

OSB PLIC – Regulation Workgroup Draft Report 11/2021

Regulation Workgroup Recommendations

The Regulation Workgroup is charged with recommending a state level regulatory framework related to implementing paraprofessional licensing. This framework includes defining the scope of practice for licensed paraprofessionals (LPs) in two specific subject matter areas (domestic relations and landlord/tenant), recommending appropriate tasks for LPs within that scope of practice, and identifying current or new regulations and rules to be revised or added to address the licensing of LPs.

There are three “official” members of this Workgroup. Initially, all members had experience primarily in domestic relations law. One Workgroup member resigned for personal reasons in August 2021 and a new member was then added. The new member’s legal experience is primarily outside both family law and landlord-tenant law. The Workgroup also received substantial, invaluable assistance in landlord-tenant law from four attorneys who currently practice landlord/tenant (LLT) law (two of whom are PLIC members), as well as other PLIC members, advisory committee members, and OSB staff. The Workgroup met in breakout sessions during most of the same meeting dates for the Committee as a whole, as well as during special separately scheduled sessions.

1. Scope of Practice – Family Law

(For purposes of this report, “family law” is considered to generally encompass the following areas: dissolution of marriage, separation, annulment, custody, parenting time, child support, spousal support, modifications, and remedial contempt. For specific subject matter scope of practice limitations, see below.)

The PLIC recommends that LPs be authorized to practice family law within the parameters listed below. The list includes specific actions within family law matters that LPs should be allowed to engage in, as well as specific subject areas in which LP participation should be allowed. Finally, specific types of family law cases that the Workgroup recommends should be outside the scope of an LP’s practice (that LPs should not be allowed to engage in) are also provided. These recommendations were based on the experience of the Workgroup members, input from the PLIC as a whole, PLIC Advisory Members, interested outside parties, and a review of the work of other states addressing similar issues. In particular, the Workgroup considered whether a subject area or procedure is typically considered especially difficult or complex, and what might benefit the greatest number of family law or landlord-tenant litigants who might otherwise be self-represented and could benefit from the assistance of an LP.

a. *Family Law Tasks within the Scope of LP Practice.*

The PLIC recommends that LPs be allowed to engage in the following tasks in the course of a family law case (within the subject matter limitations listed below):

- *Meet with potential clients to evaluate and determine needs and goals and advise.* As part of such a meeting, the LP would make an initial determination

whether the potential client's concerns are within the scope of the LP's practice or whether a referral to an attorney would be appropriate.

- *Enter a contractual relationship to represent a natural person (not including a business entity)* – Most family law litigants are “natural persons.” Very few family law litigants are business entities, and those that are business entities usually come into family law cases through more complex procedural mechanisms such as intervention or interpleading. Allowing LPs to represent only natural persons in family law cases would not unduly limit the kinds of cases they could engage in and is consistent with the Workgroup’s recommendation that LPs not engage in cases involving interpleading or intervenors.
- *Assist by completing pattern forms, drafting and serving pleadings and documents including orders and judgments* – In many basic cases, standard documents and pleadings are already available through the Oregon Judicial Department or local courts. In such situations, LPs would be able to assist litigants in form selection and completion, much as Family Law Courthouse Facilitators do currently. Unfortunately, not all counties have Courthouse Facilitators and even those that do may not be able to assist all self-represented litigants, particularly those who are not fluent in English. LPs would be able to explain the purpose of documents to litigants, help determine the appropriate document to use, help customize the information provided in the documents/pleadings to the litigants benefit and provide clarity and accuracy in filling out such documents consistent with the requirements of case law, Oregon Revised Statutes, Oregon Rules of Civil Procedure, Uniform Trial Court Rules and Supplemental Local Rules. LP assistance with pleadings would also presumably help to clarify the nature of the litigant’s position for the opposing party and the court and enable the court to proceed more efficiently.
- *File documents/pleadings with the court* – Many documents are now required to be filed with the court electronically. While some courts provide access to self-represented litigants for electronic filing, it may be difficult or confusing, especially for those not used to doing so, who are not fluent in English, or who need to file after physical access to the court is closed. LPs could assist such litigants presumably at a lower cost than most attorneys.
- *Assist by drafting, serving, and completing discovery and issuing subpoenas* -
- Family law discovery practice often includes such procedures and pleadings as requests for production of documents, responses to requests for production of documents, protective orders, drafting and advising on motions to compel, conferring with the opposing party or their representative, subpoenas, uniform support declarations, requests for admissions, and motions for and responses to motions for the following: custody and parenting time evaluations; drug and alcohol assessments; psychological evaluations; inspection of property; real and personal property appraisals; and vocational

