

MINUTES

Paraprofessional Licensing Implementation Committee Regulation Workgroup Breakout Session

Meeting Date:	February 8, 2021
Location:	Zoom Call
Committee Chair:	Sr. Judge Kirsten Thompson
Committee Vice Chair:	Sr. Judge Dan Harris (not in attendance of this workgroup's breakout session)
Committee Attendance:	Sue Gerhardt
Advisory Group:	Madeleine Campbell, Nik Chourey, Katherine Denning, Walter Fonseca, David Friedman, Daniel Lang, Joan Marie Michelson, Jason Specht
Staff present:	Susan Grabe

INFORMATION ITEMS

Breakout Session—Regulation Workgroup

- The group reviewed the Minimum Continuing Legal Education rules as presented by Kate Denning. The rules and regulations attached as Exhibit 1 were identified as requiring revision or review. Discussion occurred regarding specific rules:
 - Licensed paraprofessionals need to be added to attorney references throughout.
 - 1.130, 3.6, 7 need to be revised if the reporting dates and audit procedures will be different from attorneys.
 - 2.2-2.4 likely would not apply for the first several years as there will be no senior licensed paraprofessionals to mentor new licensees.
 - 3, 5.14(b) licensed paraprofessionals should be required to obtain the same specialty credits regarding abuse, access to justice, etc. ORS 9.114 would need to be revised, if this is the case.
 - 5.6 reference is made to ABA or AALS accredited law schools so would need to be revised based upon licensed paraprofessional admission requirements.
- The committee reviewed the Oregon Rules of Civil Procedure and Uniform Trial Court Rules as presented by Sue Gerhardt. Suggested revisions were reviewed, discussed and preliminarily approved as indicated in the attached drafts (Exhibits 2 and 3), excluding the following that were identified for further discussion:
 - UTCR 1.090(2)(a) SANCTIONS
 - Assess against the noncompliant party or attorney or both reasonable costs, expenses and attorneys fees incurred by a party, attorney or the court.
 - 1.090(2)(b) Otherwise award reasonable costs, expenses and attorneys fees incurred by a party, **attorney** or the court.
 - Danny Lang expressed concern that licensed paraprofessionals would be unduly vulnerable to financial sanctions due to lack of education and experience. Discussion followed regarding protections resulting from licensure, education and insurance, scope of practice limits (possibly including a ceiling on net assets) as well as a duty to refer. Judge Thompson reminded the group that judges have discretion in awarding fees, costs and sanctions.
 - Danny Lang suggested if licensed paraprofessionals are subject to sanctions, candidates should be experienced in matters such as rats and mold in the

landlord tenant area. After further discussion, the group concurred it should be considered in the scope of practice decisions.

- “47E Summary Judgment Affidavit or declaration of attorney when expert opinion required.”
- The workgroup discussed whether licensed paraprofessionals should be added to ORCP 47E relating to summary judgments. The primary concern was that attorneys would use summary judgments to manipulate an opposing party into having to hire an attorney in place of licensed paraprofessional. The group concurred the rule should be revised to include licensed paraprofessionals but also listed as a topic for further review.

Summary of Topics for Further Discussion:

- ORCP 47E: summary judgments
- ORCP 55D(6): confidential health information (CHI)
- UTCR 1.090(2)(a): sanctions
- ORS 9.114
- Scope of license (guardrails): Prenuptials, duty to refer, limits in net case values
- Ethics hotline
- What does the community need?

