*Excerpt from the MSBA’s Legal Education Task Force report:*

**EXPAND ACCESSIBILITY OF NEEDED LEGAL SERVICES**

Our system of justice and our society depend on having qualified lawyers practicing in all areas of law and being available throughout the state. Government, nonprofit organizations, businesses, and individuals all need legal services at an affordable cost. Legal education has an important role to train practitioners prepared to meet the diversity of legal needs in our state and the MSBA has an important role in providing leadership to the profession in ensuring that practitioners meet high standards of skill and ethics.

As part of its work to address how Minnesota’s law schools might better respond to unmet legal needs in Minnesota, the Task Force considered whether the state should consider licensing non-lawyers to perform various tasks, including giving legal advice, presently reserved only for lawyers.

The issue of access to justice for low and moderate-income Minnesotans isn’t easily solved. However, time and again, the Courts and the Bar (including the state’s law schools) have innovatively adopted rules, programs, projects and initiatives that have, in fact, worked to make it easier for people in legal need to access lawyers and legal resources.[[1]](#footnote-1)

The problem with many of the solutions to date is that by their nature (such as brief legal advice or brief services), the time a self-represented litigant spends with an attorney (who can give legal advice) is extremely limited (possibly as short as fifteen minutes). As a result, the person in legal need must often access the system multiple times (e.g. repeated visits to various legal clinics) in order to progress their legal matter. This is both frustrating to the self-represented litigant and a drain on very limited resources.

In this regard, a Limited License Legal Technician (“LLLT”) would be a resource that self-represented litigants could repeatedly access and work with as the person in legal need navigates the legal system. Unlike legal clinics or other resources (for example, the Legal Access Point or Housing Court Project, both in Hennepin County) where developing a relationship with an attorney is extremely difficult, a LLLT offers self-represented litigants the possibility of a professional relationship in which legal advice would be an important component. This is the “individualized legal assistance” that the Washington State Supreme Court spoke of when adopting that state’s LLLT rule.[[2]](#footnote-2)

***Recommendation 5: In order to identify a less costly path to a career in legal services and address unmet needs for specific types of legal services, the MSBA should establish a separate task force focused on studying the viability of certifying Limited License Legal Technicians (“LLLT”) with authority to provide supervised legal services in defined practice areas. This task force should consist of representatives from the state court administrative office, civil legal services and pro bono programs, private practices from diverse practice settings throughout the state, potential clients, and institutions of higher education (including, but not limited to law schools). The task force should prepare a recommendation to the MSBA Assembly on the question whether to submit a petition to the Minnesota Supreme Court to establish an LLLT practitioner rule by June 2016.***

Given the similarity of legal access problems and past solutions in Washington State compared to Minnesota, the Task Force believes the time has come for Minnesota to seriously consider the idea of implementing a Limited License Legal Technician program. Other jurisdictions, including New York[[3]](#footnote-3), California[[4]](#footnote-4), and Oregon[[5]](#footnote-5), are pursuing this type of program as well. We also believe the idea should be expeditiously studied; given Washington State’s leadership in this area, metrics and outcomes should be readily discernible beginning in 2016. In light of the pressing needs of self-represented litigants in Minnesota, any study should be geared toward a timely conclusion.

Additionally, the Task Force encourages the new MSBA task force to go beyond the Washington model to tailor any resulting program to the specific needs and existing strengths of the legal system in Minnesota.

**Appendix F**

**The Washington Limited License Legal Technician Model**

1. The Washington Supreme Court’s Discussion of Need

In June 2012, the Supreme Court of Washington issued an order for a new Admission to Practice Rule (APR) 28 entitled “Limited Practice Rule for Limited License Legal Technicians.” The Court’s twelve page order states, “Our adversarial civil legal system is complex. It is unaffordable not only to low income people but…moderate income people as well.”[[6]](#footnote-6)

