

**THE WASHINGTON STATE LIMITED
LICENSE LEGAL TECHNICIAN PRACTICE
RULE: A NATIONAL FIRST IN ACCESS TO
JUSTICE**

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Without a lawyer, poor people do not have adequate access to the legal process, which means they do not receive justice.¹

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INTRODUCTION

For years the judiciary, bar associations, academics, and other observers have decried the lack of access to justice for poor

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¹ William H. Neukom, *An Investment in Our Future*, A.B.A. J., Apr. 2008, at 9, 9, available at www.abajournal.com/magazine/article/an_investment_in_our_future/.

and low-income individuals.² Focusing largely on civil areas of legal need,³ such as family law and housing law, the access to justice movement has proposed a range of reforms to close the “justice gap.”⁴ Yet these proposals, while helpful and productive, have not eliminated or adequately mitigated the access to justice crisis.⁵ Additional measures remain necessary.⁶

² See Bernice K. Leber, *And Justice for All*, 80 N.Y. ST. B.A. J. 5, 6 (2008) (“At a recent Presidential Summit of all 50 state bar presidents and state delegates to the ABA . . . access to justice topped the list of critical issues.”); Earl Johnson Jr., “*And Justice for All*: When Will the Pledge Be Fulfilled?”, 47 JUDGES’ J. 5, 9 (2008) (opining that access to justice remains “theoretical and illusory’ . . . for far too many of the poorest and most vulnerable people in this country”); Alan W. Houseman, *The Future of Civil Legal Aid: Some Initial Thoughts*, 13 U. PA. J.L. & SOC. CHANGE 265, 265 (2010) (“[E]qual justice is not a reality for millions of Americans,” and “particularly . . . low-income Americans who do not have meaningful access to legal information, advice, assistance, or actual representation.”); Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 LOY. L.A. L. REV. 869, 869-70 (2009) [hereinafter Rhode, *Whatever Happened*] (“[T]he United States has the world’s highest concentration of lawyers, [but] it fails miserably at making their assistance accessible to those who need it most.”); Richard Zorza, *Access to Justice: The Emerging Consensus and Some Questions and Implications*, 94 JUDICATURE 156, 156-57 (2011) (noting the “[a]ppalling statistics on access . . . combined with dramatic stories showing the dire consequences of lack of access”).

³ Criminal defendants face distinct access-to-justice issues because the federal constitution requires appointed counsel in many criminal cases. See Herbert P. Wilkins, *Introduction to the Issue: Access to Justice*, 93 MASS. L. REV. 213, 213 (2010) (“There is clearly a different aspect to access to justice in criminal proceedings, where the constitutions provide a compulsion to furnish legal assistance”). Criminal defendants instead face what some observers have termed a “*Gideon* crisis,” which focuses on the *quality* of representation. See *Five Problems Facing Public Defense on the 40th Anniversary of Gideon v. Wainwright*, NAT’L LEGAL AID & DEFENDER ASS’N, http://www.nlada.org/Defender/Defender_Gideon/five_problems.pdf; Gideon’s *Broken Promise: America’s Continuing Quest for Equal Justice*, 2004 A.B.A. STANDING COMMITTEE ON LEGAL AID & INDIGENT DEFENDANTS, http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf; *The Unfulfilled Promise of Gideon: Washington’s Flawed System of Defense for the Poor*, AM. CIV. LIBERTIES UNION WASHINGTON (2004), http://www.aclu-wa.org/library_files/Unfulfilled%20Promise%20of%20Gideon.pdf. Access to justice issues in criminal cases exceed the scope of this Article. The Washington State Supreme Court, however, has advanced the curve in this area, too. See *Supreme Court Adopts Standards for Indigent Defense; Case Limit Guidelines Effective in 2013*, WASH. CTS.: NEWS & INFO. (June 15, 2012), <http://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=2135>.

⁴ See *infra* discussion Part I.

⁵ See *infra* discussion Part I.

In 2012, the Washington State Supreme Court responded to the access to justice crisis with a unique and controversial measure: a limited-license practice rule permitting nonlawyers to practice law.⁷ The Supreme Court termed these nonlawyers “legal technicians,” who are permitted to practice only in certain well-defined areas.⁸ Much work remains to be done to implement this new practice rule and skepticism persists.⁹ But in the near future, nonlawyers in Washington State may add substantially to the legal services available to poor and low-income persons. The question becomes whether this new limited-license practice rule will prove effective and serve as an access to justice model for other states to follow.

This Article thus analyzes and assesses Washington State’s new Limited License Legal Technician Rule (LLLT Rule) in the detailed manner warranted of such a novel and untested access to justice initiative. Part I of the Article will outline the national access to justice crisis that motivated the LLLT Rule. This Part will emphasize the findings of the 2003 Washington State Civil Legal Needs Study (Washington Study)¹⁰ but will consider the access to justice crisis as a national problem in which Washington State has a critical interest. Part I also will document other efforts to remedy this crisis and how these efforts have not adequately closed the justice gap.

⁶ See Gillian K. Hadfield, *Summary of Testimony Before the Task Force to Expand Access to Civil Legal Services in New York* 1, 1 (Oct. 1, 2012), <http://richardzorza.files.wordpress.com/2012/10/hadfield-testimony-october-2012-final-2.pdf> (“[T]here is no way to generate the kind of legal help that ordinary [persons] need solely through the expenditure of public money on legal aid and the provision of pro bono and other charitable assistance. No way.”).

⁷ See Debra Cassens Weiss, *In Washington State, ‘Legal Technicians’ Will Be Allowed to Help Civil Litigants*, ABAJOURNAL.COM (June 19, 2012, 6:36 AM), http://www.abajournal.com/news/article/in_washington_state_legal_technicians_will_be_allowed_to_help_civil_litigan/; *Supreme Court Adopts Rule Authorizing Non-Lawyers to Assist in Certain Civil Legal Matters*, WASH. CTS.: NEWS & INFO. (June 15, 2012), <http://www.courts.wa.gov/newsinfo/?fa=newsinfo.internetdetail&newsid=2136>.

⁸ See *Supreme Court Adopts Rule*, *supra* note 7; see also *infra* Part II.B.

⁹ See *infra* Parts II.A and II.C.

¹⁰ TASK FORCE ON CIVIL EQUAL JUSTICE FUNDING, THE WASHINGTON STATE CIVIL LEGAL NEEDS STUDY (2003) [hereinafter WASHINGTON STUDY], *available at* <http://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf>.

Part II will examine Washington State's LLLT Rule as a unique, programmatic response to the access to justice crisis. To unwrap the potential strengths and weaknesses of this program, and to demonstrate the full controversy surrounding it, Part II.A will provide a detailed and comprehensive report on the LLLT Rule's legislative history. This legislative history includes not only the formative rule-making leading to the LLLT Rule proposal but also the extensive debate within the Washington State legal community and the robust commentary submitted to the Washington State Supreme Court in response to this proposal. Part II.B will review the final LLLT Rule that the supreme court ultimately adopted, along with the divided supreme court opinion that accompanied this Rule. Part II.C will detail the remaining work necessary for implementation of the LLLT Rule. To conclude, Part III of the Article briefly will assess whether the LLLT Rule promises to fulfill its objective: greater access to justice in Washington State.

I. THE ACCESS TO JUSTICE CRISIS

The United States has been championed as a leader in civil justice systems.¹¹ The United States is committed to the rule of law; has an independent judiciary to enforce the rule of law; and maintains a large, well-trained, and independent legal profession to facilitate access to this system of civil justice.¹² On paper, therefore, the United States offers a good system for ensuring that individuals meaningfully can access procedural and substantive civil justice.¹³

¹¹ See Steven Seidenberg, *Unequal Justice: U.S. Trails High Income Nations in Serving Civil Legal Needs*, A.B.A. J., June 1, 2012, http://www.abajournal.com/magazine/article/unequal_justice_u.s._trails_high-income_nations_in_serving_civil_legal_need/ (reporting study finding that "[t]he United States' civil legal system is one of the best in the world").

¹² See *id.*

¹³ "Civil justice" can capture a potentially wide range of access to justice conceptions. See Jason M. Solomon, *What Is Civil Justice?*, 44 LOY. L.A. L. REV. 317, 321-24 (2010) (examining definitions of "civil justice"); Gary Blasi, *Framing Access to Justice: Beyond Perceived Justice for Individuals*, 42 LOY. L.A. L. REV. 913, 914-916, 929-934 (2009) (criticizing narrow framing of "access to justice" problem to mean only access to a lawyer to deal with "a problem or dispute already framed in legal terms"); William C. Vickrey, Joseph L. Dunn & J. Clark Kelso, *Access to Justice: A Broader*

Many commentators have observed, however, that this system of justice is reserved for the percentage of individuals with the financial means to access it through counsel.¹⁴ For the millions of low-income persons in our country, “equal justice is not a reality.”¹⁵ On the contrary, “[a]ccording to most estimates, about four-fifths of the civil legal needs of the poor . . . remain unmet.”¹⁶ Moreover, the access to justice problem is not limited to poor and low-income individuals—“two- to three-fifths of the needs of

Perspective, 42 LOY. L.A. L. REV. 1147, 1148-1152 (2009) (critiquing access to justice definitions that are limited to “episodic, reactive responses to short-term challenges,” and advocating “a more comprehensive, multidimensional view of access to justice”); Clare Pastore, *A Civil Right to Counsel: Closer to Reality?*, 42 LOY. L.A. L. REV. 1065, 1066 (2009) (noting “the robust and important debate about whether ‘access to justice’ should be defined merely as the right to a lawyer (or some other assistance) when a problem reaches a legal forum, or as something much broader that involves access to the political and judicial processes that shape our conceptions and enforcement of rights and duties”); cf. Lawrence M. Friedman, *Access to Justice: Some Historical Comments*, 37 FORDHAM URB. L.J. 3, 3-11 (2010) (examining different conceptions of access to justice and noting historical and recent legal developments “that opened the way into the legal system for the underdogs”). This Article will define “access to justice” to mean simply the ability of individuals, regardless of financial means, to access the resources necessary to participate meaningfully and equally in our system of civil justice. In our legal system, these resources necessarily include some legal knowledge and training.

¹⁴ “A quarter century ago, then-President Jimmy Carter chided the American bar for perpetuating a system in which [n]inety percent of our lawyers serve 10 percent of our people.” Rhode, *Whatever Happened*, *supra* note 2, at 911 (quoting *President Carter’s Attack on Lawyers, President Spann’s Response and Chief Justice Burger’s Remarks*, 64 A.B.A. J. 840, 842 (1978)).

¹⁵ Houseman, *supra* note 2, at 265; *see also* Seidenberg, *supra* note 11 (reporting disconnect between quality of the United States’ civil justice system and access to it by millions of poor and low-income individuals). Not everyone agrees that “justice” consistently has traveled in one direction away from access and equality. *See* Friedman, *supra* note 13 (defining modern access to justice problem from a historical perspective, which reveals some democratization of justice over time).

¹⁶ DEBORAH L. RHODE, ACCESS TO JUSTICE 3 (2004) [hereinafter RHODE, ACCESS]; *see also* Rhode, *Whatever Happened*, *supra* note 2, at 869 (citing *Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low-Income Americans*, LEGAL SERVS. CORP. 1, 1-13 (2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf); Carolyn Lamm, *Finding New Ways to Help*, A.B.A. J., Oct. 2009, at 9, 9 (“[E]ighty percent of the poor people who need civil legal help to not receive it” and “the economic crisis is making the situation more dire.”); Neukom, *supra* note 1 (“[O]ur country fails to provide civil legal aid to 80 percent of the poor people who need it” and “we have been depriving poor people of access to justice at this staggering rate for decades.”).

middle-income individuals” also remain unfulfilled.¹⁷ As a result, “[e]qual justice under law’ is a principle widely embraced and routinely violated”¹⁸ because, “[b]y virtually any measure, our nation falls well short of providing even minimal, let alone equal, access to justice for Americans of limited means.”¹⁹

The 2003 Washington Study documented the significance of this national problem in Washington State. This Washington Study was undertaken when the Washington State Supreme Court, in 2001, commissioned the Washington State Task Force on Civil Equal Justice Funding (Washington Task Force).²⁰ The Washington Task Force undertook the Washington Study to measure “the civil legal needs of Washington’s low-income and vulnerable populations.”²¹ The Washington Study employed three separate surveys to gather data: (1) an in-depth field survey of more than 1300 low-income individuals “who might be expected to experience unique legal access obstacles or legal problems based on their status or identity;” (2) a telephone survey of randomly selected low- and moderate-income individuals throughout the state; and (3) an anecdotal “stakeholder” survey, including bench, bar, and court personnel—as well as social and legal services providers—concerning their perceptions of the civil legal needs of low- and moderate-income individuals.²²

The Washington Study reported these critical findings:

- More than three-quarters of all low-income households in Washington state experience at least one civil . . . legal

¹⁷ RHODE, ACCESS, *supra* note 16; *see also* Debra Cassens Weiss, *Middle-Class Dilemma: Can’t Afford Lawyers, Can’t Qualify for Legal Aid*, ABAJOURNAL.COM (July 22, 2010, 7:36 AM), <http://www.abajournal.com/news/article/middle-class-dilemma-cant-afford-lawyers-cant-qualify-for-legal-aid> (reporting growing problem of access to justice for middle class, with sixty percent of surveyed judges reporting increased rates of pro se representation in civil cases).

¹⁸ Rhode, *Whatever Happened*, *supra* note 2, at 869.

¹⁹ RHODE, ACCESS, *supra* note 16, at 6-7; *see also* Carrie Johnson, *Legal Help for the Poor in ‘State of Crisis,’* NPR MORNING EDITION (June 15, 2012, 3:57 AM), <http://www.npr.org/2012/06/15/154925376/legal-help-for-the-poor-in-state-of-crisis>.

²⁰ WASHINGTON STUDY, *supra* note 10, at 5.

²¹ *Id.* at 5, 7-8.

²² *See id.* at 9-10. For greater detail about the Washington Study’s methodology, *see id.* at 63-67.

problem each year. [Overall,] low-income people experience more than one million civil legal problems annually.

- Low-income people face more than 85 percent of their legal problems without help from an attorney. Attorney assistance is most successfully secured in family-related matters, [at about 30 percent]. Removing family-related problems, low-income people receive help from an attorney with respect to less than 10 percent of all civil legal problems.
- Women and children have more legal problems than the general population, especially on matters relating to family law and domestic violence. Specific types of legal problems are experienced by certain minorities, the disabled and members of other demographic cluster groups at a significantly higher than average rate.
- Legal problems experienced by low-income people are more likely to relate to family safety (including domestic violence), economic security, housing and other basic needs
- A significant percentage of legal problems faced by low-income people are perceived to include a wrongful discrimination component.
- Legal problems do not differ significantly regionally or between those who live in close proximity to urban centers and those who do not.
- While the legal problems of urban and rural low-income residents are similar, residents of rural areas have less knowledge of available legal resources, and have less access to and success in using technology-based legal services.
- Nearly half of all low-income people with a legal problem did not seek legal assistance because they did not . . . know [of legal protections] or that relief could be obtained from the justice system. Others did not know where to turn, were fearful, believed they could not afford legal help, or had language barriers.

