

DRAFT MINUTES

Paraprofessional Licensing Implementation Committee

Meeting Date:	April 19, 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, Maxine Tuan, Ralph Gzik
Advisory Group:	Christine Costantino, Katherine Denning, Kendra Matthews, Nik Chourey, Danny Lang, Walter Fonseca, Ryan Jennings, Jason Specht, Madeleine Campbell, Aubrey Baldwin, Crystal Sullivan, Harry Perez-Metellus
Staff present:	Helen Hierschbiel, Susan Grabe, Matt Shields, Kellie Baumann

ACTION ITEMS

Meeting notes for 4/5 approved with the caveat that any typos or scrivener errors can be corrected without review

INFORMATION ITEMS

Introduction and Welcome

- Judge Thompson gave a light update on the Stakeholder Workgroup documents
- Judge Thompson said that she will be updating the Supreme Court at their July 7th meeting.
- Judge Thompson requested that we change the wording on our agendas from “Future Meeting Schedule” to “Future Meetings and Tentative Agenda”

Regulation Workgroup Status Update

- The current makeup of the workgroup is all family law, so they do not have a full grasp on the landlord tenant issues. They want to continue to discuss the framework with those who have expertise on landlord tenant issues to further develop it. They hope to have a draft sometime in mid-May due to the schedules of the workgroup members.
- Robin Wright said that she would like to have more expertise in the landlord tenant area. She said that Jon Dennis was able to join their last gathering and gave a better overview of landlord tenant law issues. Walter Fonseca said he is always happy to discuss landlord tenant areas.
- Judge Thompson asked if the May 17th meeting date would work as a date for the Regulation Workgroup to provide a draft to the full committee.

Admissions Workgroup Status Update

- Linda Odermott discussed how they have created an initial draft framework and published it on the website for public comments. What they are working on now an analysis of the deviations from the Futures Task Force on the recommendations so we can have an internal summary to use to see where we deviated or where we moved away from or added to their recommendations. We have already begun to receive public comments on the draft and comments from the Oregon State Bar staff members that we will look at for future revisions.
- Sue Gerhardt asked how are we to make comments on this? Linda Odermott said what I would hope is to submit comments here and we can incorporate them into our next draft.
- Helen suggested that sending an email to Linda is an appropriate way to send in comments. The other thing you can do is share the draft and go through the draft with the full committee at a meeting to take any additional comments.
- Robin Wright said she wanted to add that it is clear that since we have not finished making some of our recommendations, especially on scope of licensure, that some of these statements that appear to track off of that may need to be looked at again later with the understanding that there may be some point in time where we need to go and compare all of the sections to make sure they join together.

Stakeholder Workgroup Status Update

- Judge Thompson discussed that Judge Harris sent an email status update.
- Susan Grabe said they are updating and adding more information to the engagement tracker to determine the legal and outside/public groups that we need to connect with. We are also looking at setting up a strategy for sending information out. We are adding something to the latest Bar News about the Committee as well as adding it to the next Capitol Insider. Judge Harris has some groups that he is meeting with, like SFLAC, Tribal Court Counsel, and we are hoping to have him meet with the Family Law Executive Committee at the end of this month.
- Judge Thompson said someone reached out to her to discuss writing an article for the Bar Bulletin regarding this Committee as an access to justice issue.
- Susan Grabe said we also discussed the possibility of a survey going out to members, and affinity groups to gain feedback from community based organizations.
- Judge Thompson mentioned reaching out to the Lawyer Referral Service to see the amount of people that reach out to them regarding a need for paraprofessionals.
- Linda Odermott suggested reaching out to the Court Facilitators and the people who would actually be receiving these services, though she is not sure how best to do that. Also, she has been asked by the National Federation of Paralegal Associations to speak at their Regulation Conference in June on the status of Oregon's program. I have not responded yet but may want to connect with Judge Thompson and Judge Harris before responding.
- Judge Thompson said trial court administrators also should be added to the group to get a good idea of what the folks that are using these services would need. Kendra Matthews said she gave a CLE to an organization of Oregon Court Clerks. She will track down their information to pass along.
- Linda Odermott asked if we are reaching out to the military paralegals as well since the Admissions group has included a pathway for them.

