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USA: Regulating Non-Lawyers to Close the Access to Justice Gap

Laurel Rigertas*

Despite the fact that many new lawyers are struggling today to find employment, there are a few regulators of the legal profession willing to consider how non-lawyers can help to close the gap in consumer access to legal services. One would expect strong resistance from the legal profession to any competition for legal work, particularly in these economic times. The willingness of a few states to explore non-lawyer options, however, signals some recognition that a change in the scope of the legal profession's monopoly is needed to meet the growing demand for legal services that cannot be met through pro bono and legal aid services.

Three states—Washington, California and New York—are all actively exploring the role that non-lawyers can play in the delivery of legal services. In June 2012, the Washington Supreme Court enacted the most expansive model to date—a Limited Practice Rule for Limited License Legal Technicians (LLLTs).¹ The rule creates a framework for the licensing and regulation of non-lawyers who will be authorised to independently perform discrete tasks that clearly fall within the definition of the practice of law.² The Washington Supreme Court explained that the rule was necessary because the legal profession's efforts to close the access to justice gap have not successfully stopped the growth of low and moderate income citizens who have no access to affordable legal assistance.³ A Limited License Legal Technician Board will make recommendations to the Washington Supreme Court regarding the exact parameters of LLLTs' authorised activities, but they are anticipated to include informing clients of applicable court procedures, obtaining relevant facts and explaining their relevancy to the client, explaining documents received from the opposing side, as well

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1 Washington Supreme Court, Admission to Practice Rule 28. For an in-depth analysis of this rule and the history of its enactment, see Brooks Holland, 'Washington State's Legal Technician Limited License Practice Rule: A National First in Access to Justice' (2013) 82 *Mississippi Law Journal Supra* 75.

2 Supreme Court of Washington, *In the Matter of the Adoption of New APR28—Limited Practice Rule for Limited License Legal Technicians*, Order No 25700-1-1005, at 2.

3 *Ibid*, 4–6.

as selecting and completing approved forms.⁴ In March 2013 the Supreme Court approved family law as the first practice area.⁵

California and New York are in earlier stages of exploring the role of non-lawyers. California already has a long history of authorising non-lawyers to assist in the clerical preparation of legal documents.⁶ In March 2013, the State Bar of California's Board of Trustees created a Limited License Working Group to explore whether to expand that tradition with the creation of a limited-practice licence.⁷ The working group has had three public meetings and has recommended further study of a limited licence program as a way to increase access to legal services.⁸ It is looking at Washington as a potential model.⁹ In New York, Chief Judge Jonathan Lippman formed a Committee on Non-Lawyers and the Justice Gap in early 2013 to study the use of non-lawyers to provide some assistance in simple legal matters. That committee is expected to make recommendations for a pilot program before the end of the year.¹⁰ The recommendations are expected to focus on assistance in the areas of housing, elder law and consumer credit.¹¹

It is heartening to see some states starting to experiment with innovative ways to deliver legal services. While pro bono and legal aid are important ways to serve indigent clients, together they will not close the gap in access to legal services. Furthermore, there are many consumers who are willing to pay something for legal services, but they cannot afford the going rates. The existence of this market segment is evidenced by decades of companies selling commercial self-help materials. Because regulation exists to protect consumers, it is appropriate for the legal profession's regulators to try to meet the needs of this market segment.

4 Washington Supreme Court, Admission to Practice Rule 28(F).

5 Washington State Bar Association website, www.wsba.org/Licensing-and-Lawyer-Conduct/Admissions/Limited-Licenses-and-Special-Programs/Non-Lawyers-and-Students/Legal-Technicians.

6 California Business and Professions Code, §§ 6400 ff. Prior to the enactment of this statute, California case law had held that clerical services such as filling out forms at the direction of a client did not constitute the practice of law. *People v Landlords Professional Services*, 215 Cal App 3d 1599, 1608 (1989).

7 For links to the working group's agendas and news, see www.calbar.ca.gov/AboutUs/BoardofTrustees/LimitedLicenseWorkingGroup.aspx.

8 Laura Ernde, 'Panel Gives Nod to Limited License Idea' [2013] *California Bar Journal*, www.calbarjournal.com/July2013/TopHeadlines/TH5.aspx.

9 *Ibid.*

10 Joel Stashenko, 'Non-Lawyers May be Given Role in Closing "Justice Gap"' [2013] *New York Law Journal* (29 May).

11 State of New York Unified Court System Press Release, 28 May 2013, www.nycourts.gov/press/PDFs/PR1307.pdf.