- Nine out of 10 low-income people who do not get legal assistance receive no help at all [with legal problems]²³

Based on these findings, the Washington Study concluded: “Low-income people who get legal assistance experience better outcomes and have greater respect for the justice system”²⁴ By contrast, “[a]mong those who seek but do not get an attorney’s help, only 21 percent feel positively toward the justice system.”²⁵

The Washington State legal community did not respond idly to these stark findings.²⁶ Indeed, even before the Washington Study, Washington State recognized this problem and endeavored to increase access to justice. For example, in 1994 the Washington State Supreme Court commissioned the Access to Justice Board (ATJ Board).²⁷ “[A]n autonomous body operating under the auspices of the Washington State Bar Association (WSBA), [and] in accordance with authority granted by the Washington Supreme Court,”²⁸ the ATJ Board embraces “access to the civil justice system [as] a fundamental right,”²⁹ and “works to achieve equal access [to the civil justice system] for those facing economic and other significant barriers.”³⁰ Washington State’s current

²³ See *id.* at 8-9. For a catalogue of the legal problems recognized by the Washington Study, see *id.* at 59-60. For the demographic cluster groups that the Washington Study considered, see *id.* at 57-58. For a map of the State regions evaluated by the Washington Study, see *id.* at 61.

²⁴ *Id.* at 9.

²⁵ *Id.* at 56.

²⁶ The Washington Study’s findings are similar to data concerning access to justice limitations elsewhere. See generally *Documenting the Justice Gap in America: The Current Unmet Civil Needs of Low-Income Americans*, *supra* note 16; Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 *FORDHAM URB. L.J.* 37 (2010); Laura K. Abel, *Evidence-Based Access to Justice*, 13 *U. PA. J.L. & SOC. CHANGE* 295, 296 (2009-2010) (advocating for evidence-based approach for developing “access to justice tools”).

²⁷ See *Access to Justice Board History*, WSBA, <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJ-Board-History> (last visited Feb. 6, 2013).

²⁸ *Id.*

²⁹ *About the Access to Justice Board*, WSBA, <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/About-the-Access-to-Justice-Board> (last visited Feb. 6, 2013).

³⁰ *Id.* The ATJ Board thus functioned similarly to the access to justice commissions in other states. See Karla M. Gray & Robert Echols, *Mobilizing Judges, Lawyers, and Communities: State Access to Justice Commissions*, 47 *JUDGES’ J.* 33, 33-35 (2008) (“The

commitment to access to justice thus did not materialize with the Washington Study, but rather motivated it.

Access to justice efforts in Washington State only intensified following the Washington Study findings. Many of these efforts have tracked access to justice initiatives being debated and implemented throughout the nation.³¹ These initiatives have included public awareness programs,³² legal aid funding initiatives,³³ pro bono activities,³⁴ technology programs,³⁵ court

increasing number of state access to justice commissions has been one of the most striking and consequential justice-related developments of the past decade.”); Zorza, *supra* note 2, at 159 (“The Conference of Chief Justices, in July 2010, endorsed the spread of such Access to Justice Commissions.”).

³¹ For general overviews of and perspectives on access to justice initiatives, see *Resource Center for Access to Justice Initiatives*, A.B.A., http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html (last visited Feb. 6, 2013); see also RHODE, ACCESS, *supra* note 16, at 185-94; Houseman, *supra* note 2, at 273-93; Deborah L. Rhode, *Access to Justice: Again, Still*, 73 *FORDHAM L. REV.* 1013, 1022-29 (2004) [hereinafter Rhode, *Again, Still*].

³² See generally Standing Committee on Legal Aid & Indigent Defendants, *Legal Aid Funding: Resources and Technical Assistance*, A.B.A., http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/communications_resources.html (last visited Feb. 6, 2013).

³³ See generally Standing Committee on Legal Aid & Indigent Defendants, *Resources and Technical Assistance for Legal Aid Funding*, A.B.A., http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/funding_civil_legal_services.html (last visited Feb. 6, 2013).

³⁴ See, e.g., *Volunteer Opportunities*, WSBA, <http://www.wsba.org/Legal-Community/Volunteer-Opportunities> (last visited Feb. 6, 2013). Lawyers across the nation have increased pro bono activities in response to the access to justice crisis. See Laurel Bellows, *Stepping Up for the Underserved: Lawyers' Pro Bono Is Key to Providing Access to Justice*, A.B.A. J. (Nov. 1, 2012), available at http://www.abajournal.com/magazine/article/stepping_up_for_the_underserved_lawyer_s_pro_bono_is_key_to_providing_equal/ (“Despite tremendous economic pain in our profession, an association study found that nearly 75 percent of attorneys provide free legal services to the underserved or to organizations that help those in need.”). Nevertheless, pro bono service remains an unenforceable professional responsibility. See MODEL RULES OF PROF'L CONDUCT R. 6.1 and cmt. 12 [hereinafter Model Rule], compiled in STEPHEN GILLERS, ROY D. SIMON & ANDREW M. PERLMAN, *REGULATION OF LAWYERS: STATUTES AND STANDARDS* 394-96 (Wolters Kluwer concise ed. 2012) (“Every lawyer has a professional responsibility to provide legal services to those unable to pay,” but also providing that “[t]he responsibility set forth in this Rule is not intended to be enforced through the disciplinary process.”); see GILLERS ET AL., *supra*, at 399 (“No state yet requires lawyers to perform pro bono work, and no state is actively

access programs for pro se litigants,³⁶ limited-scope representation,³⁷ legal education reform,³⁸ and claims to a right to appointed civil counsel.³⁹ Demonstrating Washington State's commitment to closing the justice gap following the Washington Study, "[f]rom 2002-2007, the WSBA spent slightly more than \$3

considering mandatory *pro bono*."); *but cf.* Mosi Secret, *Judge Details a Rule Requiring Pro Bono Work by Aspiring Lawyers*, N.Y. TIMES (Sept. 19, 2012), <http://www.nytimes.com/2012/09/20/nyregion/pro-bono-work-becomes-a-requirement-to-practice-law-in-new-york.html> (reporting on new lawyer admission rule requiring law students to perform fifty hours of pro bono work).

³⁵ See, e.g., Molly McDonough, *LSC to Grant \$3.4 Million for Technology to Improve Access to Justice*, A.B.A. J. (Sept. 28, 2012), http://www.abajournal.com/news/article/lsc_to_grant_3.4m_for_technology_to_improve_access_to_justice/.

³⁶ See, e.g., Courthouse Facilitators, WASHINGTON STATE COURTS, http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=108 (last visited Feb. 6, 2013) (explaining that a "courthouse facilitator is an individual who assists self-represented parties with their family law cases in superior court," and providing links to further information and assistance).

³⁷ See MODEL RULES OF PROF'L CONDUCT R. 1.2(c) and cmts. 6-8; see generally Madelynn M. Herman, *Pro Se: Self-Represented Litigants Trends in 2003: Limited Scope Legal Assistance: An Emerging Option for Pro Se Litigants*, NAT'L CENTER FOR STATE COURTS (2003), http://www.ncsconline.org/WC/Publications/KIS_ProSe_Trends03.pdf.

³⁸ See generally Catherine Greene Burnett & Eden Harrington, *Law Schools Working Together to Increase Access to Justice*, 51 S. TEX. L. REV. 689, 690 (2010); Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 RUTGERS L. REV. 1011, 1015 (2009).

³⁹ See Benjamin H. Barton & Stephanos Bibas, *Triaging Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. PA. L. REV. 967, 968-69 (2012); Russell Engler, *Pursuing Access to Justice and Civil Right to Counsel in a Time of Economic Crisis*, 15 ROGER WILLIAMS U. L. REV. 472, 472-73 (2010); Pastore, *supra* note 13, at 1065-67; Raven Lidman, *Civil Gideon as a Human Right: Is the U.S. Going to Join Step with the Rest of the Developed World*, 15 TEMP. POL. & CIV. RTS. L. REV. 769, 769 (2006). For an excellent piece connecting a "law protective function" in *Gideon* to a civil right to counsel, see Nancy Leong, *Gideon's Law Protective Function*, 122 YALE L.J. (forthcoming 2013), available at <http://ssrn.com/abstract=2183729>. The Washington State Supreme Court rejected a civil right to counsel claim based on the Washington State Constitution in *King v. King*, 174 P.3d 659, 664-69 (Wash. 2007). See also *Lassiter v. Dept. of Soc. Servs.*, 452 U.S. 18, 31 (1981) (rejecting civil right to counsel claim under the federal constitution). Another interesting access to justice initiative being advocated involves lifting the professional restriction on non-lawyer ownership of law practices. See, e.g., Gillian K. Hadfield, *The Cost of Law: Promoting Access to Justice Through the Corporate Practice of Law* (forthcoming), available at <http://ssrn.com/abstract=2183978>; Renee Newman Knake, *Democratizing the Delivery of Legal Services*, 73 OHIO ST. L.J. 1, 2-5 (2012).

million on *all* access to justice programs.”⁴⁰ These programs were implemented through bodies such as the ATJ Board,⁴¹ the Council on Public Defense,⁴² and the Washington Greater Access and Assistance Project.⁴³

Of recent and special note is the WSBA’s Moderate Means program, a statewide, reduced-fee, lawyer-referral program.⁴⁴ A flagship access to justice program of the WSBA, the Moderate Means program focuses on the civil-legal needs of “moderate-income households who make too much to access traditional legal aid programs, yet who cannot afford to hire a lawyer”—families with household incomes between 200% and 400% of the federal poverty level.⁴⁵ Lawyers who participate in this program receive client referrals on the condition that the clients are charged reduced fees.⁴⁶ Law students at the three Washington State law

⁴⁰ Mark A. Johnson & David S. Heller, *The Washington State Supreme Court Should Decline to Adopt the Family Law Legal Technician Proposal*, 62 WASH. ST. BAR NEWS, July 2008, at 19, 21 (2008), available at http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200807JulyBarNews.ashx.

⁴¹ See *supra* notes 32-39.

⁴² The Washington State Council on Public Defense was established by the WSBA Board of Governors to address concerns and propose initiatives regarding the quality of indigent criminal defense representation. See *Council on Public Defense*, WSBA, <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Council-on-Public-Defense> (last visited Feb. 6, 2013). The author currently serves as Vice-Chair to the Council on Public Defense.

⁴³ This project is a standing committee of the ATJ Board that works in conjunction with the Washington Young Lawyers Division of the WSBA to establish “a structure to support viable moderate means panels in Washington State.” Johnson & Heller, *supra* note 40, at 22.

⁴⁴ See *Moderate Means Program*, WSBA, <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program> (last visited Dec. 10, 2012).

⁴⁵ See *id.* In 2012, the federal poverty guideline for a single-person household was \$11,170. For a family of four persons, the federal poverty guideline was \$23,050. See *Poverty Guidelines, Research, and Measurement*, U.S. DEPT. OF HEALTH & HUMAN SERVS., <http://aspe.hhs.gov/poverty/> (last visited Feb. 6, 2013).

⁴⁶ See *Moderate Means Program*, *supra* note 44; see also *Moderate Means Program FAQs*, WSBA, <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program/Moderate-Means-Program-FAQs> (last visited Feb. 6, 2013).

schools screen and refer income-eligible clients to these lawyers.⁴⁷ In addition to these client referrals, participating lawyers also receive free and low-cost continuing legal education training related to their moderate means practice.⁴⁸ The initial success of this program already has attracted interest from other jurisdictions.⁴⁹

These initiatives all demonstrate a strong culture of service within the Washington legal community, consistent with the culture prevalent throughout the nation.⁵⁰ Even these initiatives, however, cannot adequately close the justice gap.⁵¹ Indeed, a continuing justice gap, notwithstanding these initiatives, is demonstrated by another issue related to the access to justice

⁴⁷ The Gonzaga University School of Law website details the role of the law schools in this program. See *Center for Law in Public Service*, GONZAGA UNIV. SCHOOL OF LAW, <http://www.law.gonzaga.edu/centers-programs/clips/moderate-means-program/> (last visited Feb. 6, 2013) (outlining program where a law school staff attorney “recruits, trains and supervises law student volunteers who handle client intake, case assessment and referral to private attorneys for reduced-fee representation” in the areas of “family law, housing law, and consumer law”). The WSBA pays for moderate means staffing at the three law schools. See *Moderate Means Program FAQs*, *supra* note 46.

⁴⁸ See *Moderate Means Program*, *supra* note 44; *Moderate Means Program FAQs*, *supra* note 46.

⁴⁹ See Jay Stapleton, *Access to Justice Commission to Discuss Reduced-Fee Program*, CONNECTICUT LAW TRIBUNE (Oct. 30, 2012), <http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202576527980&slreturn=20121114125231> (reporting that Connecticut’s Access to Justice Commission has recommended study of the Washington State Moderate Means Program for possible adoption).

⁵⁰ See *Mission Statement*, WSBA (Apr. 28, 2012), <http://www.wsba.org/~media/Files/WSBA-wide%20Documents/MissionStatementPrinciplesGoalsFocusCriteria.ashx> (emphasizing a “culture of service” by lawyers as a guiding principle); see also Bellows, *supra* note 34 (“[L]awyers are unique in our capacity and willingness to provide legal solutions and access to justice.”); Lamm, *supra* note 16 (“[L]aw firms, bar associations, courts, law schools, programs and corporate counsel . . . have committed themselves to making access to justice for all a reality.”).

⁵¹ Cf. Hadfield, *supra* note 6 (testifying that “the scale of the problem is such that any reasonable amount of public funding or legal aid or *pro bono* work can never be more than a partial solution,” and summarizing supporting data); Gregory R. Dallaire, *A Rationale for the Proposed Legal Technician Limited Practice Rule and Regulations*, 62 WA. STATE BAR NEWS 14, 14-15 (July 2008) (“Despite the *pro bono* contributions of thousands of lawyers in [Washington State], it is painfully apparent that neither people living below the poverty line nor those of modest means . . . can retain lawyers.”).

crisis: the market for unlicensed and unregulated legal practitioners.⁵² This market responds to unmet needs in legal services but often can harm vulnerable consumer populations. As a member of the ATJ Board explained:

When a legal crisis arises, [persons in need] either must try to handle it themselves, without any understanding of the legal framework involved, or turn to unregulated “paralegals” or others offering their services. Increasingly, people of limited means are being victimized by unscrupulous individuals providing ineffective and sometimes unethical services to the desperate. These individuals claim to have the expertise to provide legal assistance, at a price. Although this situation has proliferated in several areas of practice, it seems most rampant with regard to family law and . . . with unlicensed “notario” services.⁵³

⁵² See Letter from Washington Practice of Law Board to Washington State Supreme Court, at 2 (Oct. 27, 2010) [hereinafter 2010 POL Board Letter] (on file with author) (explaining that a “thriving market for non-attorney legal services . . . operates in Washington—with little to no oversight,” and including illustrative attachments); cf. Report by The Task Force to Expand Access to Civil Legal Services in New York to the Chief Judge of the State of New York, at 36-37 (Nov. 2012) [hereinafter 2012 New York Task Force Report], available at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf (“[W]ithout any regulatory or oversight process for non-lawyer advocates in New York . . . a variety of non-lawyer entities provide advocacy assistance to low-income New Yorkers who have current or potential legal problems.”); *Preventing Unlicensed Legal Practice*, N.C. STATE BAR, <http://www.ncbar.gov/public/upl.asp> (last visited Feb. 6, 2013) (describing problem of “individuals and businesses represent[ing] that they can provide legal services or help to prepare legal documents for members of the public even though they are not lawyers”).

