id.*

68. See *id.*

69. See *id.*

70. See Louise Lark Hill, *The Preclusion of Non-lawyer Ownership of Law Firms: Protecting the Interest of Clients or Protecting the Interest of Lawyers?*, 42 CAP. U. L. REV. 907 (2014); ABA COMM'N ON ETHICS, ISSUES PAPER CONCERNING ALTERNATIVE BUSINESS STRUCTURES 1-2 (Aug. 2012) [hereinafter ABA COMM'N ON ETHICS].

71. See ABA COMM'N ON ETHICS, *supra* note 70, at 2.

72. Hill, *supra* note 70, at 942.

jurisdiction, but practicing in Washington, would not be subject to discipline for forming a partnership with LLLTs. However, these lawyers would likely be subject to discipline if they practiced law in a Model Rules jurisdiction through a Washington firm with LLLT partners.

Given the issues created by departing from Model Rule 5.4, it is clear that the LLLT program is not a necessary or sufficient justification for Washington's changes to the rule. LLLTs will likely not be capital investors in law firms such as the "high net-worth individuals" referred to in the *Jacoby & Meyers* case, the unique benefit of lobbyist partners does not apply in Washington as it does in D.C., and LLLTs could exist and practice without the right to partner with lawyers. Therefore, "[t]here is no legitimate reason to take that dangerous step."⁷³

2. RPC 5.9: "Business Structures Involving LLLT and Lawyer Ownership"

Because the amended RPC 5.4 allows LLLTs to partner with lawyers, Washington created RPC 5.9, which limits LLLTs' involvement in these partnerships to protect lawyers' professional judgment.⁷⁴ Accordingly, RPC 5.9 sets forth specific ethical rules governing partnerships between lawyers and LLLTs.⁷⁵ RPC 5.9(a)(1) specifies that lawyers and LLLTs may share fees if they are part of the same firm.⁷⁶ Under RPC 5.9(a)(3), LLLTs and lawyers may practice "in the form of a professional corporation, association, or other business structure authorized to practice law for a profit in which an LLLT owns an interest or serves as a corporate director or officer or occupies a position of similar responsibility."⁷⁷

RPC 5.9(b) further specifies that lawyers and LLLTs may practice in law firms as partners only if certain requirements are met: LLLTs may not "direct or regulate any lawyer's professional judgment," have supervisory authority over lawyers, or "possess a majority ownership interest or exercise controlling managerial authority in the firm."⁷⁸ Furthermore, managing lawyers must "expressly undertake responsibility" for their LLLT partners' or owners' conduct "to the same extent they are responsible for the conduct of lawyers in the firm."⁷⁹

73. See Letter from SASMF, LLP, *supra* note 53, at 2.

74. See WASH. RULES OF PROF'L CONDUCT r. 5.9.

75. See RPC Amendments, *supra* note 42, at 62–63.

76. See *id.* at 62.

77. *Id.*

78. *Id.*

79. *Id.* In general, "a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer." WASH. RULES OF PROF'L CONDUCT r. 5.3(b). The provision in RPC 5.9

RPC 5.9 emphasizes the importance of protecting lawyers' professional judgment, but it does not fully address an important issue that arises in amending RPC 5.4 and creating RPC 5.9: lawyers and LLLTs in the same firm will share fees with one another. The Model Rules contain a general prohibition against lawyers sharing fees with non-lawyers,⁸⁰ but they allow lawyers who are not in the same firm to share legal fees.⁸¹ In Formal Ethics Opinion 464, the ABA considered whether lawyers in Model Rules jurisdictions may divide legal fees with lawyers or firms that eventually share fees with non-lawyers.⁸² The ABA concluded that this kind of fee sharing does not violate the Model Rules "simply because a non-lawyer could ultimately receive some portion of the fee under the applicable law of the other jurisdiction."⁸³ The ABA stated that its conclusion was consistent with the policy behind the Model Rules because "there is no reason to believe that the non-lawyer . . . might actually influence the independent professional judgment of the lawyer in the Model Rules jurisdiction, who practices in a different firm, in a different jurisdiction."⁸⁴

Formal Ethics Opinion 464 likely makes it permissible for LLLTs who are partners in law firms to share in fees generated by lawyers practicing in Model Rules jurisdictions. However, it does not address the problem that, within law firms with LLLT partners, the lawyers will end up subsidizing the LLLTs' income with fees from work that LLLTs are prohibited from doing. For example, LLLTs who own an interest in a law firm and are compensated, in part, based on the firm's annual profits, would be earning a portion of every fee earned by the firm's lawyers. Assuming that the lawyers' services were billed at higher rates than the LLLTs' services and that the lawyers worked on matters that the LLLTs, if practicing alone, would be prohibited from handling, the LLLTs' benefit from partnering with lawyers would far outweigh the LLLTs' contributions to the firm.⁸⁵ Assuming that LLLTs might not be able to earn the same income if they were solo practitioners or members of firms

requiring managing lawyers to take responsibility for LLLTs' conduct is similar to D.C. RPC 5.4 mentioned above. *See* D.C. RULES OF PROF'L CONDUCT r. 5.4(b)(3).

80. MODEL RULES OF PROF'L CONDUCT r. 5.4(a). ("A lawyer or law firm shall not share legal fees with a non-lawyer.")

81. MODEL RULES OF PROF'L CONDUCT r. 1.5(e). ("A division of a fee between lawyers who are not in the same firm may be made.")

82. *See* ABA Comm'n on Ethics & Prof'l Responsibility, Formal Op. 13-464 (2013).

83. *Id.*

84. *Id.*

85. *See generally* Jerry Moberg & Greg McLawsen, *Is There a Case for Bringing LLLTs Into a Firm?*, 69 NWLAWYER 20 (Nov. 2015), http://nwlawyer.wsba.org/nwlawyer/november_2015?pg=22#pg22 [<https://perma.cc/PE3D-924Q>].

made up of only LLLTs,⁸⁶ fee sharing between lawyers and LLLTs could amount to a windfall to LLLT partners, whose income would be the result of the lawyers' training and skills.

