

MINUTES

Paraprofessional Licensing Implementation Committee

Meeting Date: March 8, 2021
Location: Zoom Call
Chair: Sr. Judge Kirsten Thompson
Vice Chair: Sr. Judge Dan Harris
Committee Attendance: Sue Gerhardt, Linda Odermott, Brian Cox, Robin Wright
Advisory Group: Chris Costantino, Kendra Matthews, Nik Chourey, Danny Lang, David Friedman, Joan Marie Michelson, Walter Fonseca, Ryan Jennings, Jason Specht, Madeleine Campbell, Aubrey Baldwin, Crystal Sullivan,
Staff present: Helen Hirschbiel, Susan Grabe, Kellie Baumann

ACTION ITEMS

Meeting notes for 2/22 approved

The 2/23 Regulation minutes and 3/1 Admission minutes were tabled until next meeting

INFORMATION ITEMS

Revisit Work Plan and Committee Schedule –

- PLIC Work Plan and Timeline
 - The committee discussed the Work Plan and whether they needed to adjust some of the timeframes. Linda Odermott reported that the Admissions Workgroup is on target and has a draft framework, but would like the full committee to consider a few issues. They are going to draft the educational directives with the education advisors at the next Work Group meeting. Robin Wright reported that the Regulation Work Group has made good progress in the Family Law area, but still has some significant work to do. They especially need assistance from those well versed in landlord tenant issues.
 - Judge Thompson recommended revising the timeline so that the Admissions guidelines are due April 5th and the Regulation guidelines are due April 19th. This will allow the full Implementation Committee to review each individual draft at separate meetings. As a reminder, bar staff is willing to help with the drafting of the guidelines once the full committee has addressed the policy decision points.
 - The committee discussed that their recommendations will have to go to the full Board of Governors as well as the Board of Bar Examiners for review and consideration before a set of final recommendations is made to the Supreme Court. J Thompson emphasized that a robust process is important to make

sure there is adequate time for feedback and comments. Jason Specht also reinforced that the court wants to ensure ample time and opportunity for public comment.

- She suggests we push the overall timeline back a bit. The committee can possibly present a final report to the BOG at their November meeting.
- Judge Thompson suggested adjusting to May/June for phase III – move the deadline to June 30th for the guideline and regulatory structure. This adjustment would leave the comment period for July/August with the goal of being able to present to the Board of Governors in September. Report to the Board of Bar Examiners either right before the BOG or immediately after. Update to the court in October. Final report in December or January. This timeline would allow for adequate notice and comment. Defining the comment period at a more granular level will be important as we reach out for comments.
- Judge Harris reported on the progress of the stakeholder workgroup and possible adjustments to the comment period.
- He stated that they have a list of stakeholders that comprise about 80% of those interested parties to reach out to about the process, however, until we have our first draft proposal to share with the public, all we can do is give them a heads up on what we are working on and a general idea of where we are headed. He believes the earlier we can solicit feedback the better and more valuable the input will be to inform the work of the committee and to ensure the broader community feels like they were involved in the final product.
- Susan Grabe stated that touching base with the legal community and the communities we plan to serve will be extremely important. The stakeholder is currently working on building on the list of communities that we serve to solicit their feedback as well.
- Judge Thompson asked for a regulatory view on the timeframe for putting work out for public comment.
- Helen H. clarified that the court relies on the bar for public comment. Generally, we provide at least 30 days, but in this case more time, either 60 days or two 45 day periods might be better. She stated, in terms of formal public comment requirements, BOG has committed to the court that it will provide at least 30 days public comment for any regulatory rule changes prior to submitting them to the court. A proposed approach would be to send a final draft to BOG in September. BOG would put it through the final comment process, then submit it with any comments received to the court at its November/December meeting. However, we should submit it for feedback before we have the absolutely final version.
- Jason Specht stated that the court relies on the Bar's public comment period to vet the rules. The court prefers that they receive as final of a product as possible.

