

WSR 21-04-093
RULES OF COURT
STATE SUPREME COURT
[January 8, 2021]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1334
LIMITED LICENSE LEGAL)
TECHNICIAN RULES OF)
PROFESSIONAL CONDUCT (LLLT)
RPC) 1.0B—ADDITIONAL)
TERMINOLOGY; LLLT RPC 1.5—)
FEES; LLLT RPC 7.1—)
COMMUNICATION CONCERNING)
AN LLLT'S SERVICES; LLLT RPC 7.2)
—ADVERTISING RESERVED; LLLT)
RPC 7.3—DIRECT CONTACT WITH)
PROSPECTIVE CLIENTS)
SOLICITATION OF CLIENTS; LLLT)
RPC 7.4—COMMUNICATION OF)
FIELDS OF PRACTICE AND)
SPECIALIZATION RESERVED; LLLT)
RPC 7.5—FIRM NAME AND)
LETTERHEADS RESERVED)

The Limited License Legal Technician Board, having recommended the expeditious adoption of the suggested amendments to Limited License Legal Technician Rules of Professional Conduct (LLLT RPC) 1.0B—Additional Terminology; LLLT RPC 1.5—Fees; LLLT RPC 7.1—Communication Concerning an LLLT's Services; LLLT RPC 7.2—Advertising Reserved; LLLT RPC 7.3—Direct Contact With Prospective Clients Solicitation of Clients; LLLT RPC 7.4—Communication of Fields of Practice and Specialization Reserved; LLLT RPC 7.5—Firm Name and Letterheads Reserved, and the Court having considered the suggested amendments, and having determined that the suggested amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the suggested amendments as shown below are adopted.

(b) That pursuant to the emergency provisions of GR 9(j)(1), the suggested amendments will be expeditiously published in the Washington Reports and will become effective upon publication.

DATED at Olympia, Washington this 8th day of January, 2021.

Stephens, C.J.
Johnson, J. Gordon McCloud, J.
Madsen, J. Yu, J.
Owens, J. Montoya-Lewis, J.
Gonzalez, J. Whitener, J.

LLLT RPC 1.0B

TITLE

Limited License Legal Technician Rules of Professional Conduct

RULE 1.0B. ADDITIONAL TERMINOLOGY

(a) - (h) Unchanged.

Comment

[1] - [2] Unchanged.

[3] The terms "firm" and "law firm" are used interchangeably in the Lawyer RPC and also in these Rules. An LLLT should be cautious,

however, in using the words "law firm" to describe a law practice that includes only LLLTs. The name and description of an LLLT's practice should not imply that a lawyer is associated with the firm unless that is the case. ~~Rule 7.5(a) requires that any firm name used for an LLLT practice that does not include a lawyer include the words "Legal Technician."~~ Any firm name used for an LLLT practice that does not include a lawyer must include the words "Legal Technician." See LLLT RPC cmt. 2.

LLLT RPC 1.5

TITLE

Limited License Legal Technician Rules of Professional Conduct

RULE 1.5. FEES

(a) - (f) Unchanged.

Comment

[1] - [2] Unchanged.

[3] Under the circumstances specified in Lawyer RPC 1.5(e), a lawyer may agree to a division of a fee either with another lawyer who is not in the same firm or with an authorized lawyer referral service. By contrast, paragraph (e) of this Rule categorically prohibits an LLLT from dividing a fee. An LLLT may pay the usual charges of an LLLT referral service. See Rule 7.23(eb).

[4] - [5] [Unchanged.]

LLLT RPC 7.1, 7.2, 7.3, 7.4, 7.5

TITLE

Limited License Legal Technician Rules of Professional Conduct

RULE 7.1. COMMUNICATION CONCERNING AN LLLT'S SERVICES

(a) An LLLT shall not make a false or misleading communication about the LLLT or the LLLT's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) In all communications about the LLLT or the LLLT's services, an LLLT shall communicate the fact that the LLLT has a limited license to practice in the particular fields of law for which the LLLT is licensed, and shall not state or imply that an LLLT is licensed to practice in any other areas of law, or has an unlimited license to practice law in any area of law.

Comment

[1] ~~This Rule Subsection (a) was adapted from~~ is based on Lawyer RPC 7.1 with no substantive changes and the comments to Lawyer RPC 7.1 applies to LLLTs analogously. See also APR 28 (H)(1) (prohibiting an LLLT from making any statement that the LLLT can or will obtain special favors from or has special influence with any court or governmental agency).

[2] If there are no lawyers in the firm, any firm name used by an LLLT in private practice shall include the words "Legal Technician."

RULE 7.2 Advertising [RESERVED.]

