

Paraprofessional Licensing Implementation Committee (PLIC); Admissions and Education Workgroup ("the Workgroup") Supplement 1 – Analysis and Comparison of Deviations from the June 2017 Futures Task Force Report  
May 16, 2021

The Workgroup provides the following analysis and comparison to support its initial Draft Admissions and Education Framework, evidencing its work to synthesize the Futures Task Force's Recommendations with issues the Workgroup determined needed to be expanded, amended, or deleted.

The Workgroup reviewed existing paraprofessional licensing programs within the U.S and Canada, program proposals, and newly enacted programs from across the United States. The Workgroup then considered the various options within each program to choose the best ones for Oregon's Licensing Paraprofessionals (L.P.) program, cherry-picking the best pieces from many different programs. The Workgroup then discussed the pros and cons and the potential impacts to both the L.P. candidates and the licensing program. Finally, the Workgroup asked the full PLIC to weigh on several key issues because of the importance of "getting those issues right." You can review those discussions via the Oregon State Bar's recordings of the Workgroup's sessions.

The Regulation Workgroup is currently refining the Scope of Practice guidelines, which will more fully inform the Approved Coursework guidelines within the Admissions and Education Draft Framework and Recommendations. Once complete, both the Regulation Workgroup and the Admissions & Education Workgroup will synthesize their respective work product.

*Futures Task Force RECOMMENDATION NO. 1.1: An applicant should be at least 18 years old and of good moral character. Attorneys who are suspended, resign Form B, or disbarred from practicing law should not be eligible for a paraprofessional license.*

The Workgroup believes Recommendation 1.1 was a significant first step. However, the Workgroup believes the recommendation did not give adequate guidance to evaluate an applicant's conduct to protect the public, except to call out disbarred attorneys as bad actors. Additionally, Recommendation 1.1 was largely silent on a host of issues informing how the Oregon State Bar would ultimately analyze an L.P. application or what parameters would be used in determining if an individual were of good moral character. It also failed to identify activities related to UPL, or other conduct, that the Workgroup felt might hinder an individual's ability to be an L.P.

With the requirement to "ensur[e] the competence and integrity of the licensed paralegals" while "improving the quality of their legal services," the Workgroup expanded the guidance within Recommendation 1.1. One issue that became apparent was the need to balance competency and equity issues for applicants, as well as the need to define further what it means to "be of good moral character." Additionally, the Workgroup desired to incorporate the Oregon State Bar's (OSB) philosophy of rehabilitation when considering behaviors that would be crucial to determine the good moral character of an applicant. The resulting draft Framework includes the Workgroup's recommendations for eligibility guidelines for deliberating an applicant's good moral character.

The Futures Task Force thought it essential not to recommend an exam be created or used for the L.P. program, listing several reasons supporting the recommendation. Still, they also provided a caveat that if the Implementation Committee felt an exam was necessary, then look to existing, national-paralegal certifications instead of incurring the cost to develop and administer an exam. The Workgroup considered the recommendation and ultimately agreed with the Futures Task Force, ultimately deciding that creating and administering an exam was too costly a burden for the OSB to shoulder. The Workgroup also decided that if an exam's desired result was to ensure competency, competency could be measured through other measures such as: education, experience, CLE, and the education waiver pathways, with one pathway relying on the national certification exams and a requisite number of years of substantive paralegal experience.

Another option the Workgroup considered was to have the L.P. candidates take the ethics exam required of attorney applicants. The Workgroup ultimately rejected this alternative as those exams are only available with law school approval (which the L.P. candidates would not be privy to) and include testing data that would not apply to the L.P. candidates. The Workgroup Recommends the ethics component be part of the core curriculum within the Approved Coursework and the CLE component for education waiver.

*RECOMMENDATION NO. 1.2: An applicant should have an associate degree or better and should graduate from an ABA-approved or institutionally accredited paralegal studies program, including approved coursework in the subject matter of the license. Highly experienced paralegals and applicants with a J.D. degree should be exempt from the requirement to graduate from a paralegal studies program.*

With the assistance of our Educator Advisory Members, the Workgroup came to understand that this recommendation needed more refinement. First, the Workgroup wrestled with the standard set by the Futures Task Force; L.P. applicants would possess a minimum of an associate degree or higher in paralegal studies from an ABA-approved school or institution. Unfortunately, this definition left many competent and qualified paralegals out of the equation. The recommendation would also limit the number of applicants to only those who could come up with the funds to attend a paralegal program in the state, such as Portland Community College or Umpqua Community College, at a cost of roughly \$11K-\$12K for an Associate Degree and \$7,700 for a paralegal certificate. Finally, the Workgroup wrestled with the fact that the program is supposed to address access to justice concerns, but this requirement would lend to the income disparities. It would disproportionately impact those who could afford to go to college and the Highly Experience Paralegals who have years of experience but did not take a traditional pathway to become a paralegal.