However, it is not clear that law firms will be motivated to hire LLLTs and share fees with them because LLLT services may not be cheaper than new lawyers' fees or generate sufficient profits. In a recent article, two Washington lawyers consider whether it makes business sense to include LLLTs in law firms.⁸⁷ One of the authors, the former chair of the WSBA Solo and Small Practice Section, said, if "it is not uncommon for recent graduates to free-lance for \$25/hour," then "[w]hy hire a 'lawyer lite' when you can just hire a lawyer?"⁸⁸ The article also discusses the fact that law firms generate profits due to the difference between the billable rate (paid by the client) and the cost of legal labor (the attorney's compensation),⁸⁹ which makes sense for lawyers but not for LLLTs. Assuming LLLTs could charge cheaper rates and be paid less than lawyers, such as an LLLT earning \$40 per hour for work billed to a client at \$80 per hour, "[a] solid 40-hour workweek would render \$1,600, from which a firm would still have to pay overhead associated with the LLLT. The law firm would have to achieve extraordinary volume to make this model significantly profitable."⁹⁰

B. The LLLT Rules of Professional Conduct

In addition to the amendments and additions to the RPCs, there is a proposed set of ethical rules for LLLTs called the LLLT RPCs,⁹¹ which are substantially similar to the RPCs.⁹² Under the LLLT RPCs, LLLTs are held to the same standard of care as lawyers,⁹³ and "[t]he Washington law of attorney–client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician–client relationship to the same extent as it would apply to an attorney–client relationship."⁹⁴

86. It is not yet clear how much LLLTs will be able to earn. *See generally* Blake Edwards, *Washington State Experiments with Legal Technicians*, BLOOMBERG L. (June 29, 2015), <https://bol.bna.com/washington-state-experiments-with-legal-technicians/> [<https://perma.cc/C4QT-6DDH>].

87. *See* Moberg & McLawsen, *supra* note 85.

88. Moberg & McLawsen, *supra* note 85, at 22.

89. *Id.*

90. *Id.*

91. *See generally* LTD. LICENSE LEGAL TECHNICIAN RULES OF PROF'L CONDUCT, http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LLLT/2015-02-03%20LLLT%20RPC.ashx [<https://perma.cc/2PJJ-CCQ4>].

92. *See* LTD. LICENSE LEGAL TECHNICIAN RULES OF PROF'L CONDUCT, cmt. 23.

93. *See* WASH. SUP. CT. ADMISSION TO PRAC. R. 28(K)(1).

94. *See id.* R. 28(K)(3).

There are several important differences between the RPCs and the LLLT RPCs. These differences take the form of additional limitations on LLLTs that are not explicitly stated in APR 28. These additional limitations are that LLLTs (1) may not advise clients on the possible legal consequences of a course of action,⁹⁵ (2) may not represent organizations,⁹⁶ (3) may not interact with opposing parties,⁹⁷ (4) may not practice outside of Washington,⁹⁸ and (5) should report violations of the LLLT RPCs and the RPCs.⁹⁹

1. LLLT RPC 1.2: “Scope of Representation and Allocation of Authority between Client and LLLT”

The value of legal representatives who cannot discuss the possible legal consequences of a proposed course of action is questionable; therefore, RPC 1.2 allows lawyers to advise clients about the potential legal consequences of their actions.¹⁰⁰ In contrast, LLLTs are “prohibited from discussing with a client the legal consequences of any proposed criminal or fraudulent conduct and assisting a client in determining the validity, scope, meaning, or application of the law with respect to any such conduct.”¹⁰¹ This difference is important when considered along with LLLTs’ obligation to refer clients to lawyers if the LLLT determines that a matter extends beyond the LLLT’s scope of practice.¹⁰² Presumably, if a client were to ask an LLLT to speculate about the legal consequences of a course of action, the LLLT would have refuse to answer or make a referral to an attorney to avoid violating both APR 28 and the LLLT RPCs.

2. LLLT RPC 1.13: Organizations as Clients

In addition to being prohibited from giving legal advice to individuals, LLLTs’ scope of practice does not include representing organizations.¹⁰³ Because the current scope of practice for LLLTs is confined to family law issues, this limitation does not seem important now; however, it could significantly hinder the expansion of LLLTs’

95. See LTD. LICENSE LEGAL TECHNICIAN RULES OF PROF’L CONDUCT r. 1.2, cmt. 2.

96. See *id.* r. 1.13.

97. See *id.* r. 4.2; 4.3(b).

98. See *id.* r. 5.5, cmt. 1.

99. See *id.* r. 8.3.

100. WASH. RULES OF PROF’L CONDUCT r. 1.2(d). (“[A] lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”).

101. LTD. LICENSE LEGAL TECHNICIAN RULES OF PROF’L CONDUCT r. 1.2, cmt. 2.

102. See WASH. SUP. CT. ADMISSION TO PRAC. R. 28(F); R. 28, app. 2(A)(1)–(4).

103. See LTD. LICENSE LEGAL TECHNICIAN RULES OF PROF’L CONDUCT r. 1.13, cmt. 1.

scope of practice into other areas of law where the potential clients could be corporations or other business entities. APR 28 and the LLLT RPCs, taken as a whole, seem to assume that business entities are not among the class of individuals who cannot afford legal representation by lawyers and would benefit from being able to hire LLLTs.

3. LLLT RPCs 4.2 and 4.3: “Communication with Person Represented by Lawyer” and “Dealing with Person Not Represented by Lawyer”

LLLTs cannot give legal advice, represent organizations, and, according to LLLT RPC 4.2, “there is no circumstance in which an LLLT could communicate with a person represented by a lawyer about the subject matter of the representation.”¹⁰⁴ Under LLLT RPC 4.3, an LLLT is strictly prohibited from communicating with another party about the subject of the representation,¹⁰⁵ and the client of an LLLT is considered an unrepresented person.¹⁰⁶ In a recent report on the status of the LLLT program, the WSBA LLLT Board Scope of Practice Committee “decided that APR 28 could only be interpreted as not permitting any communication at all by an LLLT with an opposing counsel or party.”¹⁰⁷

The implications of these rules could be quite significant. LLLTs cannot communicate with opposing parties regardless of whether or not those parties are represented by lawyers, but if the opposing parties are represented by lawyers, those lawyers could communicate with the LLLTs’ clients.¹⁰⁸ In this situation, an LLLT’s client would either need to hire a lawyer or take the chance of being at a significant disadvantage as a layperson negotiating against an attorney. In general, a legal representative who cannot communicate with an opposing party is of questionable value.

It seems that this error in drafting APR 28 and the LLLT RPCs has become a practical issue for LLLT clients. According to the LLLT Report mentioned above, “[t]he current prohibition against LLLTs negotiating for their clients has created significant questions” because clients might be put in situations where “it would clearly be in their best interest to have a neutral third party be the contact person.”¹⁰⁹ As a result,

104. LTD. LICENSE LEGAL TECHNICIAN RULES OF PROF’L CONDUCT r. 4.2, cmt. 1.

105. *See id.* r. 4.3(b). “At the same time, nothing prohibits an LLLT simply employed by a law firm from functioning instead as a paralegal, where, under the supervision of a lawyer, a paralegal can, for example, deal directly with opposing counsel.” Mark J. Fucile, *Washington’s LLLT Experiment*, MULTNOMAH LAW. ETHICS FOCUS 3 (Feb. 2016).