~~(a) Subject to the requirements of Rules 7.1 and 7.3, an LLLT may advertise services through written, recorded, or electronic communication, including public media.~~

~~(b) An LLLT shall not give anything of value to a person for recommending the LLLT's services, except that an LLLT may~~

~~(1) pay the reasonable cost of advertisements or communications permitted by this Rule;~~

- ~~(2) pay the usual charges of a legal service plan or a not-for-profit LLLT referral service;~~
- ~~(3) pay for a law practice in accordance with Rule 1.17; and~~
- ~~(4) refer clients to a lawyer or to another LLLT pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the LLLT, if~~
- ~~(i) the reciprocal referral agreement is not exclusive, and~~
- ~~(ii) the client is informed of the existence and nature of the agreement.~~
- ~~(c) Any communication made pursuant to this Rule shall include the name and office address of at least one LLLT or law firm responsible for its content.~~

Comment

[1] This Rule was adapted from Lawyer RPC 7.2 with no substantive changes except to reflect that client referrals may occur reciprocally between lawyers and LLLTs. It applies to LLLTs analogously.

[2] This Rule prohibits LLLTs from paying others for referrals. See also Rule 1.5(e) (prohibiting the division of fees with another LLLT or lawyer who is not in the same firm as the LLLT); Rule 5.4 (subject to Rule 5.9, prohibiting the sharing of fees with anyone who is not an LLLT).

[3] In advertising, an LLLT also has an affirmative obligation to communicate the fact that the LLLT has a limited license to practice in the particular fields of law for which the LLLT is licensed and is prohibited from stating or implying that the LLLT is licensed to practice in any other areas of law, or has an unlimited license to practice law in any area of law. See Rule 7.4(a).

RULE 7.3. DIRECT CONTACT WITH PROSPECTIVE CLIENTS SOLICITATION OF CLIENTS

~~(a) An LLLT shall not directly or through a third person, by in-person, live telephone, or real-time electronic contact may solicit professional employment from a prospective client when a significant motive for the LLLT's doing so is the LLLT's pecuniary gain, unless the person contacted:~~

- ~~(1) is a lawyer or an LLLT the solicitation is false or misleading;~~
- ~~(2) has a family, close personal, or prior professional relationship with the LLLT; or the LLLT knows or reasonably should know that the physical, emotional, or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing an LLLT;~~
- ~~(3) has consented to the contact by requesting a referral from a not-for-profit LLLT referral service. the subject of the solicitation has made known to the LLLT a desire not to be solicited by the LLLT;~~
~~or~~
- ~~(4) the solicitation involves coercion, duress, or harassment.~~

~~(b) An LLLT shall not solicit professional employment from a prospective client by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by paragraph (a), if; compensate, or give or promise anything of value to, a person who is not an employee or LLLT in the same firm for the purpose of recommending or securing the services of the LLLT or law firm, except that an LLLT may:~~

- ~~(1) the prospective client has made known to the LLLT a desire not to be solicited by the LLLT; or pay the reasonable cost of advertisements or communications permitted by LLLT RPC 7.1, including on-line group advertising;~~

~~(2) the solicitation involves coercion, duress or harassment. pay the usual charges of a legal service plan or a not-for-profit LLLT referral service;~~

~~(3) pay for a law practice in accordance with LLLT RPC 1.17;~~

~~(4) refer clients to a lawyer or to another LLLT or other nonlawyer professional pursuant to an agreement not otherwise prohibited under these rules that provides for the other person to refer clients or customers to the LLLT, if:~~

~~(i) the reciprocal referral agreement is not exclusive, and~~

~~(ii) the client is informed of the existence and nature of the agreement;~~

~~(5) give nominal gifts that are neither intended nor reasonably expected to be a form of compensation for recommending an LLLT's services.~~

~~(c) [Reserved.]~~

~~(d) Notwithstanding the prohibitions in paragraph (a), an LLLT may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the LLLT that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. [Reserved.]~~

Comment

[1] This Rule was adapted from is based on Lawyer RPC 7.3 with no substantive changes except to reflect that LLLTs may solicit employment from lawyers as well as other LLLTs, and that referral services may refer to both lawyers and LLLTs. This Rule The comments to Lawyer RPC 7.3 applies to LLLTs analogously.

[2] This Rule prohibits LLLTs from paying others for referrals. See also Rule 1.5(e) (prohibiting the division of fees with another LLLT or lawyer who is not in the same firm as the LLLT); Rule 5.4 (subject to Rule 5.9, prohibiting the sharing of fees with anyone who is not an LLLT).

RULE 7.4 COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION [RESERVED.]