⁵³ Dallaire, *supra* note 51, at 15; see also Ann M. Simmons, *Immigrants Exploited by “Notarios”*, L.A. TIMES (Aug. 10, 2004), <http://articles.latimes.com/2004/aug/10/local/me-notarios10> (“Unscrupulous operators are using confusion over the meaning of the word [notario] to dupe unsuspecting immigrants into thinking they are attorneys who can help people get U.S. work permits and legalize their residency status . . . [t]hey charge their clients exorbitant fees, file frivolous paperwork and keep them waiting—and paying—often for years.”); *Fight Notario Fraud*, A.B.A., http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fighnotariofraud.html (last visited Feb. 6, 2013); *Stop Notario Fraud*, AILA INFONET (Dec. 21, 2012), <http://www.aila.org/content/default.aspx?docid=26749>.

Officials in Washington State and elsewhere have used criminal and civil laws to combat these unlicensed legal practices, especially when they are incompetent or fraudulent.⁵⁴ But the prevalence of these practices demonstrates that individuals who need legal services remain outside the reach of both the traditional legal market and current access to justice initiatives.⁵⁵

This continuing justice gap thus has prompted commentators to argue for “fundamental change in the way the judiciary regulates the practice of law.”⁵⁶ This change would expand “the types of people and organizations that are authorized to provide legal help”⁵⁷ by opening lawyers’ traditional professional monopoly on the practice of law. The legal profession has protected this monopoly vigorously,⁵⁸ often on consumer-protection and public-interest grounds.⁵⁹ This monopoly protection, however, also has been criticized vigorously,⁶⁰ including in access to justice debates:

⁵⁴ See, e.g., Press Release, Attorney General Greg Abbott, Federal Officials Launch Multi-Jurisdictional “Notario” Crackdown (June 9, 2011), *available at* <https://www.oag.state.tx.us/oagnews/release.php?id=3758>; Press Release, Attorney General Puts an End to Three Illegal Immigration Services (July 23, 2010), *available at* <http://www.atg.wa.gov/pressrelease.aspx?id=26098#.UMZyb4PAd8E>; Press Release, Washington Attorney General Zooms In on LegalZoom’s Claims (Sept. 16, 2010), *available at* <http://www.atg.wa.gov/pressrelease.aspx?id=26466#.UMZy8oPAd8E>; see, e.g., *State v. Hunt*, 880 P.2d 95, 97-98 (Wa. Ct. App. 1994) (detailing fraudulent and incompetent practices of paralegal convicted of unlicensed practice of law); see generally *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations*, A.B.A. COMM’N ON NONLAWYER PRACTICE 1, 23-32, 126 (Aug. 1995), http://www.americanbar.org/content/dam/aba/migrated/cpr/clientpro/Non_Lawyer_Activity.authcheckdam.pdf (reporting general trend in many states away from strict enforcement of unauthorized practice restrictions absent consumer harm, but highlighting the risk of incompetence and fraud by non-lawyers).

⁵⁵ See *Practice of Law Board*, WSBA, <http://www.wsba.org/legal-community/committees-boards-and-other-groups/practice-of-law-board> (last visited Feb. 6, 2013) [hereinafter *Practice of Law Board*] (identifying mortgage modifications for real property, “notarios,” and unsupervised paralegals as the most commonly reported forms of unauthorized practice).

⁵⁶ Hadfield, *supra* note 6, at 1.

⁵⁷ *Id.*

⁵⁸ See Tom Lininger, *From Park Place to Community Chest: Rethinking Lawyers’ Monopoly*, 101 NW. U. L. REV. 1343, 1347 (2007) (reviewing DEBORAH L. RHODE, *PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS* (Stanford University Press 2005) (“No other country in the world protects lawyers’ monopoly as zealously as does the United States.”)).

⁵⁹ See *id.* at 1347 (“State bars originally proposed the [unauthorized practice of law] statutes for the ostensible purpose of protecting clients from incompetent

The bar's debates about access to justice have traditionally assumed that the main problem is inadequate access to lawyers and that the solution is to make their services more broadly available. From the profession's standpoint, this approach has obvious advantages. But from the public's vantage, such frameworks mischaracterize both the problem and the prescription. What Americans want is more justice, not necessarily more lawyering . . . In many contexts, the most cost-effective strategies are those that individuals can pursue themselves

. . . .

Giving qualified nonlawyers a greater role in providing routine legal assistance is likely to have a . . . positive effect, but the organized bar is pushing hard in the opposite direction.⁶¹

One scholar who recently testified before a New York State access to justice task force rationalized this debate over whether to open legal practice to nonlawyers:

I realize that [a call to expand qualified legal practitioners to nonlawyers] is a statement that is at odds with almost everything lawyers talk about when they talk about access to justice. But it shouldn't be. It should be the main topic of conversation: how will we expand access by expanding the

advocates."); Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Ethical and Legal Parameters*, 67 FORDHAM L. REV. 2581, 2593 (1999) (quoting MODEL CODE OF PROF'L RESPONSIBILITY Canon 3-1 (1981) ("The prohibition on the practice of law by a lay[person] is grounded in the need of the public for integrity and competence of those who undertake to render legal services.")).

⁶⁰ See George W.C. McCarter, *The A.B.A.'s Attack on "Unauthorized" Practice of Law and Consumer Choice*, 4 ENGAGE, May 1, 2003, at 131-33, available at <http://www.fed-soc.org/publications/detail/the-abas-attack-on-unauthorized-practice-of-law-and-consumer-choice> (challenging consumer-protection and public-interest justifications for lawyer monopoly on legal practice); Jaqueline M. Nolen-Haley, *Lawyers, Non-Lawyers and Mediation: Rethinking the Professional Monopoly from a Problem-Solving Perspective*, 7 HARV. NEGOT. L. REV. 235, 268 (2002) (critiquing the "myth" of consumer protection rationales for unlicensed practice rules, noting that "the limited empirical evidence suggests otherwise").

⁶¹ RHODE, ACCESS, *supra* note 16, at 81, 87; see also Lininger, *supra* note 58, at 1345, (quoting RHODE, PRO BONO IN PRINCIPLE AND PRACTICE, *supra* note 58, at 28-29 ("The monopoly 'prices out' the poor in the market for legal services.")).

range of options available to ordinary people when they face the ordinary legal needs of everyday life? This is not a scary option. It is not an unethical option. It is . . . the only responsible option.⁶²

The LLLT Rule represents the product of exactly this kind of conversation between the bar, the public, and the judiciary. This conversation was lengthy and well documented, and it proved quite contentious. The LLLT Rule originated within the WSBA, with the WSBA Practice of Law Board (POL Board).⁶³ Yet a substantial portion of the WSBA strongly and publicly opposed the LLLT Rule, including the WSBA Board of Governors.⁶⁴ Notwithstanding vocal opposition within the WSBA and from other interested parties, the Washington State Supreme Court ultimately adopted the LLLT Rule, the first limited-practice rule of this scope in the country.⁶⁵ Yet, even the Washington State Supreme Court divided over this proposal, with three justices dissenting.⁶⁶ This complex conversation leading to the LLLT Rule merits detailed consideration.

⁶² Hadfield, *supra* note 6, at 1; see *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations*, *supra* note 54, at 134-158; *id.* at 135 (commenting that the access to justice “gap might be partially closed by allowing nonlawyers to engage in [a specified] range of activities,” subject to regulatory oversight).

⁶³ See *Practice of Law Board*, *supra* note 55.

⁶⁴ See *Board of Governors*, WSBA, <http://www.wsba.org/bog> (last visited Feb. 6, 2013).

⁶⁵ Non-lawyer practice rules do exist already in Washington State and elsewhere. For instance, Washington State, for years, has authorized non-lawyers termed “limited practice officers” to select and prepare legal documents relating to real-estate closing and private property transactions. See *generally LPP Rules & Regulations*, WSBA, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Admissions/Limited-Licenses-and-Special-Programs/Non-Lawyers-and-Students/Limited-Practice-Officers/LPO-Rules-and-Regulations> (last visited Feb. 6, 2013). But, this LLLT Rule extends practice authority to non-lawyers well beyond existing non-lawyer practice rules. See *infra* Part II.A.

⁶⁶ See *infra* Part II.B.

II. THE WASHINGTON STATE LLLT RULE

A. *The LLLT Rule Background and Debate*

Washington State, like all states, prohibits the unauthorized practice of law.⁶⁷ Washington's unauthorized practice statute defines the unlawful practice of law to include circumstances when "[a] nonlawyer practices law, or holds himself or herself out to practice law."⁶⁸ The practice of law, in turn, is defined by the Washington State Supreme Court in Washington State General Court Rule 24.⁶⁹ This Rule defines the practice of law broadly, as "[t]he 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 law."⁷⁰ Subject to specific exclusions,⁷¹ this definition of the practice of law includes, but is not limited to:

- "Giving [legal] advice or counsel to others [about] legal rights or . . . responsibilities . . . for fees or other consideration."⁷²
- "Selection, drafting, or completion of legal documents or agreements [that] affect . . . legal rights."⁷³

⁶⁷ See WASH. REV. CODE § 2.48.180 (2012). The unauthorized practice of law constitutes a gross misdemeanor for a single violation. See WASH. REV. CODE § 2.48.180(3)(a). But subsequent violations are a class C felony. See WASH. REV. CODE § 2.48.180(3)(b). See generally Denckla, *supra* note 59, at 2581 ("In every state, nonlawyers are generally prohibited from practicing law, deemed the 'unauthorized practice of law.'").

⁶⁸ See WASH. REV. CODE § 2.48.180(2)(a). Washington's unauthorized practice statute makes clear that the Washington State Supreme Court governs who has authority, as a lawyer or non-lawyer, to practice law. See WASH. REV. CODE § 2.48.180(1). The unauthorized practice statute provides for several other circumstances when a person practices law unlawfully, such as when a non-lawyer holds an investment or ownership interest in a law firm and when a non-lawyer shares legal fees with a lawyer. See WASH. REV. CODE § 2.48.180(3)(b).

⁶⁹ See WASH. GEN. RULE 24 (2002), available at http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&ruleId=gagr24&pdf=.

⁷⁰ *Id.* at 24(a).

⁷¹ See *id.* at 24(b).

⁷² See *id.* at 24(a)(1).

⁷³ See *id.* at 24(a)(2).

- “Representation of another entity or person(s) in a court [or another] adjudicative proceedings or . . . dispute resolution process”⁷⁴
- “Negotiation of legal rights or responsibilities on behalf of another entity or person(s).”⁷⁵

“In order to implement and make meaningful the . . . rule defining the practice of law,”⁷⁶ the Washington State Supreme Court, in 2001, established the thirteen-member POL Board.⁷⁷ Operating within the WSBA, the POL Board “investigate[s] unauthorized practice of law complaints, [and] issue[s] advisory opinions.”⁷⁸ Moreover, relating directly to access to justice issues, the POL Board “recommend[s] to the Supreme Court ways nonlawyers can improve access to law-related services.”⁷⁹ Under this latter authority, the POL Board, “[o]n request of the Supreme Court or any person or organization, or on its own initiative . . . may recommend that non-lawyers be authorized to engage in certain defined activities that otherwise constitute the practice of law.”⁸⁰ The POL Board’s recommendation, however, “shall be accompanied with a determination” of several criteria⁸¹:

(A) that access to affordable and reliable legal and law-related services consistent with protection of the public will be enhanced by permitting non-lawyers to engage in the defined activities set forth in the recommendation;

⁷⁴ See *id.* at 24(a)(3).

⁷⁵ See *id.* at 24(a)(4).

⁷⁶ KARL B. TEGLAND, 2 WASHINGTON PRACTICE, RULES PRACTICE 98-104 (2011).

⁷⁷ See *Practice of Law Board*, *supra* note 55.

⁷⁸ *Id.*

⁷⁹ *Id.*; see also WASH. GEN. RULE 25(c)(4) [hereinafter WGR] (court rule authorizing POL Board to recommend legal services by non-lawyers), *available at* http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr25. General Rule 25 was adopted in 2001 and amended in 2006.

⁸⁰ See WGR 25(c)(4).

⁸¹ See *id.* at 25(c)(4); POL BOARD REGULATION 8(A), *available at* http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=gagr25r. The POL Board Regulations were adopted in 2004 as an appendix to General Rule 25, and were amended in 2005. *Id.*

(B) that the defined activities outlined in the recommendation can be reasonably and competently provided by skilled and trained non-lawyers;

(C) if the public interest requires regulation under authority of the Supreme Court, such regulation is tailored to promote access to affordable legal and law-related services while ensuring that those whose important rights are at stake can reasonably rely on the quality, skill and ability of those non-lawyers who will provide such services;

(D) that, to the extent that the activities authorized will involve the handling of client trust funds, provision has been made to ensure that such funds are handled in a manner consistent with RPC 1.15A and APR 12.1 . . . ;

(E) that the costs of the regulation, if any, can be effectively underwritten within the context of the proposed regulatory scheme. Recommendations to authorize non-lawyers to engage in the limited practice of law pursuant to this section shall be forwarded to the [WSBA] Board of Governors for consideration and comment before transmission to the Supreme Court.⁸²

The Washington State Supreme Court therefore gave the POL Board a clear template to act on limited-license practice by nonlawyers.⁸³ Drawing on existing studies and literature

⁸² WGR 25(c)(4); *see also* POL BOARD REGULATIONS 8(C) and 8(D), *available at* http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=gagr25r.

⁸³ Although this template to the POL Board largely was developed after the 2003 Washington Study, *see* WASHINGTON STUDY, *supra* note 10, the inspiration for this template originated with bar association work in Washington State and elsewhere that preceded the 2003 Washington Study. In 1994, for instance, the WSBA commissioned a task force on non-lawyer practice. *See Final Report*, WASH. ST. BAR ASSOC. TASK FORCE ON NONLAWYER PRAC. OF LAW (Sept. 1995) (on file with author). This task force, although divided over whether non-lawyers should be permitted to practice law in any circumstances, *id.* at 14, reported that “support for nonlawyer practice was driven by access to justice concerns,” *id.* at 5, and recommended nine conditions to any practice authority given to non-lawyers. *See id.* at 7-8. The American Bar Association also published a major report in 1995 analyzing and recommending state exploration of expanded non-lawyer legal services. *See Nonlawyer Activity in Law-Related Situations: A Report with Recommendations*, *supra* note 54, at 134-158; *id.* at 135 (commenting

examining whether and how to expand the authority of nonlawyers to provide legal services,⁸⁴ the POL Board undertook the project of exploring and recommending a limited-license practice rule that ultimately became the proposed LLLT Rule. The POL Board understood this proposed LLLT Rule “to fulfill its mission to recommend to the Supreme Court ways nonlawyers can assist in access to law-related services.”⁸⁵ The proposed LLLT Rule, however, proved controversial and heavily debated from the start.

The POL Board initially proposed the LLLT Rule to the WSBA Board of Governors in 2006 as new Washington State Admission to Practice Rule (APR) 28.⁸⁶ The 2006 LLLT Rule proposal began by noting that the Washington Study “clearly established that the legal needs of the consuming public are not currently being met.”⁸⁷ The proposal continued that “[t]he purpose of this rule is to authorize certain persons to render legal assistance or advice in defined areas of law”⁸⁸ and “is intended to permit trained legal technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.”⁸⁹ The proposal accordingly defined a legal technician to mean:

[A] trained practitioner authorized to engage in the limited practice of law as specified in this rule and related rules. The legal technician does not represent the client in court

that the access to justice “gap might be partially closed by allowing nonlawyers to engage in [a specified] range of activities,” subject to regulatory oversight).

⁸⁴ See, e.g., *supra* note 83.

