

MINUTES

Paraprofessional Licensing Implementation Committee

Meeting Date:	April 5, 2021
Location:	Zoom Call
Chair:	Sr. Judge Kirsten Thompson
Vice Chair:	Sr. Judge Dan Harris
Committee Attendance:	Sue Gerhardt, Linda Odermott, Jon Dennis, Robin Wright, Brian Cox
Advisory Group:	Nik Chourey, Jason Specht, Jered Brown, Danny Lang, Aubrey Baldwin, Crystal Sullivan, Ryan Jennings, Harry Perez-Metellus
Staff present:	Helen Hierschbiel, Susan Grabe, Matt Shields, Kellie Baumann

ACTION ITEMS

Meeting notes for 3/22 approved with the caveat that any typos or scrivener errors can be corrected without review

The 2/23 Regulation minutes, 3/22 Regulation minutes, and 3/22 Admission minutes will be approved in the individual Workgroup's Breakout Sessions.

INFORMATION ITEMS

Introduction of New Interested Party

- New interested party Harry Perez-Metellus introduced himself to the group and provided a brief background.

Introduction and Welcome

- The May 31, 2021 meeting will be cancelled as it is a holiday, Memorial Day.

Discussion Points for Full Committee

- **Subject Matter Experience** – clarify whether we are going to require 1500 hours of specific substantive subject matter experience in the subject matter seeking licensure, or require a portion of the 1500 hour requirement to be in specific subject matter experience, or require significant substantive experience as a paralegal generally
 - Judge Harris questioned how these paralegals would acquire the required hours. He is wondering if we would exclude a large portion of paralegals with this requirement.
 - Judge Thompson asked whether a 1/3 requirement could be possible. Judge Harris said yes, the 1/3 standard that Utah uses seems like a good standard because they need some experience.
 - Sue Gerhardt asked whether they would need landlord tenant or family law.
 - Linda Odermott said the way it is worded is that they would receive a specific licensure for the experience that they have – either landlord tenant or family law.

- Judge Harris said the paralegals could get this experience through the education requirements. He does not want to close the door 2/3 of the way and only allow the few who could get the required subject matter experience in these specific areas to get licensure. A 500 hour requirement would leave a lot of people unable to qualify. We could handle this substantially by requiring applicants to reach a certain level of education on the subject matter, a CLE class, and a required number of hours of watching first appearances in court hearings.
- Discussion about 1500 hour substantive experience requirement. Could eliminate a high number of candidates. 500 hours is better, but perhaps a better choice is substantial experience as confirmed by a lawyer. There is a group that has been left out of this conversation: those who are highly experienced in this position who do not meet the education requirements, but have real world experience. Perhaps we should have a third route for them.
- Linda Odermott said that one thing she keeps coming back to is that we keep trying to determine an equation of competency and what that means. It is some combination of experience and education. What I am hearing is that we have to have that experience in opposite of education if we are not requiring education.
- Robin Wright asked if there is something that would require the admissions requirements for the different licensure be the same. In other words, if you have an LP for landlord/tenant and an LP in family law – you can have a different kind of experience requirement for the different licensure. It seems as if the world of knowledge for a family law LP could be broader than what you anticipate for a landlord/tenant LP.
- Judge Harris said they are very different worlds so it makes sense to require different requirements for licensure. Family law is so broad whereas landlord/tenant is quite technical.
- Judge Harris said his concern is regarding the attorney requirement for experience. This would require a paralegal getting an attorney to agree to hire them. We could require so many hours in the courtroom watching the experience unfold.
- Sue Gerhardt asked why an attorney would agree to this if the LP are going to be their competition.
- Linda Odermott said we are including a requirement for the attorney to respond to this because we don't want this issue of withholding verification to come up.
- **Referral Service** – will there be one and how will it impact current ethics rules?
 - Helen Hirschbiel said that part of the decision making would be up to the Board of Governors to decide. If we have a recommendation for the Board to explore that possibility, that is certainly appropriate.
 - Robin Wright said that it would make sense to offer that option and to suggest that that is one way that people can find these LPs at rates that are lower. It helps expand the outreach to the general public.
 - Sue Gerhardt said it would also funnel people to licensed paralegals as opposed to unlicensed paralegals who are advertising.