106. LTD. LICENSE LEGAL TECHNICIAN RULES OF PROF’L CONDUCT r. 4.3, cmt. 3.

107. LLLT Report, *supra* note 20, at 12.

108. *See* WASH. RULES OF PROF’L CONDUCT r. 4.3.

109. LLLT Report, *supra* note 20, at 32.

the LLLT Board is now considering if “it would be better to have an LLLT negotiate directly with an opposing party’s attorney than it is to have a pro se party do so, and also whether it would be much easier for the attorney to deal with a legal professional rather than a pro se layperson.”¹¹⁰

4. LLLT RPC 5.5: “Unauthorized Practice of Law”

LLLT RPC 5.5 prohibits LLLTs from engaging in multi-jurisdictional practice.¹¹¹ Lawyers, under certain circumstances, may practice law in jurisdictions where they are not licensed.¹¹² Conversely, LLLT RPC 5.5 states that “[u]nless and until other jurisdictions authorize Washington-licensed LLLTs to practice law, it will be unethical under this Rule for the LLLT to provide or attempt to provide legal services” outside of Washington State.¹¹³ The comments to LLLT RPC 5.5 further state that, “because there are no limited license programs in other jurisdictions tantamount to Washington’s LLLT rules[,] [there is] no need to authorize non-lawyers in other jurisdictions to practice law in Washington, either temporarily or on an ongoing basis.”¹¹⁴

The fact that neither the LLLT RPCs nor other states’ RPCs contemplate multi-jurisdictional practice could be evidence that LLLTs are not in demand. If there was a national market for LLLTs, then there would be pressure on other state bar associations or courts to adopt LLLT rules and to allow multi-jurisdictional practice by LLLTs. Moreover, if the Washington State Supreme Court was confident that non-lawyer legal practitioners would be appearing in legal markets across the nation¹¹⁵ with increased frequency and volume, or that non-lawyer practitioners are desperately needed to close the access to justice gap, then the LLLT RPCs would have been written to allow

110. LLLT Report, *supra* note 20, at 32.

111. For a discussion about the risks of LLLTs engaging in the unauthorized practice of law, see *infra* Part III.E.

112. See WASH. RULES OF PROF’L CONDUCT r. 5.5, cmt. 5.

113. LTD. LICENSE LEGAL TECHNICIAN RULES OF PROF’L CONDUCT r. 5.5, cmt. 1.

114. *Id.* r. 5.5, cmt. 2.

115. There are other states in the process of considering legal technician programs, and some of those states have looked to Washington’s LLLT program for guidance. See generally Sands McKinley, *Legal Technicians Across the US*, SANDS MCKINLEY (June 6, 2015), <http://www.sandsmckinley.com/legal-technicians-across-the-us/> [https://perma.cc/GLR7-EMYC]. See also STATE OF UTAH SUPREME COURT, SUPREME COURT TASK FORCE TO EXAMINE LIMITED LEGAL LICENSING, REPORT AND RECOMMENDATIONS 50–58 (Nov. 18, 2015). The state of Utah decided that, “while the Washington experience might provide useful lessons for a nascent Utah program, it appears that Washington’s program is not the right fit for Utah.” *Id.* at 29.

non-lawyer practitioners from other states to practice in Washington in some capacity.

5. LLLT RPC 8.3: “Reporting Professional Misconduct”

In addition to the prohibitions against LLLTs giving legal advice, representing organizations, communicating with opposing parties, and practicing outside of Washington, the LLLT RPCs suggest that LLLTs should report ethical violations by other LLLTs and lawyers.¹¹⁶ The LLLT RPCs provide that an LLLT “should” inform the appropriate authorities when the LLLT knows that another lawyer or LLLT has violated ethical rules in a manner “that raises a substantial question as to that LLLT’s or that lawyer’s honesty, trustworthiness, or fitness as an LLLT or lawyer in other respects.”¹¹⁷ Likewise, RPC 8.3 provides that a lawyer “should” inform the appropriate authorities when the lawyer knows that another lawyer or an LLLT has violated ethical rules.¹¹⁸

These rules seem to assume that LLLTs will know and understand the extent of the RPCs and that lawyers will know the extent of LLLTs’ ethical responsibilities. Because lawyers could potentially be subject to discipline for LLLTs’ conduct regardless of whether the LLLTs are employees or partners in the firm,¹¹⁹ it is reasonable to expect that a lawyer should inform the appropriate authorities if an LLLT violates ethical rules. However, recommending that LLLTs should report lawyers to disciplinary authorities is potentially problematic because LLLTs have substantially less education than lawyers¹²⁰ and, presumably, very little understanding of the RPCs.

For LLLTs employed in law firms and supervised by lawyers, LLLT RPC 8.3 suggests that the LLLTs should be monitoring their bosses’ conduct for RPC violations. It seems unlikely that LLLTs will have enough knowledge of the RPCs to spot ethical issues or have the motivation to become whistle-blowers. Although this could also be the case for new lawyers supervised by senior lawyers, LLLTs reporting lawyers for ethical violations still seems less likely because of LLLTs’ limited opportunities and scope of practice. For lawyers working

116. See LTD. LICENSE LEGAL TECHNICIAN RULES OF PROF’L CONDUCT r. 8.3.

117. *Id.* r. 8.3(a).

118. WASH. RULES OF PROF’L CONDUCT r. 8.3(a).

119. See *id.* r. 5.3(e)(1)–(2); r. 5.9, cmt. 2; r. 5.10(b), (c)(1)–(2).

120. LLLTs are required to take forty-five law school credit hours. WASH. SUP. CT. ADMISSION TO PRAC. R. 28(D)(3)(b). In contrast, in order to become a lawyer in Washington, a person must graduate from law school. See *id.* R. 3(b)(i). Graduation from law school requires completion of at least ninety credit hours. See, e.g., *Academic Requirements*, SEATTLE U. SCH. L., <https://law.seattleu.edu/academics/curriculum-overview/requirements> [https://perma.cc/GXY4-RB8E].

in firms who believe that the other lawyers consistently violate the RPCs, the possible solutions are to change firms or start a new firm. In the case of LLLTs who believe the lawyers in the firm are practicing unethically, changing firms may or may not be possible because not all firms will employ LLLTs. Similarly, starting a new firm may not be financially possible due to the limits on LLLTs' scope of practice and their inability to change practice areas. Under these circumstances, LLLTs who believe lawyers are violating ethical rules may have an incentive to look the other way instead of jeopardizing their already limited career opportunities by reporting their supervisors to the WSBA.