⁸⁵ See *Expanding Access to Law-Related Services*, WSBA, <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Practice-of-Law-Board/Expanding-Access-to-Law-Related-Services> (last visited Feb. 6, 2013).

⁸⁶ See *Original Proposed Legal Technician Rule*, NONLAWYER PRACTICE BOARD REGULATIONS (Jan. 2008), *available at* http://www.wsba.org/~media/Files/News_Events/News/LegalTechnicianRule.ashx [hereinafter 2006 LLLT Rule Proposal]. The Washington State APRs are available at http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=APR.

⁸⁷ 2006 LLLT Rule Proposal, *supra* note 86, at 1.

⁸⁸ *Id.*

⁸⁹ *Id.*

proceedings or negotiations, but provides limited legal assistance as set forth in this rule to a *pro se* client.⁹⁰

The proposal detailed the certification requirements for legal technicians⁹¹ and identified nine areas of activity authorized for legal technician practice:

- 1) Ascertain whether the problem is within the defined practice area, and if so, obtain relevant facts, and explain the relevancy of such information information to the client.
- 2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceedings.
- 3) Inform the client of applicable procedures for proper service of process for motion papers, and proper filing procedures.
- 4) Provide the client with approved self-help materials prepared by a lawyer or approved by the Nonlawyer Practice Commission, which contain information as to statutory requirements, case law basis for the client's claim, and venue and jurisdiction requirements.
- 5) Review pleadings or exhibits presented by the client from the other side, and explain the documents.
- 6) Select and complete forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a lawyer; or forms approved by the Nonlawyer Practice

⁹⁰ *Id.*

⁹¹ Under the proposed rule, applicants to certify as a legal technician must be at least eighteen years of age, have "good moral character," have graduated from a paralegal or legal assistant program approved by the American Bar Association or the Nonlawyer Practice Commission, have two-to-three years substantive legal experience as a paralegal or legal assistant, and pass a legal technician examination testing substantive, procedural, and ethical knowledge. *See id.* at 2-3. In addition, within two years prior to taking the legal technician examination, the legal technician applicant must "[c]omplete at least 20 hours of *pro bono* service to a legal services organization." *Id.*

Commission; and advise the client of the significance of the selected forms to the client's case.

7) Perform legal research and draft letters and pleadings, if the work is reviewed and approved by a lawyer.

8) Advise the client as to other documents which may be necessary, such as exhibits, witness declarations, or party declarations, and explain how such additional documents or pleadings may affect the client's case.

9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.⁹²

The LLLT Rule proposal added that within this authority, the legal technician-client relationship "shall be governed by all rules, expectations, privileges and considerations that govern the relationship between lawyers and their clients."⁹³

The 2006 LLLT Rule proposal also prohibited certain acts by legal technicians,⁹⁴ and provided for a Nonlawyer Practice Commission, "authorized and directed to carry out the functions established by this rule."⁹⁵ In limiting the scope of authorized practice by a legal technician, the LLLT Rule proposal made clear:

A legal technician may not provide services to a client who requires assistance exceeding the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client requires the services of a lawyer. The scope of practice shall be determined as provided in regulations adopted by the [Nonlawyer Practice] Commission and approved by the [POL] Board and the Supreme Court.⁹⁶

⁹² *See id.* at 3-4.

⁹³ *See id.* at 4.

⁹⁴ In addition to some technical prohibitions, the LLLT Rule proposal forbids a legal technician from representing or advertising titles or credentials that could cause a client to believe that the legal technician possesses professional skills beyond those for which the legal technician has been certified, and from representing or otherwise providing legal or law-related services to a client except as permitted by law or the proposed legal technician rule. *See id.* at 5.

⁹⁵ *Id.* at 1. The LLLT Rule proposal included detailed regulations to govern the Nonlawyer Practice Commission. *See id.* at 7-12.

⁹⁶ *See id.* at 5.

Finally, the 2006 LLLT Rule proposal required legal technicians to satisfy continuing certification requirements,⁹⁷ to show proof of financial responsibility,⁹⁸ and generally to follow the standards of professional and ethical care of a lawyer.⁹⁹

This 2006 LLLT Rule proposal did not proceed far past the drawing board, however, because the WSBA Board of Governors, in March 2006, voted to reject it.¹⁰⁰ At this March 2006 WSBA Board of Governors meeting, several WSBA groups strongly opposed the proposed LLLT Rule,¹⁰¹ countered by support from the ATJ Board and the Office of Civil Legal Aid.¹⁰² The Board of Governors voted twelve to two to reject the LLLT Rule proposal “as currently drafted.”¹⁰³ The Board of Governors, however, also voted “to leave the door open to a revised, more specific proposal from the [POL Board].”¹⁰⁴ The Board of Governors highlighted several points of concern for a revised proposal:

- The [LLLT Rule] needed sufficient attorney-client privilege language;
- [The LLLT Rule presents] significant financial and staffing impacts to the WSBA;

⁹⁷ *See id.* at 5-6.

⁹⁸ *See id.* at 6.

⁹⁹ *See id.*

¹⁰⁰ *See* Minutes of WSBA Board of Governors on Rejection of the 2006 LLLT Rule Proposal, at 5, Mar. 3, 2006 [hereinafter March 2006 Minutes] (on file with author); *see also* Letter from WSBA President Mark Johnson to Washington State Supreme Court, at 1 (Sept. 26, 2008) [hereinafter 2008 WSBA Letter] (on file with author) (“In March of 2006, the BOG voted down, by a 12-2 vote, a more expansive Legal Technician proposal.”); Mary Whisner, *WSBA Board of Goves Votes Down Legal Technician Rule*, TRIAL AD (AND OTHER) NOTES BLOG (Mar. 16, 2006 9:07 PM), <http://trialadnotes.blogspot.com/2006/03/wsba-board-of-goves-votes-down-legal.html?m=1>.

¹⁰¹ For example, the Washington Young Lawyers Division opposed the LLLT Rule by a 13-1 vote; the Family Law Section opposed the LLLT Rule by an eighty-nine percent member vote; the American Immigration Lawyers Association expressed concern for the vulnerability of the immigrant community to abuse under the LLLT Rule; and the Legal Foundation of Washington opined that the proposed LLLT Rule lacked sufficiently particularity about approved practice areas for legal technicians. *See* March 2006 Minutes, *supra* note 100, at 4-5.

¹⁰² *See id.* at 5.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

- The [LLLT] Rule may not solve the current access to justice problem . . . ;
- [The LLLT Rule proposal did not address] the means of educating and protecting the public . . . ;
- The [LLLT] Rule [did] not address unlicensed practice of law;
- The [LLLT] Rule proposal present[ed] too many “unknowns”;
- The [LLLT] Rule proposal did not define the areas of non-lawyer practice of law; and
- The insurance market does not offer an insurance package for non-lawyer practice.¹⁰⁵

In response, the POL Board continued to “solicit[] input, which included four public hearings, numerous presentations to local bar associations, Access to Justice Conferences, specialty groups, and presentations to the Board of Governors of the [WSBA].”¹⁰⁶ Moreover, a study committee was appointed, comprised of the POL Board, a Washington Supreme Court Justice, two members of the WSBA Board of Governors, the President of the WSBA Young Lawyers Division, and the Family Law Section Executive Committee Chair.¹⁰⁷ This input led the POL Board to narrow the LLLT Rule proposal to specific practice areas.¹⁰⁸ The POL Board created subcommittees to investigate the viability of the LLLT Rule relating to family law, elder law,

¹⁰⁵ See *id.* at 4.

¹⁰⁶ Letter from POL Board to Washington State Supreme Court, at 2 (January 7, 2008), available at http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Practice-of-Law-Board/~media/Files/Legal%20Community/Committees_Boards_Panels/Practice%20of%20Law%20Board/Legal%20Technician%20Rule%20Documents/Report%20to%20Court.ashx [hereinafter 2008 LLLT Rule Proposal].

¹⁰⁷ See Rita L. Bender & Paul A. Bastine, *Legal Technicians: Myths and Facts*, 62 WASH. ST. B. NEWS 23, 25 (July 2008), available at http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200807JulyBarNews.ashx.

¹⁰⁸ See *id.*; 2008 LLLT Rule Proposal, *supra* note 106, at 2.

immigration law, and landlord-tenant law.¹⁰⁹ In 2007, these subcommittees reported to the POL Board.¹¹⁰ From these reports, the POL Board concluded that immigration law “was not an appropriate [area] for Legal Technician practice,”¹¹¹ but that “the other three areas were very appropriate.”¹¹² Ultimately, the POL Board “selected the recommendation of the Family Law Subcommittee . . . as its recommendation . . . for Legal Technician practice.”¹¹³

The POL Board unveiled this revised LLLT Rule proposal in January 2008, recommending that “Legal Technicians be certified to provide a limited range of services within the substantive area of ‘family law.’”¹¹⁴ The 2008 LLLT Rule proposal incorporated the 2006 LLLT Rule, as an attached exhibit.¹¹⁵ The text of the proposed LLLT Rule in 2008 thus identified the same nine areas of activity that legal technician certification would authorize, the same certification requirements, and the same limitations to legal technician practice.¹¹⁶ Yet, the POL Board’s memorandum letter accompanying the 2008 LLLT Rule proposal described these rules as governing “family law legal technicians,”¹¹⁷ and contextualized the authorized scope of practice to family law.¹¹⁸ The POL Board’s

¹⁰⁹ 2008 LLLT Rule Proposal, *supra* note 106, at 2-3.

¹¹⁰ *See id.* at 3.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*; *see also id.* at Ex. E: Family Law Subcommittee Recommendation.

¹¹⁴ *Id.* at 3.

¹¹⁵ *See id.* at Ex. A.

¹¹⁶ *See id.*; *see also* New Admission to Practice Rule 28: Limited Practice Rule for Legal Technicians, WASH. ADMIS. TO PRAC. R. 28 (Proposed Jan. 2009), *available at* http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplayArchive&ruleId=154. Indeed, the only noticeable difference between the 2006 LLLT Rule and the 2008 LLLT Rule is that in section J(3), dealing with professional responsibility for client funds, the 2008 LLLT Rule refers to Washington Rule of Professional Conduct (RPC) 1.14, whereas the 2006 LLLT Rule refers to RPC 1.15B. The change is odd, because RPC 1.14 concerns lawyers’ professional responsibility to clients with diminished capacity, and RPC 1.15B details standards for client trust accounts, and section J(3) of the proposal addresses legal technicians’ professional responsibility for client property.

¹¹⁷ *See* 2008 LLLT Rule Proposal, *supra* note 106, at 3-4.

¹¹⁸ *See, e.g., id.* at 3 (describing the first area of practice as “[a]scertain[ing] whether the problem is within the defined practice area of *family law*, and if so, obtain[ing]

memorandum also listed family law-specific practice limitations not contained in the LLLT Rule, itself, but that the POL Board believed were consistent with the LLLT Rule's express limitations.¹¹⁹ In particular, the 2008 LLLT Rule proposal prohibited legal technicians from:

1. Assisting clients where a party to the action has active military service status, unless a Washington attorney directly and actively supervises the legal technician.
2. Contacting the opposing party or his or her counsel or entering into negotiations with them.
3. Engaging in or responding to discovery procedures, unless a Washington attorney directly and actively supervises the legal technician.
4. Drafting non-party witness declarations, unless a Washington attorney directly and actively supervises the legal technician, except that an unsupervised legal technician may explain to a client the need for and criteria of non-party declarations.
5. Providing services related to assisted reproduction parenting issues.¹²⁰

The POL Board also analyzed existing nonlawyer, legal-services programs in evaluating the affordability, cost, effectiveness, and risks of the proposed LLLT Rule.¹²¹ From this

relevant facts, and explain[ing] the relevancy of such information to the client” (emphasis added).

¹¹⁹ The 2008 LLLT Rule proposal prohibited legal technicians from assisting clients, unless supervised directly and actively by an attorney, in matters involving the Indian Child Welfare Act, relocations with minor children, parenting plan modifications, disestablishment or rescission of parenting acknowledgment, interstate custody, transfer of interest in real property, division of retirement benefits, division of business property, and contempt proceedings. *See id.* at 4-5.

¹²⁰ *See id.* at 5.

¹²¹ In particular, the LLLT Rule proposal considered data from nonlawyer document-preparer programs in California and Arizona, and the Limited Practice Officer Rule in Washington State, under which nonlawyers may assist in certain real estate transactions. *See* WASH. GEN. RULE 24. *See also* 2008 LLLT Rule Proposal, *supra* note 106, at 5. For further information about the California document-preparer

analysis, the POL Board concluded that legal technician services likely would prove more affordable than comparable services from a lawyer;¹²² the LLLT Rule would involve a start-up cost of \$200,000 but would become self-supporting through license and exam fees;¹²³ and the public would be protected by the provisions of the proposed LLLT Rule itself—such as the requirements for financial responsibility, a licensing examination, continuing education requirements, and regulation by the judiciary, along with enhanced enforcement of unauthorized practice.¹²⁴ The POL Board therefore concluded that legal technicians would enhance access to justice: “This widely available, affordable local training, should translate into greater access to legal services for low income legal consumers, especially in traditionally underserved rural areas.”¹²⁵

Instead of submitting the 2008 LLLT Rule proposal to the WSBA Board of Governors, however, the POL Board submitted it directly to the Washington State Supreme Court for its consideration.¹²⁶ This move took the Board of Governors by surprise,¹²⁷ with the Board of Governors characterizing the 2008 LLLT Rule proposal as “tantamount to a revolution in the practice of law.”¹²⁸ The Board of Governors thus predicted to the supreme court that “[t]he legal technician proposal will generate significant

program, see CAL. ASSOC. OF LEG. DOC. PREPARERS, <http://www.calda.org/> (last visited Feb. 6, 2013); CAL. BUS. CODE § 6400(c) (West 2012). For information about the Arizona document-preparer program, see *Certification & Licensing: Legal Document Preparers*, ARIZ. JUD. BRANCH, <http://www.azcourts.gov/cld/LegalDocumentPreparers.aspx> (last visited Feb. 6, 2013).

¹²² See 2008 LLLT Rule Proposal, *supra* note 106, at 5-7.

¹²³ See *id.* at 7-8.

¹²⁴ See *id.* at 8-11.

¹²⁵ *Id.* at 8.

¹²⁶ See *id.* at 12; Letter from WSBA President Stanley Bastian to Washington State Supreme Court, at 1 (Feb. 8, 2008) [hereinafter 2008 Bastian Letter] (on file with author) (writing on the WSBA’s plan to respond to the POL Board’s January 2008 LLLT Rule proposal, to the Washington State Supreme Court, and noting that “[w]e have not yet had an opportunity to consider the current proposal”).

¹²⁷ See 2008 Bastian Letter, *supra* note 126 (“[I]t took us by surprise when the POL [Board] submitted [the 2008 LLLT Rule proposal] to the Court without first seeking review and input from the WSBA Board of Governors.”).

¹²⁸ *Id.*

controversy,”¹²⁹ and requested an opportunity for the full WSBA to evaluate the 2008 LLLT Rule proposal.¹³⁰ The subsequent debate on the 2008 LLLT Rule proposal confirmed the Board of Governor’s prediction.