- Robin Wright said one of the things that we have tossed around as we have come to know more information about the landlord side of landlord tenant is that there is an apparent exemption in the unlawful practice of law specifically for landlord-side representatives. There has been a discussion on what to do with that if anything. That is something we have been trying to deal with. More information from practitioners in the area and how to address what may be a tricky area with regard to those area who are currently allowed to practice might be helpful and useful if there are people with specific ideas about that.
- Brian Cox said to fully explain the context to the group, so we have a complete understanding. ORS Chapter 105 controls evictions and it says that a non-lawyer can appear on behalf of the plaintiff. That non-lawyer can appear as if they are the party and so presumably that non-lawyer could ask for a deposition or something, although I've only had one deposition in an F.E.D. in 30 years. But it doesn't allow that non-lawyer to do many of the other things that our paralegal would be allowed to do. I do want to draw a distinction that they are not analogous, they are only similar.
- Judge Thompson said those are the nuances that I think would be extremely helpful to Robin and her workgroup. I know part of the issue within the court room in a busy landlord tenant docket is that there are a lot of people who are appearing on behalf of others for landlords, not so much for tenants. At least in my experience. There is an access to justice issue that needs to be addressed there, but it needs to be addressed in the nuanced way that you point out. It's really a first appearance and initial case resolution issue. Given everything that's going on in terms of the pandemic and the cost for landlords and the difficulties for tenants and vice versa, I would think this is an area that is very fraught right now and it should be addressed with a lot of nuance.

Discussion Points for the Full Committee - Subject Matter Experience and Admissions Criteria

- Judge Thompson said that in our past meeting, we discussed that 1/3 of the 1500 hours would be in the subject matter.
- Linda Odermott said about 500 hours and 250 for landlord tenant is how it is broken out in the current draft. Judge Thompson asked if the committee agrees that 500 family law 250 landlord tenant is a good breakout.
- Jon Dennis said there is enough technical pieces that if anything, the landlord tenant might want to be as much or more than the family law. There are enough technical traps and fee shifting that there is a significant risk of high consequences or malpractice because of the complications of the process. It's a lot to take on in 250 hours.
- Judge Thompson said the committee discussed that it may be hard for someone to acquire that many hours of expertise in landlord tenant. We're weighted a little heavily towards family law because it was easy to imagine how you could get the 500 hours, but the 500 hours in landlord tenant seemed tougher.
- Jon Dennis said we might compensate for that. Especially in the tri-county area, there is a robust tenant bar. I'm aware of like 5 or 6 full time lawyers who practice that and that is the highest concentration maybe outside of Legal Aid offices and aggregates. So it might be hard on that front, but the Legal Aid offices may have an interest in helping see people get training for this sort of thing because that might be a majority of people who go into this might end up helping the tenant side of it. But in any event, if that is a significant problem, because that

is not like in a lot of areas, there's not a lot of practitioners, unlike family law, you might try to compensate for a reduction in the numbers of practical hour experience but a higher training component for them to offset it a bit.