- Judge Thompson said it sounds like this is something we would like to recommend to the Board to consider, but it is beyond the scope of our Committee's charge.
- Jered Brown said we see this a lot where members of the public reach out to us for referrals for various issues and we tell them to reach out to the Bar Referral Service. I think this is something we definitely should recommend to the Board.
- Brian Cox suggested asking BOG to review tenant lawyer referrals to get a sense of how much need it out there.
- Judge Thompson said that if we are getting requests from members of the public that are filtering their way to the Bar for referrals, that will help to support the idea that this is an area that the BOG needs to address. I would recommend that this finds its way into our final report.

- **DHS Proceedings**

- Judge Thompson previously recommended this discussion continue in the Regulation Workgroup and be sent to the Stakeholder Workgroup for stakeholder feedback. She wanted the Regulation Workgroup to work on this more and create a nuanced guide path on what may be appropriate.
- Judge Thompson said that her sense is that there would be a restriction on a paralegal individually representing parents or children in a juvenile court but otherwise, there should not be an across the board restriction for a paralegal working with a client who may have juvenile court or DHS involvement. It is more that paralegals cannot represent people in juvenile court.
- Sue Gerhardt said we were in 100% agreement that LPs would not be involved in juvenile proceedings. Robin Wright said that the issue is that due to a change in DHS protocol, a lot of the work happens in DHS cases prior to it ever getting to the court. It used to be the case that it would happen up front and now it happens at the very back end. After everything is done, if you aren't able to work things out, you end up in juvenile court. So part of the question is would it make sense for LPs to be involved in the work that happens up front before it gets into court.
- Sue Gerhardt said she likes the proposal where they are not permitted to engage in DHS discussions prior to juvenile court.
- Judge Thompson said the piece of this that she keeps coming back to in her mind is when a person has a DHS case worker raise their attention that there is a significant safety issue with a child and they are told to go get emergency custody order or a modification to place the child in your care, or else we are going to file a case. So, what I saw is that people would come in self-represented because they couldn't afford to get any assistance. But they are coming into family court at that point and a juvenile case has not been filed.
- The proposed language that they cannot engage with DHS at all would preclude them from getting a letter from DHS recommending that the parent get emergency custody.
- Judge Thompson said that she would hate to see licensed paralegals that I hope would be more accessible and less expensive than a licensed attorney be restricted

from assisting someone in filing a modification or petition in an emergency custody order where DHS has said if you don't do this, we're going to file a petition.

- Robin Wright said that actually happens a lot when you don't get closure. My concern is on the other end that you have people with potential criminal liability who are fully exposed and don't understand that and may be walking into something that they are completely unprepared for. That doesn't mean that LPs couldn't tell them that but it would require an understanding of criminal law potentially that we are not licensing people to have.
- If we look at what Washington did, they taught LPs everything they needed to know so they knew when the line was being crossed and they knew that they couldn't go past it. They taught them past the line so they knew when they were crossing the line. I'm not sure if that helps feed into determining what education has to include.
- Clarification that there are two levels of education and what we're talking about is the education that only some of the applicants would be required to have in order to get licensed and there would be CLE after the fact. If you're talking about the instructions that students or people would get before, some of them would get none. So you have to count on you're admitting people who will get no education. It was confusing as to how you rely on that pre-education when it is not required of everyone.
- Discussion that if you have 500 hours of subject matter experience in a family law firm, it would not be unlikely that you would have some conversations about those things or some clients that have presented with those issues. If we don't figure out some good answers, we will restrict LPs from providing meaningful help to those who really need it. Having a bright-line rule of no you don't represent those in a juvenile court I feel real comfortable with. If there is an active criminal case, that is outside their scope of license. Sometimes there is a criminal investigation going on that no one has any awareness of. This is tricky stuff.
- Judge Harris said it would be very helpful to talk to other states that have dealt with these issues. I would be interested in learning what standard they applied and what they've learned from practicing it. I think that would be very helpful.