Moreover, because of LLLTs' extremely limited scope of practice, there seems to be a greater possibility that LLLTs will violate ethical rules. LLLTs are restricted to practicing in a single area of law, under very limited circumstances; thus, they will have a very small number of potential clients who need the precise kind of services they can provide. Due to the market for clients being so small, LLLTs may be motivated to accept as many clients as possible. This motivation could lead to scope of practice violations by LLLTs seeking to retain clients whose legal problems appear to be simple at first, but turn out to be beyond what the LLLTs are allowed to handle under APR 28 or the LLLT RPCs: "If the legal technician does not realize that an issue exists, he or she won't recognize the need to refer a client to an attorney. The potential for abuse is high when a legal technician has a financial incentive to keep the client in the dark."¹²¹

Consequently, LLLTs will not be motivated to report other LLLTs or lawyers for ethical violations, and the recommendation that LLLTs should report ethical violations, therefore, provides little or no protection for clients.

III. ARGUMENTS AGAINST LLLTs

The foregoing discussion reveals that APR 28, the RPC revisions, and the LLLT RPCs allow non-lawyers access to the legal profession, but clients may only get access to representation that is so limited it is inadequate. In addition, because the Washington State Supreme Court allocated the expenses of implementing the LLLT program to the WSBA, lawyers' bar membership dues have been used to subsidize the creation of a practitioner that will likely compete with lawyers.¹²² Accordingly, the dissent to APR 28, authored by Justice Owens, points

121. Letter from Wash. Young Lawyers Div. of the WSBA, to the WSBA Bd. of Governors (Apr. 30, 2009) (on file with author).

122. As of December 31, 2015, the LLLT program had generated just over \$11,000 in revenue, and the total expenses were more than \$470,000. See LLLT Report, *supra* note 24, at 26.

outs that the rule was “ill-considered, incorrect, and most of all extremely unfair to members of the Washington State Bar Association.”¹²³

Justice Owens expressed concern about the fact that “there [was] uncertainty about whether the [LLLT] certification fees [would] produce sufficient funds to underwrite the annual cost of the legal technician program,” which led to the requirement that the WSBA provide additional funding for the LLLT program.¹²⁴ Justice Owens further argued that it was unfair to place this monetary burden on the WSBA because the WSBA had already invested in a number of programs to address the problems APR 28 was designed to solve,¹²⁵ instead, she suggested that the Washington State Supreme Court should have taken responsibility for APR 28.¹²⁶

However, Justice Owens speculated “that[,] if this court had been asked to assume financial responsibility for establishing and administering this major program for certification of legal technicians, with the vague promise that the program may someday be self-supporting,” the court would have decided that there was not enough money in the budget.¹²⁷ Justice Owens concluded that it was not “fair or equitable for th[e] court to eschew assuming financial responsibility for this program in this time of economic distress, and instead impose the obligation on all of the state’s lawyers, many of whom are feeling the adverse effects of the current downturn of the economy.”¹²⁸

Notwithstanding Justice Owens’ dissent to APR 28, there are several arguments against the existence of LLLTs: (A) LLLTs will not close the access to justice gap because they will not necessarily be willing or able to charge lower rates than attorneys, (B) LLLTs will take work away from small and solo firms, (C) LLLTs will provide inadequate legal services, (D) LLLTs should not be permitted to practice in family law because of the complexity of the issues involved, and (E) LLLTs will engage in the unauthorized practice of law. These arguments are discussed in turn below.

A. LLLTs Will Not Close the Access to Justice Gap

LLLTs will not close the access to justice gap by serving economically disadvantaged clients. Before the adoption of APR 28, two

123. LLLT Court Order, *supra* note 1, at 1 (Owens, J., dissenting).

124. *Id.* at 3 (Owens, J., dissenting).

125. *See id.* at 3–4 (Owens, J., dissenting).

126. *See id.* at 4–5 (Owens, J., dissenting).

127. *See id.* at 5 (Owens, J., dissenting).

128. *Id.* at 5 (Owens, J., dissenting).

members of the WSBA Board of Governors argued that, because of their limited scope of practice, LLLTs would not be able to earn enough money; therefore, very few people would have the incentive to become LLLTs and there would be no net effect on the access to justice gap.¹²⁹

[T]he POLB envisions that a significant number of college-educated, law office-trained professionals will leave their jobs and . . . work at low rates in a single area of law with significant restrictions upon the scope of their practice, for people of modest means. . . . This vision is neither realistic nor economically viable.¹³⁰

Even if there were enough LLLTs to serve the large number of low-income, unrepresented persons, “[a]ll we’re providing is access to injustice, because [LLLTs] will not have the competency to actually do for the poor what needs to be done”; “[j]ust because you’re poor doesn’t mean your legal problems are simple.”¹³¹ The reality is that “legal technicians simply disguise a much larger problem—that poor citizens need help getting access to fully trained lawyers.”¹³²

Moreover, APR 28 was designed to create a practitioner that could help some of the “thousands of unrepresented (pro se) individuals” that appear in Washington courts, but do we really “know that otherwise self-represented litigants would pay for the services of a limited license legal technician when they were not willing to pay for the services of an attorney?”¹³³

Ultimately, the LLLT program will fail to close the access to justice gap because “[t]here are no protections . . . to ensure that legal technicians will actually provide services to the poor, as opposed to selling their services to those who can most afford them”;¹³⁴ “the cost of hiring a legal technician w[ill] likely be no less expensive than hiring a young or less experienced attorney.”¹³⁵ “[T]here is no guarantee that LLLTs will charge affordable rates. They can charge whatever they

129. See Mark A. Johnson & David S. Heller, *The Washington State Supreme Court Should Decline to Adopt the Family Law Legal Technician Proposal*, 62 WASH. ST. B. NEWS 19, 20 (July 2008).

130. *Id.* at 21.

131. Ambrogi, *supra* note 3 (quoting Ruth Laura Edlund, former chair of the WSBA Family Law Section).

132. Edwards, *supra* note 86.

133. See J. Robert Weisberger, Jr., *Gaining Perspective on Limited Scope Representation*, 62 R.I. B.J. 4 (Nov./Dec., 2013).

