

WSR 23-03-034
RULES OF COURT
STATE SUPREME COURT
[January 5, 2023]

IN THE MATTER OF THE) ORDER
SUGGESTED AMENDMENTS TO) NO. 25700-A-1495
APR 28 AND THE APPENDIX APR 28)
REGULATIONS)

The Limited License Legal Technician Board, having recommended the suggested amendments to APR 28 and the Appendix APR 28 Regulations, and the Court having approved the suggested amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the suggested amendments as shown below are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Administrative Office of the Court's websites in January 2023.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2023. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 5th day of January, 2023.

For the Court

Gonzalez, C.J.

CHIEF JUSTICE

GR 9 COVER SHEET

Suggested Amendments to

ADMISSION AND PRACTICE RULES

RULE 28 AND THE APPENDIX APR 28 REGULATIONS

Submitted by the Limited License Legal Technician Board

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Limited License Legal Technician (LLLT) Board
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C. Purposes:

SUMMARY OF PURPOSES

In general, the four primary purposes of the suggested amendments to Admission and Practice Rule (APR) 28 the APR 28 Appendix of Regulations (Reg.) are to (1) reflect changes to the Limited License Legal Technician (LLLT) Program following the entry of the Washington State Supreme Court's (Court's) July 1, 2021, order to sunset the LLLT Program (Sunset Order); (2) remove provisions in the APR that became moot following the Sunset Order and clarify the role of the LLLT Board following the Sunset Order; (3) update and clarify provisions in APR 28 relating to "nonparental and third party custody" due to recent changes in the law; and (4) clarify a LLLT's authority to accompany clients to pretrial conferences and settlement conferences. A more specific list of the purposes of the suggested amendments are as follows:

1. To reduce the LLLT Board from 15 to 11 members and to update the LLLT Board duties in APR 28C to reflect the evolution of the LLLT Program following the Sunset Order.
 2. To delete responsibilities of the LLLT Board set forth in APR 28C(2) that have become moot because of the Sunset Order.
 3. To amend and update APR 28C(2) to more fully and accurately describe the duties and powers of the LLLT Board following the Sunset Order, including duties to process and administer LLLT disciplinary grievances, approve standard forms for LLLTs, propose rules for governing LLLTs, and establish committees to carry out the LLLT Board's proposed new powers to provide continuing legal education to LLLTs, assess changes in the law that affect a LLLT's scope of practice, and collaborate with other boards and entities regarding the delivery of law related services.
 4. To add a provision to APR 28 that accurately acknowledges and describes the LLLT Board's power and authority to adopt regulations provided that the proposed regulations are approved by the Court. See suggested APR 28P.
 5. To update the provisions in the APR 28 Regulations by deleting references to "nonparental and third party custody" because the Washington state legislature repealed the underlying statutes for "nonparental and third party custody." See suggested amendments to APR 28 Reg. 2B.1.(i), APR 28 Reg. 2B.2.(h)vi, and suggested APR 28 Reg. 2B.3.(b)ix.
 6. To replace the references in APR 28 Reg 2B to "nonparental and third party custody" with references to the guardianship proceedings for the statute that replaced the repealed statutes for "nonparental and third party custody." See suggested amendments to APR 28 Reg. 2B.1.(i) and suggested APR Reg. 2B.2.(h)ix.
 7. To clarify and describe the scope of practice for LLLTs in connection with pretrial calendar proceedings. See suggested amendments to APR 28 Reg 2B.2.(h)viii.
 8. To clarify that LLLTs may accompany their clients in settlement conference proceedings. See suggested APR 28 Reg. 2B.2.(h)x.
- The LLLT Board's suggested amendments seek to clarify, not expand, the prior authority granted by this Court to the LLLT Board and LLLTs.

BACKGROUND AND EXPLANATION OF PROPOSED AMENDMENTS:

A. COURT ENTERS ORDER SUNSETTING LLLT PROGRAM

On July 1, 2021, the Court entered an order sunseting the LLLT Program, effective July 31, 2022. After July 31, 2023, the Washington State Bar Association (WSBA) will no longer be admitting LLLTs.¹ Consequently, the LLLT Board will no longer be involved in preparing and grading LLLT examinations or reviewing additional areas of practice for LLLTs. There are currently 75 active LLLTs in Washington.