The Workgroup chose to look at the education waiver pathway as a tool for offering more diverse education options that would ensure competency. The Workgroup then identified several potential education deficiencies that some education waiver applicants might possess. Finally, the Workgroup Recommended the Education Waiver Applicants take essential CLES designed to cure any deficiencies.

As we all know, there are many pathways to becoming an experienced paralegal than by obtaining an associate degree in paralegal studies. Unfortunately, recommendation 1.2 did not consider the many paralegals who have a bachelor's degree in another discipline or who may have added a paralegal certificate to their training later. Nor did it consider those applicants who work as a paralegal but may possess a Masters, Ph.D., or even a J.D., even though they may not have taken any paralegal courses. It also did not address Oregon's lack of substantial ABA-approved paralegal programs, with only Portland Community College currently being ABA-approved. Nor did it address the disproportionality of the OSB requiring attorney applicants to attend ABA-approved law school. In contrast, with this recommendation from the Futures Task Force, paralegal applicants have the freedom to choose between an ABA-approved school or an institutionally accredited program. In addition, there is the added confusion that all ABA-approved paralegal programs are institutionally accredited, but not all institutionally accredited paralegal programs are ABA-approved, which could lead to L.P. candidates seeking out the ABA-approved paralegal program over the other viable paralegal programs.

Thus, after much discussion and deliberation, the Workgroup agreed to eliminate the ABA-approved program requirement, relying instead on the paralegal programs being "institutionally accredited" by the regional educational institutions who handle such accreditations, such as the Northwest Commission on Colleges and Universities.

The Workgroup also Recommends that the paralegal programs provide "approved coursework" to ensure the required competencies are achieved and ensure the integrity, quality, and improvement of the legal services their students will ultimately provide. The Workgroup needed to interpret who was to be the agency "approving" the coursework put out by the paralegal programs. The Workgroup ultimately determined the Workgroup would make recommendations about the coursework, with the Oregon Supreme Court approving the rules.

One other consideration missing from the recommendation was how to analyze foreign degrees obtained outside of Oregon or those obtained outside of the United States. The Workgroup sought input from the Education Advisory Members and ultimately Recommended that paralegal programs outside of Oregon should be approved to provide the necessary education, even if they do not provide Oregon specific education, provided those applicants complete the required CLE training in those areas. In addition, the Workgroup considered the current foreign degree evaluation process of the Oregon State Bar and adopted that same process in its recommendation.

Additionally, the Workgroup defined "Highly Experienced Paralegal" exception noted within the Futures Task Force Recommendation. What does "Highly Experienced Paralegal" mean, given the lack of regulation in the paralegal profession and no standards for when an attorney could bestow the paralegal title onto an employee? Who qualifies under this term? For example, does having a bachelor's degree in Art History and six months of experience as a family law paralegal mean that an individual is competent to hold an endorsement as an L.P. in family law? The Workgroup ultimately combined Recommendation 1.2 and 1.3 to create multiple formulas, or pathways, that help to answer the complex competency question; by defining terms and using a variety of eligibility, pathways made up of various experience, education, paralegal certification,

and attorney verification requirements (with the additional CLE components to ensure critical concepts be supplemented as part of the applicants training).

Additionally, the Workgroup asked the Stakeholder group to reach out to Oregon's Tribal Courts to gauge their interest in a licensed paraprofessional program and, if interested, request their input to draft such a pathway. The Tribal Courts noted their Professional Standards for Advocates who appear before Tribal Courts in response to this outreach.

The Workgroup also discussed recent changes in other jurisdictions, such as the Utah Supreme Court's Sandbox program<sup>i</sup>, which expands its licensing programs to include proposals for individuals who are neither paralegals nor individuals with formal legal training. The Workgroup would like to revisit this issue, perhaps in Phase II of the program, to allow for a similar alternative certification pathway for individuals with sufficient landlord-tenant knowledge per the Recommendation of Workgroup member, Brian Cox.

