

AGENDA ITEM

II B. JULY 18 2013

DATE: July 18, 2013

TO: Members, Regulation, Admissions & Discipline Oversight Committee

FROM: Limited License Working Group

SUBJECT: Limited License Working Group Report: Receive Recommendations and Possible Future Course of Action

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 three 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 three 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?

DISCUSSION

Access to Justice

The testimony heard by the Working Group members over the course of the last three hearings repeatedly addressed the rising cost of legal services, which has resulted in increasing numbers of consumers seeking self-help options and legal assistance from unlicensed practitioners, or attempting to proceed without any legal assistance at all. Furthermore, this is not a new concern. The State Bar has previously published reports on legal technicians in the late 1980s, early 1990s with similar findings:

“...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 appears only to have widened since 1988. 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.

FISCAL / PERSONNEL IMPACT:

To be determined.

RULE AMENDMENTS:

To be determined.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

It is recommended that the State Bar receive the recommendations of the Limited License Working Group which support the concept of a limited license program (**Attachment 2**). Furthermore, given that the justice gap continues to increase and that the legal profession has not found a way under traditional methods to alleviate access to justice challenges, it is recommended that any further exploration of a limited license program be expanded to first include an in-depth study of the causes, effects and possible solutions to access to justice challenges in California.

PROPOSED LIMITED LICENSE WORKING GROUP RESOLUTION:

Should the Regulation, Admissions & Discipline Oversight Committee 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, 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 Regulation, Admissions & Discipline Oversight Committee hereby accepts the recommendations of the Limited License Working Group which supports the concept of a limited license program in California as part of an overall solution to address the Justice Gap; and

FURTHER RESOLVED, that the Regulation, Admissions & Discipline Oversight Committee directs staff to work with the Chair and the President to develop proposals, in consultation with relevant stakeholders, to examine and address the causes, effects and possible solutions to the various access to justice challenges in California, including but not limited to the concept of the Limited License, and collaborate with the Access to Justice Commission and other branch partners in connection with its research.

Attachments:

1. Regulation, Admissions & Discipline Oversight Committee (RAD) agenda item, March 2013
2. Limited License Working Group agenda item, June 17, 2013