assessments. Requesting or responding to such requests are often crucial for the just determination of family law matters. Competent and comprehensive discovery practice can be time-consuming and require substantial follow-up. The rules and requirements related to discovery practice may also be complex and confusing for those not familiar with them. LPs would be familiar with discovery requirements and procedures and able to assist litigants in this crucial aspect of the process.

- *Attend depositions, but not take or defend* – The PLIC recommends that LPs be permitted to assist with scheduling and compelling deposition appearances and preparing clients for being deposed and for taking a deposition, but that they not be allowed to take depositions or defend them. This restriction is based on depositions being a form of testimony under oath that requires knowledge and application of the rules of evidence to preserve objections or other evidentiary issues for possible later use in court. Knowledge and application of the evidence code is a basic skill required for taking and defending a deposition that is beyond the scope of LP practice (and likely training.)
- *Prepare for, participate in, and represent a party in settlement discussions, including mediation and settlement meetings* – LPs would help enforce the requirement that litigants attend alternative dispute resolution, advise clients in advance on what to expect, and help them prepare so that such sessions might be more efficient and effective.
- *Prepare parties for judicial settlement conferences.*
- *Participate and assist with hearing, trial, and arbitration preparation* – LPs would prepare clients for court appearances (e.g., direct-examination and cross-examination, oral argument, issue subpoenas, prepare witnesses, prepare and submit exhibits, draft asset/liability statements, and write memoranda to provide to the court).
- *Attend court appearances to provide support and assistance in procedural and ex parte matters.* LPs would be allowed to sit at counsel table during court appearances and respond to questions by the court in both standard procedural family law appearances, ex parte matters, evidentiary proceedings, and Informal Domestic Relations (IDRT) proceedings. LPs would not affirmatively represent a client directly during evidentiary hearings or other similar court appearances. For example, an LP would not be allowed to make evidentiary objections, offer exhibits, or question witnesses.
- *Review opinion letters, court orders, and notices with a client and explain how they affect the client including the right to appeal.* Informing litigants about the significance of a court's determination and the right to appeal and the related timing would be an important service, even if LPs are restricted from assisting

in the appeals process. LPs could also provide referrals if a client is considering an appeal.

- *Refer clients to attorneys for tasks or subject matter outside the scope of LP representation.* This ongoing obligation would be a requirement throughout an LP's representation, especially if the case came to include something beyond the LP's original expectation during the initial assessment.

b. Family Law Practice Outside the Scope of LP Representation

The PLIC recommends that the following types of cases, sometimes broadly considered part of or related to "family law," be outside an LP's scope of practice:

- *Appeals (administrative, trial court and court of appeals), except de novo appeals of administrative child support judgments.* Appeals have their own procedural rules and deadlines and can be quite complicated. This is especially true of appeals from trial court determinations and decisions of the Court of Appeals. While some self-represented family law litigants manage to navigate the process on their own, the small volume of such parties makes this complicated area less compelling for inclusion as a part of LP practice at this time, especially when balancing the potential benefit compared to the additional training LP candidates would require to be proficient. In the future if there is substantial demand from self-represented litigants for LP assistance with appeals, expansion into this substantive area (with the requirement of additional education) could be considered.

Appeals of administrative child support judgments, however, involve a circumscribed and limited subject matter area that primarily covers information an LP would be expected to know already as part of a trial-level practice, namely the administrative rules related to child support determinations. While some additional minimal administrative procedural rules would also need to be learned, the substantive law of child support would not be new. In addition, it is believed that an appreciable proportion of administrative child support proceedings already involve self-represented litigants. Further, the decisions of administrative law judges in these proceedings may be appealed to a trial court. If LPs are permitted to assist in the preparation of child support cases before a trial court, they should be permitted to assist in the preparation of administrative child support determinations as well.

- *Stalking protective orders* – This area of the law often involves unrelated parties, falls under a separate chapter of the Oregon Revised Statutes and is not customarily seen as falling within the area of family law (or landlord/tenant law).