- Judge Thompson the work plan has July/August for submitting almost final drafts to the stakeholders. She assumes most of it will be virtual and the stakeholder workgroup can solicit feedback from these stakeholders virtually.
- The committee agreed to review the Admissions and Regulation reports as separate documents at the April 5 and April 19 full committee meetings respectively.
- A revised work plan with the changes discussed will be distributed.
- Judge Thompson discussed the following changes to the full committee's membership.
 - Aurora Levinson has regrettably had to step away from the committee.
 - Eddie Sherman needed to step back from leading the stakeholder workgroup. We are confirming whether he can return to the full committee or not.
- Full Committee Schedule
 - Susan Grabe asked that the schedule be revised so that every other meeting will be a full committee meeting and the workgroups will meet in the meantime.
 - The committee agreed to this revision
 - Robin Wright requested that we have more time for the workgroups to meet.
 - March 22 will be a workgroup meeting, April 5th will be a full committee discussion meeting, and April 19th will be a workgroup meeting.

Discussion Points for Full Committee:

- Scope of License - would licensed paraprofessionals have a role in these?
 - DHS proceedings:
 - Robin Wright said that the Regulatory Workgroup would suggest that paraprofessionals be excluded from being a part of DHS proceedings. The formal court process aspect of this has moved to the end and there are more informal discussions occurring outside of the courtroom. She said the Workgroup feels that there are a lot of complexities involved that would make this more difficult.
 - Sue Gerhardt said the Dom Rel piece is separate. She said the fact that there is a pending DHS case and juvenile case shouldn't preclude an LP from assisting with pleadings and the dom rel piece. So often the juvenile case gets dismissed once the dom rel piece is completed. It is something facilitators help with so there is no reason to exclude that, just the juvenile piece.
 - The committee has not reached an agreement on this topic. Often when you have a juvenile and DHS proceeding, often the judge is looking at both. Again, it may be further down the line, but the juvenile proceeding would have precedence over the DHS proceeding. Sometimes resolving the domestic proceeding will clear out the juvenile proceeding.

- Dependency proceedings raise the issue of whether there are criminal and constitutional rights that a parent may have. It is important to be mindful of not giving legal advice in the juvenile proceedings.
- It is the view of the committee that there be a carve out for licensed paraprofessionals to be involved in uncontested juvenile proceedings with DHS involvement. However, there was discussion as to whether this should be left to the discretion of the judge since this is a complex, complicated and nuanced area. Some jurisdictions require court approval to allow LPs to participate.
- Sue Gerhardt said the fact that there is a pending juvenile court proceeding should not prohibit LPs from helping in a domestic relations issue involving the same parties if the dom rel case is uncontested.
- Helen Hirschbiel clarified the futures task force recommendation regarding appearing in court. She thinks they contemplated being able to appear in court, but not speaking on behalf of the individual. If there is something in the recommendations that the committee feels missed the point, they can certainly bring that recommendation to the Board, but should have good reason for deviating from the recommendations.
- Robin Wright wanted to add another topic to the scope of licensure to the list – informal domestic relations trials. Some jurisdictions allow attorneys with staff to appear before the court and some require staff to stay behind the bar.
- Linda Odermott said one of the things from the Futures Task Force that we heard from the judges was that we needed these individuals to be able to help their clients through the process. Including getting them before the judge because if you did all of this work to get them into the courtroom and they don't know how to talk to the judge, how to respond, how to dress, or even how to get to the courtroom. You've defeated the purpose of getting them to the courtroom. Just taking that into consideration as were discussing what we think these LPs should and shouldn't do. There are some things that were not addressed in the Report that we have a duty to address here whether it is different from what the Futures Task Force said or not.
- Danny Lang reinforced the need for paralegals to appear in court, otherwise it is a disservice to the client. If we are going to provide a service, it should be a full service.
- Judge Harris stated that there should be LP participation in the courtroom for first appearances in landlord tenant cases.
- Judge Thompson recommended this discussion continue in the Regulation Workgroup and be sent to the Stakeholder Workgroup for stakeholder feedback. She wants to make sure that we don't forget both sides of the coin on this point. We should tread carefully, but she