~~(a) In all advertising, an LLLT shall communicate the fact that the LLLT has a limited license practice in the particular fields of law for which the LLLT is licensed, and shall not state or imply that an LLLT is licensed to practice in any other areas of law, or has an unlimited license to practice law in any area of law.~~

~~(b) [Reserved.]~~

~~(c) [Reserved.]~~

~~(d) An LLLT shall not state or imply that an LLLT is "certified," a "specialist," or an "expert," or use any other similar term to describe his or her qualifications as an LLLT, but may identify any award or recognition that the LLLT has received from a group, organization, or association. If an LLLT has received any other legal title, credential, or certificate from any group, organization, or association, then the LLLT may identify the legal title, credential, or certificate provided that the reference must:~~

~~(1) be truthful and verifiable and otherwise comply with Rule 7.1;~~

~~(2) identify the group, organization, or association that issued the legal title, credential, or certificate; and~~

~~(3) state that the Supreme Court of Washington does not recognize certification of specialties in the practice of law and that the legal title, credential, or certificate is not a requirement of the LLLT's~~

limited license to practice in the particular fields of law for which the LLLT is licensed.

Comment

[1] An LLLT's license to provide legal services is unique and may not be understood by persons who are not familiar with the limited scope of practice of an LLLT and with the differences between an LLLT and a lawyer. Advertising is designed to help educate the public on the availability of legal services, but advertising by an LLLT may not be false or misleading. See Rule 7.1. In order to avoid confusion about the scope of services that an LLLT can provide as distinct from the broader scope of services that a lawyer is authorized to provide, advertising by an LLLT must communicate that an LLLT may deliver legal services only within a limited scope. Accordingly, Rule 7.4(a) differs from Lawyer RPC 7.4(a) in that it requires that all advertising by an LLLT communicate relevant facts concerning the scope of the LLLT's license and expressly prohibits communications that state or imply that the LLLT's license exceeds that scope.

[2] Lawyer RPC 7.4(b) pertains to a patent practice before the United States Patent and Trademark Office, a practice that exceeds the authorized scope of APR 28. Accordingly, Rule 7.4(b) is reserved.

[3] Lawyer RPC 7.4(c) pertains to an admiralty practice, a practice that exceeds the authorized scope of APR 28. Accordingly, Rule 7.4(c) is reserved.

[4] In order to avoid confusion about the scope of services that an LLLT can provide, APR 28 (H) (4) prohibits an LLLT from representing or advertising, in connection with the provision of legal services, other legal titles or credentials that could cause a client to believe that the LLLT possesses professional legal skills beyond those authorized by the license held by the LLLT. The terms "certified," "specialist," "expert," and similar terms suggest achievement of skills beyond those that are authorized by the LLLT's license, and may not be used when describing an LLLT's credentials. Other titles and recognitions, however, may provide useful information that is not likely to mislead clients or potential clients concerning the skills and authorized scope of an LLLT's practice. Accordingly, if an LLLT has received a legal title, credential, or certificate from a group, organization, or association, the LLLT may identify that title, credential, or certificate so long as communications about it meet the requirements enumerated in Rule 7.4 (d) (1)-(3). Those requirements are substantially similar to Lawyer Rule 7.4 (d) (1)-(3). An LLLT may also identify awards and recognitions that the LLLT has received from a group, organization, or association.

RULE 7.5 FIRM NAMES AND LETTERHEADS [RESERVED.]

(a) An LLLT shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by an LLLT in private practice if the trade name does not imply that lawyers are members or employees of the firm unless that is the case, and if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If there are no lawyers in the firm, any firm name used by an LLLT in private practice shall include the words "Legal Technician."

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers or LLLTs in an office of the firm

shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

~~(c) The name of an LLLT or lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the LLLT or lawyer is not actively and regularly practicing with the firm.~~

~~(d) LLLTs may state or imply that they practice in a partnership or other organization only when that is a fact.~~

Comment

~~[1] This Rule was adapted from Lawyer RPC 7.5 with no substantive changes except that provisions have been added to subpart (a) to require that any trade name not imply that lawyers are members or employees of the firm unless that is the case, and that, if there are no lawyers in the firm, any trade name include the words "Legal Technician." Otherwise, this Rule applies to LLLTs analogously.~~

~~[2] An LLLT's license to provide legal services is unique and may not be understood by persons who are not familiar with the limited scope of an LLLT's practice and with the differences between an LLLT and a lawyer. A trade name is a brand and is therefore similar to forms of advertising and is often used in advertising. A trade name must not be false or misleading. See Rules 7.1 and 7.4. In order to avoid confusion, trade names should communicate the nature of the legal services that a licensed practitioner or firm can deliver. Rule 7.5(a) requires that any trade name communicate relevant facts concerning the scope of the legal services that can be delivered by the legal professional or firm.~~