

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 27, 2019
From: Policy & Governance Committee
Re: Paraprofessional Licensing Program

Action Recommended

Proceed with the OSB Futures Task Force recommendation to create a Paraprofessional Licensing Program in Oregon.

Background

In June 2017, the OSB Futures Task Force recommended that the OSB take steps to establish a program for licensure of paraprofessionals who would be authorized to provide limited legal services, without attorney supervision, to litigants in family law and landlord-tenant proceedings. A summary of the recommendations are set forth in the OSB Futures Task Force Executive Summary¹ and include the following:

1. To qualify for a limited scope license, applicants would have to:

- Be at least 18 years old and of good moral character;
- Have an associates degree from an ABA-approved or institutionally accredited paralegal studies program with approved coursework in the subject matter of the license; or a juris doctorate degree; or have the equivalent in experience as a paralegal;
- Have at least one year (1,500 hours) of substantive law-related experience under the supervision of an attorney; and
- Pass a national paralegal certification exam.

2. Once licensed, the paraprofessional would have to do the following in order to retain that license:

- Comply with rules of professional conduct similar to those applicable to lawyers;
- Meet continuing legal education requirements;
- Use written fee agreements with mandatory disclosures relating to the scope of practice; and
- Carry professional malpractice insurance.

¹ The Futures Task Force Executive Summary can be found here:

http://www.osbar.org/docs/resources/taskforces/futures/FuturesTF_Summary.pdf.

The full report of the Futures Task Force can be found here:

https://www.osbar.org/docs/resources/taskforces/futures/FuturesTF_Reports.pdf.

3. A licensed paraprofessional in good standing would be allowed to do the following:

- Select, prepare, file and serve forms and other documents in approved family law and landlord-tenant cases.
- Provide information and advice relating to the proceeding;
- Communicate and negotiate with the opposing party; and
- Provide emotional and administrative support to the client in court.

4. A licensed paraprofessional would NOT be allowed to do the following:

- Represent clients in depositions;
- Represent clients in court; and
- Represent client on appeal.

At its September 8, 2017 meeting, the Board of Governors decided to establish a Paraprofessional Licensing Exploration Committee, rather than an Implementation Committee. In attempting to recruit members for the committee, staff found that some viewed service on the committee as an opportunity to kill the proposal. Others were reluctant to volunteer their time to develop the proposal further, with the possibility that the board would reject the final proposal because of negative member feedback. Consequently, staff brought the issue back to the board for further consideration.

At its November 17, 2017 meeting, the board voted to approve an implementation committee, but several board members continued to voice concerns about moving forward without seeking and including member feedback as part of the implementation process.

Thereafter, staff once again began recruitment efforts for the Implementation Committee. The chair of the FTF Paraprofessional Licensing Workgroup had experience with an implementation process that would address board member concerns and felt confident that she could solicit input from stakeholders and flesh out the details of the program in a way that would build support for the program. She agreed to chair the implementation committee, but said she would have to wait to begin until after she had settled into her new job. Ultimately, in the spring of 2018, the chair informed staff that the demands of her new job precluded her from serving on the implementation committee in any capacity. At that point, other issues at the bar took priority over establishing a new paraprofessional licensing program.

Since that time, staff and board members have collected additional information, prepared a program scoresheet, and discussed the program with members of the bar on an ad hoc basis. While some bar members support licensing paraprofessionals (e.g. legal aid lawyers and many judges), many other lawyers strongly oppose the idea. Paralegals continue to be overwhelmingly supportive of the concept.

Since the OSB Futures Task Force Report, Utah has completed implementation of its licensed paralegal practitioner program. <https://www.utahbar.org/licensed-paralegal-practitioner/>. In addition, California and New Mexico have begun to discuss the possibility of providing limited law licenses to paralegals. <http://www.calbar.ca.gov/About-Us/Who-We-Are/Committees-Commissions/Task-Force-on-Access-Through-Innovation-of-Legal-Services>. [https://www.nmbar.org/Nmstatebar/About Us/LLLT Dashboard.aspx?WebsiteKey=687d8cd9-4ff9-4f83-a12f-6657211dab17](https://www.nmbar.org/Nmstatebar/About%20Us/LLLT%20Dashboard.aspx?WebsiteKey=687d8cd9-4ff9-4f83-a12f-6657211dab17). Finally, it is worth noting that the two states with some type of limited scope license for the practice of law have adopted those programs only after pressure from either their supreme court or state legislature.

At its July 26, 2019 meeting, the Policy & Governance Committee considered the following options with respect to the paraprofessional licensing program:

1. Convene an implementation committee.
2. Monitor other state efforts and revisit the issue in 2020 or 2021.
3. Focus efforts on expanding and improving resources for self-navigators, such as court facilitators and others identified in the Futures Task Force Report.
4. Take no further action.
5. Other??

After discussion, the Policy & Governance Committee recommends convening an implementation committee for the establishment of a paraprofessional licensing program in Oregon.