

AGENDA ITEM

III A. JUNE 17 13 Limited License Working Group

DATE: June 17, 2013

TO: Members, Limited License Working Group

FROM: Staff

SUBJECT: Working Group Recommendation: Support of Limited License Program and Possible Governance Structures

EXECUTIVE SUMMARY

In March 2013, the Board Committee on Regulation, Admissions & Discipline Oversight created the Limited License Working Group (“Working Group”) to explore the issue of licensing legal technicians and whether to create a limited license to practice law program in California. Legal Technicians are not fully licensed attorneys. They would be licensed to provide limited, discrete legal services to consumers in defined legal subject matter areas only. (**Attachment 1**)

BACKGROUND

Licensing legal technicians has been a subject of discussion at the State Bar for 20 years. In light of action taken creating a limited license to practice law for legal technicians in Washington State, and the actions of the Law Society of Upper Canada licensing and regulating paralegals, this was identified by the Board at its January 2013 planning meeting for exploration.

The Working Group held 3 hearings in San Francisco and Los Angeles where they took testimony from the Washington State Bar Association, the Law Society of Upper Canada, and representatives from legal academia, the judiciary, the Department of Consumer Affairs, and the US Attorney’s office. Discussion topics included:

- History and governance structure (independent board and practice area subcommittees) of the Limited License Legal Technicians (LLLT) program in Washington State
- Canadian model for licensing paralegals
- Physician assistant model
- Analysis of 3 previous State Bar reports on Legal Technicians (1988, 1990, 1993), including a regulatory framework, licensing requirements and specified areas of practice that were proposed in 1990

- Role of a limited license program in addressing public protection/access to justice (UPL and Immigration), including alternative solutions to a limited license program in addressing the justice gap such as court self-help centers, pro bono and modest means legal assistance
- Legal pre-emption issues related to federal law
- Economics of Legal Services and the UK model

ISSUE

Should the State Bar of California propose a further study, development, and implementation of a limited license to practice law program in California?

CONCLUSION

Yes.

DISCUSSION

Access to Justice

The cost of legal services continues to rise, resulting in increasing numbers of consumers seeking self-help options and legal assistance from unlicensed practitioners. Legal assistance provided by trained individuals under a regulatory framework should be readily available and affordable to address the justice gap.

The State Bar has previously published reports on legal technicians:

“...the dramatic growth in the numbers and types of services offered by non-lawyers to persons with law-related problems reflects society’s response to needs not met by California lawyers.” [Report of the State Bar of California Public Protection Committee (April 1988)]

“There is an overwhelming unmet need of California residents for better access to the legal process, and...‘legal technicians’ may provide greater access so long as their activities do not pose an unreasonable risk of harm to the public.” [Report of the State Bar of California Commission on Legal Technicians (July 1990)].

The justice gap has grown progressively wider since 1988 and the Working Group took testimony on the effect this has had in Family Law courts: Family Law Judges in the Los Angeles Superior Courts estimated recently that 75% to 85% of family law cases are pro per and 90% of Domestic Violence cases are in pro per.

The legal profession has not found a way under traditional methods to alleviate the access to justice challenges.

Harm to the Public

The significant potential of harm to the public by both unscrupulous and well-intentioned but untrained providers of legal services cannot be ignored. Potential harm can include outright fraud; inadequate and imprecise advice; missed issues, defenses and remedies, exemptions.

Regulation offering licensure, disciplinary standards and consequences, codes of conduct, education, training, and financial responsibility can provide greater access to legal services while at the same time limiting potential harm to the public. [Report of the State Bar of California Commission on Legal Technicians (July 1990)].

Scope of Non-Lawyer Services

The scope of non-lawyer services would be defined to reserve to fully-licensed lawyers those activities that lawyers have been trained to provide, such as representing clients in court, representation in areas not benefitting from limited licensure, negotiations, and effecting legal rights otherwise.

Non-lawyers would be engaged to provide discrete, technical, limited scope of law activities in non-complicated legal matters in 1) creditor/debtor law; 2) family law; 3) landlord/tenant law; 4) immigration law. [Report of the State Bar of California Commission on Legal Technicians (July 1990)]; as well as in elder law [Washington State model].

FISCAL / PERSONNEL IMPACT:

To be determined.

RULE AMENDMENTS:

To be determined.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

It is recommended that the Limited License Working Group report and recommend to the Board Committee on Regulation, Admission and Discipline Oversight that the State Bar further study and develop a proposal for a limited license to practice law program, including possible governance models, for adoption and implementation in California.

PROPOSED LIMITED LICENSE WORKING GROUP RESOLUTION:

Should the Limited License Working Group agree with the above recommendation, the following resolution would be appropriate:

WHEREAS, the availability of low cost legal services has continued to decline and the numbers of unrepresented persons appearing in California's courts and justice system has continued to grow, particularly in the areas of family law, elder law, creditor and debtor law, landlord and tenant law, and immigration law, resulting in a broadening of the "justice gap," and

WHEREAS, this justice gap has resulted in untrained and unlicensed providers of legal services; and

WHEREAS, regulation, with disciplinary standards, codes of conduct, education, training, and financial responsibility can provide greater access to legal services while at the same time limiting potential harm to the public;

WHEREAS, limited license programs adopted in other jurisdictions provide a model for addressing these issues; and

WHEREAS, there appears to be no viable alternatives from the past and existing efforts in California that have adequately addressed the justice gap;

RESOLVED, that the Limited License Working Group hereby supports the concept of a limited license program in California; and

FURTHER RESOLVED, that the Limited License Working Group recommends to the Board Committee on Regulation, Admissions and Discipline Oversight that the State Bar, in consultation with the relevant stakeholders, further study and develop a proposed limited license to practice law program and possible governance models for adoption and implementation in California.

Attachments:

1. Regulation, Admissions & Discipline Oversight Committee (RAD) agenda item, March 2013