MCLE rules review for Paraprofessional committee

- Reference to 'Attorneys' through out
- 1.1- definition of 'Active Member'- "of the Oregon State Bar, as defined in Article 6 of the Bylaws of the Oregon State Bar"
- 1.12- definition 'New Admittee'
- 1.100- definition 'Inactive or Retired Member'
- 1.110- definition 'Suspended Member'
- 1.130, 3.6, 7- Reporting, any reason would not be the same dates, audit procedures etc?
- 1.140- MCLE transcript, available through the electronic system provide by the Oregon State Bar, are we going to be providing that?
- 2.1 BOG is in charge of administering- same for Paras? 8.1 BOG has final suspension review
- 2.2-2.4 NLMP- similar program for Paras?
- 3- will be Paras be required to get the same 'specialty credits' ex: Abuse, Access to Justice
 - 5.14(b) "Child and elder abuse reporting programs must be devoted to the lawyer's statutory duty to report child abuse and elder abuse (see ORS 9.114)." Is that statute going to be amended or will there be a separate Para abuse reporting reg that should be referenced in the MCLEs?
- 3.3- Special additional credit reqs for new admittees and reinstated members
- 3.100, 3.200- Out of State-are we going to have reciprocity?
- 4 Accreditation Process- "shall be submitted via the electronic system provided by the Oregon State Bar via the internet."
- 5.6 Teaching Activities- "may be claimed for teaching accredited continuing legal education activities...in ABA or AALS accredited law schools." Should apply to Para school programs as well?

ORCP

*Highlighted text=topics for further discussion

SUMMONS:

7B Any time after the action is commenced, plaintiff{,} [or] plaintiff's attorney {**or licensed paraprofessional**} may issue as many original summonses as [either] {they} may elect and deliver such summonses to a person authorized to serve summonses under section E of this rule. A summons is issued when subscribed by plaintiff or an active member of the Oregon State Bar{, **including a licensed paraprofessional**}.

7C Who to serve??

C(3)(a) **In general.** All summonses, other than a summons referred to in paragraph C(3)(b) or C(3)(c) of this rule, shall contain a notice printed in type size equal to at least 8-point type that may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!

You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal document called a “motion” or “answer.” The “motion” or “answer” must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney { **or licensed paraprofessional**}, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

C(3)(b) **Service for counterclaim or cross-claim.** A summons to join a party to respond to a counterclaim or a cross-claim pursuant to Rule 22 D(1) shall contain a notice printed in type size equal to at least 8-point type that may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!

You must “appear” to protect your rights in this matter. To “appear” you must file with the court a legal document called a “motion,” a “reply” to a counterclaim, or an “answer” to a cross-claim. The “motion,” “reply,” or “answer” must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney {**or licensed paraprofessional**} or, if the

defendant does not have an attorney {**or licensed paraprofessional**}, proof of service on the defendant.

If you have questions, you should see an attorney {**or licensed paraprofessional**} immediately. If you need help in finding an attorney {**or licensed paraprofessional**}, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

C(3)(c) **Service on persons liable for attorney {**or licensed paraprofessional**} fees.** A summons to join a party pursuant to Rule 22 D(2) shall contain a notice printed in type size equal to at least 8-point type that may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney {**or licensed paraprofessional**} fees may be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must “appear” to protect your rights in this matter. To “appear” you must file with the court a legal document called a “motion” or “reply.” The “motion” or “reply” must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney {**licensed paraprofessional**} or, if the defendant does not have an attorney {**or licensed paraprofessional**}, proof of service on the defendant.

If you have questions, you should see an attorney {**or licensed paraprofessional**} immediately. If you need help in finding an attorney {**or licensed paraprofessional**}, you may contact the Oregon State Bar's Lawyer Referral Service online at www.oregonstatebar.org or by calling (503) 684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

17A **Signing by party {,} or attorney {**or licensed paraprofessional**}; certificate.** Every pleading, motion, and other document of a party represented by an attorney {**or licensed paraprofessional**} shall be signed by at least one attorney {**or licensed paraprofessional**} of record who is an active member of the Oregon State Bar. A party who is not represented by an attorney {**or licensed paraprofessional**} shall sign the pleading, motion, or other document and state the address of the party. The signature for filings may be in the form approved for electronic filing in accordance with these rules or any other rule of court. Pleadings need not be verified or accompanied by an affidavit or declaration.