134. See Letter from Deborah M. Nelson, *supra* note 2.

135. *Id.*

want.”¹³⁶ Even a recently licensed LLLT who intends to start her own practice admitted that “[i]t may not be possible to offer services to the lowest income residents, . . . [w]e may have to target median income people.”¹³⁷ Indeed, there is nothing in APR 28 mandating that LLLTs serve clients of a certain income level or that LLLTs are required to charge any particular amount for their services.

Finally, LLLTs will not be able to close the access to justice gap by providing legal services at substantially lower costs than attorneys because, “unlike full service lawyers, legal techs won’t have the ability to subsidize low end, unbundled work with higher cost services—which is what many lawyers do to make low bono work viable.”¹³⁸

B. LLLTs Will Take Business Away From Small & Solo Firms

Even if LLLTs end up serving some low-income clients, LLLTs will take business away from small firms and solo practitioners. Part of the rationale for the LLLT rule is that consumers with simple problems will hire LLLTs rather than lawyers because not everyone needs a lawyer to solve their legal problems. If this rationale actually leads to LLLTs gaining business from clients with simple legal issues, small firms and solo practitioners will lose more business than any other legal service provider—“[i]ntroduction of a new class of limited licensed professionals will continue to erode the economic model of solo and small law firm practice by sucking out from those practices the more routine legal services which are important to sustaining the economic viability of those law firms.”¹³⁹

Furthermore, “[w]ith unemployment rampant in today’s legal market . . . hanging a shingle [starting a solo or small firm] is a lifeline for lawyers who want a career in the law.”¹⁴⁰ The less complex cases, such as uncontested divorces, which LLLTs can now handle, “give inexperienced new lawyers a chance to cut their chops and work their way up to more difficult and high-paying cases.”¹⁴¹ Unfortunately,

136. Robert Ambrogi, *Debating the Pros and Cons of Non-lawyers Practicing Law*, LAW SITES (Jan. 19, 2015), <http://www.lawsitesblog.com/2015/01/pros-cons-non-lawyers-practicing-law.html> [<https://perma.cc/8YW8-UZAA>].

137. Edwards, *supra* note 86.

138. Carolyn Elefant, *Future Fridays: Will Limited Licensed Technicians Kill Solos & Smalls?*, MYSHINGLE (Sept. 27, 2013), <http://myshingle.com/2013/09/articles/solo-trends/future-fridays-will-limited-licensed-technicians-kill-solos-smalls/> [<https://perma.cc/QFF6-YTG9>].

139. Richard S. Granat, *Limited Licensing of Legal Technicians: A Good Idea?*, ELAWYERINGBLOG (Sept. 21, 2013), <http://www.elawyeringredux.com/2013/09/articles/unauthorized-practice-of-law/limited-licensing-of-legal-technicians-a-good-idea/> [<https://perma.cc/L8MV-UUDW>].

140. Elefant, *supra* note 138.

141. Elefant, *supra* note 138.

“higher initial cost and overhead will ensure that traditional lawyers will be unable to fairly compete with [LLLTs] for this oft-needed work. Cut off from their bread-and-butter business, the number of small firms and solo practitioners would be greatly reduced.”¹⁴²

If there is a reduction in the number of solo practitioners, then the overall cost of retaining an attorney will increase for those who have more complicated problems and need to hire attorneys rather than LLLTs. Therefore, LLLTs may actually widen the access to justice gap because fewer and fewer people will be able to afford to retain an attorney.

C. LLLTs Will Provide Inadequate Legal Services

No matter what kind of clients LLLTs serve, it is not likely that LLLTs will provide quality legal services because they have substantially less training than lawyers. As one family law lawyer put it, “I am by no means knocking the two-year education, but I don’t think someone with an associate’s degree can do what a lawyer can do.”¹⁴³

LLLTs’ services will be inadequate because, “[i]f litigation becomes necessary, the legal technician will not be able to appear or participate in court or in depositions and the client will have to hire a licensed attorney, potentially duplicating costs they have already incurred.”¹⁴⁴ “LLLTs ‘can only go so far with you. And then what? You still have to bring in a lawyer to litigate the case,’ . . . [Lawyers are] going to come in in the fourth quarter, in the last 10 minutes of the game?’ That’s ineffective legal practice that won’t serve consumers well.”¹⁴⁵

There is also evidence that consumers prefer having attorneys help with their legal problems. “Among those with legal problems who seek but do not get an attorney’s help, only 19 percent were satisfied with the way their legal problems work out. When households receive an attorney’s help, however, the satisfaction rate more than triples, to 61%.”¹⁴⁶

142. Peter Strand, *ABA Task Force Recommends Licensing Limited Legal Technicians*, 27 UTAH B.J. 43, 44 (Nov./Dec. 2014).

143. Ed Finkel, *The ABCs of LLLTs*, 103 ILL. B.J. 20 (Sept. 2015) (quoting Tamika Walker, the secretary of the Illinois Bar Association family law section).

144. Letter from Deborah M. Nelson, *supra* note 2.

145. See Finkel, *supra* note 143.

146. Jean Cotton, *Legal Technicians Aren’t the Answer: The Family Law Section’s Executive Committee Weighs In*, 62 WASH. ST. B. NEWS 31–32 (July 2008), http://www.wsba.org/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200807JulyBarNews.ashx [<https://perma.cc/2KT4-6W2C>] (citing the September 2003 Washington State Civil Legal Needs Study).

In many cases, LLLTs may end up providing substandard legal services simply because they may not fully understand their clients' legal problems: "[W]hat seems like a simple legal issue (surely one that 'legal technicians' will be allowed to handle) can branch out into many complex issues."¹⁴⁷

D. LLLTs Should Not Practice in Family Law

Some family law practitioners argue that, regardless of the merit of the LLLT program generally, LLLTs should not be allowed to practice in family law because of its complexity.¹⁴⁸ According to the former chair of the WSBA Family Law Section, Jean Cotton:

Family law is one of the most challenging areas of legal practice, balancing the skill of litigation with knowledge of the law, the psychology of clients going through one of the most stressful events of their lives. . . . Providing inaccurate or inadequate legal services in family law cases can lead to long-term, disastrous results for the families of our state. Examples of potential problematic outcomes include:

- Loss of custody or contact with one's children.
- Erroneous child-support obligation calculations.
- Inequitable or inaccurate allocation of property and liabilities in dissolutions.
- Misidentification of fathers.
- Waiver of parentage challenges.
- Lack or inappropriate issuance of restraining or protective orders.

