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**COMMENTS TO THE WASHINGTON STATE SUPREME COURT
REGARDING PROPOSED ADMISSION TO PRACTICE RULE 28 –
“LIMITED PRACTICE RULE FOR LEGAL TECHNICIANS”
SUBMITTED BY
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Pursuant to a request from the Supreme Court of Washington, HALT, Inc.¹ submits these comments in support of the proposed Admission to Practice Rule 28, which will greatly expand access to legal services for low and moderate-income people who cannot pay the prohibitive cost of full legal representation. Adoption of Practice Rule 28 would send a strong message from this Court that innovative approaches must be explored and implemented to meet the growing legal needs of Washington State’s consumers.

It is undisputed that, on their own, lawyers cannot provide all the legal services consumers need. As the Court’s *2003 Civil Legal Needs Study* conclusively states “Many thousands of our state’s most vulnerable residents have serious legal problems and cannot get any help in resolving them.” Efforts to improve access through *pro bono* programs, legal aid and help for *pro se* litigants, while useful, have been insufficient to address the problem, yet lawyers consistently resist innovative changes that employ non-lawyer legal service providers.²

There is a long history of bar associations acting as trade guilds and attempting to protect the economic interests of their members by using

¹ HALT, Inc. is a national, nonprofit public interest group dedicated to increasing access and accountability in the civil justice system. HALT believes that consumers should have access to a continuum of legal services provided by both attorneys and qualified non-lawyers that meet the full range of their legal needs. Details about HALT’s education and advocacy programs are available at www.halt.org.

² See Rhode, Deborah L., *Access to Justice* (New York: Oxford University Press, 2004), pp. 87-88, “Giving qualified non-lawyers a greater role in providing routine legal assistance is likely to have a positive effect, but the organized bar is pushing hard in the opposite direction State bar leaders repeatedly sound alarms along the lines issued by one Arizona committee that non-lawyer services are causing a ‘crisis in faith’ in the legal system.”

unauthorized practice prohibitions to suppress competition. In fact, on no fewer than six occasions, the United States Supreme Court has ordered state or local bar associations to cease protectionist practices that violate the Constitution or the Sherman Act.³

Federal agencies also recognize the damaging impact unauthorized practice of law rules have on consumers⁴ and have, together with HALT, recommended a narrower ‘practice of law’ definition—one that acknowledges that the defining characteristic of the practice of law is the establishment of an attorney-client relationship.⁵ By being absolutely clear that it is regulating only activities that require an attorney-client relationship, courts can allow innovative approaches to

³ See *NAACP v. Button*, 371 U.S. 415 (1963)(Virginia court injunction enforcing state anti-solicitation rules against NAACP lawyers violates the First and Fourteenth Amendments); *Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1 (1964) (injunction against union-sponsored lawyer referral service relying on state bar regulations violates the First and Fourteenth Amendments); *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217 (1967)(state bar use of unauthorized practice of law regulations to prevent union from hiring attorneys on salary basis violates the First and Fourteenth Amendments); *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576 (1971)(injunction secured by state bar against union-sponsored legal services and lawyer referral program violates the First and Fourteenth Amendments); *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975)(minimum legal fee schedules violate the Sherman Antitrust Act); *Bates v. Arizona State Bar*, 433 U.S. 350, 383 (1977)(blanket prohibition on attorney advertising violates the First Amendment).

⁴ See Department of Justice comments to the Supreme Court of Wisconsin expressing concern that a broadly written practice of law definition “likely would unduly restrict non-lawyers from competing with lawyers to the detriment of consumers.” Letter from the Department of Justice to Ms. Susan Gray, Office of the Director of State Courts, February 28, 2008, page 1.

⁵ The Federal Trade Commission and the Department of Justice, in comments to the Supreme Court of Hawaii, wrote that they “believe that the definition of the practice of law should be limited to activities for which specialized legal knowledge and training is demonstrably necessary to protect consumers *and an attorney-client relationship is present.*” Comments on Proposed Definition of the Practice of Law, January 25, 2008 (italics added). In comments to the Wisconsin Supreme Court, Department of Justice Assistant Attorney General Thomas O. Barnett wrote, “...we suggest that the proposed definition be limited to services where specialized legal skills are required *and an attorney-client relationship is present.*” Comments on Petition for Supreme Court Rule 07-09, December 10, 2007. Such language is also found in Rule 49(b)(2) of the District of Columbia Court of Appeals, which defines the practice of law as “the provision of professional legal services *where there is a client relationship of trust or reliance.*”

exist—such as non-lawyer legal service providers—that help meet consumer demand for efficient and inexpensive legal help⁶.