To inform the WSBA membership of the 2008 LLLT Rule proposal, the WSBA dedicated a 2008 volume of its official publication, the *Washington State Bar News*,¹³¹ to debate the proposal, including both pro and con articles. For instance, Rita L. Bender and Paul A. Bastine, both members of the POL Board, wrote *Legal Technicians: Myths and Facts*.¹³² In this piece, the authors advocated in favor of the LLLT Rule proposal by arguing against a number of common concerns: that the POL Board inappropriately circumvented the WSBA Board of Governors, that legal technicians will be insufficiently trained and untested, that legal technicians will litigate cases, that legal technicians will exceed and abuse practice limitations, that the legal-technician program will burden the WSBA financially, that legal technicians will harm clients and the public, and that legal technicians will not prove cost-efficient and will provide second-class services.¹³³ The authors concluded that “[t]he legal technician rule is not the ultimate solution, but it is a step toward full access to justice.”¹³⁴

Jean Cotton, Chair of the WSBA Family Law Section, countered this view in *Legal Technicians Aren’t the Answer: The Family Law Section’s Executive Committee Weighs In*.¹³⁵ Arguing that the POL Board resisted opposing views to the LLLT Rule proposal about this program’s risks, costs, and efficiency,¹³⁶ Cotton highlighted the demands and complexity of family law practice.¹³⁷

¹²⁹ *Id.* at 3.

¹³⁰ *See id.* at 2-3.

¹³¹ In December of 2012, the *Washington State Bar News* became the *NWLawyer*. See Michael Heatherly, *It Will Be Worth the Wait*, 66 WASH. ST. B. NEWS 6 (2012).

¹³² *See* Bender & Bastine, *supra* note 107, at 23.

¹³³ *See id.* at 23-28.

¹³⁴ *Id.* at 29.

¹³⁵ 62 WASH. ST. B. NEWS 30 (July 2008), available at http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Events/Publications/Bar%20News/2008%20Full%20Issues/200807JulyBarNews.ashx.

¹³⁶ *See id.* at 30-32.

¹³⁷ *See id.* at 31.

“[I]naccurate or inadequate legal services in family law cases,” Cotton observed, “can lead to long-term, disastrous results for the families of our state,”¹³⁸ and “poses a risk to the public.”¹³⁹ To address the continuing justice gap, Cotton advocated, instead, for better funding of lawyer-based legal services, “[m]inimal but mandatory *pro bono* service requirements,” and enhanced public education and support for *pro se* litigants.¹⁴⁰

Gregory Dallaire, a member of the ATJ Board, argued that these solutions already had proven inadequate, in *A Rationale for the Proposed Legal Technician Limited Practice Rule and Regulations*.¹⁴¹ Analogizing the legal profession to the medical profession, Dallaire opined:

The problem is just too big for solution without supplemental resources born of creative thinking. Certified technicians will not, and should not, take the place of lawyers . . . But just as a combination of nurses, nurse practitioners, and EMTs augment the resources available to patients of MDs, trained, tested, and certified legal technicians can supplement the resources available to the segment of the public that falls between free legal aid and those who have the resources to retain private counsel.¹⁴²

Mark A. Johnson, the 2008 WSBA president-elect, and David S. Heller, a WSBA governor, responded with *The Washington State Supreme Court Should Decline to Adopt the Family Law Legal Technician Proposal*.¹⁴³ These authors emphasized that, unlike limited, nonlawyer practice provisions in places like California and Arizona, the proposed LLLT Rule would permit legal technicians to exercise independent legal judgment and offer case-specific advice, including on necessary evidence.¹⁴⁴ The

¹³⁸ *Id.*

¹³⁹ *Id.* at 32.

¹⁴⁰ *Id.* at 30.

¹⁴¹ See Dallaire, *supra* note 51, at 14-15.

¹⁴² *Id.* at 16.

¹⁴³ 62 WASH. ST. B. NEWS 19 (July 2008), available at http://www.wsba.org/News-and-Events/Publications-Newsletters-Brochures/Bar-News/~media/Files/News_Publications/Bar%20News/2008%20Full%20Issues/200807JulyBarNews.ashx.

¹⁴⁴ See *id.* at 19-20.

training and experience necessary for this professional endeavor, these authors explained, will not realistically translate into widely available, low-cost legal services for the persons most in need.¹⁴⁵ Rather, these authors predicted, the legal technician program will drain limited bar resources from other, more effective access to justice programs.¹⁴⁶

Several interested parties commented on the 2008 LLLT Rule proposal to the WSBA Board of Governors. For instance, the WSBA Pro Bono and Legal Aid Committee endorsed the 2008 LLLT Rule “to assist low and moderate income family law litigants—most of whom are currently unrepresented—in obtaining the type and quality of legal help they need to resolve their cases.”¹⁴⁷ Supporting provisos that would enhance the LLLT Rule’s enforcement provisions and financial self-sustainability, the Pro Bono and Legal Aid Committee observed that existing programs have failed adequately to address the access to justice crisis.¹⁴⁸ Accordingly, the Pro Bono and Legal Aid Committee concluded that “[i]f the WSBA wishes to see progress in this area of unmet needs, it will itself need to be progressive,”¹⁴⁹ and adopt the LLLT Rule proposal.¹⁵⁰

The ATJ Board also communicated its view to the WSBA.¹⁵¹ Acknowledging the WSBA’s division over the proposal and vocal opposition to it, the ATJ Board commented that “[d]ivisiveness . . . must be balanced against the demonstrated need of individuals in our state who cannot afford a lawyer.”¹⁵² Despite other access to

¹⁴⁵ See *id.* at 20-21.

¹⁴⁶ See *id.* at 21-22.

¹⁴⁷ Memorandum from WSBA Pro Bono & Legal Aid Comm. to WSBA President 2 (Aug. 1, 2008) available at http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Practice-of-Law-Board/~media/Files/Legal%20Community/Committees_Boards_Panels/Practice%20of%20Law%20Board/Legal%20Technician%20Rule%20Documents/legaltechnicianproposal.pblaccomments.ashx.

¹⁴⁸ See *id.* at 1-2.

¹⁴⁹ *Id.* at 4.

¹⁵⁰ See *id.*

¹⁵¹ See Memorandum from ATJ Board to WSBA President and Washington State Supreme Court Rules Comm. Chair (Aug. 15, 2008), available at http://wsponline.org/index.php?option=com_phocadownload&view=category&id=15:ws-pa-nfpa&download=74:atj-letter-to-supreme-court&Itemid=90.

¹⁵² *Id.* at 3.

justice programs, “client demand greatly exceeds the availability of lawyers willing to provide services at reduced rates.”¹⁵³ The ATJ Board thus recommended that the WSBA Board of Governors join the ATJ Board in proposing a task force to the Washington State Supreme Court to refine the LLLT Rule proposal and “build consensus around a program that will finally, at long last, address the long-standing needs of the public.”¹⁵⁴

Notwithstanding the ATJ Board’s call for further study of the 2008 LLLT Rule proposal, the WSBA Board of Governors, in September of 2008, formally opposed the proposal in a nine-to-three vote.¹⁵⁵ In a letter reporting the WSBA Board of Governor’s position to the Washington State Supreme Court, the WSBA President explained that the WSBA Board of Governor’s had examined the proposal thoroughly and no further study was required.¹⁵⁶ The Board of Governors concluded:

- The LLLT Rule would revolutionize legal practice by permitting non-lawyers to “be legal representatives-counselors exercising independent judgment in a direct representative-client relationship.”¹⁵⁷
- As a private capital, free-market model for delivering low-cost legal services, the LT program “has no chance of attracting a sufficient number of individuals to the program to make an appreciable difference in the delivery of legal services to the intended group of clients.”¹⁵⁸
- The Washington State Legislature may reduce funding for other access to justice programs if the legal technician program is implemented.¹⁵⁹
- “Because [legal technicians] will not be able to appear in court, the proposal will not solve the problem of *pro se* representation.”¹⁶⁰

¹⁵³ *Id.* at 1.

¹⁵⁴ *Id.* at 2-3.

¹⁵⁵ See 2008 WSBA Letter, *supra* note 100, at 1.

¹⁵⁶ See *id.*

¹⁵⁷ *Id.* at 2.

¹⁵⁸ *Id.* at 3.

¹⁵⁹ See *id.*

- The legal technician program will take work away from young, rural, and less affluent lawyers.¹⁶¹
- The LLLT Rule proposal “represents the beginning of the institutionalization of second class, separate but unequal, justice. It is not yet time to give up the dream of equal justice.”¹⁶²
- If the legal technician program fails, individuals who committed to the training and licensing required for certification will be unfairly prejudiced.¹⁶³
- The POL Board’s cost estimate to the WSBA is questionable, and negatively will impact the WSBA during a time of fiscal crisis.¹⁶⁴

Accordingly, the Board of Governors recommended that the Washington State Supreme Court reject the LLLT Rule proposal.¹⁶⁵

Following the WSBA’s public debate and Board of Governor’s vote on the LLLT Rule proposal, the Washington State Supreme Court, in 2009, solicited public comments.¹⁶⁶ These comments reflected a wide range of views on the proposed LLLT Rule, with many commentators opposing it strongly. For instance, the Washington Young Lawyers Division of the WSBA opposed the rule, detailing numerous efficacy and professional objections and concluding that “the problem is not a shortage of attorneys willing to take cases on a reduced fee, but rather it is a problem of

¹⁶⁰ *Id.*

¹⁶¹ *See id.* at 4.

¹⁶² *Id.* at 4.

¹⁶³ *See id.*

¹⁶⁴ *See id.*

¹⁶⁵ *See id.* at 5.

¹⁶⁶ *See Comments for APR 28—Limited Practice Rule for Legal Technicians*, WASH. COURTS,

http://www.courts.wa.gov/court_rules/?fa=court_rules.commentDisplay&ruleId=154
(last visited Feb. 6, 2013) (providing access to the January 2009 Archive of Proposed Rules Published for Comment).

matching willing attorneys to the client.”¹⁶⁷ The WSBA Family Law Section reiterated that it “oppos[ed], and respectfully request[ed] that the Supreme Court resoundingly reject, in the strongest possible terms, the [LLLT Rule proposal] by the [POL] Board.”¹⁶⁸ The Washington State Superior Court Judge’s Association also opposed the rule “as drafted,”¹⁶⁹ noting that the Family and Juvenile Law Committee of the Association “oppose[d] the draft in a very close vote.”¹⁷⁰ Local Washington State bar associations opposed the rule,¹⁷¹ as did professional associations of attorneys,¹⁷² and private practice attorneys.¹⁷³

¹⁶⁷ See Letter from Washington Young Lawyers Division of the WSBA (Apr. 30, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/WSBA-WYLD.pdf.

¹⁶⁸ See Letter from Jean R. Cotton, Outgoing Chair of the Family Law Section of the WSBA to the Washington State Supreme Court (Apr. 28, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/WSBA%20FLEC.pdf.

¹⁶⁹ See Letter from Judge Richard McDermott, President of the Washington State Superior Court Judge’s Association to the Washington State Supreme Court (Jan. 14, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Sup%20Court%20Judges%20Assoc.pdf.

¹⁷⁰ *Id.*

¹⁷¹ See Letter from Carol Mortenson, President of the Clallam County Bar Association, to the Washington State Supreme Court (Mar. 30, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Clallam%20County%20Bar%20Assoc.pdf.

¹⁷² See Letter from James M. Brown, President of the Washington Chapter of the National Academy of Elder Law Attorneys, to the Washington State Supreme Court (Apr. 27, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/NAELA%20Wa%20Chapter.pdf; Letter from the Law Office of Erik Bjornson, WSBA member, to the Washington State Supreme Court (Jan. 14, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Erik%20Bjornson.pdf (opposing rule and including memorandum from the Washington State Trial Lawyers Association reporting 34-0 opposition to the proposed LLLT Rule).

¹⁷³ See *id.*; Letter from the Law Office of Wechsler Becker, LLP to the Washington State Supreme Court (Mar. 25, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Wechsler%20Becker,%20LLP.pdf; Letter from Melissa Chin to the Washington State Supreme Court (Apr. 30, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Melissa%20Chin.pdf; Letter from Michael A. Valdez & C. Scott Sage to the Washington State Supreme Court (Apr. 30, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Valdez%20and%20Sage.pdf; Letter from Snezana Skrobonja to the Washington State Supreme Court (Apr.

Supportive comments came from bar leaders, however, including the POL Board Chair Steve Crossland, who commented that “the discussion has become so narrowly focused that we have lost sight of the bigger picture,”¹⁷⁴—access to justice. Advocating for adoption of the LLLT Rule, Crossland advised the Supreme Court, “You will become leaders in the Nation and will provide the opportunity for much needed legal services for low income citizens of the State of Washington.”¹⁷⁵ Supportive advocacy also came from HALT (Help Abolish Legal Tyranny), a national, nonprofit, public-interest group dedicated to increased access to the civil justice system,¹⁷⁶ and from the Washington State Paralegal Association.¹⁷⁷ In addition, members of the judiciary commented favorably on the 2008 LLLT Rule proposal,¹⁷⁸ as did members of both the practicing bar,¹⁷⁹ and the public.¹⁸⁰

29, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Snezana%20Skrobonja.pdf.

¹⁷⁴ Letter from Stephen R. Crossland, Chair of the POL Board, at 1 (Apr. 2, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Stephen%20R.%20Crossland.pdf.

¹⁷⁵ *Id.* at 3.

¹⁷⁶ See Letter from Robert Gordon & Theresa Meehan Rudy, Directors of HALT, to the Washington State Supreme Court, *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/HALT.pdf.

¹⁷⁷ See Letter from Brian K. Haberly, the WSPA President, to the Washington State Supreme Court (Apr. 28, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/WSPA-Brian%20Haberly.pdf.

¹⁷⁸ See Letter from Judge Paul A. Bastine (Ret.) to the Washington State Supreme Court (Feb. 25, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Paul%20A.%20Bastine%20Retired%20Judge.pdf.

¹⁷⁹ See Letter from William J. Bender to the Washington State Supreme Court (Mar. 23, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/William%20Bender.pdf.

¹⁸⁰ See Letter from Amy C. Woodfin to the Washington State Supreme Court (Apr. 27, 2009), http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/Amy%20Woodfin.pdf; Letter from Dean Mann to the Washington State Supreme Court (Apr. 6, 2009), *available at* http://www.courts.wa.gov/court_Rules/proposed/2009Jan/APR28/onehotdude@peoplepc.com.pdf.

Primed with all of these perspectives on the 2008 LLLT Rule proposal, the Washington State Supreme Court nevertheless deferred any action on the proposal past its 2010 conference.¹⁸¹ The POL Board used this delay to communicate again with the Supreme Court,¹⁸² “to explain why the Legal Technician Rule is even more essential now than when first proposed.”¹⁸³ Documenting the prominence of unregulated nonlawyer practice already in place, and emphasizing again the positive track record of nonlawyer programs in California and Arizona, the POL Board reiterated that legal technicians “are not a replacement for the Moderate Means Program or lawyer *pro bono* services.”¹⁸⁴ The POL Board also reported that it intended to seek private funding for the program, if necessary, to sustain it without burdening WSBA resources.¹⁸⁵

In December of 2011, the WSBA proposed an amended version of the LLLT Rule to the Washington State Supreme Court.¹⁸⁶ The proposed amendments refined, rather than materially changed, the LLLT Rule proposal.¹⁸⁷ The WSBA, however, maintained its opposition to the LLLT Rule proposal in

¹⁸¹ See Archive of APR 28, *infra* note 200.

¹⁸² See 2010 POL Board Letter, *supra* note 52.

¹⁸³ See *id.* at 1.

¹⁸⁴ See *id.* at 1-2.

¹⁸⁵ See *id.* at 2.