- Linda Odermott said we were thinking of a kind of tiered approach for landlord tenant versus family law. Just because of that hours requirement. Judge Harris recommended including that first appearance observation and court certification as well as through the legal aid clinics so there was a more robust option on how to get that experience if they were not able to get it through the small number of practitioners
- Kendra Matthews said we should definitely be talking to Legal Aid because they don't always have resources to take on large numbers of people who need training, so putting out a public statement saying to go to them will only overwhelm them. We need to include them in the stakeholder outreach.
- Walter Fonseca said he works for Oregon Law Center. He wanted to echo what Kendra just said. It will be very difficult for OLC and Legal Aid to train folks to do this, we don't have the resources. However, it is above my pay grade within the organization so someone should be reaching out to the executive directors of these organizations. There is another group in Medford, the Center for Nonprofit Services. They're the one office that is outside of the OLC and Legal Aid Services. Someone should reach out to them as well. I don't know if they would have interest in this or not.
- Susan Grabe said we have someone in the committee, Joan-Marie Michelson. We did reach out to LASLO and OLC and she was the designated representative. We can circle back around again.
- Judge Thompson said I don't see that she is with us today, but I do see that she is on our list of invitees to the meetings and it would be good to reach out to her directly about this. I want to point out, although Jon I certainly get what you're saying with regards to the issue of the complexity of the landlord tenant because you get into Chapter 90 and Chapter 105. That said, if you are a family law practitioner, you have just the breadth of things in terms of advising people. I think it becomes much broader fairly quickly. Although I don't want to say that family law is less important or less complicated in its way, I think family law fairly quickly has a broader subject matter that it covers for the many participants in the family law arena. Also because it is a much larger bar, it is going to provide more opportunities for training paralegals. I keep coming back to, we don't want to make the path into this so narrow that people can't get in and become a licensed paraprofessional. I tend to think the recommendation of the committee may be at 500 for family law and 250 landlord tenant. Recognizing that it is 500 out of 1500 and 250 out of 1500 total hours that one has to have been working as a paralegal and the rest of those hours help with the other practical skill requirements.
- Jon Dennis said I don't disagree, but if we are going to a model that has the majority of the hours requirement being nonspecific to a practice area, I like a stripped down version of the paraprofessional license that you have your 1500 for one and you need to get your landlord tenant certification, without having to do it all over again, you can just get an endorsement or an enhancer that allows you to practice in that area. I don't think I've heard that discussed, I've only heard it being discussed as an either/or. If we are going to have the

majority of the practical hours requirement be nonspecific to one area or another, it might allow more people to help more people.

- Christine Costantino said she personally envisioned the 1500 hours would be in each subject matter, 1500 in landlord tenant, 1500 in family law. As I am listening to this group wanting a balance of those being qualified and trained, but keeping it open to as many people as possible, we don't want to disincentive people. There needs to be a balance and we need to make room for those expanding their services or changing their expertise.
- Helen Hirschbiel said the Board of Bar Examiners has been thinking about the same kinds of issues for alternative pathways for licensure for lawyers. For me, what has been helpful in thinking about this, is not starting with the number of hours, but starting with what are the essential or core competencies that we are expecting of people. We've talked about them before in Admissions as the essential eligibility requirements. What do you want people to be able to do? Then think about how long will it take someone to learn that? Or is that a skill or knowledge that fits across different practice areas. So if you want someone to be able to identify or answer a complaint for example, that might be something where even if the substantive issues are different, procedurally it might be similar. I really want to encourage because I love the conversation around how can we make this something that we can add to. I think that is awesome. I want this group to be thinking about not just how are we creating this, but how are we making it easier for us in the future to add to it. I think if you start from what are the core competencies – for practicing in the landlord tenant area and the family law area – where is there overlap, how much time is it going to take to learn the overlap, versus specialization. Just a suggestion.
- Linda Odermott said we are relying on a lot of the other jurisdictions that have been working on that issue. We know that Washington's numbers were too high, they were unattainable. The Futures Task Force picked this number and came up with the equation to tell us what competency was. We've been using that as the basis of what we need to have for competency. Looking at the other jurisdictions, the only other jurisdictions that has broken it out specifically by practice area hours is Utah. This is kind of following their lead. In regards to the core competencies, we have tried to use the approved course work criteria that was referenced in the futures task force as our core competency. We expect the students that are coming out of the paralegal program to know how to do 1-47 items included now. If they are not going through those education program, then they must be learning at least this in the CLEs. The core competencies that we are talking about are coming either from education from the paralegal programs or through experience and CLEs. I think we've been talking about core competencies from that component just calling it something else, approved coursework. Figuring out the hours component may not match up to that because nobody has done that.
- Linda Odermott said the draft we have come up with, the 1500 hours is non-negotiable. They have to have the 1500 hours no matter how they get there. So they have to have that experience component. We want to rely on what is already in place to start – in attorney certification, asking would you trust this person to do this job and would you recommend them? We don't want to create a new mentorship program.
- **DECISION POINT - Judge Thompson said this is the second or third time we've discussed this in the committee. The Admissions Workgroup needs an answer from us. Is the 1500 hours**

of practical experience as a baseline for a licensed paraprofessional something that the Committee endorses? The gross number of 1500 hours.

