

October 28, 2015

Alec Rothrock
6400 South Fiddlers Green Circle, Suite 1000
Greenwood Village, CO 80111

Mr. Rothrock:

As you are aware, the Colorado Bar Association has been involved in the discussions related to the Limited License Legal Technician (LLLT) debate for some time, without taking a formal position regarding whether such a program should be implemented in the State of Colorado. For reasons stated more fully below, the CBA now formally takes a position in opposition to creation of LLLT's in Colorado as currently proposed, with the understanding that the CBA is committed to continuing to discuss this and other issues related to the attempts to provide legal services to those in need in Colorado.

Prior to the creation of your subcommittee, the CBA leadership had been in discussions with Jim Coyle and Justice Hood related to the LLLT concept. During those discussions, the CBA raised concerns and shared those concerns with Mr. Coyle. To list a few, those concerns include:

- The most common question that I hear asked is, "Why now?" Given the lack of data on the actual impact of LLLT's, why not take a wait and see approach to see what the impact of the LLLT program is in Washington? If there is a laboratory in place in Washington, why not study what actually happens in Washington and learn from them before we try to create a program of our own?;
- There is a hope or expectation that LLLT's will provide a benefit to the community in that they will charge rates lower than practicing attorneys. However, there is nothing that binds LLLT's to lower rates, and any effort to do so would likely bring action from the Justice Department. This may well create a situation where litigants (who are not knowledgeable of the differences between LLLT's and attorneys) are being charged the same amount for inferior services;
- Due to the economic downturn in 2008, there is a generation of attorneys who are unemployed or underemployed. Bringing in another line of legal practitioners seems to ignore the needs of those attorneys trying to find work, and undercuts their ability to find work and paying clients. There are already a large number of unemployed lawyers and a large number of pro se litigants. From an economics standpoint it would seem that you have two groups that would be perfect for each other. But for whatever reason, we don't

have them connecting. I would think that if you have a group of lawyers who need work, they would work for a lesser rate rather than receive nothing;

- There does not seem to be adequate economic study/proof related to why there are so many pro se litigants and at the same time so many underemployed attorneys. From an economic standpoint, it does not appear that adding more practitioners to the market will actually provide for higher representation rates;
- The over 70% pro se rates in family law cases is often raised as a justification for the move towards LLLT's, but there has been no study to determine why there is such a high pro se rate in the domestic relations arena. Without such a study it is premature to create a new program without knowing what it will actually achieve;
- We will need to address the potential malpractice components of this new field. There would need to be new definitions of the standard of care for LLLT's. There would need to be significant changes to the substantive law related to putting forward a prima facie case of malpractice against a LLLT. This of course opens the door to questions about whether liability insurance would be available, and what the proper mandatory limits would be;
- There does not yet seem to be a firm definition of what LLLT's would be able to do in Colorado. What would be the limits of their representation? What types of cases would they be able to work on? How would that be monitored? What are the can dos? What are the can't dos? A 10 commandments for LLLT's?;
- How would the program be funded? Where would the seed money for the creation and implementation of the program come from? Would the program be able to support itself financially going forward?;
- There is concern regarding the supervision of LLLT's. Will a LLLT be an independent practitioner? Would a LLLT be able to hang its own shingle, independent of supervision?;
- Where will they train?;
- Will there be a required residency following certification?
- What would be the requirements of the training? Would the training be adequate to allow for proper representation?;
- There are concerns that the profession is already under attack and being devalued by the commoditization of legal services. We are seeing this through online services, outsourcing, and lack of understanding of the need for attorney representation. Would a LLLT program in Colorado further devalue the profession?;

- Is there any empirical data proving that creating of LLLT's will actually have the desired effect of creating more representation? We all would like to see the number of pro se litigants in that arena decrease, but will this actually have that impact?;
- We have not seen the full benefit of the pro se resource centers. Do we owe it to that program to see if it will have a positive impact on the needs of pro se litigants before creating a new program? With 100,000 litigants served in 2014, has that program increased the number of pro se litigants?;
- We have not seen the full benefit of the modest means committee. There are still parts of that committee and efforts by that committee that have not been realized. Do we owe it to that program to see if it will have a positive impact on the needs of pro se litigants before we create a new program?;
- We have not yet received the super list from the Chief's committee (the list of attorneys who will do low pay, slow pay, and sliding scale work). That may well inform the public that there are lawyers who are willing to work for a lower fee without the need for creating an entirely new class of practitioners who do the same thing for less pay;
- Are we seeing a positive impact from the unbundled rule? Is that one of the reasons for the higher rate to pro se litigants? Does that need to be advertised more effectively so that people know they have that option with attorneys?

Though those issues, and many others have been raised, none have been addressed by this committee beyond very brief discussion. Through my visits with the local bar associations, throughout the state, I have heard many of these same concerns raised, on multiple occasions. Before any meaningful discussion can occur, and before a decision can be made, these and other issues should be addressed.

Since the creation of your committee, it has become clear that the LLLT discussion has centered on these new practitioners operating in the family law arena. Therefore, I referred this issue to the CBA Family Law Section for further discussion.

The CBA Family Law Section has recommended a position formally opposing the creation of LLLT's in Colorado. There are several reasons for the recommended opposition:

- The potential harm to consumers outweighs any potential benefit of the program;
- Such a program is likely to negatively impact employment opportunities and the financial viability of newly licensed and young Colorado attorneys;
- The licensing of non-attorneys in this matter does not truly meet the legal needs of the modest means/low income litigants and pro se litigants that it purportedly seeks to address; and

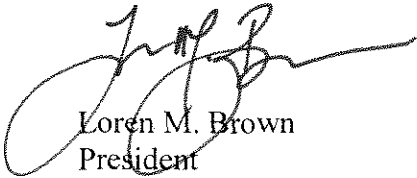
- More time is necessary to study the Washington model and to obtain adequate data concerning the usefulness and effectiveness of the LLLT program. In time and with more data, the consideration can be more thoughtful.

Therefore, the Colorado Bar Association now formally takes a position in opposition to the creation of a Limited License Legal Technician in Colorado as currently proposed.

Though the position at this time is in opposition to the LLLT program, the CBA is committed to continuing to engage in discussions which seek to address the needs of pro se and modest means litigants, programs similar to the New York navigator program, mandatory pro bono requirements, programs involving young lawyers connecting with modest means litigants, etc.

Thank you for your work on the committee. The CBA and I look forward to working with you in the future as we attempt to address the legal needs of all Coloradans, including the poor and modest means litigants.

Sincerely,



Loren M. Brown
President
Colorado Bar Association