¹⁸⁶ See Letter from Paula C. Littlewood, Executive Director of the Washington State Bar Association, to Chief Justice Barbara A. Madsen, Washington Supreme Court (Dec. 20, 2011) [hereinafter WSBA Proposed Limited License Practitioner Rule], available at http://www.wsba.org/~media/Files/News_Events/News/LLP.ashx (containing the WSBA Proposed Limited License Practitioner Rule).

¹⁸⁷ Cf. Letter from POL Board to Washington State Supreme Court (Feb. 12, 2012) (on file with author) (“The [POL] Board and the WSBA are in agreement about the majority of the revisions WSBA staff made,” which “do not constitute a material change to the substance of the rule.”). Many of these proposed amendments to the LLLT Rule thus ultimately were reflected in the final version of APR 28 that the Washington State Supreme Court adopted. See *infra* Part II.C. One proposed amendment that did not find its way into the adopted version of APR 28 was the WSBA’s proposed title change for these limited license actors, from “legal technicians” to “limited license practitioners.” See WSBA Proposed Limited License Practitioner Rule, *supra* note 186, at 3; cf. Letter from POL Board Letter to Washington State Supreme Court (Feb. 12, 2012) (on file with author) (opposing WSBA’s proposed name change, contending that title of legal technician “best identifies the role that the proposed rule creates”).

general.¹⁸⁸ The WSBA also videotaped a two-hour “town hall” meeting addressing the 2008 LLLT Rule proposal.¹⁸⁹ During this meeting, the WSBA repeated its opposition to the 2008 LLLT Rule proposal. The WSBA further recorded comments from audience members in Seattle, along with webcast participants from other parts of Washington State, for submission to the Washington State Supreme Court.¹⁹⁰ These comments ran through the existing spectrum of pros and cons to the proposed LLLT Rule from many of the same interested parties.¹⁹¹

The Washington Supreme Court also heard during this interval from Dean Kellye Y. Testy of the University of Washington School of Law—Washington State’s sole public law school.¹⁹² Observing that “[a]ccess to justice is dangerously compromised in our state and nation,”¹⁹³ Dean Testy expressed her “strong support for a limited license for some forms of law practice,”¹⁹⁴ and “applaud[ed] the [POL] Board for its support of this innovation.”¹⁹⁵ Dean Testy acknowledged that a “rigorous educational program” should be a prerequisite of this kind of limited-practice license, to ensure legal technicians appropriately can discern the limits of their practice authority.¹⁹⁶ Yet, Dean Testy supported the LLLT Rule proposal as a “prudent step” toward closing the justice gap that should not adversely impact

¹⁸⁸ See WSBA Proposed Limited License Practitioner Rule, *supra* note 186, at 2. The WSBA reiterated its opposition to the LLLT Rule proposal in May of 2012, when it approved some suggestions from the Washington State Supreme Court to the WSBA’s proposed amendments. See Minutes of Special Meeting of the WSBA Board of Governors, May 22, 2012, available at <http://www.wsba.org/About-WSBA/Governance/Board-of-Governors/~media/Files/About%20WSBA/Governance/BOG%20Minutes/2011%202012/Public%20Session%20Minutes%20%20May%2022%202012%20Special%20Meeting.ashx>.

¹⁸⁹ See Washington State Bar, *Limited License Practitioner Town Hall*, YOUTUBE (Feb. 23, 2012), <http://youtu.be/cMykqPODKgU>.

¹⁹⁰ This meeting also began with a fairly detailed explanation of the 2008 LLLT Rule proposal and its procedural background.

¹⁹¹ See *id.*

¹⁹² See Letter from Dean Kellye Y. Testy to the Washington State Supreme Court (May 1, 2012) [hereinafter Dean Testy Letter] (on file with author).

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See *id.*

lawyers' economic welfare.¹⁹⁷ On the contrary, Dean Testy predicted that "as citizens flourish as a result of getting their basic needs met [with the help of legal technicians], they may advance to other matters that require a lawyer's counsel."¹⁹⁸ Thus, Dean Testy observed, "[a] rising tide can indeed lift all boats."¹⁹⁹

In the summer of 2012, after receiving and considering all of this input on the 2008 LLLT Rule proposal, the Washington State Supreme Court adopted the proposal, codifying it as Washington State APR 28.²⁰⁰ The adopted version of APR 28, however, did contain 2012 amendments by the court to reflect and address received comments.²⁰¹ Moreover, even with the amendments reflected in APR 28, the court was not unanimous in its support for this new practice rule.

B. APR 28: The Text and Decision

APR 28 largely tracks the 2008 LLLT Rule proposal.²⁰² Thus, subject to some minor amendments largely proposed by the WSBA,²⁰³ the basic scope of legal-technician-practice authority remains comparable to the authority detailed in the 2008 LLLT proposal.²⁰⁴ APR 28, however, does include some distinct

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ See http://www.courts.wa.gov/court_rules/?fa=court_rules.archiveActions&historyid=60 (last visited Feb. 6, 2013); see also *In the Matter of the Adoption of New APR 28—Limited Practice Rule for Limited License Legal Technicians*, No. 25700-A-1005, at 1-2 (Wash. June 15, 2012) [hereinafter *APR 28 Decision*], available at <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

²⁰¹ See *id.* (noting "the individuals and organizations whose suggestions to the language of the rule have improved it"); see also *supra* notes 188-190 (noting amendments proposed by the WSBA and largely approved by the POL Board).

²⁰² For readers' convenience, the full text of APR 28 is available in PDF form on the Washington State Courts Website. WASH. ADMIS. TO PRAC. R. 28 [hereinafter *APR*], available at http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&ruleId=gaapr28&pdf=1.

²⁰³ See *supra* notes 116-117 and accompanying text.

²⁰⁴ See APR 28(F). APR 28(F), however, removes the language from the comparable provision of the 2008 LLLT Rule proposal that "the relationship between the Legal Technician and the client shall be governed by all rules, expectations, privileges and considerations that govern the relationship between lawyers and their clients." See

provisions to reflect the 2012 amendments to the 2008 LLLT Rule proposal.²⁰⁵ For example, APR 28(D) and APR 28(E) separate applicant requirements from licensing requirements, which the LLLT Rule proposal had combined under “certification” requirements.²⁰⁶ APR 28(C) also establishes a Limited License Legal Technician Board (LLLTT Board) to substitute for the Non-Lawyer Practice Commission and Regulations that the POL Board had proposed with the LLLT Rule.²⁰⁷ APR 28(H) adds more prohibited acts, and expressly prohibits representation in court proceedings,²⁰⁸ for instance, or negotiation of legal rights or responsibilities,²⁰⁹ or service to clients in other states.²¹⁰ Furthermore, APR 28(K) clarifies legal technicians’ standards of professional and ethical care,²¹¹ adding that the Washington State’s attorney-client privilege and lawyer fiduciary responsibility will apply to the legal technician–client relationship.²¹²

Perhaps as significant as these amendments, however, was the Washington State Supreme Court’s division over the 2008 LLLT Rule proposal itself: Six justices voted to adopt APR 28, but three justices voted to reject it. In a majority opinion by Chief Justice Barbara Madsen, the supreme court explained and defended its adoption of APR 28:

supra note 95 and accompanying text. APR 28(F) also makes more clear the legal technician’s duty not to engage in acts outside the defined practice area for which the legal technician is licensed, and instead to advise the client to seek a lawyer.

²⁰⁵ See Archive of APR 28, *supra* note 200.

²⁰⁶ See 2008 LLLT Rule Proposal, *supra* note 106.

²⁰⁷ See *supra* note 95 (explaining original proposal); Letter from POL Board, *supra* note 187 (asking Washington State Supreme court not to adopt the originally proposed Nonlawyer Practice Commission and regulations and instead to create the LLLTT Board with the aid of the WSBA’s expertise). The Supreme Court thus did not act on the proposed Nonlawyer Practice Commission and Regulations when the Court adopted APR 28. See Archive of APR 28, *supra* note 200 (noting no Supreme Court action on proposed Non-Lawyer Practice Commission regulations).

²⁰⁸ APR 28(H)(5).

²⁰⁹ *Id.* at 28(H)(6).

²¹⁰ *Id.* at 28(H)(7).

²¹¹ *Id.* at 28(K)(1) and (K)(2).

²¹² *Id.* at 28(K)(3).

[W]e adopt APR 28, the Limited Practice Rule for Limited License Legal Technicians. It is time. Since this rule was submitted to the Court by the [POL] Board in 2008, and revised in 2012, we have reviewed many comments both in support and in opposition to the proposal . . . During this time, we also have witnessed the wide and ever-growing gap in necessary legal and law related services for low and moderate income persons.

. . . The Limited License Legal Technician Rule that we adopt today is narrowly tailored to accomplish its stated objectives, includes appropriate training, financial responsibility, regulatory oversight and accountability systems, and incorporates ethical and other requirements designed to ensure competency within the narrow spectrum of the services that Limited License Legal Technicians will be allowed to provide. In adopting this rule we are acutely aware of the unregulated activities of many untrained, unsupervised legal practitioners who daily do harm to “clients” and to the public’s interest in having high quality civil legal services provided by qualified practitioners.

The practice of law is a professional calling that requires competence, experience, accountability and oversight. Legal License Legal Technicians [*sic*] are not lawyers. They are prohibited from engaging in most activities that lawyers have been trained to provide. They are, under the rule adopted today, authorized to engage in very discrete, limited scope and limited function activities. Many individuals will need far more help than the limited scope of law related activities that a limited license legal technician will be able to offer. These people must still seek help from an attorney. But there are people who need only limited levels of assistance that can be provided by non-lawyers trained and overseen within the framework of the regulatory system developed by the [POL] Board. This assistance should be available and affordable. Our system of justice requires it.²¹³

The Washington Supreme Court further responded to the criticisms and concerns that were raised in response to the LLLT

²¹³ See APR 28 Decision, *supra* note 200, at 1-2.

Rule proposal. For example, in response to the concern that the legal-technician program threatens the practice of lawyers, the court asserted that “[p]rotecting the monopoly status of attorneys in any practice area is not a legitimate objective.”²¹⁴ Moreover, the court rejected that legal technicians’ limited-practice authority would intrude appreciably into attorney practice.²¹⁵ To the concern that a viable and necessary market does not exist for legal technicians, the court noted that a viable market could not be excluded, and legal technicians may complement existing attorney practice.²¹⁶ Also, “it may be that non-profit organizations that provide social services with a family law component . . . will elect to add limited license legal technicians onto their staffs.”²¹⁷ On whether legal technicians will threaten client and public interests, the court noted the existing, unregulated market of legal practitioners who already harm many clients and emphasized the regulatory scheme for legal technicians that will involve certification, professional oversight, financial responsibility, and continuing education.²¹⁸ Finally, responding to the complaint that attorneys will be required to underwrite a professional program for non-attorneys, the court expressed its confidence “that the WSBA and [POL] Board, in consultation with this Court, will be able to develop a fee-based system that ensures that the licensing and ongoing regulation of limited license legal technicians will be cost-neutral to the WSBA and its membership.”²¹⁹

In the end, after addressing these concerns, the court explained that “[n]o one has a crystal ball.”²²⁰ Yet, “if market economies can be achieved, the public will have a source of relatively affordable technical help with uncomplicated legal matters.”²²¹ The Washington Supreme Court therefore concluded that APR 28 “offers a sound opportunity to determine whether, and if so, to what degree the involvement of effectively trained,

²¹⁴ *Id.* at 7.

²¹⁵ *Id.*

²¹⁶ *Id.* at 8-10.

²¹⁷ *Id.* at 9.

²¹⁸ *Id.* at 10-11.

²¹⁹ *Id.* at 11.

²²⁰ *Id.* at 8.

²²¹ *Id.* at 9.

licensed, and regulated non-attorneys may help expand access to necessary legal help in ways that serve the justice system and protect the public.”²²²

Justice Susan Owens penned the dissent, which was joined by Justices Charles Johnson and Mary Fairhurst.²²³ Justice Owens began by noting that in her tenure on the Washington Supreme Court, she had “not once authored a dissent to an administrative order.”²²⁴ Moreover, Justice Owens acknowledged the pressing need “to expand the availability of legal assistance to the public.”²²⁵ But, in Justice Owens’s view, “APR 28 is ill-considered, incorrect, and most of all extremely unfair to the members of the [WSBA].”²²⁶

Assuming, for argument, that the supreme court had “the inherent authority to create this new profession of legal technicians,”²²⁷ Justice Owens “[did] not believe that we possess[ed] the authority to tax the lawyers of this state to pay ‘all of the expenses reasonably and necessarily incurred’ by the [LLLT Board].”²²⁸ This potential financial burden on the WSBA proves particular unfair, Justice Owens continued, because the WSBA

²²² *Id.* at 11-12.

²²³ *See* In the Matter of the Adoption of New APR 28—Limited Practice Rule for Legal Technicians and New APR 28—Non-Lawyer Practice Commission Regulations, No. 25700-A-1005, at 1-7 (Wash. June 14, 2012) [hereinafter APR 28 Dissent] (Owens, J., dissenting), available at <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf> (last visited Jan. 15, 2013). Justice Fairhurst, in a handwritten note to the APR 28 Dissent, concurred with the dissent “in result only.” *See id.* at 5. Justice Fairhurst did not elaborate on her rationale for concurring in result only.

²²⁴ *Id.* at 1.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.* at 1-2.

²²⁸ *Id.* at 2. Justice Owens’ dissent here actually referred to the proposed Non-Lawyer Practice Commission and Regulation 3(G), which the original LLLT Rule proposal established. *See supra* notes 87-99. The Washington State Supreme Court, however, amended the 2008 LLLT Rule proposal to establish the LLLT Board, *see* APR 28(C); APR 28 Decision, *supra* note 200, at 3, and thus the court never acted on the proposed LT Regulations. *See supra* note 207; Archive of APR 28, *supra* note 200 (noting no Washington State Supreme Court action on proposed Non-Lawyer Practice Commission regulations). Nevertheless, because APR28(C) does not identify the funding source for the LLLT Board, Justice Owens’ point may carry to this new provision.

recently incurred a major dues rollback,²²⁹ and WSBA members already have committed substantial time and money to access to justice initiatives.²³⁰ Observing that APR 28 did not limit legal-technician-practice authority to family law or any other specific area of practice, Justice Owens surmised that APR 28 was designed to confer broad practice-authorization discretion to help to cover its likely expense.²³¹ This framework, Justice Owens concluded, would not enhance justice.²³²

Dissent notwithstanding, APR 28 became effective on September 1, 2012.²³³ Yet, as the APR 28 decision itself observed, “The rule itself authorizes no one to practice. It simply establishes the regulatory framework for the consideration of proposals to allow non-attorneys to practice.”²³⁴ Much work remains to be done between the WSBA, the LLLT Board, and the Washington State Supreme Court before APR 28 can be implemented and legal technicians can be authorized to practice.

C. Implementation of APR 28

First and foremost, the LLLT Board must be established, because the LLLT Board will “creat[e] and draft[] the operational details for the LLLT program.”²³⁵ APR 28(C)(1) requires the Washington State Supreme Court to appoint thirteen members to the LLLT Board, with nine Washington State lawyers and four nonlawyer Washington State residents. At least one member of the LLLT Board must be a legal educator. To assist the supreme court, the WSBA established an LLLT Board Nominating Committee, and in November this committee submitted a slate of

²²⁹ APR 28 Dissent, *supra* note 225, at 2.

²³⁰ *Id.* at 3-4.