- *Juvenile court cases* (dependency or delinquency) – Both dependency and delinquency law are complex, fall under an entirely different statutory framework than family law cases, and involve multiple parties. Delinquency cases are similar to adult criminal cases and require an understanding of criminal law. Dependency cases almost always involve child protective services and can lead to a termination of parental rights. Financially qualified trial level litigants are generally entitled to court appointed counsel in both types of juvenile court proceedings. These factors mitigate against allowing LPs to represent litigants if juvenile court cases are involved.

However, there are some juvenile dependency situations where limited LP assistance might be appropriate. In family law cases with consolidated or related associated juvenile court proceedings where juvenile court involvement may not be initiated or may be dismissed if a divorce, separation, custody case, or modification is initiated (and child custody therefore secured for a protective parent), limited LP assistance in the family law case may be appropriate. This is especially true since court appointed counsel in juvenile dependency cases often refuse to assist clients in their family law action because it would be outside the terms of their appointment contract. Allowing an LP to assist in a divorce related to a juvenile court proceeding would, of course, apply only if the associated divorce proceedings were also otherwise within the LP's scope of practice.

- *Modifications of custody, parenting time or child support when the initial court order originates outside Oregon* – When the initial court order originated outside of Oregon, modifications of custody and parenting time may require application of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Modifying a child support order when the initial court order originated outside Oregon may require application of the Uniform Interstate Family Support Act (UIFSA). Both statutes are complex and may require contact and working with officials from other jurisdictions. It is not likely that restricting LP practice in this more complicated area would dramatically limit the number of possible cases available for LPs.
- *Premarital or postnuptial agreements* (drafting, reviewing, or litigating) – Premarital and postnuptial agreements often involve substantial and/or complicated assets and may have significant consequences if not properly drafted or implemented. If significant assets are in play and something is found to have “gone wrong” with the drafting, there may be substantial malpractice liability. Such agreements may also be considered contracts, with contract law applied to their interpretation and enforcement. As such, including these agreements in LP practice would require extensive additional education in contract law, outside the normal scope of family law. Additionally, in the experience of the family law practitioners on the workgroup, premarital and postnuptial agreements do not comprise a large portion of family law practice and restricting LPs from this type of work would not substantially impact the number of litigants likely to seek LP assistance.

- *Cohabitation agreements (drafting, reviewing, or litigating)* – As with premarital and postnuptial agreements, cohabitation agreements involve primarily contract law and are not within traditional family law practice. Including these agreements in LP practice would require extensive additional education in contract law, outside the normal scope of family law.
- *Qualified Domestic Relations Orders (QDROs) and Domestic Relations Orders (DROs) (drafting, reviewing, or litigating)* – Drafting DROs can be complex with substantial monetary consequences if mistakes are made. As a result, many attorneys who practice primarily or even exclusively in family law often get assistance from specialized attorneys for QDROs/DROs. While prohibited from drafting such provisions themselves, LPs should be allowed to use language for QDROs/DROs provided by these specialized attorneys.
- *Third party custody/visitation cases (ORS 109.119)* – The statute involved in third party custody and visitation cases is quite complex. Multiple parties may be involved. Specific detailed and necessary facts must be alleged. Other forms of relief, such as those involving guardianship of a minor, may also be implicated. The subject area is best left to attorneys.
- *Unregistered domestic partnerships (“Beal and Beal cases”)* – Litigation involving unregistered domestic partnerships (as opposed to registered domestic partnerships) can be contract cases or “de-facto” spouse cases involving complicated issues, case law, and the application of facts to the law, including contract law. Including this area of law in LP practice would require extensive additional education in contract law, outside the normal scope of family law.
- *Cases with third-party intervenors* – Specific facts must be alleged to intervene, resulting often in more complicated procedural requirements.
- *Military divorces unless stipulated* – These cases often involve the Servicemembers Civil Relief Act (SCRA) and military retirement benefits and requirements that can be extremely complex. Even with this complexity, when both parties agree on the dissolution terms it seems reasonable to allow LPs to assist in finalizing the divorce. A note of caution: while an LP should be allowed to work on military divorces when the parties agree to all dissolution terms, it would be wise in such situations for a litigant to consult with an attorney well versed in military divorces to understand the impact of what they are agreeing to and for the LP to insist that such a consultation occur before helping to memorialize the divorce terms.
- *Remedial Contempt when confinement requested* – Contempt can be punitive or remedial. Punitive contempt can only be initiated by a district attorney, may result in confinement, and is therefore more like a criminal proceeding, which is outside the scope of family law practice. Remedial

contempt when there is a request for confinement is similar in that regard and therefore should be outside the scope of LP practice as well. LPs should be able to assist with remedial contempt only when confinement is not before the court.