Washington has been in the forefront of providing access to the civil justice system with innovative programs such as the Northwest Justice Project, which provides free civil legal services to low-income people from 13 offices and four satellite locations, and CLEAR (Coordinated Legal Education, Advice and Referral), a statewide comprehensive toll-free telephone intake and referral system that serves as a critical point of access for clients throughout the state. Adoption of the proposed Legal Technician’s rule would maintain the state’s position as a leader in legal reform.

HALT congratulates the Court for taking up this measure and believes its objective should be to rapidly expand the availability of non-lawyer legal service providers by streamlining the entrance requirements for becoming a legal technician.

I. Revisions to Certification Requirements

As it is currently written, the proposal sets up a licensing scheme that is unnecessarily burdensome. While we support most of the rule’s “Certification Requirements,” we encourage the Court to modify subsections C (3) Education and C (4) Experience as follows:

Under C (3), we believe the language should read: Education. Have graduated from a paralegal/legal assistant program that is approved by the American Bar Association or the Commission *or any other accrediting body approved by the Commission*. This allows non-lawyers who have been accredited by agencies outside the state to sit for the exam. We also believe a fourth category should be added under C (3) and should read: d) Those who have successfully completed the first year of an accredited or unaccredited law school. Allowing law students who have completed at least one year of law school to sit for the examination would greatly expand the pool of qualified candidates.

⁶ California and Arizona have developed programs that are analogous to Washington’s proposed Legal Technicians program by enacting legislation and adopting rules that authorize legal document preparers to help fulfill consumers’ legal needs (See Cal. Bus. & Prof. Code § 6400 et al. (2007); Arizona Supreme Court Rules, Rule 31 (d) (23) (2007)).

Under C (4), we object to provision b) which sets up an arbitrary and unnecessary obstacle to becoming a legal technician and believe it should be deleted. A more valuable provision under C (4) would specifically recognize non-lawyer legal service providers, such as traditional paralegals, independent paralegals and legal document preparers who have been certified in other states and who already possess the requisite education, skill and training. Many of these professionals have years of experience selecting and completing legal forms, interviewing clients, conducting legal research and preparing simple legal forms and could start helping clients immediately.

When considering experience requirements, we urge the Court to follow the example of the Arizona Supreme Court and the Supreme Court of California, which have created education and experience requirements for independent paralegals that we believe are more reasonable and that act to protect the interests of consumers. Arizona requires two years experience when an applicant has only finished high school, one year when the applicant has finished a four-year degree program and no experience when the applicant has been trained in certain paralegal programs. California's provisions are substantially the same as those of Arizona.

Both California and Arizona have concluded that training in a paralegal program is sufficient to familiarize those providing non-lawyer services with the relevant processes and that experience is not necessary if one has been through the training. While a minimum experience requirement for those *without* legal training makes sense to protect legal consumers, requiring experience for those who already have adequate training is an unnecessarily burdensome requirement, which might make trained and knowledgeable paralegals less inclined to pursue Legal Technician certification.

II. Comments on other Regulatory Features

We support the creation of a Nonlawyer Practice Commission, as defined under subsection B (4), to help regulate non-lawyer legal service providers but urge the Court to require significant non-lawyer participation on any governing panel. We offer Arizona as a good model to follow. In Arizona, the Chief Justice of the Court appoints all eleven members of the Board of Legal Document Preparers that includes: one (1) judge or court administrator, five (5) certified Legal Document Preparers with at least five years of experience, the administrative director of the courts or a designee, one (1) superior court clerk or a designee, one (1) attorney, and two (2) professionals who are not involved in law or the courts.

We also support the various requirements APR 28 imposes on Legal Technicians before they can offer legal services, such as those found under C (5) fulfilling a mandatory *pro bono* service requirement, E (4) using written contracts with customers, G (1), taking continuing education courses and J (2) being subject to the “same ethical standards” as lawyers. Strong regulatory requirements will ensure that consumers are adequately protected from Legal Technicians who behave incompetently or fraudulently. It is notable, however, that many of the proposal’s requirements for non-lawyers go far beyond what is expected or required of lawyers. For example, most lawyers are not required to perform *pro bono* work as a condition of employment or membership in a bar association. Nor are they required to use written fee contracts or disclose to clients that they have “the right to rescind the contract at any time and receive a full refund of unearned fees.” HALT has long advocated similar requirements for all legal service providers – lawyers and non-lawyers alike.

III. Conclusion

The vast majority of Washingtonians who require legal assistance continue to have unmet needs because they simply cannot afford the \$100 or more per hour in fees it takes to hire a lawyer. Limiting consumers to options that only the richest can afford makes it impossible for many consumers to find any legal representation at all. Any realistic solution to Washington State’s crisis in access must include expanding the availability of less expensive legal services provided by non-lawyers. The proposed Legal Technician’s rule offers a real and practical solution to Washington’s legal access problem. On behalf of its thousands of members nationwide, and especially its members in Washington, HALT respectfully asks the Court to adopt APR Rule 28, incorporating the amendments described herein.