The emotional and financial cost to clients to correct most of these types of errors would far exceed the cost of doing them right the first time with the assistance of an experienced attorney.¹⁴⁹

Cotton also pointed out that "[f]amily law is notoriously productive of malpractice claims and complaints to the bar association; it is not the area one would pick to permit lay persons to begin practicing law."¹⁵⁰

147. Letter from Melissa Chin, to the Practice of Law Bd., (Apr. 30, 2009) (on file with author).

148. Similar arguments were made regarding elder law as well. *See generally* Letter from Erv DeSmet & James M. Brown, President & Vice President of the National Academy of Elder Lawyers, to the Practice of Law Bd., at 2, 6 (Oct. 12, 2007) (on file with author); Letter from Karl L. Flaccus, Chair of the Elder Law Section of the Wash. State Bar Ass'n, to the Practice of Law Bd., at 8–11 (Oct. 5, 2007) (on file with author).

149. Cotton, *supra* note 146, at 31.

150. Letter from Jean A. Cotton, Outgoing Chair of the Family Law Section of the WSBA, to the Wash. State Supreme Court, at 2 (Apr. 28, 2009) (on file with author); *see also* Letter from the

Cotton further argued that LLLTs are not necessary because Washington already has a Courthouse Facilitator Program¹⁵¹ to aid pro se litigants in family law¹⁵² and because family law “attorneys already are providing services either at reduced rates or on a pro bono basis for their family law clients much more often than for any other type of clientele.”¹⁵³

Another argument against LLLTs practicing in family law is that LLLTs’ scope of practice is too limited to serve family law clients effectively. As the Washington Young Lawyers Division of the WSBA pointed out, LLLTs are prohibited from addressing “almost every known issue there is in family law, i.e., real property transfers, retirement benefits, [and] interstate disputes.”¹⁵⁴ Similarly, regarding the limitation that LLLTs cannot enter into negotiations on behalf of their clients, an Illinois family law lawyer said, “[t]hat’s what family lawyers do all day. . . . So I’m not sure what [an LLLT] is going to do.”¹⁵⁵

E. LLLTs Will Increase the Incidence of the Unauthorized Practice of Law

The final argument against LLLTs is that the ambiguous definition of “the practice of law,”¹⁵⁶ when combined with the provisions of APR 28, creates an environment in which LLLTs are particularly susceptible to engaging in the unauthorized practice of law.

1. The Practice of Law

To define “the unauthorized practice of law,” one must first define the phrase “the practice of law.” Washington State Supreme Court General Rule 24 states that “[t]he practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law.”¹⁵⁷

According to the Washington State Supreme Court, “[t]he practice of law does not lend itself easily to precise definition,”¹⁵⁸ and “[t]he line

Law Office of Wendy E. Zicht, Tacoma Pierce Cnty. Bar Ass’n Family Law Section Bd. of Tr. Member, to the Practice of Law Bd. (July 7, 2009) (on file with author).

151. See WASH. REV. CODE § 26.12.240 (2015). (“A county may create a courthouse facilitator program to provide basic services to pro se litigants in family law cases.”).

152. Letter from Jean A. Cotton, *supra* note 150.

153. Cotton, *supra* note 146, at 32.

154. Letter from Wash. Young Lawyers Div. of the WSBA, *supra* note 121.

155. Finkel, *supra* note 143.

156. See WASH. SUP. CT. GEN. R. 24(a)–(b).

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

158. Wash. State Bar Ass’n v. Great W. Union Fed. Savings and Loan, 586 P.2d 870, 875 (Wash. 1978); see also Cindy Alberts Carson, *Under New Mismanagement: The Problem of Non-Lawyer Equity Partnerships in Law Firms*, 7 GEO. J. LEGAL ETHICS 593, 615–17 (1994).

between those activities included within the definition of the practice of law and those that are not is oftentimes difficult to determine.”¹⁵⁹ “[T]he nature and character of the service performed . . . governs whether given activities constitute the practice of law.”¹⁶⁰ The court has defined the “practice of law” to include “legal advice and counsel”¹⁶¹ and “the selection and completion of form legal documents, or the drafting of such documents, including deeds, mortgages, deeds of trust, promissory notes and agreements modifying these documents.”¹⁶²

Conversely, the court has also held that real estate brokers or salespeople are “permitted to complete simple printed standardized real estate forms, which [] must be approved by a lawyer.”¹⁶³ This rule applies only “for simple real estate transactions which arise in the usual course of the broker’s business” and “only in connection with real estate transactions actually handled by such broker or salesperson as a broker or salesperson . . . without charge.”¹⁶⁴ If brokers “prepare[] a contract at variance with the client’s instructions, [they are] liable for negligence.”¹⁶⁵

2. What is the Unauthorized Practice of Law?

With the ambiguous definition of “the practice of law” in mind, one can now try to understand what “the unauthorized practice of law” means. This phrase is defined by statute,¹⁶⁶ but four of the five enumerated acts that would constitute the unauthorized practice of law are now allowed by APR 28 because LLLTs can share ownership in law firms and share fees with lawyers.¹⁶⁷ The only remaining definition of the unauthorized practice of law is when “[a] non-lawyer practices law, or holds himself or herself out as entitled to practice law.”¹⁶⁸

Adding to the confusion, the statute also provides that “it is a defense if proven by the defendant . . . that, at the time of the offense, the conduct alleged was authorized by the rules of professional conduct or the admission to practice rules.”¹⁶⁹ This provision likely means that if an LLLT is accused of engaging in the unauthorized practice of law, but can

159. *Bennion, Van Camp, Hagen & Ruhl v. Kassler Escrow, Inc.*, 635 P.2d 730, 732 (Wash. 1981).

160. *Great W. Union Fed. Savings and Loan*, 586 P.2d at 874.

161. *Id.* at 875.

162. *Id.*

163. *Cultum v. Heritage House Realtors, Inc.*, 694 P.2d 630, 634–35 (Wash. 1985).

164. *Id.*

165. *Id.* at 636.

166. *See* WASH. REV. CODE § 2.48.180(2) (2015).

167. *See id.* § 2.48.180(2)(b)–(e) (2015).

168. *Id.* § 2.48.180(2)(a) (2015).

169. *See id.* § 2.48.180(7) (2015).

prove that the actions taken were authorized by APR 28 or the LLLT RPCs, then no liability will result. The phrase “unauthorized practice of law” does not appear in APR 28; thus, it is unclear exactly what actions by an LLLT would be considered the unauthorized practice of law.