- *Stand Alone Family Abuse Prevention Act (“FAPA”) cases* – ORS 107.700 – 107.735) Petitioners in FAPA cases can often access no-cost assistance from outside advocates available in many courthouses. Respondent’s seldom have that option. For many respondents, FAPAs can raise the prospect of additional significant related legal actions being filed against them, including criminal complaints or juvenile court petitions. The decisions made in responding to a FAPA order may also implicate such things as access to the party’s child or the ability to possess a firearm. While the consequences of the FAPA alone may have a huge impact on the litigants, adding the possible additional major legal repercussions make the situation even more complex. Competent advice to a respondent in a FAPA case should always include consideration of other possible legal implications. Therefore, LPs should not, in general, represent litigants in FAPA cases.

However, concern has also been expressed that if LPs are prohibited from representing litigants if a FAPA claim is raised, then an opposing party may raise a baseless FAPA claim in order to disqualify an otherwise competent LP from a divorce case. Therefore, the PLIC recommends that if there is an already existing family law matter where an LP represents a party, that LP should not be disqualified from continuing such representation if the opposing party files a FAPA petition. In that scenario, the LP should be allowed to continue representing the FAPA respondent or petitioner, with the strong recommendation to have their client consult with an appropriate attorney regarding possible related legal consequences.

- *Elderly Persons and Persons with Disabilities Abuse Prevention Act cases, (“EPPDAPAs”), Sexual Abuse Protection Order cases (“SAPOs”), guardianships, and adoptions.* All of these listed areas of law are outside the standard area of family law practice. Guardianships and adoptions in particular are complex and have their own specific procedural requirements. EPPDAPAs and SAPOs have concerns similar to those for FAPAs, as cited above. Therefore, cases that involve EPPDAPAs, SAPOs, guardianships or adoptions should be excluded from LP practice.

2. Scope of Practice – Landlord/Tenant Law

The PLIC recommends that LPs be authorized to offer guidance, document preparation services, and courtroom representation on landlord-tenant (“LT”) matters as outlined below. It is anticipated that granting LPs authority to serve in this capacity will increase the availability of legal services to both landlords and tenants and help close the access to justice gap. The consequences of not having access to legal assistance in landlord/tenant matters can be

severe. Tenants may be evicted despite having meritorious defenses, and they may be unable to obtain basic housing rights guaranteed by the Oregon Residential Landlord and Tenant Act (ORLTA), including freedom from illegal treatment and access to decent, safe, and sanitary housing. Landlords can need guidance in following the law and may not understand their rights or responsibilities, which may have substantial financial consequences. For example, errors in a required written notice may cause the notice to be defective, delay a meritorious eviction, or cause the loss of an eviction lawsuit resulting in the potential for attorney fees against the landlord even when their claim is well founded.

Landlords already enjoy the option of representation in circuit court forcible eviction and detainer actions (“FEDs”) by a non-lawyer agent (ORS 105.130(4)). Such non-lawyer agents, however, are likely to represent those landlords that have a large number of residential tenants and are in court often. Landlords with a small number of residential rental units and who are not in court often are less likely to have access to the services of non-lawyer agents already allowed in FED actions. Tenants do not enjoy a reciprocal right to non-lawyer assistance. Authorizing LPs in landlord/tenant cases would help balance this disparity by providing both tenants and “small number” landlords the option of working with a knowledgeable LP. Landlords who currently rely on non-lawyer agents would also have the additional choice of representation by an LP who is trained, licensed, and covered by the PLF.