¹ On June 9, 2022, the Court entered an order extending by one year the deadline for LLLT applicants who passed the LLLT examination to complete the pre-admission requirements in APR 5 (e)(2). The Court's order did not authorize WSBA or the LLLT Board to administer additional LLLT examinations.

B. PROPOSALS TO CHANGE LLLT BOARD'S SIZE AND COMPOSITION AND UPDATE THE LIST OF THE LLLT BOARD'S DUTIES

APR 28C(1) provides for the establishment of a LLLT Board that is comprised of 15 members. APR 28C(1) requires the composition of the LLLT Board to include a legal educator and one ex officio member who is a representative of the Washington State Board of Community and Technical Colleges. The Sunset Order eliminates the need for educators on the LLLT Board because it will no longer be involved in education requirements for licensing LLLTs and licensing exams for LLLTs. The final LLLT examination was administered on May 3-4, 2022.

APR 28C(2) lists six responsibilities of the LLLT Board. The Sunset Order has effectively made moot the following four of the six listed responsibilities in APR 28C(2):

- "Recommending practice areas for LLLTs subject to approval by the Supreme Court." APR 28C (2) (a);
- "Working with the Bar ... to select, create, maintain, and grade the examinations required under this rule ..." APR 28C (2) (b);
- "Approving education and experience requirements for licensure in approved practice areas." APR 28C (2) (c); and
- "Establishing and maintaining criteria for approval of educational programs that offer LLLT core curriculum." APR 28C (2) (e).

The LLLT Board's suggested amendments to APR 28 seek to remove these four responsibilities from APR 28C(2) because they have been effectively eliminated by the Sunset Order. The suggested amendments also delete the provision making WSBA responsible for notices and filings "including applications for admission as a LLLT" in APR 28C(4) because this responsibility is also now moot for the same reason.

The Sunset Order has effectively changed the focus of the LLLT Board from developing the LLLT Program and licensing LLLTs to improving and sustaining the current LLLT Program. The suggested amendments refer to the LLLT Board's "duties and powers" instead of "responsibilities." APR 28C(2). This suggested change makes the terminology in APR 28 consistent with the terminology contained in the rules governing the Limited Practice Board. See APR 12 (b) (2). Following the Sunset Order, the LLLT Board's duties and powers now focus on administering LLLT disciplinary complaints; developing forms for LLLT practice; improving the LLLT Program by proposing amendments to APR 28, the LLLT Rules of Professional Conduct (LLLT RPC), and procedural rules for LLLT disciplinary matters (ELLLTC); and overseeing committees to carry out the LLLT Board's duties to the LLLT Program.

The LLLT Board's suggested amendments seek to clarify and more accurately reflect its evolved role to sustain and improve the LLLT Program by adding the following duties and powers in APR 28C(2):

- Administering grievances and discipline. APR 28C (2) (a);
- Approving standard LLLT forms. APR 28C (2) (b);
- Proposing amendments to LLLT rules. APR 28C (2) (c);

- Overseeing the provision of continuing legal education to LLLTs. APR 28C (2) (d) i;
- Overseeing the assessment of changes in the law that affect the practice of LLLTs. APR 28C (2) (d) ii; and
- Overseeing collaborations with other boards and entities regarding the delivery of law related services. APR 28C (2) (d) iii.

The suggested amendments do not expand the current authority of the LLLT Board. Rather, the suggested amendments reflect the tasks currently performed by the LLLT Board to sustain the LLLT Program. For example, the Rules for Enforcement of Limited License Legal Technician Conduct (ELLLTC), including but not limited to ELLLTC 2.3, 2.4, 5.3, and 6.9, currently establish the authority of the LLLT Board and LLLT Disciplinary Committee to administer grievances and discipline. APR 28F(6) implies that the LLLT Board has authority to approve standard forms as it provides that LLLTs may provide legal assistance to a *pro se* client, including to "select, complete, file, and effect service of ... forms approved by the LLLT Board." APR 28C (2) (c).

APR 28C(3) currently provides the LLLT Board with the responsibility to propose rules, regulations, and amendments to APR 28 and other court rules:

Rules and Regulations. The LLLT Board shall propose rules, regulations and amendments to these rules and regulations, to implement and carry out the provisions of this rule, for adoption by the Supreme Court.

The other suggested amendments include tasks that could or would fit under the current catchall provision in APR 28C (2) (f) that the Board is responsible for "[s]uch other activities and functions as are expressly provided for in this rule." The LLLT Board's suggested amendments recommend deleting the catchall provision and replacing it with more specific provisions stated above to avoid confusion.