²³¹ *Id.* at 3.

²³² *Id.* at 5.

²³³ See APR 28 Decision, *supra* note 200, at 12; see also *Supreme Court Adopts Rule*, *supra* note 7.

²³⁴ APR 28 Decision, *supra* note 200, at 2-3.

²³⁵ *Limited License Legal Technicians: Admission to Practice Rule 28*, WSBA, <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Admissions/Limited-Licenses-and-Special-Programs/Non-Lawyers-and-Students/Legal-Technicians> (last visited Feb. 6, 2013).

twenty-one nominees to the WSBA Board of Governors.²³⁶ When the WSBA refers final nominations to the court, and the court appoints the LLLT Board members, the LLLT Board can establish the details of the LLLT Rule program.²³⁷

Critical issues for the LLLT Board to address will include the actual areas of authorized legal-technician practice.²³⁸ Although the 2008 LLLT Rule proposal focused on family law, APR 28 itself is silent as to areas of authorized practice. The debate leading to the adoption of APR demonstrated what an important and potentially contentious subject this issue of authorized practice area may be for the LLLT Board. The LLLT Board also may need to specify different education and experience requirements for a legal-technician license to these specific practice areas.²³⁹

The LLLT Board further must create and administer a legal-technician examination.²⁴⁰ The LLLT Board has broad discretion over the examination coverage and content. But, the examination “shall, at a minimum, cover the rules of professional conduct applicable to [legal technicians], rules relating to the attorney-client privilege, procedural rules and substantive law issues related to one or more approved practice areas.”²⁴¹ The LLLT Board further must establish examination fees, along with

²³⁶ See *id.*; see also November 9, 2012 Memorandum of the WSBA LLLT Board Nominating Committee and Supporting Material (on file with author) (noting that the Washington State Supreme Court “asked for 21 nominations including a designation of which 13 are recommended for appointment”). For a copy of the WSBA’s LLLT Board application see *Limited Licence Legal Technician Board Application Form for WSBA Members*, WSBA, http://www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/Admissions/Special%20Admissions/LLLT%20Board%20application%20form%20FY%202013.ashx.

²³⁷ APR 28(C)(1)-(3).

²³⁸ See *id.* at 28(C)(2)(a). The Washington State Supreme Court must approve any areas of practice authorized by the LLLT Board. *Id.*

²³⁹ See *id.* at 28(C)(2)(d). Dean Testy of the University of Washington Law School recommended an educational program for legal technicians through the University of Washington’s Educational Outreach Program, a non-degree affordable adult education program, See Dean Testy Letter, *supra* note 192; see also *UW Educational Outreach*, UNIV. OF WASH. EDUC. OUTREACH, <https://www.outreach.washington.edu/uweo/> (last visited Feb. 6, 2013). What role, if any, the Washington State law schools may play in educating legal technicians remains to be determined.

²⁴⁰ APR 28(C)(2)(c).

²⁴¹ *Id.*

licensing and other fees necessary for the LLLT Board to regulate legal-technician practice.²⁴²

The LLLT Board additionally must propose legal technician rules and regulations for the Washington State Supreme Court to adopt.²⁴³ These rules and regulations include procedures for grievances and disciplinary proceedings.²⁴⁴ The LLLT Board also must establish trust account requirements and procedures,²⁴⁵ as well as rules of professional and ethical conduct.²⁴⁶ Finally, rules and procedures must be created to “[i]mplement the other provisions of this rule.”²⁴⁷

The LLLT Board thus has a tremendous amount of work to accomplish, with subsequent Washington State Supreme Court approval, before APR 28’s adoption will translate into practicing legal technicians in Washington State. The WSBA predicted in the Fall of 2012 that “[t]he work of the LLLT Board is expected to take at least one year before it will be able to accept applications and begin licensing of LLLT’s.”²⁴⁸ Accordingly, Washingtonians likely will need to wait until late 2013, or even 2014, to see whether APR 28 will realize its objective: increased access to justice.

III. THE LLLT RULE: MEANINGFUL JUSTICE, BUT ALSO EQUAL JUSTICE?

The Washington State Supreme Court aptly observed that “[n]o one has a crystal ball” with which to predict the degree of success the legal technician program may or may not have.²⁴⁹ But, the WSBA appears to have committed itself to the success of Washington State’s legal-technician program, despite the WSBA’s

²⁴² *Id.* at 28(C)(2)(g).

²⁴³ *Id.* at 28(C)(3).

²⁴⁴ *Id.* at 28(C)(3)(a).

²⁴⁵ *Id.* at 28(C)(3)(b).

²⁴⁶ *Id.* at 28(C)(3)(c).

²⁴⁷ *Id.* at 28(C)(3)(d).

²⁴⁸ *Limited License Legal Technicians: Admission to Practice Rule 28, supra* note 235.

²⁴⁹ APR 28 Decision, *supra* note 200, at 8.

earlier opposition to it.²⁵⁰ The WSBA's impressive track record in supporting access to justice initiatives thus bodes well for the operational support that the WSBA can offer to this program.

The legal-technician program also has been received positively outside of Washington State, including in access to justice circles²⁵¹ and in sources indicating a potential pool of nonlawyers interested in a legal-technician market.²⁵² Notably, in October of 2012, Gillian Hadfield, the Kirtland Professor of Law and Economics at the University of Southern California, testified positively about this kind of nonlawyer program to the Task Force to Expand Access to Civil Legal Services in New York (New York Task Force).²⁵³ Explaining that "any reasonable response to the

²⁵⁰ See *Limited License Legal Technicians: Admission to Practice Rule 28*, supra note 235 (noting the WSBA's "goal . . . to ensure quality implementation" of the program, and that "[t]his rule provides Washington the opportunity to lead the nation in expanding legal services for the people of our state"). Not all parts of the WSBA, however, are so committed. On June 22, 2012, the Family Law Section of the WSBA formally resolved to "voice opposition to the Order so passed by the Washington State Supreme Court," to "urge each and every member of the Washington State Supreme Court to reconsider and rescind the authorization and adoption of said Order," and to "acknowledge and thank the Justices who dissented to the adoption of said Order." *Resolution*, FAM. LAW. SEC. OF THE WSBA (June 22, 2012) (on file with author); see also Christopher J. Fox, *Legal Technicians*, WASH. FAM. L. REP. (June 23, 2012), available at <http://waflr.blogspot.com/2012/06/legal-technicians.html?m=1>.

²⁵¹ See, e.g., Richard Zorza, *Important Step Forward with Washington State Legal Technician Rule*, RICHARD ZORZA'S ACCESS TO JUSTICE BLOG (June 19, 2012), <http://accesstojustice.net/2012/06/19/important-step-forward-with-washington-state-legal-technician-rule/>; *Washington State Supreme Court Passes HALT Supported Legal Technician Proposal*, HALT, <http://www.halt.org/what-we-do-for-you/improve-legal-access/unauthorized-practice-of-law/washington> (last visited Feb. 6, 2013). But cf. *Washington Supreme Court Adopts Limited Practice Rule for "Legal Technicians,"* ACCESS TO JUST. WEB (July 16, 2012), <http://www.atjweb.org/washington-supreme-court-adopts-limited-practice-rule-for-legal-technicians/> (noting concerns of Washington-based legal services organizations about the LLLT Rule).

²⁵² See, e.g., Robert E. Mongue, *More on Washington State Licensing Rule*, THE EMPOWERED PARALEGAL BLOG (July 7, 2012), <http://theempoweredparalegal.com/?p=2122>; *WA Supreme Court Authorizes Limited License Legal Technician Rule*, WSPA ONLINE (July 16, 2012), http://wsponline.org/index.php?option=com_content&view=article&id=561:wa-supreme-court-authorizes-limited-license-legal-technician-rule&catid=29:wspa-news&Itemid=106; *News: Washington State Supreme Court Approves New 'Legal Technicians' Rule*, THE LEGACO EXPRESS FOR PARALEGALS BLOG (June 2012), <http://m.legaco.org/article/washington-state-supreme-court-approves-new-%E2%80%99legal-technicians%E2%80%99-rule>.

²⁵³ See Hadfield, supra note 6.

crisis in access to justice for ordinary households . . . must involve a serious effort to increase the supply of low-cost legal assistance.”²⁵⁴ Professor Hadfield asserted, “There is a straightforward way to do this: allow people and organizations other than lawyers and law firms to provide some forms of legal assistance.”²⁵⁵ Professor Hadfield noted that Washington State had created just such a program, and she observed, “It will be a program to watch.”²⁵⁶

Washington State’s legal-technician program therefore realistically may improve access to justice by establishing a pool of affordable legal professionals to assist with routine legal matters. This realistic potential was recognized in November of 2012 when the New York Task Force recommended that New York State Courts implement a pilot program similar to Washington State’s legal-technician program.²⁵⁷ Referring explicitly to Washington State’s recently adopted LLLT Rule, the New York Task Force concluded that “development of the role of non-lawyer advocates can be an important element in helping to address the substantial access to justice gap in the State.”²⁵⁸ The California State Bar Association’s Board of Trustees also recently discussed evaluating a similar limited-license program, citing many of the rationales that motivated Washington State’s rule.²⁵⁹

The success of a comparable program in Ontario, Canada furthers suggests that the Washington State legal-technician program may advance its intended goal. In 2007, the Law Society of Upper Canada, Ontario’s regulatory body for the legal profession,²⁶⁰ assumed responsibility for licensing and regulating paralegals.²⁶¹ These paralegals are licensed and regulated in a

²⁵⁴ *Id.* at 3.

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 6.

²⁵⁷ See 2012 New York Task Force Report, *supra* note 52, at 36-39.

²⁵⁸ *Id.* at 39.

²⁵⁹ Laura Ernde, *State Bar to Look at Limited-Practice Licensing Program*, CAL. BAR J. (Feb. 2013), <http://www.calbarjournal.com/February2013/TopHeadlines/TH1.aspx>.

²⁶⁰ See THE LAW SOC’Y OF UPPER CAN., <http://www.lsuc.com/> (last visited Feb. 6, 2013).

²⁶¹ See *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the Law Society Act*, THE LAW SOC’Y OF UPPER CAN. 1, 2 (2012) [hereinafter Law Society

manner similar to the framework established in APR 28,²⁶² and they are authorized to practice in areas including small-claims court, traffic offenses, landlord-tenant, administrative matters, and minor criminal offenses.²⁶³ In a recent five-year review of this paralegal program, the Law Society reported that its “regulation of paralegals has been successful.”²⁶⁴ In particular, the Law Society found that “[c]onsumer protection has been balanced with maintaining access to justice and the public interest has thereby been protected.”²⁶⁵ The Law Society thus may expand the authorized areas of paralegal legal practice to meet the most recent analysis of legal needs.²⁶⁶

The legal-technician program’s promise of more meaningful justice, however, does not necessarily mean it will deliver *equal* justice. Access to justice literature is replete with the aspiration of “equal justice.”²⁶⁷ Indeed, some advocates might identify equality

Report], *available* at <http://www.lsuc.com/WorkArea/DownloadAsset.aspx?id=2147488010>.

²⁶² *Id.* at 2-3; *see also* *Paralegal Frequently Asked Questions*, THE LAW SOC’Y OF UPPER CAN., <http://rc.lsuc.on.ca/jsp/paralegal/QandA.jsp>.

²⁶³ *See* Law Society Report, *supra* note 261, at 2; *Paralegal Frequently Asked Questions*, *supra* note 262.

²⁶⁴ Law Society Report, *supra* note 261, at 3.

²⁶⁵ *Id.*; *see also id.* at 5 (reporting that the Standing Committee on Paralegals “regards the implementation of paralegal regulation in Ontario as a success, providing consumer protection while maintaining access to justice”); News Release, The Law Society of Upper Canada, Success of Paralegal Program Highlighted in Report to Attorney General (June 28, 2012), *available* at <http://www.lsuc.com/WorkArea/DownloadAsset.aspx?id=2147488045> (reporting enhanced paralegal professional standing, consumer protection, and access to justice).

²⁶⁶ Law Society Report, *supra* note 261, at 4; *cf. also* Gillian Hadfield, *Lawyers, Make Room for Nonlawyers*, CNN.com (Nov. 25, 2012), <http://www.cnn.com/2012/11/23/opinion/hadfield-legal-profession/index.html> (“The United Kingdom has a long history of allowing a wide variety of differently trained individuals and organizations [to] provide legal assistance, and studies show that the practice works very well.”).

²⁶⁷ Rhode, *Whatever Happened*, *supra* note 2, at 870 (“‘Equal justice under law’ is one of America’s most proudly proclaimed . . . legal principles.”); *See* Earl Johnson, Jr., *Equality before the Law and the Social Contract: When Will the United States Finally Guarantee Its People Equality Before the Law the Social Contract Demands?*, 37 *FORDHAM URB. L.J.* 157, 159 (2010) (arguing that “equal justice” originates in the “social contract theory [that] was so influential among the principle founders of the United States”); Rhode, *Again, Still*, *supra* note 31, at 1013 (“‘Equal justice under law’ is the idea that we inscribe on courthouse doors.”); Deborah L. Rhode, *Equal Justice Under Law: Connecting Principle to Practice*, 12 *WASH. U. J.L. & POL’Y* 47, 47 (2003)

in justice as the full goal of the access to justice movement.²⁶⁸ Yet, a legal technician, for all of his or her ability to assist clients, is not the same in function or perception as a lawyer authorized to practice law in all areas and venues. This difference may impact whether the legal-technician program delivers real access to justice.

The experience of any public defender can illustrate this point. Public defender clients, unable to choose their counsel in the private market of attorneys, sometimes perceive that they are receiving less than the fully capable counsel that the private market would supply.²⁶⁹ Public defenders thus commonly are called less-than-glowing, non-lawyerly terms like “public pretender.”²⁷⁰ Sometimes, this perception does reflect a reality of poorer-quality representation, commonly because of severe limitations to public defender resources.²⁷¹ Often, however, this perception reflects simply a perception of inequality—many public defenders are the most talented, experienced, and dedicated

[hereinafter Rhode, *Equal Justice*] (“‘Equal justice under law’ is what America claims on its courthouse doors”).

²⁶⁸ See Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 25 n.6 (2006) (“The Equal Justice Project rejected limiting its objectives to increasing ‘access to justice,’ and instead identified ‘equal justice as a far more visionary and substantive goal.’”).

²⁶⁹ Cf. e.g., *The Dirty Truth about Public Defenders*, THE CRIME & FEDERALISM BLOG (March 22, 2010), <http://www.crimeandfederalism.com/2010/03/the-dirty-truth-about-public-defenders.html> (“There isn’t a criminal defense lawyer reading this post who would, if charged with a crime, choose to be thrust into the public defense system rather than hire counsel.”).

²⁷⁰ Cf. Tom Becker, *Indigent Defense*, 25 CHAMPION, Sept.-Oct. 2001, at 35, 35-36 (2001) (discussing public defenders’ battle against the image of the “public pretender”); *Public Pretender*, OF A PUBLIC DEFENDER’S LIFE BLOG (Oct. 29, 2006), <http://publicdefenderslife.blogspot.com/2006/10/public-pretender.html?m=1> (responding to online article by nonlawyer challenging the value of public defenders versus retained counsel).