The PLIC recommends that LPs scope of practice on landlord-tenant issues be limited to those concerning residential rental agreements under the Oregon Residential Landlord Tenant Act (ORS Chapter 90, ORLTA), and the Forcible Entry and Wrongful Detainer provisions found at ORS 105.126-168. The scope of practice would be limited to only residential tenancies. The specific types of cases that the PLIC recommends should be outside the scope of an LP’s practice in landlord/tenant cases (that LPs should not be allowed to engage in) are clarified below. These recommendations were based on the experience of PLIC Advisory Members experienced in landlord/tenant law, (including both private practitioners and those who provide representation through Legal Aid), input from the PLIC as a whole, and input from interested outside parties. In particular, in deciding whether a specific case should be outside the scope of LP representation, the PLIC considered whether a subject area or procedure is typically especially difficult or complex, and what might benefit the greatest number of landlord-tenant litigants who might otherwise be self-represented and could benefit from the assistance of an LP.

a. Landlord/Tenant Law Tasks within the Scope of LP Practice.

The PLIC recommends that LPs be allowed to engage in the following tasks in the course of a landlord/tenant (LLT) case within the subject matter limitations listed below:

- *Enter into a contractual relationship to represent a natural person or a business entity* – LPs should be available to assist tenants or landlords, especially those who might not otherwise have access to legal advice. While tenants are likely to be natural persons, landlords in need of such assistance may also be proceeding as a business entity. LPs, therefore, should be able to contract with both natural persons and business entities on LT matters.

- *Meet with potential clients to evaluate and determine needs, goals, and advise on claims or defenses (e.g., notices of intent to terminate tenancy, inspect premises, rent increase, etc.)* – Prospective clients should be able to meet with LPs regarding landlord/tenant matters whenever needed to determine the best way to proceed and to start whatever process might be necessary. LPs may be an especially important source of legal information for litigants with limited financial resources (e.g., who are not able to obtain representation from Legal Aid) or from geographic areas of the state where there are few attorneys who practice landlord/tenant law. In addition, LPs who are fluent in languages other than English may provide essential services especially to non-English speaking tenants.
- *Review, prepare, and provide advice regarding a variety of documents including pleadings, notices, orders and judgments* – The types of documents LPs would be authorized to review would include but not be limited to residential leases and rental agreements, amendments to rental agreements, eviction notices, notices of intent to enter rental property, rent increase notices, demand letters, notices of violation, security deposit accountings, etc.
- *File documents and pleadings with the court* – Litigation regarding residential tenancies can occur through small claims court actions as well as FED litigation. Examples of the types of documents LPs would be authorized to help prepare and file in small claims actions include but are not limited to: small claims and notices of small claims, responses, trial exhibits and memoranda. Examples of the types of documents LPs would be authorized to help prepare and file in FED litigation include but are not limited to: complaints, answers (including tenant counterclaims) replies to counterclaims and affirmative defenses, subpoenas, trial exhibits, FED stipulated agreements (ORS 105.145(2)), declarations of noncompliance (ORS 105.146), requests for hearing on declarations of noncompliance (ORS 105.148), notices of restitution, and writs of execution.
- *Assist in obtaining continuance requests to allow parties to make discovery requests or obtain other discovery* – Expedited FED timelines make most discovery impractical. However, landlords may request continuances, and tenants may request continuances if they pay rent into court (ORS 105.140(2)). LPs could provide this information to litigants and assist in the discovery process if the continuance was allowed.
- *Attend depositions, but not take or defend* -- While discovery timelines for FED cases can make depositions impractical, they only require “reasonable notice,” which caselaw has found to be satisfied with two days’ notice. LPs would be able to work with tenants to assist with this expedited timeframe, including scheduling and compelling deposition appearances and preparing clients for being deposed and for taking a deposition.

The PLIC recommends that LPs be permitted to assist with depositions, but that they not be allowed to take depositions or defend them. This restriction is based on depositions being a form of testimony under oath that requires knowledge and application of the rules of evidence to preserve objections or other evidentiary issues for possible later use in court. Knowledge and application of the evidence code is a basic skill required for taking and defending a deposition that is beyond the scope of LP practice (and likely training.)