*RECOMMENDATION NO. 1.3: Applicants should have at least one year (1,500 hours) of substantive law-related experience under the supervision of an attorney.*

The Workgroup evaluated the 1,500-hour recommendation from the Futures Task Force to see if it was sufficient to equate to competency; how other jurisdictions are handling the hourly experience requirement, and how L.P. applicants would be able to obtain such experience. Are there opportunities currently available to allow applicants to gain this experience, or would they need to be created through a mentorship program (requiring additional infrastructure and volunteer mentor attorneys)?

If the Workgroup relies solely on the standard (formula) set out by the Futures Task Force, then *an associate degree in Paralegal Studies from an institutionally accredited program + 1,500 hours of substantive paralegal experience = **competency and highly experienced paralegal = competency***, then what other formulas also equaled competency (i.e., defining those terms).

Some questions the Workgroup needed to answer:

- What does substantive paralegal experience mean, and how is it measured?
- What are the career pathways that equate to becoming a highly experienced paralegal? (The Futures Task Force recommended five years of experience be the baseline).
- What other educational requirements or CLES would these education waiver applicants need in the substantive areas of law that these L.P.s were going to be licensed to practice?
- How could the Workgroup ensure the program had a sustainable candidate pool?
- Were L.P.s going to be mandatory reporters?
- Were L.P.s going to administer IOLTA accounts?
- Did providing an education waiver necessitate modifying the hours of substantive experience, or would these applicants be required to complete the same experience requirement?
- Should the experience component include a certain percentage of the subject-matter-specific experience, and should it be a different quantity for family law v. landlord/tenant?

- What other candidate pathways could be afforded through the "highly qualified paralegal" education waiver?

The Workgroup began by figuring out the different ways that a paralegal comes into being; how do they gain the necessary experience, and how could we verify that experience equates to competency? Ultimately, the Workgroup identified several different career paths that could be used by the Oregon State Bar to approve an individual's application to become an L.P. as outlined in the Admissions and Education Draft Framework.

The Workgroup also determined that the 1,500 substantive paralegal experience hour requirement was the bare minimum required of applicants. Still, applicants seeking a specific endorsement to practice (such as family law or landlord-tenant) would be required to have a minimum practice area-specific hourly requirement as well on a sliding scale, which could be part of the 1,500-hour minimum. The Workgroup wanted to ensure that applicants could add multiple endorsements, and the program could build on the number and type of endorsements offered through the program to ensure sustainability. The PLIC discussed the practice area-specific hours issue repeatedly. As a result, the current Draft Admissions and Education Framework and Recommendations include a first attempt to determine those practice area-specific guidelines. Still, there may be amendments to this requirement as more input is received and analyzed.

*RECOMMENDATION NO. 1.4: Licensees should be required to carry liability insurance in an amount to be determined.*

The Workgroup did not address this issue, deferring to the Regulation Workgroup to address it in their work. However, the Workgroup recommends that the approved coursework of the paralegal programs, the CLE guidelines for the education waiver applicants, and the CLE renewal guidelines include: teachings on the Professional Liability Fund, IOLTA Account management, and liability insurance mandates.

*RECOMMENDATION NO. 1.5: Licensees should be required to comply with professional rules of conduct modeled after the rules for attorneys.*

The Workgroup did not address this issue, deferring to the Regulation Workgroup to address it in their work. However, the Workgroup notes this recommendation as a necessary part of L.P.s competency requirements to know and follow the Rules of Professional Conduct and included it as part of the approved coursework for the paralegal programs, the CLE requirements for educational waiver applicants, and renewal CLE guidelines.

*RECOMMENDATION NO. 1.6: Licensees should be required to meet continuing legal education requirements.*

The Workgroup began their analysis of this recommendation by reviewing the OSB CLE guidelines for attorneys to renew their licenses and the CLES required of a reciprocity applicant. Those requirements became the foundation for the current draft with some key differences. The

Workgroup is aware that the L.P.s will be in a lower income-generating profession, with limited ability to pay for CLEs. Therefore, the PLIC recommends that L.P.s be given access to low or no-cost CLEs and educational resources to assist them with this requirement in the subject-matter-specific areas.