- **Committee members gave a thumbs up in agreement.**
- Helen Hirschbiel said Linda I appreciate your discussion regarding the core competencies and course work. I guess what I keep coming back to is what do you expect people to learn in those 500 hours or in those 1000 hours? What do you want them to walk out of that experience with? The hours more easily fall into place if you think of it that way. Like, I want them 100% comfortable filling out the family law forms – how long does it take someone to learn that in a hands on position? I feel like we all know what that is, it's just hard to articulate. I think it's worthwhile trying to articulate it because this is one of the key issues that we will get push back on. It's the reason why Washington went too far. We're suggesting something less than that and we need to be able to justify that. Maybe as a part of that process, you have a lawyer certification that states that they have learned X, Y, and Z so everyone knows what it is that they're supposed to be learning in that time period.
- Maxine Tuan said the thinking about core competency skills during those hours is really important. I don't think it is a matter of just drafting pleadings, but in terms of the draft itself, it says observation of court proceedings. So if we're thinking about family law, seeing a lawyer do a first appearance or an ex parte proceeding, or being able to go into court and file pleadings and appear before a judge, those are the subject matters and competencies for family law. I think we should continue to think about all of the things that we want these LPs to be able to do in family law. The attorney is certifying those core hours and competencies, right?
- Linda Odermott said you're right. The letter has been very simplified. What we're asking the attorney to do certify is – are they competent? Would you put your name behind them for this program? How many hours did they do? I hate to say this because I sound like a broken record, but I feel like we have to define the scope before we can define the competencies because until we know what we're allowing them to do, we can't define what they're going to learn. We have included what we think is going to be in that approved coursework but we don't know the final product. Having those core competencies will be defined by the scope, what are we going to allow them to do? That will tell us what they have to be able to know.
- Judge Thompson said it sounds like the committee is still searching on if this is the correct answer. Part of it really depends on what the recommendation of the Regulation group is to some degree. I think we're so close on that. Again, it has to be something over zero and less than 1500 perhaps, or maybe the full 1500. That is the question mark there. If the Admissions group has a very firm commitment to the 1500 hours of practical experience, period end of story, the question we have as a Committee, is if we are endorsing that number, what percentage, what portion of that, is required for licensure in the areas of family law and landlord tenant. If we don't have enough information to make the decision today, we're going to have to punt it down the road.
- Judge Thompson said I think it makes sense for the Regulation group to recognize what the Admissions group is recommending in general terms which is associates degree in paralegal and 1500 hours of practical experience is the baseline. Or the 5 years of practical experience. Those are the two pathways in the door given what you know. That is what Admissions has come up with as an achievable goal for people in our existing educational framework. That may inform what you recommend in terms of the Regulations for people with that level of

competency. We have lots of folks who can't afford any representation. Think also what does the self-represented litigant have at this juncture, keeping in mind access to justice and consumer protection. What is the just right, what is the sweet spot for these things?

- Danny Lang said I like the last question. Maybe a blend, 1500 hours of which 750 should be in combination. Let them pick. If they're doing family law mostly, let them blend it. But they should sufficient to develop a base line competency in family law and landlord tenant for which they would put in 750 hours. And I think that would probably... because I hate rigidity, you know where someone has to be 5 foot 5 and they're 5 foot 4 and 7/8th inches. So, maybe if we had elasticity in there that would help along with the attorney certification. Thank you.

Discussion Points for the Full Committee - Scope of License – DHS Proceedings, Contempt, Military Divorces, Family Abuse Protection Act

- Pushed back to Regulation Workgroup for their expertise.

Future Meetings and Tentative Agenda

- May 3, 2021 – 12:00pm – 2:00pm – Workgroup Breakout Sessions
- May 17, 2021 – 12:00pm – 2:00pm – Full Implementation Committee Meeting
- 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 7, 2021 1:00 pm - Judge Thompson Report to the Supreme Court
- July 19, 2021 – 12:00pm – 2:00pm – Full Implementation Committee Meeting