

MINUTES

Paraprofessional Licensing Implementation Committee

Admissions & Regulation Workgroups Breakout Session

Meeting Date:	January 11, 2021
Location:	Zoom Call
Chair:	Sr. Judge Kirsten Thompson
Vice Chair:	Sr. Judge Dan Harris (not in attendance)
Committee Attendance:	Sue Gerhardt, Linda Odermott, Jon Dennis, Brian Cox, Robin Wright, Eddie Sherman
Advisory Group:	Katherine Denning, Kendra Matthews, Nik Chourey, Danny Lang, Terry Wright, Walter Fonseca, Ryan Jennings, Jason Specht, Jered Brown, Aubrey Baldwin, Crystal Sullivan, Jack Lundeen
Staff present:	Helen Hirschbiel, Susan Grabe, Kellie Baumann

INFORMATION ITEMS

Breakout Session – Admissions & Regulation Workgroup

- The Workgroup on Admissions and Education and the Regulation Workgroup had a joint breakout session.
 - The workgroups began by discussing the draft Admissions Framework.
 - The first topic was ineligible persons and character and fitness issues.
 - The Futures Task Force (in recommendations 1.1 and 1.2) included attorneys who have been disbarred, suspended for disciplinary reasons, or who resign Form B while discipline is pending as ineligible.
 - The workgroups discussed the pros and cons of licensing paraprofessionals who may have been previously subject to discipline. The group discussed that the level of discipline (including criminal prosecution in extreme cases) maybe relevant.
 - Helen Hirschbiel said that that fits with the way that the BBX handles character and fitness applications and issues. It raises a character and fitness issue but there are very few things that makes someone outright ineligible.
 - Other members agreed with this perspective
 - The group consensus was that disbarment might make someone ineligible and anything else would be under review by whichever designated body would be doing the character and fitness analysis.
 - The next section that the workgroup discussed was Minimum Qualifications
 - The Futures Task Force listed the minimum requirements as:
Must be at least 18 years of age, prove that they have good moral character and fitness for the practice of law; and file a Paraprofessional Licensing
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- application and pay the appropriate fee, as set forth by the OSB Board of Governors;
- It was pointed out that the recommendation was not to have an exam put on by the Bar, but to use one of the national exams available. The PCCE, an entry level paralegal exam, was specifically mentioned by the Futures Task Force.
 - Members discussed that there are a number of organizations that administer exam, and it is easy to be confused as to which is which. Different exams have different minimum education and experience requirements in order to apply.
 - The groups discussed that requiring an examination may be cost prohibitive to some applicants. It was also discussed that it may not make sense to require an individual to take an exam in light of ongoing discussions about writing for the bar.
 - There was discussion of whether the exams cover ethical considerations. In general they do. Some members emphasized that this is an important component since paraprofessionals would be working without lawyer supervision.
- The next section that the workgroups discussed is a waiver of education requirements.
 - The Futures Task Force Report outlined the education requirements as: an Associate Degree or higher in paralegal studies; Degree must be from an ABA-approved or institutionally-accredited paralegal program; and the Paralegal program must provide course-work in the subject matter of the license practice area, as approved by the Court (Domestic Relations and Landlord Tenant).
 - The question was raised as to when and if this requirement should be waived.
 - The workgroup attempted to define what a highly experienced paralegal (who could waive the education requirements) would be.
 - The definitions drafted by the workgroup are:
 - “Highly experienced paralegals” are paralegals with a minimum of 5 years of substantive paralegal experience under the supervision of an attorney licensed to practice in Oregon [adding the Oregon practice requirement, which was not included in the recommendations, but is a requirement of other state licensing programs - discussion topic]; OR a paralegal who has successfully passed one of the following national paralegal certification exams, each of which require varying education and experience eligibility components; the National Association of Legal Assistants (NALA) Certified Paralegal (CP) Exam, the National Federation of Paralegal Associations (NFPA) Paralegal Advanced Competency Exam (PACE), or the NALS Professional Paralegal (PP) Exam. [The alternative of allowing waiver of the education requirement for paralegals who have passed a national exam was also not included in the recommendations but has been included in the other states' licensing programs. Discussion topic.]
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- “Minimum work experience” is defined as full-time employment of at least one year or a minimum of 1,500 hours performing the duties of a paralegal at least 80% of the time. Part-time employment is calculated on a pro-rata basis.
 - “Substantive Paralegal Experience” is defined as the performance of substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively performed by a lawyer. The paralegal may be contracted with or employed by a lawyer, law office, governmental agency, or other entity, or may be authorized by administrative, statutory, or court authority to perform this work. [Definition culled from National Federation of Paralegal Associations and takes into account Footnote 116 of the Task Force Report, wherein it states, “Most applicants will meet the requirement by working as a paralegal under attorney supervision, but the rules should be drafted to recognize other appropriate, attorney-supervised work experience like, for example, a clerkship by a law school graduate.”]
 - Substantive paralegal work experience may be verified by letter or certification by the supervising attorney. Each such verification must verify the applicant's substantive paralegal experience and the time during which the work was performed. The verification must specify dates, capacity of employment and confirm the substantive paralegal experience with a statement from the employer that “verifies the work would have otherwise have been performed by an attorney; the paralegal was full time or part-time, the length of employment in the position, and the average number of hours worked. [This certification language is based upon NFPA’s application verification of paralegal substantive experience as a basis for starting the discussion about certifying the experience. It also comports with Footnote 117 in the Futures Taskforce which states, “At a presentation on the workgroup’s progress on April 14, 2017, a member of the OSB Board of Governors suggested requiring the applicant to obtain a written certification from the supervising attorney. Washington has a similar requirement, and the workgroup unanimously agreed that the Oregon rules should include a similar provision.”]
 - The Futures Task Force said that anyone with 5 years of experience would qualify as a “highly experienced paralegal” who could waive the education requirements.
 - The Admissions workgroup decided that 5 years was not enough. Other programs require 10 years to waive, which seems too high. The group came up with 7 years as a potential requirement. The Futures Task Force was silent on whether the experience had to be within Oregon on Oregon matters. The other thing that the workgroup discussed previously was whether national credentials would count as “highly experienced.”
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- Different jurisdictions are discussing this issue, and one of the problems they have found is that some of the practicum and experience requirements have ended up dissuading people from seeking licensure because they are too stringent. The point was made that this group should not make the requirements more stringent than the Futures Task Force had because we don't want to discourage people from seeking licensure. This has caused some programs to not be as successful.
 - One member provided an example of two situations that seem to illustrate what the group is discussing. He has a legal assistant with over 30 years of experience who knows how to file inside and out, but he would never want her giving legal advice to a person because that is not her role. He also, through involvement with several landlord organizations, know of several individuals who have absolutely zero legal training and zero legal experience who are better than 99% of lawyers that he knows in advising on landlord tenant law. He would rubberstamp them into this program in a second. How could that second person become a licensed paraprofessional without having to come work for an office or saying they are under his supervision? These are people who are involved at a state level who write the manuals and the book and who work closely with lawyers and legislators. They have a broad level of experience, but no formal education and don't hit any of our qualification numbers.
 - The committee then discussed the "minimum work experience" definition.
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