Responsive Law
The Consumer's Voice in the Legal System

Comments on: Sunset of Limited License Legal Technician ("LLLT") Program

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Comments to the

Washington Supreme Court

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Consumers for a Responsive Legal System ("Responsive Law") thanks the Court for the opportunity to present these comments. Responsive Law is a national, nonprofit organization working to make the civil legal system more affordable, accessible, and accountable to its customers. In particular, we support policies that expand the range of legal services available to meet people's legal needs. **Responsive Law urges the Court to reconsider its decision to end the LLLT program**.

Washington Has Fallen Behind Other States in Allowing Consumers Access to Lawyer Alternatives

When the Court launched the program in 2012, it was heralded as a model for the country in how to expand access to affordable legal help. In retrospect, the high barriers to entry and limits on practice for LLLTs guaranteed that only a small number of LLLTs would be licensed. By requiring LLLTs to take 45 credit hours of courses and have 3000 hours of attorney-supervised work just to qualify to perform a small set of tasks within family law, it's little wonder that only a few dozen people have chosen to become LLLTs.

Meanwhile other states have moved forward with proposals for limited licenses that better calibrate license requirements with a demonstration of competence. Arizona has launched a Legal Practitioner (LP) program that allows prospective LPs to substitute work experience for course requirements. The program also will license LPs to practice cross multiple areas of law, and perform a wider range of services, including in-court representation. The State Bar of California Paraprofessional Program Working Group is considering a similar set of license requirements and allowable services.

Rather than abandon the idea of allowing consumers access to an affordable, competent alternative to lawyers, the Court

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should have allowed the LLLT profession to more fully serve consumers by adopting reformed regulations that more closely mirror those enacted by Arizona and under consideration in California.

The Court's Decision Combines the Worst Elements of the Adjudicatory and Regulatory Mindsets

Although the main function of a state supreme court is to serve as the arbiter of last resort for disputes between parties, in most states they are also responsible for serving as the primary regulator of legal service delivery. Courts have varied in the degree to which they are able to pivot from an adjudicatory mindset to a regulatory mindset. Unfortunately, in this instance, the Court has taken the worst elements of both, leading it to a decision that harms those whom regulation is supposed to benefit.

Lack of Public Involvement and Transparency

Transparency and an opportunity for public comment are hallmarks of good government. The Court's decision to end LLLT licensure demonstrated neither of these attributes. Not only was there no opportunity for public comment as part of the Court's process of reaching the decision, but the Court quietly released the sunset order on a Friday afternoon, in a manner reminiscent of an executive branch official "taking out the trash" by releasing undesirable stories right before the weekend.

Ignoring Stare Decisis

Ironically, the Court ignored one part of the adjudicatory mindset that it should have honored: *stare decisis*. The public expects policies and regulations to change based on who holds office in the legislative and executive branches. However, the judicial branch is supposed to hold a greater respect for consistency, whatever the opinions of its individual members. The Court established LLLT licensure less than a decade ago; to reverse course after such a short time follows one of the worse examples of the political branches.

Money, Politics, and Judicial Recusal

Chief Justice wrote a sharp dissent from the Court's decision to slightly expand the LLLT scope of practice in 2019, and then voted to sunset in 2020.

In 2018, Justice Gonzalez was reelected in a contested election in which he raised the highest amount for a Washington Supreme Court Justice race in recent memory.[1] He held at least three fundraisers hosted by family lawyers during his 2018 campaign.[2]

If a member of the Court had one of her campaign donors appear before them in a contested case, she would—one hopes—recuse herself to avoid the appearance of impropriety. In contrast, members of the political branches do not usually recuse themselves from matters affecting their campaign donors. Unfortunately, Justice Gonzalez chose the less restrictive standard of lawmakers, rather than the standard he would have been required to follow had this been a contested case rather than a regulatory decision.

Individually, none of these three examples of an ill-suited mindset would necessarily call the Court's decision process into question (although the last of the three might). However, in combination, they diminish the public's confidence in the Court's decisions, not only in this matter, but overall. **We urge the Court to stay its order to sunset LLLT licensure pending an open process in which the public is given an opportunity to comment.**

[1] Justice Gonzalez raised and spent more money in a campaign cycle than any other candidate since at least 2010, according to Public Disclosure Commission data (https://www.pdc.wa.gov/browse/campaign-explorer, searched April 29, 2021).

[2] See, e.g., April Showers of Support for Justice Gonzalez, April 7, 2018 (reception hosted by Adrienne Stuart of Tacoma); Reception to Re-Elect Justice Gonzalez, April 18, 2018 (co-hosted by Dennis Cronin and Paul Mack of Spokane) available at https://justicegonzalez.com/events/; July 29, 2018 fundraiser for Justice Gonzalez (hosted by Dennis McGlothin at his home), available at https://twitter.com/dennislawyer?lang=en. See also Retain Justice Montoya-Lewis, August 25, 2020 (co-hosted by Dennis McGlothin and Shiki Izuka), available at https://twitter.com/dennislawyer/status/1294288021882171393/photo/1.