- *Participate, prepare for, and represent a party in settlement discussions, including mediation and settlement meetings* – Negotiations in landlord tenant cases often occur the day of the initial court appearance. Being able to consult with an LP in advance of the initial court appearance would allow a litigant to become informed about what to expect and what the negotiation process would likely entail. It could also help those new to the process understand the strength or weakness of their position ahead of time from an informed perspective, resulting in more reasonable, just, and efficient outcomes.
- *Prepare parties for judicial settlement conferences.*
- *Participate and assist with hearing and trial preparation* – LPs should be allowed to prepare clients for court appearances (e.g., direct-examination and cross-examination, oral argument, exhibit preparation and submission, and memoranda to the court)
- *Attend court appearances to provide permitted support and assistance in procedural matters.* LPs would be allowed to sit at counsel table during court appearances and respond to questions by the court. LPs would not affirmatively represent a client directly during evidentiary hearings or other similar court appearances. For example, an LP would not be permitted to make evidentiary objections, offer exhibits, or question witnesses, but would be able to assist their client in doing so.
- *Review opinion letters, court orders, and notices with a client and explain how they affect the client including the right to appeal.* Informing litigants about the significance of a court's determination and the right to appeal and the related timing would be an important service, even if LPs are restricted from assisting in the appeals process. LPs could also provide referrals if a client is considering an appeal.
- *Refer clients to attorneys for tasks or subject matter outside the scope of LP representation.* This ongoing obligation would be a requirement throughout an LP's representation, especially if the case came to include something beyond the LP's original expectation during the initial assessment.

b. Landlord/Tenant Practice Outside the Scope of LP Representation

The PLIC recommends that the following types of landlord/tenant (LLT) cases be outside an LP's scope of practice:

- *Affirmative Plaintiff Cases in Circuit Court* – Affirmative plaintiff cases often include matters beyond the scope of landlord/tenant practice in general and beyond the scope of what LPs are expected to master. Parties can file in small claims court for up to \$10,000, which may be an alternative forum for such cases. Excluding these types of cases would not unduly limit cases available for LP practice. These types of cases are not as frequent and urgent as most FED cases and often include counterclaims, depositions, and substantial discovery.
- *Agricultural tenancies and leasing* – These cases are outside of the Oregon Residential Landlord and Tenant Act (ORLTA) and more similar to tort claims, often requiring specialized knowledge. These cases are not common and often involve significant dollar amounts. Farm worker tenancies often do not fall under ORLTA and often implicate federal laws, which would be beyond expected LP proficiency. There are other specialized resources available for advocacy in these types of cases.
- *Affirmative Discrimination Claims (except if asserted as a counterclaim or defense)* – This is a complex area of law requiring significant specialized legal knowledge – often implicating other areas of state and federal law. While discrimination cases are important and need to be pursued, this area largely arises outside of ORLTA and requires significant specialized legal knowledge and extensive factual development and discovery. Claims may be raised in state or federal court and if raised in an FED may create preclusion issues. If a tenant wishes to counterclaim for personal injury damages, whether arising under a tort or ORLTA theory of liability, the LP would then need to refer the case to an attorney. There was some discussion that in the future a third practice area or special certification for LPs could be created for discrimination cases.
- *Commercial tenancies and leasing* – These cases fall outside of ORLTA and require extensive knowledge of complicated business law and contract law.
- *Landlord/tenant claims for personal injury* – Personal injury and other tort claims may arise during the landlord-tenant relationship and may give rise to liability under ORLTA or the rental agreement. Examples of this include premises liability injuries and mold-related illnesses. This area of law requires significant specialized legal knowledge and can be very complex, requiring extensive factual development and discovery. It may also implicate other areas of law. Such claims may be brought in the circuit court as well, and if raised previously in an FED, may create preclusion issues. These claims may also involve insurance issues. With all of these potential concerns, these

personal injury claims are beyond the scope of what LPs can reasonably be expected to become proficient about and advise upon. If a tenant wishes to counterclaim for personal injury damages, whether arising under a tort or ORLTA theory of liability, the LP must refer to an attorney.

- *Injunctive relief in affirmative cases.*
- *Housing provided in relation to employment* – This area is generally excluded from ORLTA and implicates significant state and federal law claims. Additionally, these claims can be brought in both state and federal court.
- *Affirmative subsidized housing claims* – These claims are complex and involve significant overlap with federal laws and regulations. A number of lawyers have expertise with subsidized housing claims and could assist both tenants and landlords with these issues. However, an LP who is familiar with subsidized housing related issues should not be precluded from advising on defenses to eviction related to the subsidized status of a unit.