47E **Affidavit or declaration of attorney {**or licensed paraprofessional**} when expert opinion required.** Motions under this rule are not designed to be used as discovery

devices to obtain the names of potential expert witnesses or to obtain their facts or opinions. If a party, in opposing a motion for summary judgment, is required to provide the opinion of an expert to establish a genuine issue of material fact, an affidavit or a declaration of the party's attorney { **or licensed paraprofessional** } stating that an unnamed, qualified expert has been retained who is available and willing to testify to admissible facts or opinions creating a question of fact will be deemed sufficient to controvert the allegations of the moving party and an adequate basis for the court to deny the motion. The affidavit or declaration must be made in good faith based on admissible facts or opinions obtained from a qualified expert who has actually been retained by the attorney { **or licensed paraprofessional** }, who is available and willing to testify, and who has actually rendered an opinion or provided facts that, if revealed by affidavit or declaration, would be a sufficient basis for denying the motion for summary judgment.

55A(3)(a) Subpoena:

A(3) **Who may issue.**

(3)(a) **Attorney { or licensed paraprofessional } of record.** An attorney { **or licensed paraprofessional** } of record for a party to the action may issue a subpoena requiring a witness to appear on behalf of that party.

55D(6) **Additional responsibilities of attorney { or licensed paraprofessional } or party receiving delivery of CHI.**

68A(1) A Definitions. As used in this rule:

A(1) **Attorney fees.** “Attorney fees” are the reasonable value of legal services related to the prosecution or defense of an action { **whether provided by attorneys or licensed paraprofessionals** }.

UTCR

*Highlighted text=topics for further discussion

- 1.010(4) These rules apply to attorneys {, **licensed paraprofessionals**} and to persons representing themselves.
- 1.050(1)(b) A court must incorporate into its SLR any local practice, procedure, form, or other requirement (“local practice”) with which the court expects or requires parties {,} [and] attorneys {, **and licensed paraprofessionals**} to comply. A court may not adopt SLR that duplicate or conflict with the constitutions, statutes, ORCP, UTCR, Chief Justice Orders, Supreme Court Orders, disciplinary rules for lawyers, judicial canons, or ORAP. A court may not adopt SLR that establish internal operating procedures of the court or trial court administrator that do not create requirements or have potential consequences for parties {,} [or] attorneys { **or licensed paraprofessionals**}.
- 1.050(1)(3) When any local practice is not contained in a court’s SLR, the court may not enforce such local practice or impose any sanction therefore, unless the court has first afforded the party {,} [or] attorney { **or licensed paraprofessional**} a reasonable opportunity to cure the violation by complying with the local practice.
- 1.090(2)(a) **SANCTIONS**
Assess against the noncompliant party {,} [or] attorney { **or licensed paraprofessional**} or both reasonable costs, expenses and attorney[s] { **or licensed paraprofessional**} fees incurred by a party, attorney {, **licensed paraprofessional**} or the court.
- 1.090(2)(b) Otherwise award reasonable costs, expenses and attorneys { **or licensed paraprofessional**} fees incurred by a party, attorney {, **licensed paraprofessional**} or the court.
- 1.110(5) “Party” means a litigant {,} [or] the litigant’s attorney { **or licensed paraprofessional**}.
- 2.010(6)(a) The name of the party {,} [or] attorney { **or licensed paraprofessional**} signing any pleading or motion must be typed or printed immediately below the signature.
- 2.010(7) All documents must include the author’s court contact information under UTCR 1.110(1) and, if prepared by an attorney { **or licensed paraprofessional**}, the name, email address, and the Bar number of the author and the trial attorney { **or licensed paraprofessional**} assigned to try the case.
- 2.010(14) An attorney {, **licensed paraprofessional**} or self-represented party whose court contact information changes must immediately provide notice of that change to the trial court administrator and all other parties.