The evolution of LLLT Board duties makes the current size and composition of the Board in APR 28C(2) superfluous for several reasons. First, the Sunset Order effectively eliminated all educational programs needed for qualifying for a LLLT license and, therefore, the need for educators on the LLLT Board. Second, the evolution of the LLLT Board duties from the development of the LLLT Program to sustaining the LLLT Program makes the need for 15 Board members unnecessary.

The description of the LLLT Board's duties and powers in the suggested amendments is sufficient that there is no longer a need for the catchall provision in APR 28C (2) (f) for "[s]uch other activities and functions as are expressly provided for in this rule." Consequently, the suggested amendments delete the catchall provision.

A 15-member LLLT Board is not practical given the small pool of LLLTs in the state (currently 75 active LLLTs) and the scaled back duties of the LLLT Board. Other similarly situated Supreme Court Boards have less members. For example, the Limited Practice Board, which has over 800 active members, is comprised of nine members. APR 12 (b) (1). For these reasons, the LLLT Board's suggested amendment to APR 28C(1) reduces the LLLT Board from 15 to 11 members and propose that the LLLT Board be composed of at least four active lawyers, three active LLLTs, and two members who are not licensed to practice law. The LLLT Board's specific proposed amendments in APR 28C(1) regarding the size and composition of the board are contained in the attached redlined version of the proposed amendments.

C. SUGGESTED AMENDMENT FOR LLLT BOARD'S ROLE TO ADOPT REGULATIONS

The LLLT Board's suggested amendments seek to add a provision to APR 28 clarifying its existing authority, currently in APR 28C(3), to adopt regulations pertinent to its duties and powers subject to the approval of the Court. This provision is essentially the same provision governing regulations that the Court adopted for the Practice of Law Board in General Rule (GR) 25(h). This suggested amendment underscores that, as a Supreme Court Board, the LLLT Board regulations are subject to approval by the Court. Moreover, the suggested amendment acknowledges and recognizes that although the LLLT regulations are not governed by the WSBA Board of Governors (BOG), proposed regulations "should" be provided to the BOG for informational purposes. See Suggested amendment APR 28P. To avoid possible confusion or duplication, the LLLT Board's suggested amendments propose to strike the provision on "rules and regulation" in APR 28C(3).

D. AMENDMENTS RELATED TO LLLT SCOPE OF PRACTICE IN MINOR GUARDIANSHIPS F/K/A NONPARENTAL CUSTODY ACTIONS

The Appendix to APR 28 is comprised of regulations covering the scope of approved practice areas for LLLTs. Domestic Relations is the only approved LLLT practice area. APR 28 Reg. 2B authorizes LLLTs to provide services to clients related to "nonparental and third party custody," but this provision is confusing because later provisions provide that LLLTs are prohibited from providing legal services in "nonparental custody actions beyond the adequate cause hearing unless the terms are agreed to by the parties or one party defaults." APR 28 Reg. 2B.3.(b)ix.

Effective January 1, 2021, the Washington state legislature repealed the nonparental custody statute for minors (RCW 26.10 *et seq.*) and replaced it with RCW 11.130.185 *et seq.* (Article 2), the Uniform Guardianship Act - minors. Guardianships for incapacitated adult children arising out of a familial relationship are now covered by RCW 11.130 Article 3.

To accommodate the change in law, the LLLT Board's suggested amendments propose to strike the provisions in APR 28 Reg. 2B referencing "nonparental and third party custody" and replace these terms with provisions authorizing LLLTs to provide services under the new statute, RCW 11.130 *et seq.*, for "agreed or default minor guardianships or guardianships arising out of a familial relationship." See suggested amendment APR 28 Reg. 2B.1.(i). This suggested amendment is intended to ameliorate confusion that may exist regarding the extent of the services that LLLTs are authorized to provide to clients. The suggested amendments to the provisions in APR 28 Reg 2B include the following:

- Replace "nonparental and third party custody" in APR 28 Reg. 2B.1.(i) with "agreed or default minor guardianships arising out of a familial relationship."
- Delete "nonparental custody" in APR 28 Reg. 2B.2.(h)vi.
- Add a new subsection for hearings related to "agreed or default minor guardianships or guardianships arising out of a familial relationship" to APR 28 Reg. 2B.2.(h)ix.
- Delete "nonparental custody actions" in APR 28 Reg. 2B.3.b.ix.