- would hate to see someone not have the option to have paraprofessional assistance because we are being overly cautious. She requested the Regulation Workgroup to work on this more and create a nuanced guide path on what may be appropriate.
- Robin Wright said that in the discussion of LPs being allowed in the courtroom brings up the question of whether they should be allowed to participate in depositions.
 - Contempt – (remedial when confinement requested):
 - The Regulation Workgroup (with the exception of Sue Gerhardt) recommends that LPs should not be included when confinement is requested, although Sue Gerhardt said she doesn't think that should be a reason to exclude an LP
 - Judge Harris noted that SFLAC would like LPs to help with the filings of such motions and the filings of support requests.
 - Judge Thompson said by the time a person gets to filing a contempt, their resources are strapped due to the noncompliance of the other party. If our recommendation is that LP cannot help in filing that contempt, are we disadvantaging them even further? She suggests that there are certain kinds of contempt proceedings that you would not want an LP to participate in, but perhaps somewhere they can.
 - Robin Wright highlighted the concern about the type of confinement being sought. People can do a lot of this on their own, but it is a different question on getting help from an LP. The pro is you want someone to help these people with their paperwork, but the con is you want them to understand and get a sufficient idea on what confinement is possible and what it may entail.
 - Sue Gerhardt countered that if they have asked for confinement, they will be arraigned and will be available for a court appointed lawyer. Although that may not be true in all jurisdictions
 - Judge Thompson noted that a lot of self-represented litigants file for contempt and seek confinement.
 - Judge Thompson suggested pushing this back into the Regulatory Committee for further discussion and a recommendation. She would like to hear more of the pros and cons and receive feedback from stakeholders.
 - Judge Harris suggested that we raise these issues in the notices that we send to stakeholders for feedback on these specific questions.
 - Danny Lang said his concern is if we don't let the LPs do the first appearances, then someone will create an appearance of contempt to get rid of the LP on the other side. He is concerned that this might be abused in the process.
 - Chris Costantino stated that there is a distinction between helping someone fill out forms and advocacy in court. When the task force was thinking about this, the goal was the equity piece of giving people

- who no one is representing some help. The idea of assisting and advocacy are different. There may not be an easy answer, but the line on the advocacy piece is where there should be more thought.
- Judge Thompson reinforced the need to engage our stakeholders for feedback on a lot of these issues. This committee is tasked with bringing this program to light, but we don't want to create too many barriers.
 - Robin Wright said there is an obligation to be protective of the general public. You want to make sure we are thinking about both sides.
 - Military divorces and unstipulated military divorces:
 - Robin Wright said the stipulated divorces are typically not very complex, but the stipulated divorces bring more questions.
 - Sue Gerhardt said that if the people who got married when they were both stationed and haven't seen each other since, we should allow LPs to help.
 - Linda Odermott said that if we have military paralegals who have background in this already, there may be reason for a carve out.
 - Sue Gerhardt said Oregon has specific statutes regarding military.
 - Judge Thompson said it sounds like this will require stakeholder feedback as well.
 - Beal and Beal – dissolution of a civil contract:
 - Judge Thompson said she believes this would be good to exclude
 - Robin Wright said the Regulation Workgroup agrees. They can be very complex and should be excluded
 - Jail/prison access for LP when client is confined:
 - Sue Gerhardt said she reviewed the administrative rules and they require a current OSB card.
 - Judge Thompson said LPs should be able to meet a client who is in custody.
 - Judge Harris agrees as long as it doesn't relate to their confinement and the reason why they are being confined.
 - Brian Cox said you can also see a client with an attorney letter if they are working under the supervision of the attorney.
 - Kendra mentioned the importance of telling people the ethical rules regarding visiting someone who is represented by counsel.
 - Judge Thompson said the idea is that LPs should have access subject to any ethical rules.
 - Family Abuse Protection Act Restraining Orders:
 - Judge Harris said his belief is court staff already helps people fill out these forms. Every courthouse deals with these differently so we would need to solicit feedback on how each courthouse deals with FAPA requests. Some have paper hearings and some have first hearings. Do we allow the LP to help submit evidence? At least there is a need in helping fill out the FAPA request.