²⁷¹ See Heather Baxter, *Too Many Clients, Too Little Time: How States Are Forcing Public Defenders to Violate Their Ethical Obligations*, 25 FED. SENT. RPTR. 91 (2012) (arguing that budget cuts and other resource limitations too often force public defenders to provide less than competent and diligent representation); Monroe Freedman, *Taking Gideon Seriously*, LEGAL ETHICS FORUM (Dec. 26, 2012), <http://www.legaethicsforum.com/blog/2012/12/taking-gideon-seriously.html> (critiquing “[f]ifty years of constitutional and ethical hypocrisy” in the quality of public defense services that clients receive).

criminal defense lawyers available. Yet either way, public defense services can result in a second-class legal *experience*. In the case of nonlawyer legal technicians, the actual or perceived inequality in legal services could prove even more significant because of legal technicians' significant practice limitations.

By this equality measure, therefore, the legal-technician program could fail to deliver *full* justice—even if the program improves justice—if it institutionalizes a two-tier system of civil justice: People of financial means will have lawyers, but poor and low-income individuals will work with nonlawyer legal technicians. Only a few comments on the LLLT Rule proposal raised this equal-justice concern directly as a concern distinct from the adequacy of legal technicians to assist clients competently.²⁷² The Washington Supreme Court's decision adopting APR 28 did not address this precise concern expressly. Nevertheless, two access to justice considerations may eliminate or ameliorate this concern. One consideration addresses the merits of this equal-justice concern; the other consideration resolves this concern pragmatically.

On the merits, the legal-technician program may not provide unequal justice if legal technicians do not operate solely as a poor-person substitute for the lawyers whom persons of means would retain for comparable legal needs. Legal technicians may provide not just economical legal services for the limited tasks they will be licensed to perform but also *quality* legal services—services that any consumer of legal services would value, regardless of whether they can afford a lawyer.²⁷³ If legal technicians do become a viable

²⁷² See 2008 WSBA Letter, *supra* note 100, at 4 (arguing that the POL Board's 2008 LLLT Rule proposal "represents the beginning of the institutionalization of second class, separate but unequal, justice"); *Washington Supreme Court Adopts Limited Practice Rule for "Legal Technicians," supra* note 251 (noting the argument of Columbia Legal Services in Washington State "that the Rule may create a 'two-tiered' system of justice, where only people of financial means have access to comprehensive legal assistance, while poorer individuals are 'relegated to a system that does not provide the full measure of service and justice to which all should be entitled'"); Bender & Bastine, *supra* note 107, at 28 (addressing concern that legal technicians will provide "second-class representation" by arguing that "legal technicians will not provide representation, in that they cannot appear in court or negotiate a case").

²⁷³ Cf. Law Society Report, *supra* note 261, at 3 ("Paralegals operat[ing] within a regulatory framework that closely parallels that for lawyers . . . are establishing a

legal service across the economic spectrum for the limited services they offer, this program would provide both meaningful and equal access to justice for poor and low-income persons because they would not be tracked into an alternative justice system based on solely their economic status. Instead, all persons realistically could access an affordable and quality legal technician for a specific range of limited legal services. The fact that a service costs less does not make it inequitable to a more expensive service if individuals who could pay more still value the service at the better price point.

By way of comparison, the development of nurse-practitioner programs in the medical profession may illustrate the potential of the legal-technician program to occupy its own equitable share of the legal market.²⁷⁴ Health care faces a primary-care gap in the United States, resulting from a shortage of doctors with rising consumer health care needs.²⁷⁵ To respond to this health-care gap, many states have authorized nurse practitioners to practice medicine independent of doctors in specific practice areas.²⁷⁶ Critics, including established physician groups, have argued that independent nurse practitioners will provide substandard, second-

prestigious and well-regarded profession.”); *Id.* at 5 (reporting finding of the Paralegal Standing Committee that “paralegals feel that . . . regulation has enhanced paralegals’ professional standing”).

²⁷⁴ See Barbara J. Safriet, *Health Care Dollars and Regulatory Sense: The Role of Advanced Practice Nursing*, 9 YALE J. ON REG. 417, 423-34 (1992) (defining “nurse practitioner”).

²⁷⁵ See *id.* at 419-23 (defining primary healthcare and identifying access problem); *Primary Care for the 21st Century: Ensuring a Quality, Physician-Led Team for Every Patient*, AM. ACAD. OF FAM. PHYSICIANS (Sept. 18, 2012), http://www.aafp.org/online/etc/medialib/aafp_org/documents/membership/nps/primary-care-21st-century/whitepaper.Par.0001.File.dat/AAFP-PCMHWhitePaper.pdf [hereinafter *Primary Care for the 21st Century*] (noting “primary care gap”); Tina Rosenberg, *The Family Doctor, Minus the M.D.*, N.Y. TIMES OPINIONATOR BLOG (Oct. 24, 2012), <http://opinionator.blogs.nytimes.com/2012/10/24/the-family-doctor-minus-the-m-d/> [hereinafter *The Family Doctor*] (“America has a serious shortage of primary care physicians, and the deficit is growing.”).

²⁷⁶ See *The Family Doctor*, *supra* note 277 (describing nurse practitioner education, training, and practice, where “[n]urse practitioners do everything primary care doctors do, including prescribing, although some states require that a physician provide review. Like doctors, of course, nurse practitioners refer patients to specialists or a hospital when needed”).

class health care to individuals who cannot purchase into physician care.²⁷⁷ But the opposite may be true:

Data has shown that nurse practitioners provide good health care. A review of 118 published studies over 18 years comparing health outcomes and patient satisfaction at doctor-led and nurse practitioner-led clinics found the two groups to be equivalent on most outcomes. The nurses did better at controlling blood glucose and lipid levels, and on many aspects of birthing. There were no measures on which nurses did worse.²⁷⁸

In addition, “[n]urse-led clinics can save money.”²⁷⁹

As a result, nurse practitioners have grown into a more widely used, professionalized, and respected component of the health care market.²⁸⁰ Nurse practitioner programs thus appear to

²⁷⁷ See Safriet, *supra* note 274, at 440-54 (describing barriers to nurse practitioner practice authority); *Primary Care for the 21st Century*, *supra* note 275 (“[S]ubstituting NPs for doctors cannot be the answer, [because n]urse practitioners are not doctors . . . nurse practitioners do not have the substance of doctor training or the length of clinical experience required to be doctors.”); Jefferey J. Cain, *Addressing the Doctor Shortage*, N.Y. TIMES (Oct. 30, 2012), http://www.nytimes.com/2012/10/31/opinion/addressing-the-doctor-shortage.html?_r=0 (letter to the editor from the President of the American Academy of Family Physicians, arguing against nurse practitioners as an answer to the primary care gap, because “the differences in training and experience are important for patients and for our health care system,” and “family physicians bring[] extra breadth and depth to the diagnosis and treatment of all health problems”).

²⁷⁸ The Family Doctor, *supra* note 277 (referring to Robin P. Newhouse, et al., *Advanced Practice Nurse Outcomes 1990-2008: A Systemic Review* (Oct. 2011), <https://www.nursingeconomics.net/ce/2013/article3001021.pdf>; see also Safriet, *supra* note 274, at 427-31 (“[V]irtually all the studies to date have demonstrated that the quality of care rendered by NPs . . . is at least equivalent to that provided by physicians for comparable services.”); *When the Doctor Is Not Needed*, N.Y. TIMES OPINION (Dec. 15, 2012), <http://www.nytimes.com/2012/12/16/opinion/sunday/when-the-doctor-is-not-needed.html> (arguing in favor of increased access to nurse practitioners and other non-physician healthcare providers to address the national shortage of doctors, because “[t]here is plenty of evidence that well-trained health workers can provide routine service that is every bit as good or even better than what doctors would receive from a doctor. And because they are paid less than the doctors, they can save the patient and the health care system money”).

²⁷⁹ The Family Doctor, *supra* note 277; see also Safriet, *supra* note 274, at 434-40 (reporting cost-effectiveness of nurse practitioners).

²⁸⁰ See Jay S. Markowitz, *I Am Your Nurse. Please Call Me ‘Doctor’*, N.Y. TIMES (Oct. 4, 2011), <http://www.nytimes.com/2011/10/05/opinion/i-am-your-nurse-please-call->

offer much more than second-class, non-physician service to marginalized health-care consumers. On the contrary, nurse practitioners can contribute accessible and quality primary health care to all consumers.²⁸¹ With time, well-trained and regulated legal technicians may prove the same in their limited-practice areas, thus minimizing, if not eliminating, equal justice concerns.²⁸²

The legal market may be positioned to permit this kind of shift in perspectives about the range of viable and quality legal services. For example, law school enrollment has dropped sizably,²⁸³ in large part because of perceptions that the legal market has grown too tight relative to the cost of a traditional law degree.²⁸⁴ This volatile legal market has prompted many ground-

me-doctor.html?r=0; *but cf.* The Family Doctor, *supra* note 277 (“Nurse-managed clinics have to overcome regulatory and financial obstacles that traditional clinics don’t face.”).

²⁸¹ See Safriet, *supra* note 274, at 440 (concluding that nurse practitioners’ “cost-effectiveness, combined with their proved ability to provide quality care to a large number of people, suggests that they should be play a central role in the solutions currently being developed for our health care crisis”); *When the Doctor Is Not Needed*, *supra* note 278.

²⁸² See Debra Cassens Weiss, *Vermont Law School Plans to Downsize Staff; Dean Says Nonlawyer Specialists Will Do More Legal Work*, A.B.A. J., Nov. 28, 2012, <http://www.abajournal.com/news/article/vermont-law-school-plans-to-downsize/> (last visited Jan. 15, 2013) (“The field of health care has been transformed with more cost-effective treatment by nurse practitioners and physician assistants, and the legal field will follow with less work being done by lawyers, according to a law dean who is preparing for changes ahead by downsizing.”); Hadfield, *supra* note 6 (testifying to successful lessons the legal profession can learn from the medical profession’s increased use of non-physicians to improve access to health care); *cf.* Nolan-Haley, *supra* note 60 at 296-98 (arguing that greater collaboration between lawyers and nonlawyers will improve services in mediation advocacy).

²⁸³ See Karen Sloan, *Survey Reveals Smaller Class Size This Year*, NAT’L L.J., Nov. 19, 2012, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202578807666&Survey_reveals_smaller_law_school_class_sizes_this_year&slreturn=20130028191409; Karen Sloan, *Avoiding Law Schools in Doves*, NAT’L L.J., Jan. 28, 2013, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202585810784&Avoiding_law_school_in_doves_&slreturn=20130029204221.

²⁸⁴ Steven M. Davidoff, *The Economics of Law School*, N.Y. TIMES DEALBOOK, Sept. 24, 2012, <http://dealbook.nytimes.com/2012/09/24/the-economics-of-law-school> (noting a “trend away from law schools,” because “they leave too many graduates in debt, chasing too few employment opportunities”); Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, June 14, 2012, <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law->

up reform proposals to address the “new reality,”²⁸⁵ including some fairly radical changes to traditional legal education and credentialing.²⁸⁶ In a future, potentially more adaptable legal market—one possibly short on lawyers as more people leave the profession than enter it²⁸⁷—legal technicians may well compete viably for clients seeking quality but limited legal services.²⁸⁸

If, however, this competitive market vision of legal technicians does not become reality, a more pragmatic consideration may have to govern equal-justice concerns: The legal-technician program remains superior to the real-world

schools.html (commenting that a “ huge number of new graduates, if lucky enough to find work, will not be employed in legal jobs that require passing the bar”); James G. Leipold, *The Changing Legal Employment Market for New Law School Graduates*, 79 THE BAR EXAMINER, Nov. 2010, at 1, available at http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2010/790410_Leipold.pdf (collecting data and concluding that “future law school graduates are likely to face a job market that is significantly different from that faced by their predecessors. In the medium-term future, for example, there are likely to be fewer opportunities to start a legal career at a large law firm than existed prior to the recession”).

²⁸⁵ Cf. James B. Stewart, *Dewey’s Fall Underscores Law Firm’s New Reality*, N.Y. TIMES, May 4, 2012, <http://www.nytimes.com/2012/05/05/business/deweys-collapse-underscores-a-new-reality-for-law-firms-common-sense.html> (“Clients have figured out that much of what lawyers do is a commodity that can easily be outsourced far more cheaply.”).

²⁸⁶ See e.g., Daniel B. Rodriguez & Samuel Estreicher, *Make Law Schools Earn a Third Year*, N.Y. TIMES, Jan. 17, 2013, http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html?_r=0 (commenting positively on New York State proposal to permit law students to sit for the bar examination after two years of school, making the traditional third year discretionary).

²⁸⁷ See Paula Littlewood, *Let’s Seize the Moment*, 1 NW LAWYER, Dec.-Jan. 2013, at 11, available at http://nwlawyer.wsba.org/nw_lawyer/201301#pg13 (reviewing demographic data about the profession, and concluding, “if this trend continues we may be looking at a shortage of lawyers in the future”).

²⁸⁸ Cf. Ethan Bronner, *Law Schools’ Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 30, 2013, available at <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html> (noting that the volatile legal market has prompted “[s]ome ... [to] call[] for one- or two-year training programs to create nonlawyer specialists for many tasks currently done by lawyers,” and that “the decline [in the legal market] is creating what many see as a cultural shift”).

alternative of nothing.²⁸⁹ As a noted scholar in the access to justice movement has observed: “Equal justice is an implausible ideal; adequate access to justice is less poetic but more imaginable.”²⁹⁰ This somewhat fatalistic-sounding view of justice recognizes that more exceeds less in the real world, and the current arsenal of access to justice initiatives falls well short of meaningful justice.²⁹¹ Access to justice advocates understandably might prefer to hold fast on the mantra, “It is not time yet to give up the dream of equal justice.”²⁹² But if the pursuit of equal justice continues to leave large numbers of individuals with less-than-meaningful access to justice, equal justice sadly may be too implausible to justify further inaction. That time may have arrived with the legal-technician program and its promise of meaningful access to justice for Washingtonians.²⁹³

CONCLUSION

Washington State’s legal technician program may not be perfect, and it will not solve the access to justice problem entirely. But the program does offer a well-regulated framework for enhancing access to justice meaningfully, and perhaps even equitably, by authorizing trained professionals to practice in discrete, limited areas of law. As the Washington State Supreme Court observed in adopting APR 28, “It is time.”²⁹⁴

Only more time will tell, however, whether this program will work as desired, and much work remains before legal technicians will begin to practice in Washington State. But as a national first, “[i]t will be a program to watch”²⁹⁵ for evidence of whether “less-expensive, non-JD professionals and nonlawyer dominated

²⁸⁹ Cf. *The Family Doctor*, *supra* note 277 (observing that for the residents of a poor county served only by a nurse practitioner clinic, “the alternative . . . was not first-class primary care, but none”).

²⁹⁰ Rhode, *Equal Justice*, *supra* note 267, at 61.

²⁹¹ See *supra* notes 51-61 and accompanying text.

²⁹² 2008 WSBA Letter, *supra* note 100, at 4.

²⁹³ Cf. Rhode, *Equal Justice*, *supra*, note 267, at 61-62 (advocating for reforms including “greater access to non-lawyer providers,” and arguing that “[m]ore education about what passes for justice among the ‘have nots’ should be a key priority”).

²⁹⁴ APR 28 Decision, *supra* note 200, at 1.

²⁹⁵ Hadfield, *supra* note 6.

organizations . . . can provide perfectly adequate help in many cases.”²⁹⁶ Yet even now, with the thorough and well-documented debate over the LLLT Rule, Washington State has established a rich resource from which other states can work in exploring whether a comparable limited-license practice program will aid underserved legal consumers who continue to fall in the justice gap.

²⁹⁶ Hadfield, *supra* note 266.