The suggested amendments seek to provide LLLTs with the same authority in dealing with "nonparental and third party custody" that they had prior to January 1, 2021, the date that RCW 26.10 was repealed. The suggested amendments do not expand LLLT's authority. Moreover, *pro se* parties are able to use LLLTs to ensure that nonparental

and third party custody issues are dealt with under the most current law.²

² The new guardianship statute is a topic that the LLLT Board has been monitoring. It intends to provide mandatory continuing legal education classes to update LLLTs if and when the Court adopts the suggested amendment.

E. AMENDMENTS RELATED TO ATTENDING PRETRIAL CALENDAR PROCEEDINGS AND SETTLEMENT CONFERENCES

The LLLT Board has discovered that there was some confusion regarding the provision authorizing LLLTs to assist clients in "trial setting calendar proceedings." See APR 28 Reg. 2B.2.(h)viii. To ameliorate potential confusion, the LLLT Board's suggested amendments seek to clarify this provision by striking "trial setting" and replacing it with more specificity regarding the nature of proceedings in which LLLTs may assist clients: "pretrial calendar proceedings such as trial setting, pretrial conferences, and status conferences." See suggested amendment to APR 28 Reg. 2B.2.(h)viii.

The LLLT Board's suggested amendments also seek to clarify LLLTs' authority to attend settlement conference proceedings with clients in APR 28 Reg. 2B by adding more specificity that LLLTs are authorized to attend "settlement conference proceedings" with their clients. See proposed APR 28 Reg. 2B.2.(h)x. The current rules provide that LLLTs may "accompany and assist clients in dispute resolution proceedings including ... settlement conferences where not prohibited by the rules and procedures of the forum." APR 28 Reg. 2B.2.(e).

F. BOG MEETING ON LLLT BOARD'S SUGGESTED ADMENTS

On September 23, 2022, the WSBA Board of Governors (BOG) met to consider the LLLT Board's suggested amendments. Prior to the BOG meeting, the WSBA fiscal analysis opined that the adoption of the suggested amendments would result in estimated costs savings to the LLLT budget of \$4,952. The LLLT Board requested the BOG to support the suggested amendments. Instead, the BOG voted 5-4 to oppose the suggested amendments, with a number of governors absent for the vote. The BOG did not recommend changes to the suggested amendments. Nor did the BOG provide any specific reason for opposing the suggested amendments.

Conclusion

The LLLT Board believes that its suggested amendments will improve and clarify APR 28 and assist in effectuating the Court's Sunset Order.

D. Hearing: A hearing is not requested.

E. Expedited Consideration: Expedited consideration is not requested.

F. Supporting Materials: Suggested Amendments to APR 28 and the APR 28

Appendix of Regulations Redlined and Clean Version.

SUGGESTED AMENDMENTS TO ADMISSION AND PRACTICE RULES

TITLE

ADMISSION AND PRACTICE RULES (APR)

RULE 28. LIMITED PRACTICE RULE FOR LIMITED LICENSE LEGAL TECHNICIANS

A. - B. Unchanged.

C. Limited License Legal Technician Board

(1) *Establishment.* There is hereby established a Limited License Legal Technician Board (LLLT Board). The LLLT Board shall consist of 11 ~~15~~ voting members appointed by the Supreme Court. Nine members of the LLLT Board shall be active members of the WSBA with at least four active lawyer members, one of whom must have experience practicing in family law, and three active LLLT members. Two members of the LLLT

~~Board shall be Washington residents who do not have a license to practice law. And one non-voting ex officio member who is a representative of the Washington State Board of Community and Technical Colleges. At least one member shall be a legal educator. At least 11 members shall be Washington lawyers, LLLTs or LPOs. Of those 11 members, at least nine shall be active lawyers or LLLTs, and no more than two may be LPOs, or judicial or emeritus pro bono lawyers or LLLTs. Four members of the LLLT Board shall be Washington residents who do not have a license to practice law. Appointments shall be for staggered three year terms. No member may serve more than two consecutive full three year terms. The validity of the Board's actions is not affected if the Board's makeup differs from the stated constitution due to a temporary vacancy in any of the specified positions.~~

~~(2) LLLT Board Duties and Powers. Responsibilities. The LLLT Board shall be responsible for the following:~~

