

ADVANTAGES AND DISADVANTAGES OF LIMITED LICENSE LEGAL TECHNICIANS

BY NANCY BROOKS

The emerging concept of limited license legal technicians (LLTs) has the potential to be very favorable for citizens of the United States and a great way to reach unserved populations who are in need of legal assistance. LLTs may be able to reach people who need legal services but cannot afford the ever-increasing fees of attorneys. Additionally, rigid qualifications can ensure that LLTs provide capable, quality services to clients. Potential pitfalls include the LLTs being at a disadvantage when arguing against attorneys with more education and potentially more experience than the LLTs. All factors weighed, however, LLTs can serve a market that currently is not served at all to provide them with desperately needed legal services.

Advantages

The greatest advantage of licensing paralegals to perform specific legal services is that a currently unserved portion of the population—and perhaps the largest portion of the population altogether—may potentially be provided with legal assistance. Even a reasonable attorney’s fee is out of the reach of much of the US population.

I experienced this first-hand when I found that I could not afford an attorney to help me obtain a divorce. I was referred by a friend to the Legal Aid Society, which also was not able to help me because I had been married for more than their required maximum number of years, and I have a child, which also disqualified me from their representation. However, the Legal Aid Society referred me to Modest Means, and I was “fortunate” to have an income low enough to qualify for a



Nancy Brooks and Cailin Kee of Thomson/Reuters

wonderful attorney who works at one-third her usual rate for people just like me. I know firsthand that especially in family law, people who cannot afford an attorney would greatly benefit from representation by a paralegal licensed to practice family law.

Legal services should not be an entitlement only to the wealthy who can afford attorneys. On the contrary, legal services should be available and accessible to people at all income levels. The cost of a lawyer’s education and experience has driven attorneys’ fees out of the reach of much of the population. This huge gap between cost and need can be filled by LLTs, who can produce quality work at greatly reduced rates to represent this population.

Currently the LLTs in Washington State work in association with an attorney. I think attorneys should embrace the concept of LLTs as a benefit to them

rather than competition. LLLTs will actually end up helping attorneys by working in conjunction with them, and attorneys who hire LLLTs on their staff can reach a wider segment of the market. This is also beneficial for the LLLTs when they need to increase learning to become more competent, as they will have access to an attorney in addition to other resources.

Finally, LLLTs can provide quality representation by being licensed only in certain specialty areas where they are validated to be highly competent by a combination of education, experience, testing, and licensing. By licensing them to practice in only certain areas, the public can be ensured that LLLTs are qualified to provide competent representation.

Disadvantages

The thought of a nonattorney battling against an attorney is indeed intimidating. It would seem that the attorney, having higher education plus experience representing clients, would have an automatic advantage over an LLLT. This concern could intimidate the LLLT and also cause the client to question whether their representation is “good enough” to stand up to an attorney. Hopefully any judges and magistrates would not have any bias in favor of an attorney over an LLLT, but this may be a potential disadvantage.

Another potential is that attorneys could view LLLTs as cutting into their business, just as the majority of attorneys were against the idea of paralegals forty-five years ago. But then the strangest thing happened: they hired those very paralegals when they realized how much the paralegals could help them. Today, I think the same thing could happen, and attorneys could benefit from hiring LLLTs. Although attorneys might initially have some resistance, I think they will see that these legal technicians will not cut into their business because they will be serving the currently unserved population, those who are pro se.

Some attorneys may also have a selfish motivation to protect the image of a lawyer as one who has attained secret knowledge as a law student and law clerk and therefore is now in a small group of only select people who can give legal advice. (One article used the term “faux legal service” to describe LLLT services.) LLLTs

may be subject to scorn and disdain, even by those in the field of law. Unfortunately, the lawyers’ years of study and experience come at a cost that is unaffordable to most people. America must figure out a way to provide legal services to the people who need them, not just the people who can afford them. If this select group of attorneys could actually fulfill this need in our society, there would be no need for LLLTs; but in reality this need is going unmet and will continue to do so until we reach a solution.

Conflicting Roles and Employment Matters

The final question I will address is whether the LLLT concept would conflict with current paralegal roles or discourage employers from hiring paralegals.

The legal technician licensed for certain legal matters should not conflict with current paralegal roles. Instead, I think this will give paralegals more options and a wider career path to choose from. As noted above, I expect that attorneys will benefit from having an LLLT on their staff, which will create more demand and therefore employability for LLLTs.

Washington State has identified four areas with unmet need of legal services that LLLTs have the potential to provide: family law, immigration, elder law, and landlord/tenant law. I think another area that should be researched for LLLTs is employment law. This is an area where small cases are not profitable for lawyers to pursue, yet many low-income people are fired from their jobs unfairly and have a family to support but no recourse against their employer. Without access to justice, this segment of the population will only get poorer.

In conclusion, the LLLT concept is very workable solution to reach the currently unserved population in need of legal assistance. Strict qualifications can ensure that LLLTs provide capable, quality services to clients. Potential pitfalls include the LLLTs being at a disadvantage when arguing against attorneys with more education and experience, and LLLTs being subject to unfair treatment because they are not lawyers. With all factors weighed, however, LLLTs can serve a market that currently is not served at all to ensure that all Americans are provided with access to justice.