Additionally, the Workgroup focused on increasing the number and types of Access to Justice and Equity education programs and CLEs required of those who provide services to the underserved members of the public. For this reason, the Workgroup included an aggressive requirement for Access to Justice education and CLE in the approved course work, the education waiver CLE requirement, and the renewal CLE requirement. It is so vital to the Workgroup that the recommendation is double the Access to Justice education required of renewing attorneys.

As the larger Implementation Committee decided vital issues, such as the Recommendation that LPs be mandatory reporters, those topics were added to the list of required CLE courses. This process continued until the Workgroup was satisfied that the CLE program would supplement identified deficiencies in education and training so that an L.P. candidate or a renewing license holder could be considered competent.

*RECOMMENDATION NO. 1.7: To protect the public from confusion about a licensee's limited scope of practice, licensees should be required to use written agreements with mandatory disclosures. Licensees also should be required to advise clients to seek legal advice from an attorney if a licensee knows or reasonably should know that a client requires services outside of the limited scope of practice.*

The Workgroup did not address this issue, as the Regulation Workgroup will make recommendations as part of their work, except for the educational components necessary as part of the approved coursework, the CLE requirements for educational waiver applicants, and renewal CLE guidelines.

*RECOMMENDATION NO. 1.8: Initially, licensees should be permitted to provide limited legal services to self-represented litigants in family-law and landlord-tenant cases. Inherently complex proceedings in those subject areas should be excluded from the permissible scope of practice.*

The Workgroup is relying on the Regulation Workgroup's to define the scope of practice for the L.P.s. However, based upon the initial Draft Regulation Framework, the Education Workgroup drafted educational components necessary the paralegal programs, the CLE requirements for education waiver applicants, and renewal CLE guidelines for permitted legal services in domestic relations and landlord-tenant cases. The Workgroup will further amend these education requirements as the Regulation Workgroup defines the scope of practice.

*RECOMMENDATION NO. 1.9: Licensees should be able to select, prepare, file, and serve forms and other documents in an approved proceeding; provide information and advice relating to the proceeding; communicate and negotiate with another party, and provide emotional and administrative support to the client in court. Licensees should be prohibited from representing clients in depositions, in court, and in appeals.*

The Workgroup provides the same analysis as noted in the preceding section.

*RECOMMENDATION NO. 1.10: Given the likely modest size of a paraprofessional licensing program, the high cost of implementing a bar-like examination, and the sufficiency of the education and experience requirements to ensure minimum competence, we do not recommend requiring applicants to pass a licensing exam. If the Board of Governors thinks that an exam should be required, we recommend a national paralegal certification exam.*

The Workgroup addresses this recommendation in 1.2 above. However, the Workgroup notes that if the Oregon State Bar believes that an exam should be required, we agree with the Futures Task Force's recommendations to rely on an existing national paralegal certification exam such as the *Paralegal Core Competency Exam*® (PCCE®) for all applicants.

*RECOMMENDATION NO. 1.11: To administer the program cost effectively, we recommend integrating the licensing program into the existing structure of the bar rather than creating a new regulatory body.*

The Workgroup agrees with the PLIC and the Futures Task Force; the licensing program should be part of the existing structure of the bar, rather than creating a new regulatory body. The Workgroup adds that L.P.s should be admitted to the Oregon State Bar, deferring to the Bar on the administrative details.

The Workgroup references its Recommendation regarding the minimum requirement of 1,500 hours of substantive paralegal experience and the subsequent practice area-specific endorsements, requiring several hours within that practice area, as discussed previously. The Workgroup wants to emphasize its recommendation and support that while the practice areas currently being considered are Domestic Relations and Landlord/Tenant, the Workgroup supports the expansion of the L.P. program into other endorsement areas when the needs and analysis support such expansion.

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<sup>i</sup> The Sandbox, which is overseen by the Office of Legal Services Innovation, has garnered strong interest in the local and national legal services arena. The Office has received 47 applications to the Sandbox. The Court has authorized 26 entities to offer services. Services provided range across legal needs, including family law, end of life planning, and small-business needs. Entities include those with new business structures, including nonlawyer ownership and investment and joint ventures between lawyers and nonlawyers. Several entities have been authorized to use nonlawyer human or software providers of legal advice and assistance. <http://www.utcourts.gov/utc/news/2021/05/03/utah-supreme-court-to-extend-regulatory-sandbox-to-seven-years/>