3. Statutes, Rules and Regulations to Review or Revise

A large number of current statutes, rules, and regulations will need to be reviewed and revised before LPs are licensed and begin practice. The PLIC has discussed at least two possible scenarios to accomplish these revisions. The first is to add a simple overarching statement to each of the major statute/rule categories (e.g., an addition to the ORCPs that “all rules in the ORCP applicable to attorneys shall also apply to LPs”). Another option would be to change the text of specific rules in each major statute or rule category (e.g., a change to ORCP 17A to add “licensed paraprofessional” to the list of who must sign a pleading, motion or other document). The PLIC recommends changing the text of specific rules/statutes to add LPs to promote clarity with regard to which rules/statutes apply to LPs and which do not. There was some concern over what impact this method might have on statutory interpretation and precedent. There was also concern about the amount of time such detailed revisions might take, as well as what might happen if a revision was missed. Overall, however, the general sense of the PLIC was that changes should be made to specific applicable statutes, rules and regulations.

a. Revisions Applicable to LP Practice in General

The statutes, rules, and regulations identified as pertinent to LP practice in general (rather than to either family law or landlord tenant law) that would need review or modification include but are not limited to:

- *Oregon Rules of Civil Procedure (ORCP)*
- *Uniform Trial Court Rules (UTCRC)*
- *Oregon Rules of Professional Conduct (ORPC)*
- *Minimum Continuing Legal Education Rules (MCLE)*
- *OSB Client Security Fund Rules*
- *OSB Rules of Procedure*

- *Oregon Code of Judicial Conduct*
- *Various Supplementary Local Rules for each Circuit Court*
- *ORS 9.005 et. seq. (Oregon State Bar Act)*
- *ORS 124.060 (Elder Abuse Reporting)*
- *ORS 419B.005 et. seq. (Child Abuse Reporting)*

b. *Additional Family Law Related Revisions*

Additional specific rules and statutes identified as pertinent to the domestic relations prong of LP practice that would need review or modification include but are not limited to:

- *ORS 107 et. seq. (Dissolution, Annulment and Separation)*
- *ORS 109 et. seq. (Parent and Child Rights and Relationships)*
- *Rules related to Informal Domestic Relations Trial (“IDRT” – UTCR 8.120)*
- *ORS 20.075 (Factors to be considered by a court in awarding attorney fees)*
- *ORS 40.090 et seq. (Oregon Evidence Code, including rules 202, 503, 503-1, 504-5, 509-2, 511, 513.)*
- *Supplementary Local Rules, including specifically those reserved in Chapter 8 for domestic relations proceedings*

c. *Additional Landlord/Tenant Related Revisions*

Additional specific rules and statutes identified as pertinent to the landlord/tenant prong of LP practice that would need review or modification include but are not limited to:

- *ORS 90 (Residential Landlord and Tenant)*
- *ORS 91 (Tenancy)*
- *ORS 105 (Property Rights)*
- *ORS 20.075 (Factors to be considered by a court in awarding attorney fees)*
- *ORS 40.090 et seq. (Oregon Evidence Code, including rules 202, 503, 503-1, 504-5, 509-2, 511, 513.)*
- *Supplementary Local Rules, including specifically those reserved in Chapter 18 for landlord/tenant proceedings*

d. *Additional Business-Related Revisions*

In addition to knowing and following the substantive and procedural aspects of family law and landlord/tenant law, LPs who are in business should be required to comply with the same requirements in dealing with clients and the public as apply to attorneys. This would include, but not be limited to those aspects of the Rules of Professional Conduct that apply to transactions with clients, transactions with persons other than clients, and legal firms and associations. Specific rules that will need to be revised for LP practice may include but would not be limited to provisions that also apply to the current practice of law by attorneys such as requiring the use of Interest on Lawyer Trust Accounts (IOLTA), IOLTA-related certification requirements, and a

prohibition on sharing fees with non-attorneys or other paraprofessionals or from sharing ownership in a firm with individuals not licensed by the Oregon State Bar, as is the case with lawyers now.

The PLIC also recommends that the Professional Liability Fund (PLF) rules, regulations, and practice aids applicable to attorneys also apply to LPs. The PLF provides valuable assistance to attorneys in best practices, ongoing practice management, liability reduction and other crucial services and the general public would benefit substantially if the same were made available to LPs.

e. Potential New Provisions Needed

New statutes, rules, and regulations will also be needed for LP practice in at least the following additional areas:

- LP admission criteria
- LP scope of practice definitions and limitations
- LP discipline reporting requirements