- 3.010(2) When appearing in court, all attorneys { **licensed paraprofessionals** } and court officials must wear appropriate attire.
- 3.030 During trial, the litigants and litigants' attorneys { **or licensed paraprofessionals** } must not address adult witnesses, jurors or opposing parties by their first names, and, except in *voir dire*, must not address jurors individually.
- 3.040 Attorneys { **and licensed paraprofessionals** } must advise their clients and witnesses of the formalities of the court and must encourage their cooperation.
- 3.070 Except as otherwise permitted by the court, during the trial of any case or the presentation of any matter to the court, no persons, including members of litigants' families, shall be permitted within the bar of the courtroom, other than clients, attorneys, { **licensed paraprofessionals** } court personnel and witnesses when called to the stand.
- 3.140(1) An application to resign, a notice of termination, or a notice of substitution made pursuant to ORS 9.380 must contain the court contact information under UTCR 1.110 of the party and of the new attorney { **or licensed paraprofessional** } , if one is being substituted, and the date of any scheduled trial or hearing. It must be served on that party and the opposing party's attorney { **or licensed paraprofessional** }. If no attorney { **or licensed paraprofessional** } has appeared for the opposing party, the application must be served on the opposing party. A notice of withdrawal, termination, or substitution of attorney { **or licensed paraprofessional** } must be promptly filed.
- 3.140(2) The attorney { **or licensed paraprofessional** } who files the initial appearance for a party, or who personally appears for a party at arraignment on an offense, is deemed to be that party's attorney- { **or licensed paraprofessional** } -of-record, unless at that time the attorney { **or licensed paraprofessional** } otherwise notifies the court and opposing party(ies) in open court or complies with subsection (1).
- 3.140(3) When an attorney { **or licensed paraprofessional** } is employed or appointed to appear in an already pending case, the attorney { **or licensed paraprofessional** } must immediately notify the court and the opposing party in writing or in open court. That attorney { **or licensed paraprofessional** } shall be deemed to be the attorney- { **or licensed paraprofessional** } -of-record unless that attorney { **or licensed paraprofessional** } otherwise notifies the court.
- 3.180 ELECTRONIC RECORDING AND WRITING ON COURTHOUSE PREMISES
- 3.180(6) The provisions of subsections 5(c) and (e) of this rule do not apply to attorneys { **or licensed paraprofessionals** } or to agents of attorneys { **or licensed paraprofessionals** } unless otherwise ordered by the court.
- 5.060 STIPULATED AND *EX PARTE* MATTERS

- 5.060(2) An *ex parte* default, a stipulated order, or a stipulated judgment that may be presented conventionally also may be personally presented to a judge by the attorney { **or licensed paraprofessional** } or the attorney's { **or licensed paraprofessional's** } agent. Other types of *ex parte* matters personally presented to a judge must be presented by the attorney { **or licensed paraprofessional** }.
- 6.030(2) A motion to postpone a trial must be signed by the attorney of record { **or licensed paraprofessional of record** } and contain a certificate stating that [counsel] { **the attorney or licensed paraprofessional** } has advised the client of the request and must set forth . . .
- 6.030(4)(c) The motion must be signed by the attorneys { **or licensed paraprofessionals** } of record;
- 6.030(4)(d) The motion must contain a certificate stating that the attorneys { **or licensed paraprofessionals** } have advised their clients of the stipulation and the clients agree to the postponement; and . . .

MEDIATION RULES?

13.100 AUTHORITY OF ARBITRATORS

- 13.100(9) Require a party, an attorney { **or licensed paraprofessional** } advising each party, or **both**, to pay the reasonable expenses, including attorney { **and licensed paraprofessional** } fees, caused by the failure of such party { **1** } [or] attorney { **1** } **licensed paraprofessional** } or **both**, to obey an order of the arbitrator.
- 13.100(10) RESTRICTIONS ON COMMUNICATION BETWEEN ARBITRATOR, PARTIES AND ATTORNEYS { **OR LICENSED PARAPROFESSIONALS** }. Neither counsel { **or licensed paraprofessional** } nor a party may communicate with the arbitrator.