**DRAFT**

**Oregon State Bar Paraprofessional Licensing Implementation Committee (PLIC)**

**Regulation Workgroup Initial Draft Framework and Recommendations for Public Comment**

**April 19, 2021**

Check to see what other states ding

Need input from PLIC

Workgroup members: Sue Gerhardt, Ralph Gzik, Robin Wright (chair)

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Summary

* Increase access to justice
* Balance access to justice and consumer protection
* Look to recommendations from Futures Task Force
* Differentiate from role of Family Court Facilitator (facilitator helps fill out forms; LP advises, advocates, suggests next steps/strategies)
* Where possible, build on existing structures for attorney representation
* Determine what new statutes, rules, regulations are needed

Initial Draft Recommendations

Recommendation #1 – Define Licensure/Scope of Practice

1. Limited Scope of Practice
   1. License limited to two specific substantive areas based on recommendation from Futures Task Force: Landlord/tenant and Family Law
   2. Landlord/Tenant cases
   3. Family Law Matters
      1. Scope of practice defined in terms of what LPs prohibited from doing
      2. LP prohibited from:
         1. Appeals (administrative, trial court, court of appeals)
         2. Stalking protective orders
         3. Family Abuse Prevention Act Restraining Orders
         4. Juvenile court cases (dependency or delinquency)
         5. Modifications where the initial court order originated outside Oregon
         6. Premarital or postnuptial agreements
         7. ??Cohabitation agreements
         8. Qualified Domestic Relations Orders (QDRO) and Domestic Relations Orders
         9. Cases emanating from ORS 109.119 (third party custody/visitation)
         10. Unregistered Domestic partnerships (Beal and Beal cases)
         11. Military divorces/custody cases (unless stipulated)
         12. Third party intervenors
         13. Contempt (punitive only; remedial allowed)
             1. Mixed recommendation
             2. Prohibit if confinement requested?
             3. Assisting in filling out/filing forms v. advocacy
             4. Concern opposing party may induce contumacious behavior to disqualify LP
         14. ?? Proceedings involving DHS??. Access to Justice impacts families and parties as they work through the different stages of a potential juvenile matter. Often the investigation process can go on for significant periods of time with little outcome other than a DHS findings report. In the interim, parties can be left without provisions to see their children. The court has procedures in place to properly investigate and award safety provisions for the children to the extent necessary during this period. However, parties cannot always engage lawyers for assistance and low-cost alternatives may be conflicted out due to one of the parties consulting with them. The Regulation Subcommittee recommends allowing LPs to assist with matters being investigated by DHS that are primarily family law items so long as there is not yet a juvenile matter pending with the court. Upon initiation of formal juvenile proceedings, an LP should be required to withdraw. This is very similar to what current court facilitators are allowed to do and would assist parties with being able to timely file the correct documents to get a hearing on parenting time items throughout Oregon.
             1. Mixed recommendation
             2. Complicated are of law with impact highly possible on other areas of law outside LPs scope (criminal, juvenile, etc.)
             3. Some support for allowing LPs to assist with stipulated or default cases where DHS involved
         15. ??International Family Law Cases/ Hague Convention cases. Given the scope of international family law cases and their interrelation with the Hauge Convention, the Regulations Subcommittee does not recommend LPs work on these types of matters. The Regulation Committee is cognizant that this is a limitation on the practice but believes the LPs purpose of increasing access to justice will not be inhibited by limiting this practice area.
         16. Court appearances (except to support or provide direction to client) (The Regulation Subcommittee recommends that LPs should be allowed to support and provide direction to their client at court appearances including administrative, procedural, and emotional preparation and support. Key stake holders to assist with this review are: circuit court Presiding judges, circuit court administrators, the local Bar Association Presidents (as they sign off on SLR changes) and board members.
             1. Futures Task Force recommended NO court appearances
             2. ??Draw line at administrative, procedural and emotional preparation and support?
             3. Exception for Informal Domestic Relations Trials (IDRT?)
         17. Depositions (The Regulations Subcommittee has reviewed the deposition limitations recommended by the Futures Task Force. In doing so, the Regulations Subcommittee weighted the potential chilling effect that limiting appearances for LPs compared to allowing LPs to sit through depositions but not conduct them. In reviewing the deposition processes, LPs should be able to assist with scheduling, noticing, and serving the proper documents for personal appearance at a deposition and subpoena duces tecums. LPs should be allowed to sit within the deposition but to not participate.
             1. Futures Task Force recommended NO deposition appearances for LPs
             2. Depositions as court proceedings under oath without a judge present
             3. Concern of scheduling depositions to “disqualify” LPs
             4. Should LPs be allowed to help client prepare for deposition?
             5. Should LP be allowed to help client during a deposition by being present, but not able to ask questions of opposing party?
         18. Representing minors. (LPs should not be allowed to represent Minors in matters. Representing a minor requires appearing in court on behalf of a party and at this juncture, the Futures Task Force as limited the LPs role in court. Before the Regulations Subcommittee can review this role more thoroughly, the final determination on the scope of practice and court appearances must be concluded.)
2. Duration
3. Disqualification

Recommendation #2 – Revise Existing Oregon Statutes, Regulations, and Rules

1. Oregon Revised Statutes
2. Rules of Civil Procedure
3. Uniform Trial Court Rules
4. Supplementary Local Rules
5. Administrative Rules relative to family law and landlord-tenant matters
6. Code of Judicial Conduct
7. Evidence Code
8. Rules of Professional Conduct
   * Attorney’s obligation to treat LP as legal representative of party
9. Child Abuse Reporting
10. Elder Abuse Reporting
11. Unlawful Practice of Law
12. Client Security Fund Rules
13. Minimum Continuing Legal Education (MCLE) Rules

Recommendation #3 – Promulgate or Enact New Statutes, Regulations, and Rules

1. Rules “springing” from or modeled after existing rules governing attorneys
   * Admissions criteria
   * OSB disciplinary regulations
   * Requirement for continuing legal education
   * Requirement for liability insurance
   * Requirement to participate in IOLTA (interest on lawyer trust accounts)
   * Use of referral service similar to OSB Lawyer Referral Service
   * Allow jail/prison access to meet clients
   * Access to low cost or free CLEs
   * Open up OSB section membership
   * Fee dispute resolution rules
2. Rules unique to LPs
   * Duty to refer to attorney
     + Cases requiring services outside the scope of practice
     + Cases that shift during representation to require services outside the scope of practice
     + Cases where LP suspects mental health or capacity issues

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* + Requirement to report out of state disciplinary sanctions
  + Use of written engagement agreements with mandatory disclosures
  + Allow alternative business structures between attorneys and LPs