- Robin Wright said the Regulatory Workgroup recommendation was that the court assistance programs are fine. However, there are a lot of issues and potential issues relating to criminal issues, subsequent family law issues, and juvenile cases very quickly and not sure LPs should assist.
- Sue Gerhardt said the advocates that are available in some of the courts are not permitted to sit at the table with the people. In terms of vulnerable people that need extra help from LPs, these would be them.
- Judge Harris said we don't want to interfere with support that the court is already providing. In some counties there is no one, but in some counties there is a robust staff.
- Kendra Matthews says what happens after a hearing happens?
- Sue Gerhardt says she doesn't see why LPs could not be there for assistance.
- Kendra Matthews said she would be very hesitant about that.
- Robin Wright said the timelines are important to keep in mind as well. There are a lot of parallel things happening at the same time as FAPA hearings. It seems to be a more complex area by virtue of the subject matter.
- Sue Gerhardt said people should have the choice to represent themselves, hire an LP, or hire a lawyer.
- Judge Thompson said we have to determine if this is in the scope of the LP's license. It is a land mine on both sides. However, it is a land mine that many people walk through alone. Do we think this is so much riskier that we need to exclude this from the LP?
- Linda Odermott said the duty to refer – where is the line where they have to refer? We need to make sure to flush out exactly where this line is.
- Judge Harris said this is one of the most compelling environments for people to have assistance. We need to work hard to carve out a clear definition of what assistance can be provided. We can reach out to stakeholders to get feedback on where the line should be drawn.
- Madeleine Campbell said she wonders what the standard of care is for the paraprofessionals. Is this defined by what they are permitted to do? As in the same standard as a lawyer? How will this be defined?
- Judge Thompson said that is a good question, but we do not know the answer to it yet. This is something that is a proceed with caution area. The sense of the committee is if there is going to be a role, it will be a role that is limited and a need to refer if there is any criminal or juvenile issue with this. Where someone already has an LP involved and someone files a FAPA will the LP have to leave the case? Someone could do this just to get the LP off of the case. Regulation Workgroup will have to provide nuanced recommendation to the full committee.

- Stalking Protective Orders:
 - Judge Thompson said she would like LPs not involved in this. There is so much that can be involved. The committee questioned whether this qualifies as family law.
- Linda Odermott requested that she receives information on the educational requirements and the remainder of her points discussed at the next full committee meeting so she can finalize Admissions Workgroup recommendations.
- Postnups, Prenups, Juvenile cases, QDRO's, ORS 109.119, and Out of State Modifications:
 - Judge Thompson said she knows that the Regulation Workgroup has been looking at this as things that LPs should not be doing. Personally, she would agree with this list. That is consistent with the Regulation Work Group recommendation.
- LP's Discipline Reporting Requirements:
 - The Admissions Workgroup discussed this topic based on other states. They felt it was more appropriate to come from the Regulations Workgroup on whether or not someone has to report that their license has been suspended in another state for example.
 - Judge Thompson said it seems that someone who holds a license in this state should have to report. It is consistent with whatever lawyers have to do. It is a similar ethical standard.

Tabled for March 22nd meeting:

- **LP's Role in Appeals (administrative, circuit court, and appellate court).**
- **Access to Free or Low Cost CLEs.** Options to consider include: Make the same CLEs available free to the attorneys or student learners available to the LPs; Bar materials; Preferred rates such as those offered to attorneys with less practice experience; Offer CLEs in the practice area specific topics; and Good faith efforts of those applicants who need to complete CLEs within 12 month window in advance of their application.
- **Threshold Experience Requirement.** Determine the appropriate calculation of the 1,500 hours experience requirement that a certifying attorney must confirm is substantive paralegal experience, in order to confirm competency, while considering the equity accessibility of possible candidates: "At least 80% of the time;" "A majority of the time;" or Some other metric.
- **Subject Matter Experience.** Clarify whether to require specific substantive paralegal experience "in the subject matter seeking licensure" of applicants. Some proposals considered: Not requiring experience in the subject matter seeking licensure; or Requiring all of the 1,500 hours to be in the subject matter seeking licensure; or Requiring some portion of the 1,500 hours to be in the subject matter seeking licensure; or Requiring only those seeking an education waiver to have experience in the subject matter seeking licensure; or Some other metric not previously discussed.

- **Attorney Certification Letter.** Consider what potential substantive paralegal duties should be included in as tasks within the Attorney Certification Template letter that the Certifying Attorneys can use as examples (perhaps 4 or 5).
- **Admission Criteria.**
- **Referral Service.** Will there be one and how will it impact current ethics rules?

PLIC Backgrounder:

- Judge Thompson requested that the backgrounder be revised to clarify that the program is focused in the areas of family and landlord tenant law.

Future meetings:

- March 22, 2021 – 12:00pm – 2:00pm –Workgroups Meet
- April 5, 2021 – 12:00pm – 2:00pm – Full Implementation Committee Meeting
- April 19, 2021 – 12:00pm – 2:00pm – Workgroups Meet