In setting forth the rationale for its groundbreaking order, the Washington Supreme Court detailed how that’s state court system had attempted to fashion a number of strategies that are not dissimilar to Minnesota’s system: courthouse facilitators, court self-help centers, neighborhood legal clinics, pro bono programs and a statewide legal aid self-help center.[[7]](#footnote-7) The Court noted, however, these resources have limitations, including that “many litigants require additional one-on-one help to understand their specific legal rights and prerogatives and make decisions that are best for them under the circumstances.”[[8]](#footnote-8)

The Court recognized that many self-represented litigants are “at a substantial legal disadvantage and, for increasing numbers, force(d) to seek help from unregulated, untrained, unsupervised ‘practitioners.’ We have a duty to ensure that the public can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.”[[9]](#footnote-9)

Importantly, the Court noted that establishing a new category of limited legal provider would not aid family law litigants with complex, contested matters. On the other hand, “the authorization for limited license legal technicians to engage in certain limited legal and law related activities holds promise to help reduce the level of unmet need for low and moderate income people who have relatively uncomplicated family related legal problems…”[[10]](#footnote-10)

The Court also addressed concerns that creating a new class of licensed professionals would threaten the practicing family law bar, stating, “(I)t is important to push past the rhetoric and focus on what limited license legal technicians will be allowed to do, and what they cannot do under the rule.” In particular, the new class would be limited to simple family law matters where “few private attorneys make a living.”[[11]](#footnote-11)

While admitting that adopting APR 28 “will not close the Justice Gap,” including that for moderate income persons, the Court reasoned the new rule was a “limited, narrowly tailored strategy designed to expand the provision of legal and law related services to (persons) in need of individualized legal assistance with non-complex legal problems.”[[12]](#footnote-12)

1. Washington’s Admission to Practice Rule 28 for Limited License Legal Technicians

Subpart (A) of APR 28 states in part: “The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law.”

The Rule establishes a Limited License Legal Technician Board comprised of lawyers and non-lawyers which will recommend practice areas and license requirements on a go-forward basis and which will oversee administration of a licensing examination. In particular, the Rule requires that applicants:

* Be 18 years or older.
* “Be of good moral character and demonstrate fitness to practice as a…(LLLT)”
* Have an associate level degree or higher.
* Have earned 45 credit hours in a core curriculum of paralegal studies with the curriculum also being developed in conjunction with an ABA-approved law school.
* Each applicant must take an oath similar to an attorney’s oath.

Licensing requirements for Rule 28 include that successful applicants must:

* Pass a written examination.
* Acquire 3,000 hours of “substantive law-related work experience supervised by a licensed lawyer.” These 3,000 hours can precede the licensure (in other words, it appears that an experienced paralegal can apply to be a LLLT and be licensed upon passing the written examination).
* Carry malpractice insurance.
* Attend annual CLE courses.

Rule 28 is very specific in terms of the scope of practice in which a Limited License Legal Technician can engage. In particular, under the rule, a LLT can:

* Perform usual paralegal duties.
* “Perform legal research and draft letters and pleadings documents beyond (customary paralegal duties), if the work is reviewed and approved by a Washington lawyer.”
* “Advise a client as to other documents that may be necessary to the client’s case and explain how such documents or pleadings may affect the client’s case.”
* All LLLTs are required to enter into a written contract “prior to the performance of the services for a fee…”
* LLLTs cannot appear in court or at administrative proceedings or engage in mediations or other forms of alternative dispute resolution (including negotiating settlements or agreements) on behalf of a client.

Under the Rule, an LLLT’s practice is restricted to “Domestic Relations” which is defined narrowly and confined to child support modification; divorces; parenting plans and other less complicated family law matters. Rule 28 specifically prohibits LLLTs from advising on the division of real estate or retirement assets or on bankruptcy or anti-harassment orders.

Other notable features of Rule 28 include that LLLTs are to be “held to the standard of care of a Washington lawyer.” Additionally, the Rule mandates creating a LLLT IOLTA program “for the proper handling of funds coming into the possession of the Limited License Legal Technician.” Moreover, Washington state law relative to the 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 (they) would apply to an attorney-client relationship.”