Discussion Points Resolved by Full Committee:

- LP Membership with the Bar
- Mandatory Reporting of Child/Elder Abuse
- IOLTA Accounts
- Scope of License – dissolution of civil contracts - Beal and Beal
 - Judge Harris asked if there was a discussion about custody and parenting time issues regarding parties who aren't married.
 - Judge Thompson said we didn't talk about that as a separate issue, but I think that the sense is any of the family law areas would be open. Family law would include petitions for custody, parenting time, support, etc. as between parents. In the Beal and Beals situation there is no children it is a question of property and potentially spousal support as a contract and we all thought no that is too complicated.
- Scope of License – Jail/Prison Access when Client is Confined

- **Scope of License – Postnups, Prenups, Juvenile Cases, QDROs, ORS 109.119, and Out of State Modifications**
 - Robin Wright asked if the registration itself would be acceptable to do.
 - Judge Thompson said I would think so because the registration itself is more of a functional kind of thing, but when you get into the out of state modifications you get into jurisdictional complexities. I want to make clear that you could be a licensed paralegal working in a law firm on these issues with an attorney who is the attorney of record. You are not restricted in being involved in those cases, they would just not be able to take them on without the attorney’s supervision.
- **Stalking Protective Orders**
- **LP’s Discipline Reporting Requirements**
 - Robin Wright asked if that applies to the reverse, if Oregon would have the obligation to report if a paralegal has been disciplined in Oregon if they are requested by another jurisdiction.
 - Judge Thompson said yes, it would be a reciprocal duty. If you’re licensed, you need to report that information to any sister agency that is licensing you.
- **Threshold Experience Requirements**
- **Attorney Certification Letter**
- **Access to Free or Low Cost CLEs**

- **Confidentiality**
 - Judge Harris asked about confidentiality with LPs and whether we are requiring the same confidentiality requirements for LPs as we do for lawyers.
 - Robin Wright said the Regulation group certainly discussed a lot of evidentiary issues.
 - Linda Odermott said that the Admissions group included it as one of their education components.
 - Judge Thompson said this is an area where we are going to need to include in our recommendation that the evidence code will need to be explicitly modified to cover confidentiality and communications between licensed paraprofessionals and their clients.
- **Conflicts of Interest**
 - Robin Wright asked if the ethics responsibilities as they relate to conflicts of interests apply similarly to LPs as well as attorneys.
 - Judge Thompson said the conflicting out issue is tricky but it would be unfortunate if we allow someone to conflict out a paraprofessional by making a spurious DHS complaint. If we draw it too restrictively that is a possibility so we just need to be careful on that.

Discussion Points for Future Meeting:

- **DHS Proceedings, Contempt, Military Divorces, and Family Abuse Protection Act Restraining Orders** – take a look at what other jurisdictions are doing.

Workgroup Status Updates

- **Admissions & Education Workgroup**
 - Linda Odermott said she wanted to ask Judge Harris about the outreach strategy and how they will be getting the draft to stakeholders for feedback.

- **Stakeholder Workgroup**

- Judge Harris said they have created a backgrounder that will be further refined that we will use to reach out to stakeholders. We have put together a list of stakeholder groups for targeted outreach. Once we have a closer to final draft of that list, we will with the full committee to see if there is anyone we should add. Then we will actively engage with those groups that have been identified.
- Susan Grabe said it would be helpful to have the draft and an executive summary of high level thoughts both posted and available. We want to get the big picture perspective so they know what is going on, and get initial feedback on what works best for them and what is important for them. Once we have that initial feedback and drafts from we can drill down further once we have drafts from the Admissions and Regulation Workgroups.

- **Admissions & Education Workgroup**

- Linda Odermott said the Admissions Workgroup has almost finalized their draft. She hopes to have that by the end of the day. This is the best draft possible - 18 pages short and sweet.

- **Regulation Workgroup**

- Robin Wright said that the last time they met, the focus that the group had was too detailed and we were asked to pull back a bit. They have not met since then. We went through all of the Evidence Code and figured out what potentially needed to be changed, all of the Trial Court Rules, and all of the Rules of Civil Procedure. Instead, we will now be focusing more high level and a listing and brief comment on why we're looking at what we're looking at and the policy behind it.
- Judge Thompson asked whether the draft goal of April 19th is still possible.
- Robin Wright said it is possible that we won't be able to make the deadline, but they will try.

Future meetings:

- April 19, 2021 – 12:00pm – 2:00pm – Workgroup Breakout Sessions
- May 3, 2021 – 12:00pm – 2:00pm – Full Implementation Committee Meeting
- May 17, 2021 – 12:00pm – 2:00pm – Workgroup Breakout Sessions
- June 7, 2021 – 12:00pm – 2:00pm – Workgroup Breakout Sessions
- June 21, 2021 – 12:00pm – 2:00pm – Full Implementation Committee Meeting
- July 5, 2021 – 12:00pm – 2:00pm – Workgroup Breakout Sessions
- July 19, 2021 – 12:00pm – 2:00pm – Full Implementation Committee Meeting