~~(a) Grievances and discipline. The LLLT Board's involvement in the investigation, hearing and appeal procedures for handling complaints of persons aggrieved by the failure of LLLTs to comply with the requirements of this rule and of the LLLT RPC shall be as established in the Rules for Enforcement of LLLT Conduct (ELLLTC). Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;~~

~~(b) Approval of Forms. The LLLT Board shall approve standard forms for use by LLLTs in the performance of legal services authorized by this rule. Working with the Bar and other appropriate entities to select, create, maintain, and grade the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to LLLTs, rules relating to the attorney-client privilege, procedural rules, and substantive law issues related to approved practice areas;~~

~~(c) Rules. The LLLT Board shall propose to the Supreme Court amendments to APR 28, LLLT Rules of Professional Conduct, the Rules for Enforcement of LLLT Conduct, and these rules as may appear necessary to implement and carry out the provisions of this rule. Approving education and experience requirements for licensure in approved practice areas;~~

~~(d) Establishing and overseeing committees and tenure of members on such committees to carry out the LLLT Board's duties and powers; including~~

~~i. providing continuing legal education to LLLTs;~~

~~ii. assessing changes in the law that effect the scope of practice by LLLTs; and~~

~~iii. collaborating with other boards and entities regarding the delivery of law related services.~~

~~(e) Establishing and maintaining criteria for approval of educational programs that offer LLLT core curriculum; and~~

~~(f) Such other activities and functions as are expressly provided for in this rule.~~

~~(3)-(4) Administration. The Bar shall provide reasonably necessary administrative support for the LLLT Board. All notices and filings required by these Rules, including applications for admission as a LLLT, shall be sent to the headquarters of the Bar.~~

~~(3) Rules and Regulations. The LLLT Board shall propose rules, regulations and amendments to these rules and regulations, to implement and carry out the provisions of this rule, for adoption by the Supreme Court.~~

~~(4)-(5)~~ *Expenses of the LLLT Board.* Members of the LLLT Board shall not be compensated for their services but shall be reimbursed for actual reasonable and necessary expenses incurred in the performance of their duties according to the Bar's expense policies.

D. - O. Unchanged

P. Regulations. The LLLT Board may adopt regulations pertinent to its duties and powers subject to the approval of the Supreme Court. Proposed regulations should be provided to the Washington State Bar Association Board of Governors for informational purposes.

APPENDIX APR 28. REGULATIONS OF THE APR 28 LIMITED LICENSE LEGAL TECHNICIAN BOARD

REGULATION 1 Unchanged.

REGULATION 2A Unchanged.

B. Domestic Relations

1. *Domestic Relations, Defined.* For the purposes of these Regulations, domestic relations shall include only the following actions:

(a) - (h) Unchanged.

(i) agreed or default minor guardianships or guardianships arising out of a familial relationship nonparental and third party custody,

(j) - (k) Unchanged.

2. *Scope of Practice for Limited License Legal Technicians—Domestic Relations.* LLLTs licensed in domestic relations may render legal services to clients as provided in APR 28F and this regulation, except as prohibited by APR 28H and Regulation 2B.

(a) - (g) Unchanged.

(h) LLLTs, when accompanying their client, may assist and confer with their pro se clients and respond to direct questions from the court or tribunal regarding factual and procedural issues at the hearings listed below:

i. - v. Unchanged.

vi. adequate cause hearings for ~~nonparental custody or parenting plan modifications;~~

vii. Unchanged.

viii. pretrial trial setting calendar proceedings such as trial setting, pretrial conferences, and status conferences with or without the client when the LLLT has confirmed the available dates of the client in writing in advance of the proceeding;

ix. agreed or default minor guardianships or guardianships arising out of a familial relationship; and

x. settlement conference proceedings.

3. *Prohibited Acts.* In addition to the prohibitions set forth in APR 28H, in the course of rendering legal services to clients or prospective clients, LLLTs licensed to practice in domestic relations:

a. Unchanged;

b. shall not render legal services in:

i. - viii. Unchanged.

ix. major parenting plan modifications ~~and nonparental custody actions~~ beyond the adequate cause hearing unless the terms are agreed to by the parties or one party defaults;

x. - xii. Unchanged.

REGULATIONS 3 - 20 Unchanged.

Reviser's note: The spelling error in the above material occurred in the copy filed by the state supreme court and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the state supreme court and appear in the Register pursuant to the requirements of RCW 34.08.040.