3. LLLTs Are Particularly Susceptible to Engaging in the Unauthorized Practice of Law

Although there is currently no definitive answer as to whether a violation of APR 28 would be considered the unauthorized practice of law, some lawyers think “Washington’s LLLT program legitimizes acts, by individuals who are not lawyers that would conventionally constitute the unauthorized practice of law.”¹⁷⁰ The risk that LLLTs will engage in the unauthorized practice of law increases for LLLTs who become partners in law firms; there may be “little to protect clients from non-lawyers who, while not actually claiming to be lawyers, convey the impression of legal literacy because of their partnership [status].”¹⁷¹

In addition, “[a] non-lawyer partner who has had legal training probably runs the greatest risk of engaging in the unauthorized practice of law.”¹⁷² “With the public unable to distinguish a traditional attorney from the newly created non-JD limited legal technician, there [will] be ample opportunit[ies] for these newly minted professionals to take advantage of the public by offering services they are not authorized to perform.”¹⁷³

Unfortunately, there are few prosecutions for the unauthorized practice of law, which means that the incentive to become an LLLT is also decreased. “Due to the lack of enforcement, it is . . . a cause for concern as to why any individual would go through the rigorous certification process when they can already practice law without real threat of prosecution.”¹⁷⁴ In other words, how do we “know that those . . . who are engaged in the unauthorized practice of law would

170. Selina Thomas, *Rethinking Unauthorized Practice of Law in Light of the Access to Justice Crisis*, 23 *PROF'L LAWYER* 3, 17–18 (2016).

171. See Carson, *supra* note 158, at 616.

172. See *id.* at 617.

173. Strand, *supra* note 142, at 45.

174. See Letter from Noah Davis & John Brangwin, President & President-elect of the Wash. Young Lawyers Div., to the Practice of Law Board (Mar. 1, 2006), http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Erik%20Bjornson.pdf [<https://perma.cc/23R4-LWBG>].

take time and spend the money to obtain such a license, rather than continuing to fly under the radar?”¹⁷⁵

IV. The Alternative to LLLTs

The objections to the creation of LLLTs are not based on a disagreement that access to justice is a problem in Washington—the disagreement is about the method used to solve the problem. As an alternative to allowing non-lawyers access to the legal profession, Washington could increase access to justice by expanding the role of the Limited Practice Officer (LPO), as other states with similar positions have done.¹⁷⁶

A. The Washington LPO

Although Washington is the first state to create LLLTs, LLLTs are not the only non-lawyers that participate in the legal process in the state. Admission to Practice Rule 12 (APR 12) created the LPO with the stated purpose “to authorize certain lay persons to select, prepare and complete legal documents incident to the closing of real estate and personal property transactions.”¹⁷⁷

LPOs may only render services only if all the clients involved in the transaction agree to the basic terms of the deal and the LPO makes certain required disclosures.¹⁷⁸ LPOs “may select, prepare and complete documents in a form previously approved by the [Limited Practice] Board for use by others in, or in anticipation of, closing a loan, extension of credit, sale or other transfer of interest in real or personal property.”¹⁷⁹ The documents an LPO may prepare are strictly limited to a preapproved list.¹⁸⁰ The Washington Court of Appeals has found that LPOs engage in the unauthorized practice of law when they use unapproved forms or make alterations to approved forms.¹⁸¹

175. Weisberger, *supra* note 133, at 4.

176. See generally *Limited Practice Officers*, WASH. ST. B. ASS’N, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Limited-Practice-Officers> [https://perma.cc/T7AS-EK65].

177. WASH. SUP. CT. ADMISSION TO PRAC. R. 12(a). For a discussion on the events leading to the adoption of APR 12, see Robert C. Farrell, *Limited Practice Officers and Admission to Practice Rule 12: Taking or Not?*, 23 SEATTLE U. L. REV. 735, 754–56 (2000).

178. See WASH. SUP. CT. ADMISSION TO PRAC. R. 12(e)(1)–(2).

179. *Id.* R 12(d).

180. See *Forms Approved by the Limited Practice Board for Use by LPOs*, WASH. ST. B. ASS’N, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Limited-Practice-Officers/LPO-Forms> [https://perma.cc/2YJ7-5M3P].

181. See *Bishop v. Jefferson Title Co.*, 28 P.3d 802 (Wash. Ct. App. 2001). An LPO engaged in the unauthorized practice of law because she “did more than enter objective data into standard, approved, form documents. Rather, she used unapproved documents that she did not understand, and

LPOs will generally be held to the same standard of care as lawyers, but do not have the same duties to clients as lawyers would.¹⁸² The duties not required of an LPO using approved forms include the following:

[T]he duty to investigate legal matters, to form legal opinions (including but not limited to the capacity of an individual to sign for an entity or whether a legal document is effective), to give legal advice (including advice on how a legal document affects the rights or duties of a party), or to consult with a party on the advisability of a transaction.¹⁸³

In order to become an LPO, a person must be at least eighteen years old, of good moral character, pass an examination, and execute on oath.¹⁸⁴ There are also Limited Practice Officer Rules of Professional Conduct (LPO RPCs), which are patterned after the RPCs.¹⁸⁵

The LPO RPCs generally reflect LPOs' limited scope of practice, and they create some important rules making LPOs distinct from both lawyers and LLLTs. For example, not all LPOs will be competent to provide services for every type of transaction,¹⁸⁶ and LPOs must refer clients to lawyers when they "reasonably believe" clients do not understand the "meaning or effect of an instrument."¹⁸⁷ LPOs do not have a duty to keep information confidential,¹⁸⁸ but they do have a duty to disclose "material facts to clients or any parties to the transaction."¹⁸⁹

The foregoing discussion illustrates that LPOs are similar to LLLTs because both positions are governed by the Washington State Supreme Court,¹⁹⁰ are limited to practicing in one area of law; are limited to dealing with the preparation of documents in the context of uncontested transactions; and are required to refer clients to lawyers when the representation goes beyond the practitioners' scope of practice. Given the number of similarities between LPOs and LLLTs, and the fact that other

she used designations and inserted language into documents that significantly affected the parties' obligations, without knowing or understanding the legal impact of the modified [documents]." *Id.* at 809.

182. *See* WASH. SUP. CT. ADMISSION TO PRAC. R. 12, cmt. 2.

183. *Id.*

184. *See id.* R. 12(c)(1)–(5).

185. *See* WASH. LTD. PRAC. OFFICER RULES OF PROF'L CONDUCT, pmbll., http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LPO/Part%203%20-%20LPO%20Rules%20of%20Professional%20Conduct.ashx [https://perma.cc/BT7E-GNHC].

186. *See id.* r. 1.1.

187. *See id.* r. 1.3(c).