In summary, Washington State has created an entirely new class of licensed legal professional that in many respects resembles the role of a lawyer. Key to Washington State’s LLLT programs is the goal of enabling a person in legal need to receive one-on-one advice and assistance via a sustained relationship with a legal professional. This is a first-of-its-kind experiment in the United States which we believe holds great hope of succeeding given the collaborators behind it.

**Proposals in Other States under Consideration**

California

California Bar Civil Justice Strategies Task Force Report & Recommendations

<http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000013003.pdf>

Colorado

Subcommittee formed by state supreme court

<http://www.coloradosupremecourt.us/Newsletters/Spring2015/Colorado%20studying%20new%20limited%20legal%20license.htm>

Florida

State Bar’s Vision 2016 commission

<http://www.floridabar.org/vision2016>

Report and recommendation of Vision 2016 Access to Justice Subcommittee –

<http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/BBF30D5952EF9F8D85257E890068B197/$FILE/Vision%202016%20Access%20to%20Legal%20Services%20Report%20and%20Rec.pdf?OpenElement>

Illinois

Task force appointed

<http://www.isba.org/ibj/2015/09/abcslllts>

Oregon

Final report of OSBA Legal Technicians Task Force (January 2015)

<http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf>

Utah

Report & Recommendations of Supreme Court Task Force to Examine Limited Legal Licensing (November 2015)

<http://www.utcourts.gov/committees/limited_legal/Supreme%20Court%20Task%20Force%20to%20Examine%20Limited%20Legal%20Licensing.pdf>

**Related Intitiatives**

Arizona

Legal Document Preparers (licensed by Arizona Supreme Court)

<https://www.azcourts.gov/cld/Legal-Document-Preparers>

California

Legal Document Assistants (created by statute – formerly independent paralegals)

<http://calda.org/>

New York

Court Navigator program established in NYC Housing Court in the Bronx and Brooklyn

<http://www.nycourts.gov/COURTS/nyc/housing/rap.shtml>

1. For a more in-depth discussion of Minnesota’s legal needs and current solutions, see Appendix E. [↑](#footnote-ref-1)
2. For a summary of Washington’s model program, see Appendix F. [↑](#footnote-ref-2)
3. *See* N.Y. Sen. 09073-01-5 (Feb. 9, 2015) (legislative proposal providing for housing and consumer court advocates). [↑](#footnote-ref-3)
4. In California’s report, following the identification of a gap in access to legal representation and a discussion of the Washington LLLT program, the task force recommended that its state bar study a pilot LLLT program. *See* State Bar of California, Civil Justice Strategies Task Force Report and Recommendations 56–57(2015). ([http://board.calbar.ca.gov/docs/agendaitem/public/agendaitem1000013042.pdf](http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000013042.pdf)) In its recommendation for such a program, California’s task force included a testing requirement for licensing, a recommendation that the state bar be the regulatory body, and that the subject matter of such licenses be limited to narrow areas such as landlord-tenant, limited jurisdiction consumer cases, and domestic violence cases. *See id*. [↑](#footnote-ref-4)
5. Oregon’s task force similarly recommended further study of an LLLT program, with Washington’s program as a possible model, as a method of addressing the justice gap. *See* State Bar of Oregon, Legal Technicians Task Force, Final Report to the Board of Governors 1–2, 9 (Feb. 13, 2015). Oregon’s task force recommended that the first area licensed be family law, including guardianship matters. *See id.* at 9. (<http://bog11.homestead.com/LegalTechTF/Jan2015/Report_22Jan2015.pdf>) [↑](#footnote-ref-5)
6. In re the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians, Wash. No. 25700-A-1005, 4 (Jun. 14, 2012), *available at* <http://www.wsba.org/~/media/Files/Legal%20Community/Committees_Boards_Panels/LLLT%20Board/Legal%20Technician%20Rule.ashx>. [↑](#footnote-ref-6)
7. *Id.* at 5. [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* at 5–6. [↑](#footnote-ref-9)
10. *Id.* at 6. [↑](#footnote-ref-10)
11. *Id.* at 6–7. [↑](#footnote-ref-11)
12. *Id.* at 11. [↑](#footnote-ref-12)