188. *See id.* r. 1.4.

189. *See id.* r. 1.7.

190. *See* WASH. SUP. CT. RULES OF ENFORCEMENT OF LPO CONDUCT R. 2.1; LLLT Court Order, *supra* note 1.

states have positions similar to the LPO, it is not clear why Washington decided to create LLLTs rather than expand the role of LPOs.

B. Other States Have Positions Similar to the LPO

In other states that have non-lawyer practitioners, those practitioners are “essentially document preparers who,” like Washington LPOs, “may not give advice.”¹⁹¹ “In some states the document preparer cannot even advise which form to use. In most states, they cannot file the documents that they prepare.”¹⁹² For example, Arizona and California have positions similar to the LPO. In Arizona, the position is called “legal document preparer.”¹⁹³ California has positions called “immigration consultants,”¹⁹⁴ “unlawful detainer assistants,”¹⁹⁵ and “legal document assistants.”¹⁹⁶

The fact that other states have created positions similar to the LPO, not the LLLT, is evidence that the LPO position serves a need in the legal market.¹⁹⁷ Conversely, the fact that no other jurisdiction has LLLTs—not even D.C., which has the most liberal rules regarding lawyer partnerships with non-lawyers—is evidence that there is no market or demand for LLLTs.

C. Advantages of Expanding the Role of LPOs

Given that LLLTs are only permitted to help clients complete documents within one area of law, LLLTs are effectively the same kind of practitioner as LPOs. Because the role of LPOs could be expanded to include other practice areas, including family law, there is no reason to have more than one type of non-lawyer practitioner in Washington. Thus, the LLLT is an unnecessary and redundant position.

There are three main advantages to expanding the role of LPOs rather than allowing the LLLT program to continue. First, because LPOs are limited to preparing preapproved documents, it is easier to determine when LPOs engage in the unauthorized practice of law. The Washington State Supreme Court could create a rule that using any form not on the preapproved list, or modifying any preapproved form, constitutes the

191. STATE OF UTAH SUPREME COURT, *supra* note 115, at 29.

192. *Id.*

193. See ACJA § 7-201(A); *Legal Document Preparers*, ARIZ. COURTS, <http://www.azcourts.gov/cld/Legal-Documents-Preparers> [<https://perma.cc/EUS3-VMDE>].

194. See CAL. BUS. & PROF. CODE § 22441(a) (2015).

195. See *id.* § 6400(a) (2015).

196. See *id.* § 6400(c)(1)–(2) (2015).

197. Currently, the Washington State Bar Association Website lists 772 results for “active” LPOs. *Limited Practice Officer Search*, WASH. ST. B. ASS’N, <http://mcle.mywsba.org/LCE/> [<https://perma.cc/E23N-444Z>].

unauthorized practice of law.¹⁹⁸ This rule would allow for LPOs to practice in other areas of law because the Limited Practice Board would merely need to select and approve forms for each new area of law.¹⁹⁹

Furthermore, there is established authority defining the proper role of LPOs,²⁰⁰ including the Rules for Enforcement of Limited Practice Officer Conduct,²⁰¹ which means that lawyers and courts would not have to expend their time and energy trying to determine what the scope of practice and duties of LPOs should be.

Second, because LPOs do not have the option to form partnerships with lawyers, their role is easier for clients to understand. A client working with an LPO is not likely to mistake the LPO for a legal advocate or advisor because the LPO would only be allowed to help complete documents. In contrast, LLLTs who are partners in a firm with lawyers or other LLLTs are likely to—intentionally or negligently—mislead clients into believing that they can advise clients about their rights.

Finally, the use of LPOs could allow lawyers, particularly in solo or small firms, to take on more cases, work on more complex matters, or do more low bono²⁰² work.

CONCLUSION

The Washington State Supreme Court erred in adopting APR 28²⁰³ and amending the RPCs because the existence of an access to justice gap

198. See *Bishop v. Jefferson Title Co.*, 28 P.3d 802 (Wash. Ct. App. 2001).

199. See WASH. SUP. CT. ADMISSION TO PRAC. R. 12(b)(2)(vii).

200. See generally KARL B. TEGLAND, 2 WASH. PRAC. SERIES, RULES PRAC. APR 12 (7th ed. 2015).

201. See *LPO Rules and Regulations*, WASH. ST. B. ASS'N, http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LPO/Rules%20Regs/Rules%20for%20Enforcement%20of%20LPO%20Conduct%20-%20appr%20Jan%206%202016%20eff%20Mar%201%202016.ashx [<https://perma.cc/W9UL-Y8XF>].

202. See generally *Low Bono Section*, WASH. ST. B. ASS'N, <http://www.wsba.org/Legal-Community/Sections/Low-Bono-Section> [<https://perma.cc/KH3U-99LM>]. (“[L]ow bono is the principle of increasing access to law-related services for people of moderate means who do not qualify for pro bono assistance, but cannot afford the fees private attorneys typically charge under traditional law firm models.”).

203. The LLLT rule has created a considerable amount of controversy within the WSBA. In fact, as of November 2015, “nearly the entire Practice of Law Board resigned.” Letter from Scott A. Smith, Juan Pablo Paredes, Hon. Rebecca M. Baker (ret.) & Hon. Mark Han-Ku Kim, to the Washington Supreme Court Justices 1 (Nov. 9, 2015), https://cloudedtitlesblog.files.wordpress.com/2015/11/letter_to_supreme_court_explaining_resignations.pdf [<https://perma.cc/4QYC-DUSV>]. One of the stated reasons for the mass resignations was that the WSBA opposed the LLLT rule. *Id.* at 3. See also Victor Li, *Board Members Quit, Blast Washington State Bar in Fight over UPL, Legal Technicians*, ABA J. (Nov. 9, 2015), http://www.abajournal.com/news/article/board_members_quit_blast_washington_state_bar_in_fight_over_upl/ [<https://perma.cc/32RJ-7MSZ>].

is an insufficient justification for allowing non-lawyers to partner and share fees with lawyers. There is no dispute about the fact that there are people in Washington who are not receiving the legal help they need. However, LLLTs are not the proper solution to this problem because this underserved population needs fully trained lawyers, not non-lawyers who can practice law only under very limited circumstances. Indeed, this is likely the reason that the other fifty jurisdictions in the United States have not adopted rules similar to APR 28.

Alternatively, expanding the role of the Washington LPO would likely allow for the provision of quality legal services without increasing the incidences of the unauthorized practice of law or misleading clients. It would also allow lawyers more time to do low bono work, which would help close the access to justice gap.